

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

April 23, 2019

5:59 p.m.

**MEMBERS PRESENT**

Senator Shelley Hughes, Chair  
Senator Lora Reinbold, Vice Chair  
Senator Peter Micciche  
Senator Jesse Kiehl

**MEMBERS ABSENT**

Senator Mike Shower

**COMMITTEE CALENDAR**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 12 (JUD)

"An Act relating to protective orders."

- HEARD & HELD

SENATE BILL NO. 80

"An Act relating to proposing and enacting laws by initiative."

- HEARD & HELD

SENATE BILL NO. 52

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

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 9

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation bill funding public education for grades kindergarten through 12.

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 12

SHORT TITLE: PROTECTIVE ORDERS

SPONSOR(S): REPRESENTATIVE(S) KOPP

02/20/19	(H)	PREFILE RELEASED 1/7/19
02/20/19	(H)	READ THE FIRST TIME - REFERRALS
02/20/19	(H)	STA, JUD
02/28/19	(H)	STA AT 3:00 PM GRUENBERG 120
02/28/19	(H)	Heard & Held
02/28/19	(H)	MINUTE(STA)
03/07/19	(H)	STA AT 3:00 PM GRUENBERG 120
03/07/19	(H)	Moved CSHB 12(STA) Out of Committee
03/07/19	(H)	MINUTE(STA)
03/08/19	(H)	STA RPT CS(STA) 7DP
03/08/19	(H)	DP: VANCE, LEDOUX, WOOL, SHAW, STORY, FIELDS, KREISS-TOMKINS
03/18/19	(H)	JUD AT 1:30 PM GRUENBERG 120
03/18/19	(H)	Heard & Held
03/18/19	(H)	MINUTE(JUD)
03/27/19	(H)	JUD AT 1:00 PM GRUENBERG 120
03/27/19	(H)	Moved CSHB 12(JUD) Out of Committee
03/27/19	(H)	MINUTE(JUD)
03/29/19	(H)	JUD RPT CS(JUD) 5DP 1NR
03/29/19	(H)	DP: WOOL, LEDOUX, SHAW, KOPP, CLAMAN
03/29/19	(H)	NR: EASTMAN
04/05/19	(H)	TRANSMITTED TO (S)
04/05/19	(H)	VERSION: CSHB 12(JUD)
04/08/19	(S)	READ THE FIRST TIME - REFERRALS
04/08/19	(S)	JUD
04/23/19	(S)	JUD AT 6:00 PM BELTZ 105 (TSBldg)

BILL: SB 80

SHORT TITLE: INITIATIVE SEVERABILITY

SPONSOR(S): SENATOR(S) BIRCH

03/06/19	(S)	READ THE FIRST TIME - REFERRALS
03/06/19	(S)	STA, JUD
04/11/19	(S)	STA AT 3:30 PM BUTROVICH 205
04/11/19	(S)	Moved SB 80 Out of Committee

04/11/19 (S) MINUTE (STA)  
 04/12/19 (S) STA RPT 2DP 1DNP 2NR  
 04/12/19 (S) NR: SHOWER, REINBOLD  
 04/12/19 (S) DP: MICCICHE, COGHILL  
 04/12/19 (S) DNP: KAWASAKI  
 04/23/19 (S) JUD AT 6:00 PM BELTZ 105 (TSBldg)

