

**ALASKA STATE LEGISLATURE  
SENATE LABOR AND COMMERCE STANDING COMMITTEE**

March 15, 2018

1:36 p.m.

**MEMBERS PRESENT**

Senator Mia Costello, Chair  
Senator Kevin Meyer, Vice Chair  
Senator Gary Stevens  
Senator Berta Gardner  
Senator Peter Micciche

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 62

"An Act repealing the certificate of need program for health care facilities; making conforming amendments; and providing for an effective date."

- MOVED CSSB 62(L&C) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 76

"An Act relating to alcoholic beverages; relating to the regulation of manufacturers, wholesalers, retailers, and common carriers of alcoholic beverages; relating to licenses, endorsements, and permits involving alcoholic beverages; relating to the Alcoholic Beverage Control Board; relating to offenses involving alcoholic beverages; amending Rule 17, Alaska Rules of Minor Offense Procedure; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 62

SHORT TITLE: REPEAL CERTIFICATE OF NEED PROGRAM

SPONSOR(S): SENATOR(S) WILSON

02/17/17           (S)           READ THE FIRST TIME - REFERRALS

02/17/17 (S) L&C, FIN  
04/06/17 (S) L&C AT 9:00 AM BELTZ 105 (TSBldg)  
04/06/17 (S) Heard & Held  
04/06/17 (S) MINUTE(L&C)  
04/06/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
04/06/17 (S) -- MEETING CANCELED --  
04/07/17 (S) L&C AT 9:00 AM BELTZ 105 (TSBldg)  
04/07/17 (S) Heard & Held  
04/07/17 (S) MINUTE(L&C)  
02/06/18 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
02/06/18 (S) Heard & Held  
02/06/18 (S) MINUTE(L&C)  
03/08/18 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
03/08/18 (S) Heard & Held  
03/08/18 (S) MINUTE(L&C)  
03/15/18 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 76

SHORT TITLE: ALCOHOLIC BEVERAGE CONTROL; ALCOHOL REG  
SPONSOR(s): SENATOR(s) MICCICHE

03/03/17 (S) READ THE FIRST TIME - REFERRALS  
03/03/17 (S) L&C, JUD  
05/11/17 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS  
05/11/17 (S) L&C, JUD  
03/13/18 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
03/13/18 (S) Heard & Held  
03/13/18 (S) MINUTE(L&C)  
03/15/18 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

NATASHA MCCLANAHAN, Staff  
Senator Mia Costello  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided an explanation of changes between version D and version O of SB 62.

MARGARET BRODIE, Director  
Division of Health Care Services  
Department of Health and Social Services (DHSS)  
Anchorage, Alaska

**POSITION STATEMENT:** Stated that the CS for SB 62 will have no fiscal impact on the department.

DONNA STEWART, Executive Director

Office of Rate Review (ORR)  
Department of Health and Social Services (DHSS)  
**POSITION STATEMENT:** Provided information relevant to SB 62.

JEAN MISCHEL, Legislative Counsel  
Legislative Legal Services  
Legislative Affairs Agency  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As drafter, answered questions related to SB 62.

ANNA BRAWLEY, Consultant  
Agnew Beck Consulting  
Anchorage, Alaska

**POSITION STATEMENT:** Delivered the sectional analysis for SB 76.

JOEL KADARAUCH  
Alaska Beer, Wine & Spirits Wholesalers Association  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in strong support of SB 76.

MICHAEL BALDWIN, Senior Evaluation and Planning Officer  
Grants & Administration  
Alaska Mental Health Trust Authority (AMHTA)  
Department of Revenue (DOR)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in strong support of SB 76.

ERIKA MCCONNELL, Director  
Alcohol and Marijuana Control Office  
Department of Commerce, Community and Economic Development  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to SB 76.

ALISON KULAS, Executive Director  
Advisory Board on Alcoholism and Drug Abuse (ABADA) and  
Alaska Mental Health Board (AMHB)  
Division of Behavioral Health  
Department of Health and Social Services (DHSS)  
Juneau, Alaska

**POSITION STATEMENT:** Testified that both boards are in full support of SB 76.

TREVOR STORRS, Executive Director  
Alaska Children's Trust and  
member of the Recover Alaska Steering Committee

**POSITION STATEMENT:** Testified that the Alaska Children's Trust supports SB 76 and the components related to underage drinking.

ERIKA MCCONNEL, Director  
Alcohol and Marijuana Control Office  
Department of Commerce, Community and Economic Development  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information related to SB 76.

NANCY MEADE, General Counsel  
Administrative Staff  
Office of the Administrative Director  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Commented on SB 76.

#### **ACTION NARRATIVE**

[1:36:13 PM](#)

**CHAIR MIA COSTELLO** called the Senate Labor and Commerce Standing Committee meeting to order at 1:36 p.m. Present at the call to order were Senators Stevens, Micciche, Meyer, Gardner, and Chair Costello.

[1:37:24 PM](#)

**SENATOR GARDNER** introduced the youths from Facing Foster Care in Alaska who were job shadowing her today.

[1:38:22 PM](#)

At ease

[1:40:20 PM](#)

**CHAIR COSTELLO** reconvened the meeting.

**SENATOR MICCICHE** introduced the youths from Facing Foster Care in Alaska who were job shadowing him today.

#### **SB 62-REPEAL CERTIFICATE OF NEED PROGRAM**

[1:41:17 PM](#)

**CHAIR COSTELLO** announced the consideration of SB 62 and noted the proposed committee substitute (CS).

[1:41:59 PM](#)

At ease

[1:42:21 PM](#)

CHAIR COSTELLO reconvened the meeting.