BILL: SB 52

SHORT TITLE: ALCOHOLIC BEVERAGE CONTROL; ALCOHOL REG

SPONSOR (s): SENATOR (s) MICCICHE

02/11/19 (S) READ THE FIRST TIME - REFERRALS  
 02/11/19 (S) L&C, JUD, FIN  
 03/26/19 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
 03/26/19 (S) Heard & Held  
 03/26/19 (S) MINUTE (L&C)  
 03/28/19 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
 03/28/19 (S) Heard & Held  
 03/28/19 (S) MINUTE (L&C)  
 04/02/19 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
 04/02/19 (S) Heard & Held  
 04/02/19 (S) MINUTE (L&C)  
 04/04/19 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
 04/04/19 (S) -- MEETING CANCELED --  
 04/09/19 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
 04/09/19 (S) Heard & Held  
 04/09/19 (S) MINUTE (L&C)  
 04/11/19 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
 04/11/19 (S) Heard & Held  
 04/11/19 (S) MINUTE (L&C)  
 04/16/19 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
 04/16/19 (S) Moved CSSB 52 (L&C) Out of Committee  
 04/16/19 (S) MINUTE (L&C)  
 04/17/19 (S) L&C RPT CS FORTHCOMING 4DP  
 04/17/19 (S) DP: REINBOLD, COSTELLO, BIRCH, BISHOP  
 04/17/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/17/19 (S) -- MEETING CANCELED --  
 04/17/19 (S) JUD AT 6:00 PM BELTZ 105 (TSBldg)  
 04/17/19 (S) -- MEETING CANCELED --  
 04/19/19 (S) L&C CS RECEIVED SAME TITLE  
 04/22/19 (S) JUD AT 6:00 PM BELTZ 105 (TSBldg)  
 04/22/19 (S) Heard & Held  
 04/22/19 (S) MINUTE (JUD)  
 04/23/19 (S) JUD AT 6:00 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

REPRESENTATIVE CHUCK KOPP  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as sponsor of HB 12.

KEN TRUITT, Staff  
Representative Chuck Kopp  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the sectional analysis on HB 12, Version E, on behalf of the sponsor.

REGINA LARGENT, Staff  
Senator Shelley Hughes  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Reviewed the changes in HB 12, Version G.

CHRISTINE PATE, Executive Director  
Alaska Network on Domestic Violence and Sexual Assault (ANDVSA)  
Sitka, Alaska

**POSITION STATEMENT:** Testified in support of HB 12.

PATTY MASTERS, Coordinator  
Direct Services  
Advocates for Victims of Violence (AVV Valdez)  
Valdez, Alaska

**POSITION STATEMENT:** Testified in support of HB 12 to keep victims safe.

SENATOR CHRIS BIRCH  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as sponsor of SB 80.

KIM SKIPPER, Staff  
Senator Chris Birch  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided the sectional analysis of SB 80 on behalf of the sponsor, Senator Chris Birch.

ERIC FJELSTAD, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SB 80, relating his involvement in Proposition 1.

EDRA MORLEDGE, Staff  
Senator Peter Micciche  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the sectional analysis for SB 52, Version S.

#### **ACTION NARRATIVE**

[5:59:45 PM](#)

**CHAIR SHELLEY HUGHES** called the Senate Judiciary Standing Committee meeting to order at 5:59 p.m. Present at the call to order were, Micciche, Kiehl, and Chair Hughes. Senator Reinbold arrived shortly thereafter.

#### **HB 12-PROTECTIVE ORDERS**

[6:00:02 PM](#)

**CHAIR HUGHES** announced that the first order of business would be SENATE BILL NO. 12, "An Act relating to assault in the first degree; relating to sex offenses; and relating to credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring."

[CSHB 12(JUD), Version E was before the committee.]

**CHAIR HUGHES** made opening remarks on the committee hearing.

[6:01:06 PM](#)

**REPRESENTATIVE CHUCK KOPP**, Alaska State Legislature, Juneau, said that one of the habits he retains from his law enforcement days is that he reads Alaska Supreme Court opinions and rulings. He paraphrased from his sponsor statement, which read:

House Bill 12 - An Act Relating to Protective Orders  
Sponsor Statement Version E

Last summer, the Alaska Supreme Court ruled in Whalen v Whalen that victims of domestic violence are unable to get an extension or renewal for an existing protective order based on the same incident of violence of the original order. This is regardless of whether they are still in fear of their perpetrators or whether their perpetrators continue to pose a risk to their safety.

The Court's holding turned on the interpretation of the protective order statutes which fail to expressly allow for extensions, renewals, or subsequent protective orders. The Court ruled the statutes are unclear and thus, do not allow for the extensions.

The bill also extends this clarification to the statute that covers protective orders for sexual assault and stalking.

HB 12 clarifies that a court is not barred from ordering relief to victims based on an incident for which relief has previously been issued or considered, thus preventing a situation in which survivors must be a victim again before receiving judicial assistance.

6:02:55 PM

REPRESENTATIVE KOPP said he reviewed two protective order statutes that pertain to domestic violence and to sexual assault and stalking. He said that the bill will provide clarifying language that a protective order may be renewed or extended 30 days prior to the end of the order or within 60 days after it expires without a person having to become a victim a second time. The court would not need to determine if something else happened to the victim to justify the renewal or extension.

REPRESENTATIVE KOPP related a scenario that illustrates how this routinely arises. A person may be arrested for domestic violence assault and go to jail but the last thing the offender tells the victim is that upon release the matter will be settled. Six months later the offender is released, and the victim expresses to the court fear that the offender will be coming after the person again and requests an extension or renewal of the protective order. The Alaska Supreme Court indicates that the statutes are not clear that it is authorized unless another domestic violence incident occurs. That seemed wrong and inconsistent with how the courts had been responding to those situations.

6:04:28 PM

REPRESENTATIVE KOPP said that HB 12 does not introduce any new public policy but clarifies the statutes to expressly allow an extension or renewal of domestic violence orders. The Alaska Supreme Court has requested this change, so in that spirit, he brings forth HB 12.

6:05:05 PM

KEN TRUITT, Staff, Representative Chuck Kopp, Alaska State Legislature, Juneau, said the sponsor would like the record to reflect the problems the Alaska Supreme Court identified and how this bill corrects them. He referred to Section 1.

Section 1 AS 18.65.850(e)

This section makes clear that the court may not deny a petition for a protective order for a victim of stalking or sexual assault solely because there is a lapse between the assault and the petition, if the sexual assault was the basis of a previous order, or if a court previously found that the incident was sexual assault or stalking, but declined to issue relief.

MR. TRUITT referred to page 1, lines 4-6 of Version E, which is the existing language. He said that the language on line 5 is conforming language. He said that currently, AS 18.65.850(e) only applies to sexual assault. He referred to language on line 7, the language "the stalking or" was not in the original bill.

6:06:28

MR. TRUITT said that Section 2 provides the operative fix for the issues raised in Whalen v. Whalen.

Section 2 AS 18.65.850

This section allows a petitioner to request an extension of a protective order 30 days before, or within 60 days after it expires, or after an extension was granted through the provisions of Section 1 of this bill. The court shall give the respondent at least 10 days' notice of the hearing and the right to appear and be heard, either in person or through legal counsel. The court may extend the provision of the order if necessary to protect the petitioner from stalking or sexual assault, regardless of whether the respondent appears at the hearing. The protective order extension will be for six months or earlier if dissolved by court order.

[6:07:47 PM](#)

MR. TRUITT directed attention to page 1, line 14, to the language "or extended under this section. He said that two provisions provide clarity to the courts. He directed attention to lines 9-11 of HB 12, Version E, which highlights the situation Representative Kopp referenced. The perpetrator of the domestic violence might be in jail or have moved out of state,

so due to the proximity of the perpetrator and the victim, a protective order is not necessary. He explained that prior to Whalen, the judge would advise the victim to come back if the situation changes.

[6:08:40 PM](#)

MR. TRUITT said that Section 2 provides the due process provisions of how a court would administer an extension, and he reviewed the summary of Section 2. He said that nothing touches on the existing burden of proof that applies to protective orders. He referenced page 1, lines 10-11, noting the language "if the petition alleges a change in circumstances since the court's previous finding." He stated that this language was added by the House Judiciary Standing committee at the request of the Alaska Court System. He said that the change in circumstance would be the perpetrator being released from jail or moving back to the locale where the victim resides.