SENATOR MEYER moved to adopt the CS for SB 62, version 30-LS0502\0, as the working document.

CHAIR COSTELLO objected for an explanation of the changes.

[1:42:54 PM](#)

NATASHA MCCLANAHAN, Staff, Senator Mia Costello, Alaska State Legislature, Juneau, Alaska, paraphrased the following explanation of changes between versions D and O of SB 62:

Version O allows for an exemption from the certificate of need program if the new construction of a healthcare facility, alteration of bed capacity, or addition of a category of health services is in a location that is over 75 miles from another healthcare facility. This is a change from 100 miles in Ver. D to 75 miles in Ver. O. The change assists more communities that are currently struggling to attract and retain healthcare services to better provide equal access to care for all Alaskans.

CHAIR COSTELLO removed her objection and asked if there was further objection.

[1:44:04 PM](#)

SENATOR GARDNER asked the rationale for selecting 75 miles from another health care facility.

CHAIR COSTELLO said individuals, especially from Delta Junction, testified that the community had been unsuccessful going through the CON process even though the closest health care facility was 100 miles away. The reason for selecting 75 miles was that it is about an hour away under good driving conditions. She noted a map in the packets that shows which Alaskan communities would be affected.

[1:46:29 PM](#)

SENATOR GARDNER removed her objection.

CHAIR COSTELLO stated that without further objection, version O was adopted.

SENATOR MEYER observed that the fiscal notes would probably need to be updated.

CHAIR COSTELLO asked if he would like Margaret Brodie to comment on the department's response to the committee substitute.

SENATOR MEYER said yes.

CHAIR COSTELLO asked Ms. Brodie to speak to the fiscal impact and the department's response to the committee substitute.

[1:47:21 PM](#)

MARGARET BRODIE, Director, Division of Health Care Services, Department of Health and Social Services (DHSS), Anchorage, Alaska, explained that the CS will result in a zero fiscal note because the department already does this work. She said the department was "fine" with the CS.

SENATOR GARDNER asked if the department had a position on the current draft of the bill.

MS. BRODIE clarified that the department would support this change and the bill.

[1:48:55 PM](#)

SENATOR MICCICHE asked how the CS changes the Certificate of Need Program other than exempting a facility that is 75 miles from another health care facility from the CON statutes.

MS. BRODIE deferred the question to Donna Stewart.

[1:49:38 PM](#)

DONNA STEWART, Executive Director, Office of Rate Review (ORR), Department of Health and Social Services (DHSS), explained that ORR currently reviews all applications that fit the criteria of the statute. The current draft of the bill allows an exemption for facilities that are built 75 miles away from an existing [CON] facility. Theoretically, the department would see fewer applications. Over the last eight to ten years, the few small communities that applied for a certificate of need all had additional circumstances attached so they would have still gone through the CON process. Delta Junction would be the first community that would fall under the new requirement of 75 miles from another CON facility.

SENATOR MICCICHE posed the hypothetical situation of a for-profit facility opening in Delta Junction next door to the nonprofit facility that opened under the proposed exemption. He

asked if the second health care facility would be required to obtain a certificate of need.

MS. STEWART said it would depend on the timing. Until the nonprofit receives certification that it is an active and viable hospital, it could be in jeopardy of having a competitor open next door.

[1:53:16 PM](#)

SENATOR STEVENS said he was uncomfortable with the amendment because he wasn't sure whether the hospitals that objected to the original version would be placated by the current draft.

[1:54:09 PM](#)

CHAIR COSTELLO asked Jean Mischel to comment on Senator Micciche's question.

[1:54:17 PM](#)

JEAN MISCHEL, Legislative Counsel, Legislative Legal Services, Legislative Affairs Agency, Alaska State Legislature, Juneau, Alaska, said the statute is drafted to mean that the expenditure of \$1 million plus the inflation adjustment would trigger the need for the certificate of need. Once the nonprofit spent what is now equivalent to \$1.4 million, it would have a good argument that it had vested its interest in the health care facility enough to meet the exception standard before the for-profit hospital comes in. However, if the nonprofit came in under the exception and later decided to expand services, it would need a certificate of need. Also, if the nonprofit beat the for-profit facility within the 75-mile radius, the for-profit facility would be required to meet the standard for the certificate of need for that area.

CHAIR COSTELLO said that was her understanding; page 2 talks about where the health care facility is initiated. She thanked Senator Micciche for the question.

SENATOR MICCICHE expressed a little confusion about how a facility that was exempted from the CON process could ever qualify for CON protection. "It keeps pointing back to [AS 18.07.031] and we just changed .031"

MS. MISCHEL said .031(a) doesn't just provide the exception for the 75-mile radius. It also prohibits a person from expending \$1 million or more for the three types of facilities and that would still apply to facilities that have initiated construction.

[1:58:04 PM](#)

At ease

[1:59:45 PM](#)

CHAIR COSTELLO reconvened the meeting. She found no further questions and solicited a motion.

[1:59:57 PM](#)

SENATOR MEYER moved to report the CS for SB 62, version 30-LS0502\0, from committee with individual recommendations and forthcoming revised fiscal note(s).