[6:10:08 PM](#)

MR. TRUITT turned to Sections 3 and 4, which cover the actual domestic violence order. He stated these sections have the same intent as Sections 1-2 but are not identical since the domestic violence protective order statute is not identical to the sexual assault and stalking protective order statute.

Section 3 AS 18.66.100(e)

This section clarifies that the court may not deny a petition for a protective order for a victim of domestic violence solely because there is a lapse between the assault and the petition, if the domestic violence was the basis of a previous order, or if a court previously found that the incident was domestic violence, but declined to issue relief.

MR. TRUITT directed attention to page 2, lines 19-20 of Section 4, Version E.

Section 4 AS 18.66.100

This section allows a petitioner to request an extension of a protective order 30 days before, or within 60 days after it expires, or after an extension was granted through the provisions of Section 3 of this bill.

The court shall give the respondent at least 10 days' notice of the hearing and the right to appear and be heard, either in person or through legal counsel. The

court may extend the provision of the order it necessary to protect the petitioner from stalking or sexual assault, regardless of whether the respondent appears at the hearing. The protective order extension will be for one year or earlier if dissolved by court order.

MR. TRUITT explained that this language only applies to protective orders issued under [AS 18.66.100(b)(2)] of the domestic violence protective order statute. There are two types of protective orders in that statute. AS 18.66.100(b)(1) contains what is known as the long-term protective order statute, one without an end date, unless dissolved by the court. He said that AS 18.66.100(b)(2) contains 16 different provisions of relief the court can issue by way of the protective order. This bill applies to those provisions and not long-term protective orders, he said.

[6:11:47 PM](#)

MR. TRUITT reviewed Section 5.

Section 5 Applicability

Section 5 adds applicability language to the uncodified law of the State of Alaska to protective orders issued before, on or after the effective date of Sections 1 through 4 of this Act.

He said that if HB 12 is enacted into law, Sections 1-4 of the bill will apply to every protective order in existence, any issued on the day the bill is enacted, and any future protective orders.

[6:12:16 PM](#)

SENATOR REINBOLD pointed out that the bill does not contain an effective date.

REPRESENTATIVE KOPP acknowledged that making the bill effective as soon as possible could help a lot of people.

[6:13:13 PM](#)

CHAIR HUGHES said that it is not right that a victim must be victimized a second time in order to have the protective order extended. She thanked Representative Kopp for introducing HB 12.

REPRESENTATIVE KOPP said that he worked with the Alaska Legal Services Corporation and the Alaska Network on Domestic Violence and Sexual Assault in drafting the bill. It is supported by

those agencies, as well as the Alaska Peace Officers Association, he said.

6:14:19 PM

SENATOR REINBOLD moved to adopt the Senate committee substitute (SCS) for CSHB 12(JUD), work draft 31-LS0103\G, as the working document.

CHAIR HUGHES objected for discussion purposes.

6:14:43 PM

REGINA LARGENT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, said that Version G contains three changes:

Section 1 would amend AS 18.65.850(b) related to protective orders issued for stalking or sexual assault. It would change the effective period from six months to one year, which is in line with current protective order timeframes for domestic violence.

Section 3 is also conforming language that would amend AS 18.65.850(f) to provide that protective orders for stalking or sexual assault have a maximum extension period of one year. This section also clarifies that when an extension to a current protective order is granted the start date of that extension is the day the current protective order would have expired.

Section 5 would add a new subsection to amend AS 18.66.100(f) to provide that extensions granted for domestic violence protective orders start on the date the current protective order would have expired.

6:16:30 PM

SENATOR MICCICHE asked whether it only allows for a one-year extension.

MS. LARGENT said it provides the timeframes of when it expires.

CHAIR HUGHES said that long-term protective orders can be issued.

REPRESENTATIVE KOPP answered that there is no limit to the number of renewals for protective orders.

SENATOR MICCICHE asked for further clarification that the protective order can be issued for one year, and an extension is

for one year unless dissolved by the court. He added that those extensions can be renewed.

REPRESENTATIVE KOPP answered yes.

[6:18:17 PM](#)

CHAIR HUGHES asked whether he was supportive of the proposed committee substitute.

REPRESENTATIVE KOPP answered yes. He said that increasing the duration for sexual assault and stalking from six months to a year would bring it in line with domestic violence and sexual assault. He said that in reviewing the legislative history, that it appears the reason was that the domestic violence involves someone the victim knows. However, the victim does not always know the perpetrator in stalking and sexual assault. He said that in terms of continuity, many good reasons exist to have the duration at one year. He stated that the Domestic Violence Support Network supports making protective orders be one year in duration. He fully supported the recommendation.

MS. LARGENT pointed out that when a victim files, there would be an evidentiary hearing, so it is not automatic. The judge would need to make findings on the record and find by a preponderance of the evidence grounds to continue. The defendant would have an opportunity to present evidence so an extension potentially would not be granted. She added that the defendant or the victim can file to have a protective order extinguished.

[6:20:31 PM](#)

CHAIR HUGHES removed her objection. There being no further objections the Senate committee substitute (CS) for CSHB 12(JUD), Version G was before the committee.

[6:20:44 PM](#)

CHAIR HUGHES opened public testimony on HB 12.

[6:21:04 PM](#)

CHRISTINE PATE, Executive Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), Sitka, stated that she runs a statewide legal services program for survivors of domestic violence, sexual assault, and stalking. She also provides training and technical assistance to the advocates for the statewide domestic violence and sexual assault programs that go into court daily with survivors on civil protective orders. She appreciated Representative Kopp introducing this bill and the work the committee did to make the bill even stronger. The

ANDVSA strongly supports Version G to increase the length of the stalking and assault protection orders from six to 12 months since it provides uniformity in the law. It also provides protection to survivors who are not in an intimate relationship with the opposing party and often need a longer timeframe than the six-month period.

She said that she has worked for 25 years in this field and has found that civil legal protective orders provide a critical tool to help end domestic violence in the state. She said that making sure they are strong and flexible is critical to keeping survivors safe. This is because the survivors can control the process and have a voice in obtaining the remedies that they need to keep themselves and their families safe, she said. As a civil legal provider for survivors, she has seen the devastating effect of the Whalen decision. She has heard from numerous survivors who have needed protection after histories of terrible abuse but are unable to get it. She echoed what Representative Kopp said that prior to Whalen many courts in the state allowed for an extension or for victims to get a new protective order based on previously found domestic violence.

MS. PATE stated that now courts are unable to do this. This bill would give discretion back to the courts to protect survivors who need it most. She said that survivors who have endured terrible histories of domestic violence are currently being forced to make impossible strategic decisions about when to apply for a protective order to maximize their safety. These victims know they will only have six or 12 months of safety. If a criminal case exists, they must calculate if they should wait until the defendant is out of jail. She said that provisions for no contact orders may not specifically allow victims to obtain a civil protection order. She did not think survivors should need to make those types of decisions and protective orders must respond to the cyclical nature of crimes of intimate partner violence. She urged members to approve HB 12 to allow the courts to go back to having discretion to protect victims after 12 months if safety demands it.

[6:24:41 PM](#)

PATTY MASTERS, Coordinator, Direct Services, Advocates for Victims of Violence (AVV Valdez), Valdez, said that she advocates for victims of violence. The AVV Valdez also provides a shelter for victims. She said she works with survivors of domestic violence and sexual assault on a daily basis. She testified in support of HB 12 to help keep victims safe. She said Ms. Pate made excellent points. She said that survivors

need a protective order for longer than one year. She said it is difficult for women and men to come into programs and ask for help. The process can be daunting, and these victims suffer endless trauma in getting out of a violent household or lifestyle. This bill would fix the Whalen decision by allowing the courts to grant protective orders on already litigated domestic violence sexual assault and stalking by extending the protective order past one year. She said she recently worked with several victims who have been terrified because their perpetrators have been incarcerated and are being released this month. They have been terrified that they may not be able to get a long-term protective order.