CHAIR COSTELLO found no objection and announced that CSSB 62(L&C) moved from Senate Labor and Commerce Standing Committee.

[2:00:34 PM](#)

At ease

**SB 76-ALCOHOLIC BEVERAGE CONTROL; ALCOHOL REG**

[2:03:44 PM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of SB 76. This is the Title 4 rewrite introduced by Senator Micciche. She asked Ms. Brawley to continue presenting the sectional analysis that began during the previous hearing.

[2:04:24 PM](#)

ANNA BRAWLEY, Consultant, Agnew Beck Consulting, Anchorage, Alaska, advised that she would briefly go through the sectional analysis for the chapters presented on Tuesday. Those were Chapters 06, 16, and 21 in Title 4 and in the sectional. She said she would reference the larger recommendations that were presented on Tuesday. She paraphrased and supplemented as follows:

**Chapter 06. Alcoholic Beverage Control Board**

Pages 1-5

**Section 1 - Authority of the director**

**AS 04.06.075** is a new subsection that provides that the director of the ABC Board shall prepare the budgets for administration, enforcement, education,

training, and prevention activities under Title 4. The main change being education and prevention.

**Section 2 - Delegation of authority**

**AS 04.06.080** adds endorsements to the list of delegated powers. It also edits cross references.

**Section 3 - Powers and duties**

**AS 04.06.090(b)** relocates language from existing AS 04.11.070 stating that the board is the entity that issues, renews, and transfers licenses.

**Section 4 - Powers and duties**

**AS 04.06.090(e)** also adds endorsements.

**Section 5 - Powers and duties**

**AS 04.06.090** adds a new subsection that directs the board to prepare a Title 4 education plan for public safety, industry, youth, municipalities, and the public with annual revision.

Adds new subsections which direct the board to review the license fees in the statute every 10 years, allows the board to give opinions on pending legislation amending Title 4, requires the board to provide notice of violations to licensees and to post FASD information online for package store and winery licensees to include with shipped orders. This is something that's done now but not electronically.

[2:07:10 PM](#)

SENATOR GARDNER asked if the board isn't already allowed to provide opinions on pending legislation.

MS. BRAWLEY confirmed the board can do that now, but it's not explicitly stated in statute.

SENATOR MICCICHE added that statute clearly states that other boards and commissions have this ability. The idea here is that the board should not only have the opportunity to comment on legislation, it should also be clear that there is an expectation that the board would speak up, so they are not politically engaged in an issue.

[2:08:10 PM](#)

MS. BRAWLEY continued the sectional analysis.

**Section 6 - Statewide database**

AS 04.06.095 allows for certain information stored in the statewide database for local option orders to be retained up to 10 years [currently it's kept just one year]. Only identifying information will be purged annually. It also adds reference to endorsement.

**Section 7 - Statewide database**

AS 04.06.095(c) adds a new subsection which directs the board to produce a report of aggregate regional sales of alcohol in local option areas, based on information retained in the database and not including identifying data about an individual purchaser or seller.

**Section 8 - Regulations**

AS 04.06.100(b) adds endorsements to the board's power to create regulations, removes the board's power to create additional licenses and permits in regulation, and adds the power to restrict manufacturing, packaging, sale, and distribution of products containing alcohol for consumption.

**Section 9** - Proposed new chapter AS 04.09 to replace sections defining license types and permit types currently in AS 04.11 and regulation.

[2:09:01 PM](#)

SENATOR GARDNER asked if there was any concern that under Section 6 the information collected and retained in a statewide database could track back to just one person or household in communities that are very small.

MS. BRAWLEY said that would certainly be a concern and should probably be addressed in regulation before the board releases that information.

MS. BRAWLEY advised that she would skip the portions of the bill that have not been introduced to regulation. She asked the

members to turn to page 13 of the sectional analysis which is page 79 of the bill.

**Chapter 16. Regulation of Sales and Distribution.**

Pages 79-97

**Section 73 - Hours of sale and presence on licensed premises (standard closing hours)**

AS 04.16.010(c) is amended to allow a person to be on the licensed premises outside of the hours of sale to conduct business with the licensee, maintenance, or improvements, common carrier licensees, and adds restaurant endorsement reference.

**Section 74**

AS 04.16.010 adds a penalty for violating the section.

**Section 75 - Pricing and marketing of alcoholic beverages**

AS 04.16.015(a) issues an exemption for sampling endorsements and defines a week of an alcoholic beverage price as seven days, as opposed to a calendar week.

**Section 76**

AS 04.16.015 adds a penalty for violating the section.

**Section 77 - Trade practices**

AS 04.16.017 new section that specifies which illegal trade practices cannot be practiced by manufacturers or wholesalers and directs the board to adopt regulations defining exceptions to those rules as well as administrative penalties for violations.

**Section 78 - Solicitation of alcoholic beverages; purchase on behalf of another**

AS 04.16.020 sets penalty for unauthorized solicitation or purchase of alcoholic beverages.

**Section 79 - Online sale and purchase of alcoholic beverages**

AS04.16.022 new section prohibiting online purchase and sale in Alaska unless the licensee has a winery direct shipment license or package store shipping endorsement. It also defines the penalties.

**Section 80 - Illegal presence on premises involving alcoholic beverages**

AS 04.16.025(a) adds statutory references to all penalties involving sale without a license. [As discussed, there were changes to that original section.]

**Section 81 - Prohibited conduct relating to drunken persons**

AS 04.16.030 changes the existing penalty for prohibited conduct relating to a drunken person, adds an administrative penalty to the licensee if the employee is convicted of a violation of this section, and adds misdemeanor penalty for the licensee who knowingly allows employees to violate this section. [Ms. Brawley said that last piece is a provision in the existing AS 04.16.150.]

**Section 82 - Possession of ingredients for homebrew in certain areas**

AS 04.16.035 changes the statutory reference from one specific local option area to all local option areas, consistent with AS 04.21.025 restricting private manufacture of alcohol in all local option areas.

[2:12:26 PM](#)

**Section 83**

AS 04.16.035 maintains the current penalty for possession of ingredients for homebrew.

**Section 84 - Access of drunken persons to licensed premises**

AS 04.16.040 rewords language relating to licensed premises.

**Section 85**

AS 04.16.040 relocates and changes penalty for prohibited access by a drunken person to licensed premises.

**Section 86 - Obligation to enforce restrictions in licensed premises**

AS 04.16.045 relocates and changes penalty for permitting consumption not authorized under a license.

**Section 87 - Access of persons with restriction on purchasing alcohol**

AS 04.16.047 adds a reference to a penalty for entering and remaining on licensed premises defined in AS 04.16.160. [She noted it does not change the penalty.]

[2:13:06 PM](#)

SENATOR MICCICHE reminded the committee of the color coding in the sectional. Existing in Statute; Existing in Regulations; Penalty or Fee Change; New Concept. [For example, language that is highlighted in yellow is existing statute that has been relocated in this legislation.]

SENATOR GARDNER asked why Section 83 is highlighted in yellow if it's not relocating.

SENATOR MICCICHE reiterated that anything that is highlighted in yellow is in current statute but has been relocated in the statute, so it makes more sense.

MS. BRAWLEY continued the sectional analysis.

**Section 88 - Access to persons under the age of 21 to licensed premises**

AS 04.16.049(a) amends a reference to restaurant endorsement and club license.

**Section 89**

AS 04.16.049(c) adds additional license types to those allowed to have underage persons on premises as

employees, ages 16 and 17, provided they are not serving alcohol.

**Section 90**

**AS 04.16.049(d)** adds additional license types allowed to have underage persons on premises as employees, ages 18-20, provided they are not serving alcohol.

**Section 91**

**AS 04.16.049** adds additional license types allowed to have underage persons on premises if traveling, provided they are not served or consume alcohol. That would include common carrier dispensaries like airlines.

**Section 92 - Furnishing or delivery of alcoholic beverages to persons under the age of 21**

**AS 04.16.051(d)** defines the offense of furnishing or delivering to a minor. [She noted it does not change the penalty.]

**Section 93**

**AS 04.16.051** changes penalties for furnishing or delivering to a minor by a person, maintains one C felony charge for situations where a minor is given alcohol and causes serious injury or harm but removes C felony for the offense of serving a minor in a Local Option area, consistent with change in Section 61.

**Section 94 - Furnishing of alcoholic beverages to person under the age of 21 by licensees**

**AS 04.16.052** changes penalties for furnishing or delivering to a minor by a licensee or employee, adds administrative penalty to licensee if employee is convicted of a violation of this section and shifts misdemeanor penalty in AS 04.16.150 to licensee who knowingly allows employees to violate this section.

**Section 95 -Room rental for purposes of consuming alcoholic beverages**

AS 04.16.055 changes the penalty for renting a room for the purpose of providing alcoholic beverages to a person under 21 years of age.

**Section 96 - Permitting minor to illegally possess liquor in a dwelling**

AS 04.16.057(b) maintains current violation for allowing a minor to possess alcohol in a dwelling and adds a \$500 fine.

**Section 97 - Purchase by or delivery to persons under the age of 21**

AS 04.16.060(e) relocates the requirement for persons under the age of 16 to be accompanied by a person 21 years of age and have parental consent to remain in a restaurant that serves alcohol, now in proposed AS 04.09.450 in Section 9.

**Section 98**

AS 04.16.060 defines penalties for purchase by a person under 21 years of age and delivery to a person under 21 years of age. For persons under 21, adds similar penalty structure as those in AS 04.16.049 and AS 04.16.050, \$500 fine for violation with option to reduce fine to \$50 if youth completes treatment or community diversion panel.

**Section 99 - Sales or consumption at school events**

AS 04.16.080 edits title for the section.

**Section 100**

AS 04.16.080 sets the penalty for consuming at a school event.

**Section 101 - Prohibition of bottle clubs**

AS 04.16.090(c) makes the list exclusive and adds cover charge and other services or products provided on the premises.

**Section 102**

AS 04.16.090 defines the crime of maintaining a bottle club, relocates and maintains current penalty.

**Section 103 - Sale of certain alcoholic beverages prohibited**

AS 04.16.110 defines sale of a prohibited alcoholic beverage, relocates and maintains current penalty.

**Section 104 - Removal or introduction of alcoholic beverages**

AS 04.16.120 defines removal or introduction of alcoholic beverages, sets penalty and exemptions.

[2:18:13 PM](#)

SENATOR GARDNER asked for the definition of a bottle club.