[6:27:02 PM](#)

CHAIR HUGHES, after first determining no one else wished to testify, closed public testimony on HB 12.

[HB 12 was held in committee.]

#### **SB 80-INITIATIVE SEVERABILITY**

[6:27:46 PM](#)

CHAIR HUGHES announced that the next order of business would be SENATE BILL NO. 80, "An Act relating to proposing and enacting laws by initiative."

[6:28:18 PM](#)

SENATOR CHRIS BIRCH, Alaska State Legislature, Juneau, paraphrased from the sponsor statement, which read:

Senate Bill 80 - Sponsor Statement "An Act relating to proposing and enacting laws by initiative."

SB 80 seeks to ensure ballot initiative language that appears before voters at the ballot box is the same as the language circulated during the signature-gathering phase and to restore the legislature's important role in the initiative process.

Alaska's constitution details a very important right of our residents - the right to enact legislation through the voter initiative process. The legislature also has the right to enact legislation substantially the same as the proposed initiative thus removing it from the ballot.

The proposed ballot initiative language must be submitted to the State of Alaska for review. The Alaska Department of Law reviews the proposed language then provides the Lieutenant Governor a recommendation whether to certify or deny the language.

The Lieutenant Governor's certification is a key step in the initiative process. Only once certification happens will the state print petition booklets for gathering voter signatures. The petitioner then circulates the booklets to gather signatures and submits those to the state for verification. Once signatures are verified, an initiative can be prepared for the ballot.

Per our constitution, some issues are off-limits for ballot initiatives and initiatives can only cover one subject. But while a cursory legal review of language occurs before the Lieutenant Governor's certification, it has sometimes been the case that further review finds constitutional concerns with proposed language. In those cases, a party can file a lawsuit to force the issue through the court system. This can happen simultaneous to the circulation of signature booklets.

Under current law, if a court determines that language in a proposed initiative is unconstitutional and/or severed, an amended version of the language can appear before voters. This results in voters seeing a different initiative than the one they supported with their signature. Furthermore, if the courts revise/sever the language after the legislative review process, they deny the legislature its right to review the initiative as revised. The net effect of a court's severance is that an initiative can move forward to the voters that is substantially different than the initial version reviewed by the legislature.

SB 80 would rectify this situation. Under this bill, if a court determines that language in a proposed initiative is unconstitutional or severed, the Lieutenant Governor must reject the entire initiative petition and prohibit it from appearing on the ballot. Voters should be assured that language on the ballot has not changed from the language in the petition booklets supported with voter signatures and further, restores the legislature's right to review and enact

substantially similar legislation to stop an initiative from moving forward.

[6:31:05 PM](#)

SENATOR REINBOLD remarked that she heard this bill in Senate State Affairs Standing Committee. She is a big supporter of SB 80.

[6:31:28 PM](#)

KIM SKIPPER, Staff, Senator Chris Birch, Alaska State Legislature, Juneau, provided the sectional analysis of SB 80 on behalf of the sponsor, Senator Chris Birch. She said that this bill has one section that amends AS 15.45.240. It adds a new subsection (b), which reads, "The provisions of an initiative are not severable after being circulated under AS 15.45.110. An initiative petition may not contain a severability clause. If a court finds a provision of an initiative petition unconstitutional during a review under (a) of this section, the court shall order the lieutenant governor to reject the entire initiative petition and prohibit the placement of the initiative on the ballot."

[6:32:22 PM](#)

CHAIR HUGHES stated that an initiative initiates new law and a referendum repeals existing law. She asked whether citizens have the ability to repeal and reenact something and if that would be an initiative or if it would be defined as a referendum. She asked whether this would be needed to extend a referendum.

SENATOR BIRCH said he was unsure. He said he thought it applied solely to an initiative.