MS. BRAWLEY said her understanding is that it's an unlicensed premise that imposes a cover charge or offers to store a person's bottle on the premises for consumption there. It looks like a bar but does not sell alcohol directly. These are currently illegal in statute.

[2:18:46 PM](#)

**Section 105 - Alcoholic beverages transported by common carrier**

AS 04.16.125 repeals and reenacts the section. Allows for delivery of alcohol to a person over the age of 21 with signature from an order filled by a package store or winery direct shipment licensee only by an approved carrier, requires board to review carrier policies and publish a list of approved carriers, and removes some detailed language for delivery to a local option area. Maintains penalty for unauthorized transportation of alcoholic beverages by common carrier into a local option area and makes noncompliance a violation.

**Section 106 - Stock confined to licensed premises**

AS 04.16.130 sets a penalty for unauthorized storage of alcoholic beverages.

**Section 107 - Sale or consumption of alcoholic beverages in a warehouse**

AS 04.16.140 sets a penalty for consumption or sale of alcoholic beverages in a warehouse.

**Section 108 - Licensee responsible for violations**

AS 04.16.150 changes the penalty for failure to ensure compliance by a licensee on their licensed premises.

**Section 109 - Restriction on purchasing alcoholic beverages**

AS 04.16.160 maintains the current penalty for failure to comply with a restriction on purchasing alcoholic beverages.

**Section 110 - 111 - Source of alcoholic beverages**

AS 04.16.170 exempts winery direct shipment license and maintains current penalty for sale of alcoholic beverages from or to an unlicensed person.

**Section 112 - 113 - Restrictions on purchase and sale of alcoholic beverages**

AS 04.16.172 renumbers the cross-references to license types and maintains current penalty for licensee obtaining alcoholic beverages from an unlicensed seller.

**Section 114 - Furnishing alcoholic beverages in aid of gambling enterprise**

AS 04.16.175 maintains the current penalty for the crime of furnishing an alcoholic beverage in aid of a gambling enterprise. It defines the crime in that section

**Section 115 - Penalties for violation**

AS 04.16.180(b) adds statutory references to prohibited conduct related to drunken persons and furnishing alcoholic beverages to persons under the age of 21 by licensees.

[2:21:00 PM](#)

SENATOR GARDNER referred to Sections 110-111 and asked what the winery direct shipment license was exempt from.

MS. BRAWLEY explained that this section is part of the three-tier system which is intended to keep a separation between businesses that manufacture, distribute, and sell alcohol to the public. Generally, part of the statute says one must buy certain alcoholic beverages from someone who is designated as the primary source of supply. The proposal is to exempt winery direct shipment licensees because they would primarily be out-of-state businesses and therefore would be manufacturing or distributing product outside Alaska.

#### **Section 116**

AS 04.16.080(e) adds a definition for "conviction".

#### **Section 117**

AS 04.16.180 clarifies that licensees are subject to administrative penalties imposed by the board for violations of AS 04.16.030 (Section 81) and AS 04.16.052 (Section 94) and adds mitigating circumstances for licensees. A mitigating circumstance would be showing consistent evidence of providing employee training and no history of violations.

#### **Section 118 - 121 - Forfeitures and seizures**

AS 04.16.220(a) renumbers cross-references.

[2:22:40 PM](#)

At ease

[2:23:53 PM](#)

CHAIR COSTELLO reconvened the meeting and asked Ms. Brawley to continue to review the sectional for SB 76.

[2:24:04 PM](#)

MS. BRAWLEY advised that she was on page 18 of the sectional starting into Chapter 21 that begins on page 97 of the bill.

### **Chapter 21. General Provisions.**

Pages 97-104

#### **Section 122 - Keg registration**

**AS 04.21.012** adds new section establishing a keg registration process including proof of age, registration form requirements, identification tags, and establishes the penalty for possession and sale of alcoholic beverages in an unregistered keg.

CHAIR COSTELLO asked if this language contemplates the circumstance of a wedding where the bride may be paying for the keg but is not the one who picks it up.

MS. BRAWLEY said the language does not specifically address that situation.

CHAIR COSTELLO asked if it's written such that the person who is paying for the keg must pick it up.

MS. BRAWLEY said it doesn't specify that, but the penalties and the language of the statute focus on the purchaser.

**Section 123 - 124 - Civil liability of persons providing alcoholic beverages**

**AS 04.21.020(a)** renumbers cross-references.

**Section 125 - Alcohol server education course**

**AS 04.21.025(a)** repeal and reenact section to list license types that do not require server education training: only licenses not serving the public are exempt from the requirement.

**Section 126**

**AS 04.21.025(b)** adds reference to permit holders and individuals listed on an application as servers for a permitted event.

**Section 127**

**AS 04.21.025(c)** adds reference to permit holders and requires servers listed on the permit application to have a current alcohol servers card by the first event day.

**Section 128**

AS 04.21.025 defines the offense of failure to comply with alcohol server education requirements and sets penalty.

**Section 129 - Proof of age and of not being restricted from purchasing alcoholic beverages**

AS 04.21.050(a) renumbers cross-reference.

**Section 130 - Warehousing of alcoholic beverages**

AS 04.21.060 defines the offense of unauthorized warehousing and establishes penalty.

**Section 131 - Posting of warning signs**

AS 04.21.065(a) updates list of license types that require warning signs. She noted that not all license types that serve the public are included the list now. The intent is to include them.

**Section 132**

**AS 04.21.072. Fines and other criminal penalties.** New section which sets penalties for other violations, misdemeanors, or felonies unless otherwise specified. [She noted that the default penalty in Title 4 is a class A misdemeanor. The bill would put individual penalties in each section and if there is a penalty for something that hasn't been defined, it would be a minor offense or a violation with a \$250 fine.]

**AS 04.21.074. Bail forfeiture schedule.** Directs the supreme court to set a bail schedule for Title 4 violations.

**AS 04.21.076. Suspension of fine or sentence.** Prevents the court from suspending fines or sentences for minor offenses. [She noted that the purpose is that they can be processed more automatically rather than what happens now, which is a possible court appearance.]

**Section 133 - Court records of persons under 21 years of age**

AS 04.21.078 adds additional statutory reference to violations of AS 04.16.060. She noted that this is

consistent with Senate Bill 165 that passed in 2016 for minor consuming and minor on licensed premises.

**Section 134 - Definitions**

**AS 04.21.080(b)(6)** adds reference to permit holders and license holders.

**Section 135**

**AS 04.21.080(b)(15)** adds endorsements.

**Section 136**

**AS 04.21.080(b)** adds definitions for terms not currently defined in Title 4.

MS. BRAWLEY asked if the committee wanted her to review the remainder of the sectional that covers changes outside of Title 4.

[2:29:25 PM](#)

SENATOR GARDNER asked her to describe updating "bar" definition in Section 137.

MS. BRAWLEY said her understanding is that there are several other places in statute that reference specific license types or licensed premises. These sections generally renumber those references according to the changes in the license types. She offered to look into it further.

[2:31:05 PM](#)

At ease

[2:32:59 PM](#)

CHAIR COSTELLO reconvened the meeting and advised that Ms. Brawley just walked through Chapters 6, 16, and 21. She asked her to walk through the sections that cover changes outside of Title 4.

[2:33:27 PM](#)

MS. BRAWLEY advised that she was starting on page 19 of the sectional, bill Section 137.

**Amendments to Various Other Titles.**

Pages 104-109

**Section 137 - Definitions**

AS 05.15.690(48) renumber beverage dispensary license reference and update "bar" definition.

**Section 138 - 143**

Amends references to Title 4 in Titles 9, 11, 12 and 18.

**Section 144 - Unlawful practices in places of public accommodation**

AS 18.80.230(b) amends reference to chapter 04.11.

**Section 145 - Definitions**

AS 39.50.200(b) adds the marijuana control board to the list of state commissions or boards. This is requiring the members of that board to make financial disclosures the same as the Alcoholic Beverage Control Board and other state boards.

**Section 146 - Winery direct shipment tax; statement; audit**

AS 43.60.060 establishes tax collection on direct wine shipments from out of state businesses holding this license and outlines requirements for the Department of Revenue to collect that tax. [She noted that all manufacturers and wholesalers are subject to this tax for sales of alcohol within the state. This would establish out of state businesses with that license subject to this tax.]

**Section 147 - 148**

AS 43.70.105(a) amends references to chapter 04.11 in Titles 43 and 45.

MS. BRAWLEY asked how to proceed. The remaining sections relate to transition of license types.

CHAIR COSTELLO thanked Ms. Brawley and asked members if they had questions.

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SENATOR MEYER asked if a small winery in California will know it must charge tax under Section 146 and pay it to the Department of Revenue (DOR).

MS. BRAWLEY clarified that state law cannot regulate sales made in person or on premises outside the state. Section 146 is specific to businesses that have signed up to have the winery direct shipment license and are serving Alaska customers through online sales. She understands that many states have this type of system so wineries that participate are familiar with this type of requirement and having this license.

SENATOR MEYER asked how the wineries will be notified that they need to start collecting tax on Alaska sales.

SENATOR MICCICHE said those wineries will be notified when they become licensed. His office worked with companies that do mail order internet wine sales to standardize the process that most other states follow for licensing and notification.

SENATOR MEYER asked if wine is the only alcoholic beverage that can be ordered online.

SENATOR MICCICHE confirmed that other sales are not allowed over the internet.

CHAIR COSTELLO turned to public testimony on SB 76.

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JOEL KADARAUCH, Alaska Beer, Wine & Spirits Wholesalers Association, Anchorage, Alaska, said he was testifying in strong support of SB 76 although the association had concerns about unregulated e-commerce and the fact that Alaska is silent on unfair trade practices.

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MICHAEL BALDWIN, Senior Evaluation and Planning Officer, Grants & Administration, Alaska Mental Health Trust Authority (AMHTA), Department of Revenue (DOR), testified in strong support of SB 76. He said compromise was reached with many stakeholders at the table. It was a systematic redraft of Title 4 that will help the ABC Board carry out its mission, fairly represent the interests of all Alaskans, promote a fair business climate, and protect the public health and safety.

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SENATOR STEVENS asked Mr. Kadarauich if he represents just Alaska businesses or out-of-state suppliers as well.

MR. KADARAUCH said the association represents both out-of-state and instate manufacturers, but his testimony related only to business conducted within the state.

CHAIR COSTELLO asked Senator Stevens if he wanted to ask Ms. McConnell about the scope of responsibility for education that the bill ascribes to the ABC Board.

SENATOR STEVENS said it seems that the ABC Board is not only responsible for the education of license holders but also the general public. He asked if it was prepared for that responsibility.