SENATOR MICCICHE said since a referendum only repeals language, there would be no need to have severability protection.

CHAIR HUGHES asked whether citizens have the ability to do a repeal and reenactment in the same process.

[6:33:46 PM](#)

ERIC FJELSTAD, representing self, Anchorage, stated he is an attorney with Perkins Coie LLP, but he is testifying on his own behalf. He said he was involved in Proposition 1 last year.

CHAIR HUGHES wondered if citizens can repeal and reenact new law in the same process.

MR. FJELSTAD responded that this provision is focused on a very narrow situation in which citizens are making law and the role of the legislature in reviewing it. That is unique to initiatives, he said.

CHAIR HUGHES indicated she was satisfying her curiosity about the process.

[6:35:51 PM](#)

SENATOR MICCICHE said that he supports this bill. He has seen people "shoot for the moon" and let the courts sort it out. This would take the pressure away with respect to the intent of the initiative process. He said that if my name were on it and the language of the initiative changed, he would want to give his name a second time. He offered his belief that this would correct a lot of problems.

CHAIR HUGHES said she also supports SB 80. She said it made her think about the public trust factor. She said when people sign a contract, the language of the contract cannot change. We all know that is not the right thing to do.

[6:37:16 PM](#)

SENATOR KIEHL said that a provision like this one seems to provide an incentive for parties to sue over any and every initiative. He said that if "you can nick it" or "wound it just the tiniest bit" the whole thing is off the ballot. He expressed concern that it might encouraged citizens to be overly litigious.

SENATOR BIRCH answered that he did not think so. He did not think it would be a common practice in which the courts would rewrite an initiative. He said that [Proposition 1] was a long initiative that was substantially changed by the courts. The presumption would be that the public members who sign the initiative would not see significant changes when it shows up in the ballot.

[6:38:27 PM](#)

SENATOR KIEHL said that the courts first severed part of an initiative in the 1980s [in McAlpine v. University of Alaska]. He asked what has changed in the intervening years.

SENATOR BIRCH offered his belief that initiatives are overly complex and overreaching. The net effect is that initiatives are put in front of the public that have not gone through the deliberative process of law. He said that the assumption is that

when the initiative is initially certified by the lieutenant governor that it has gone through a legal review and is appropriate to be in front of the public.

[6:39:48 PM](#)

SENATOR KIEHL referred to Article XII, Section 11 of the Constitution of the State of Alaska issue. He said that the second sentence reads, "Unless clearly inapplicable, the law-making powers of the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI."

He said that would create an additional bar to the legislature. This would put additional burdens on the initiative power that are not imposed on the legislature's law-making power, he said.

SENATOR BIRCH deferred to Mr. Fjelstad.

[6:40:38 PM](#)

MR. FJELSTAD answered that with the initiative process, a number of constitutional provisions are in play. He acknowledged that constitutional repercussions occur when a change like this happens. He agreed that the provision Senator Kiehl mentioned is in play, but on the other side is the constitutional right and policy obligation of legislature to review an initiative before it goes to the voters. He said this is apolitical. The framers of the Constitution of the State of Alaska contemplated the legislature would be the last stop, with the ability to review an initiative and to enact something substantially similar if it chooses to do so. That would stop an initiative, he said. People have the right to make laws, subject to the legislature bringing an end to it. The dynamic of the court's severance significantly changes that, because if the courts severs something like it did last year with Proposition 1 last year, it became something very different than what the legislature considered in the first instance.

He said that it changes the politics. The legislature may review an initiative and the probability it would enact something substantially similar to an initiative it does not like is very low. However, if the court were to sever the things that were objectionable, it creates a very different piece of legislation and the probability that it would enact legislation goes way up. He said that the positioning and the timing of when the legislature reviews it matters. He said that putting the court after the legislative review and creating something different is significant.

SENATOR KIEHL said it seems analogous to the governor's power to sign a veto. He said that the court retains the ability to sever afterwards. He said it is the same dynamic. He asked how that would justify putting an additional restriction on the law-making power of the people through an initiative.