2:45:17 PM

ERIKA MCCONNELL, Director, Alcohol and Marijuana Control Office, Department of Commerce, Community and Economic Development (DCCED), Anchorage, Alaska, said her understanding was that the staff's efforts would be focused on education and the licensing and enforcement provisions regarding Title 4. She noted that the office added a local government specialist about 18 months ago and that person was solely focused on education and outreach for alcohol and marijuana. Her understanding was that the discussions in the steering committee were that the ABC Board would be responsible for adding additional education components to the website and collaborating with other agencies.

SENATOR STEVENS said he was referring to slide 6 of the presentation the committee heard on 3/13/18 that says that the ABC Board will be the lead agency for alcohol education efforts. "That seems like a big job."

MS. MCCONNELL agreed that a comprehensive plan to educate constituents on the responsible use of alcoholic beverages and the relevant state statutes, regulations, and policies was a big job.

CHAIR COSTELLO said Senator Stevens was probably envisioning public education campaigns. She asked Ms. McConnell how she interprets that role and if there would be a fiscal impact associated with that expanded role.

MS. MCCONNELL said the department submitted a fiscal note that included travel costs and printing, design, and publication costs for educational materials for the local government

specialist. With the regulations process, there would also be extra days of board meeting in the first few years.

CHAIR COSTELLO asked if the members wanted Ms. McConnell to explain the fiscal impact related to the education question.

SENATOR GARDNER asked if the fiscal note was in the packet.

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CHAIR COSTELLO reconvened the meeting and advised that the committee would return to the fiscal note later in the meeting.

SENATOR MICCICHE clarified that SB 76 simply requires the ABC Board to develop a comprehensive plan for education. Agencies that the legislature already funds would deliver the educational components.

SENATOR STEVENS said he was uncomfortable making the ABC Board the lead agency. That designation has tremendous responsibility and if it's not funded it won't happen.

SENATOR MICCICHE read the language in subsection (f) on page 2, lines 23-27, and emphasized that the board would not deliver the education. However, it is important that there is a central clearing house for the material that entities like Recover Alaska would deliver to the public.

[2:53:07 PM](#)

ALISON KULAS, Executive Director, Advisory Board on Alcoholism and Drug Abuse (ABADA) and Alaska Mental Health Board (AMHB), Division of Behavioral Health, Department of Health and Social Services (DHSS), Juneau, Alaska, advised that these boards are the state agencies that are statutorily charged with advising the governor, the legislature, and the departments for the planning and coordination of behavioral health services that are funded by the state.

She stated that both boards are in full support of SB 76, which provides a much-needed update to Title 4. It was the result of a six-year stakeholder effort to improve how alcohol is regulated for the health and safety of Alaskans. The recommendations have been vetted by over 100 members of the alcohol industry, public health, public safety, local governments and other stakeholders who use Title 4 daily. She said she sat on the licensing

subcommittee as a public health representative. It helped her understand the industry perspective and what it was willing to compromise on so that public health and safety could be protected while allowing for a fair business environment. The proposed regulatory structure is consistent for license types and increases fees to support enforcement. They give the ABC Board consistent information about violations, which will ensure that businesses are operating fairly.

SB 76 protects youth by limiting access to alcohol, incentivizing youth who need it to seek alcohol education and treatment, promoting responsible alcohol use, and reducing the harms of over consumption. The boards believe that SB 76 will fix current issues in Title 4, clearly define business practices, and promote a safer environment for all Alaskans.

SENATOR MICCICHE asked what kind of outreach the Advisory Board on Alcoholism and Drug Abuse and the Alaska Mental Health Board will do to deliver education once the ABC Board created a comprehensive plan for education.

MS. KULAS said she anticipates the boards will support the business license education the ABC Board is doing and work to ensure that the public education campaigns by Recover Alaska, the Division of Behavioral Health, the Mental Health Trust, and other nonprofits are happening.

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TREVOR STORRS, Executive Director, Alaska Children's Trust, and a member of the Recover Alaska Steering Committee, said the Alaska Children's Trust supports SB 76 and the components related to underage drinking. This is the statewide lead organization focused on Alaska's children, families, and youths.

Safe and healthy children is a value everyone shares. Alcohol plays a major role in the social, behavioral, and physical issues that communities address daily. This includes child abuse and neglect. Prevention is a key tool that can be utilized to help address current trends. One of the components of prevention is to minimize alcohol consumption with youth. Research shows that when consumption is reduced in youth, consumption and negative impacts later in life are also reduced. SB 76 does three core things related to underage drinking: requiring the keg registration, consistent but fair penalties for underage drinking will ensure youth are not punished for the rest of their lives for one mistake, and it builds resiliency versus adding on more trauma. Licensees will be held immediately

accountable for what happens on their premises and given an opportunity to correct the issue before the ABC Board reviews their license for renewal. These are all steps that protect youth. SB 76 has been a collaborative and collective effort that has made a strong and fair bill.

CHAIR COSTELLO thanked Mr. Storrs for providing specifics on why he liked the bill.

She asked Ms. McConnell to walk through the Department of Commerce, Community and Economic Development fiscal note, OMB Component 3119 related to the Alcohol and Marijuana Control Office.

3:00:15 PM

ERIKA MCCONNELL, Director, Alcohol and Marijuana Control Office (AMCO), Department of Commerce, Community and Economic Development (DCCED), asked if the committee wanted a review of the full fiscal note or just the educational component.

CHAIR COSTELLO asked her to walk through the full fiscal note and comment on the education pieces.

MS. MCCONNELL advised that AMCO estimates that under SB 76 fees from licenses and endorsements will bring an additional \$500,000 per year starting in 2020. The first year looks a little higher than the outlying years because it reflects the one-time \$1,250 fee for fixed bar endorsements that replace the current duplicate license system. Endorsement renewals will be \$200.

She said the agency has identified several issues for which it would need additional receipt authority. The first is to hire a Range 16 regulations specialist for two years for the regulations project necessitated by SB 76. There would also be additional services and supplies associated with the position. The second is the expenditure to hold four additional board meetings in FY10-FY20 to consider and take public comment on the regulations package. The third is to have AMCO's existing local government specialist take a 2-day trip to each of the four judicial districts every year for the first three years for education. The estimated expenditures are \$6,400 per year and \$10,000 per year for printing, design, and publication costs. The travel expenditure is in FY19, FY20, and FY21. The services appear in FY19 and FY20.

The last major issue is to replace the alcohol licensing database system. The anticipated cost of the new system is

\$500,000 spread over FY19 and FY20. The anticipated maintenance fee is \$50,000 per year in the outlying years. That is in the services line of the fiscal note. The expectation is that the increase in revenue would more than cover the increased expenditures for 2020 to 2024. There is no request for additional money for 2019 to implement the bill because AMCO will use the \$280,000 it generally returns to the general fund each year. The ABC Board recently approved a regulation project to increase the fees for applications that are new, transfer, and renewal effective on July 1, 2018. The anticipated increase in revenue is \$175,000. "We anticipate sufficient receipts to support the expenditures from the passage of this bill."

3:10:59 PM

CHAIR COSTELLO asked Ms. Meade to comment on the priority legislation related to minor offenses that was passed by a previous legislature, and the proposed violation and penalty changes that appear in the table in the packet.

3:12:33 PM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, Anchorage, Alaska, stated that the Court System is neutral on the bill, but views the penalty provisions as the most important aspect.

She said her reading of the new Sec. 04.21.074 in bill Section 132 is it requires the supreme court to establish a bail schedule for the 63 violations under Title 4 and allow disposition without a mandatory court appearance. She said it's a substantial project to create these 63 new codes, ensure that they're cited appropriately, and communicate the new electronic table to law enforcement so the appropriate codes are used on their hand-held ticketing devices. Once the codes are created, court administrative staff will meet with the Department of Law and others to ensure they are summarized appropriately and everybody agrees that is how it should be handled. This will then be presented to the supreme court to sign and it becomes enacted into a Court Rule. She advised that the court is prepared to undertake this additional work without fiscal impact.

MS. MEADE advised that the court also maintains a table of all crimes and cleans up that electronic database when a crime is changed from one category to another. That was done after SB 91 passed and when other laws changed things to violations.

CHAIR COSTELLO said the committee has heard that the process to bring SB 76 before the legislature was collaborative, but she'd like specific details on the philosophy behind the changes the bill makes.

MS. MEADE said she participated in meetings related to minor consuming alcohol which is the piece that was removed and passed as priority legislation (Senate Bill 165) by a previous legislature. Minor consuming was previously a semi criminal offense for which the court had an entirely separate procedure. It was not helpful to kids to be charged with something that was more criminal than it needed to be, and it was complicated to charge. The thinking was that by lowering the offense to a violation would make it easier for law enforcement to write the ticket and the minor could pled guilty and pay the fine in court. However, for whatever reason the number of cases of minor consuming has been lower than it was before the legislation. Based on discussions she heard during the meetings she attended, that probably wasn't what people expected. Senate Bill 165 directed the court to stop posting those cases on CourtView and SB 76 would extend that to one more violation, which the court can easily accomplish.

CHAIR COSTELLO expressed interest in receiving the data related offenses of minor consuming before and after Senate Bill 165 passed. She recalled that the idea was that the consequence for a mistake would not be life-altering.

MS. MEADE agreed to supply the data.

SENATOR MEYER referenced Sec. 04.16.059 and asked her to comment on the increase in penalties from a class A misdemeanor to a class C felony for anyone who is a registered sex offender or child kidnapper.

MS. MEADE said she didn't recall that was changed in the bill, but she would take another look and provide an answer.

SENATOR MEYER said he doubts there would be many of those cases, but the increase in penalty would come at a cost. "Like you said, you're saving money elsewhere, so it may be an offset."

MS. MEADE clarified that SB 76 neither saves nor costs the court money. The court doesn't experience an impact when one or two cases move from a misdemeanor to a felony. The reverse is also true; the court doesn't experience a monetary savings when an offense is reclassified from a felony to a misdemeanor.

SENATOR MEYER said he understood that it cost the Court System more if someone was charged with a felony versus a misdemeanor.

MS. MEADE said she would classify any savings as theoretical. There is no outlay of money, but there is a little less work.

CHAIR COSTELLO thanked all the participants.

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CHAIR COSTELLO held SB 76 in committee with public testimony open.

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CHAIR COSTELLO introduced the youths from Facing Foster Care in Alaska who were job shadowing her today.

[3:25:18 PM](#)

There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 3:25 p.m.