MR. FJELSTAD said the people have a law-making power and the ability to make laws. The question is not what the people propose, which might be to say we want a law that consists of 10 parts, which is fine, rather, it is when the courts are deciding unilaterally to remove two of 10 parts.

SENATOR KIEHL answered that the people ultimately make that decision when they vote on the initiative consisting of eight parts instead of 10.

MR. FJELSTAD agreed that the people get to vote. However, the legislature could say it was presented with a bill consisting of 10 parts. However, after the legislature ends, if the court carves out two parts, it means the legislature has not examined the revised version, which could be a very different bill.

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SENATOR BIRCH said he thinks SB 80 has some significant benefit and consequences with the potential to streamline the process.

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SENATOR MICCICHE said the Constitution of the State of Alaska has different provisions. He said that Title 1 on initiatives answers several of the questions. He said he has stated his support. He characterized it as a truth in advertising issue. If he places his signature on [an initiative], it should be what is going forward. Otherwise it should come back for another set of signatures.

SENATOR BIRCH thanked the committee.

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CHAIR HUGHES pointed out that legislators can withdraw their sponsorship on proposed bills if the language in the bill changes.

[SB 80 was held in committee.]

**SB 52-ALCOHOLIC BEVERAGE CONTROL; ALCOHOL REG**

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CHAIR HUGHES announced that the final order of business would be SENATE BILL NO. 52, "An Act relating to alcoholic beverages; relating to the regulation of manufacturers, wholesalers, and retailers of alcoholic beverages; relating to licenses, endorsements, and permits involving alcoholic beverages; relating to common carrier approval to transport or deliver alcoholic beverages; relating to the Alcoholic Beverage Control Board; relating to offenses involving alcoholic beverages; amending Rule 17(h), Alaska Rules of Minor Offense Procedure; and providing for an effective date."

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CHAIR HUGHES reconvened the meeting. She asked Ms. Morledge to discuss the changes that were made in the Senate Labor and Commerce Standing Committee.

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EDRA MORLEDGE, Staff, Senator Peter Micciche, Alaska State Legislature, Juneau, explained the changes in Version S, beginning with Article 2.

Explanation of Changes CS SENATE BILL NO. 52 (L&C)  
Version: 31-LS0004/S

Page 6, Lines 13-15: Requires the fermentation process of all brewed beverages offered for sale for a brewery manufacturer licensee to occur on the holder's premises in the state.

Page 6, Lines 20-21: Requires the fermentation process of all wine offered for sale by a winery manufacturer licensee to occur on the holder's premises in the state.

MS. MORLEDGE explained that this is a change from the previous version that required 80 percent of the final product of brewed beverages be manufactured on site. The same change is made for winery manufacturers.

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MS. MORLEDGE turned to the next two changes, which are very similar for breweries and wineries.

Page 22, Lines 8-10: Clarifies that brewery retail license holders can sell up to 5.167 gallons of the holder's beer or sake for consumption off the premises.

Page 23, Lines 9-11: Clarifies that the holder of a winery retail license can sell up to 5.167 gallons of the holder's wine, mead, or cider for consumption off the premises, regardless of alcohol content.

She said the only change on page 22 is to add sake although the state does not currently have any sake manufacturers.

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SENATOR KIEHL said that he appreciated the differentiation between wine and cider. He asked whether the amount of wine was doubled.

MS. MORLEDGE responded that in current statute both breweries and wineries can sell up to five gallons. The original version of the bill changed it to nine liters. Some wineries said that change would negatively impact their profits. She said in the Lower 48 wineries are selling kegs for special events and functions.

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SENATOR REINBOLD said that was her amendment and it was conforming language. She said that the committee heard that people wanted to have a wedding and were limited by the nine liters, she said.

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MS. MORLEDGE continued with Section 10. This took out the prohibition of manufacturer sampling license holders to advertise sampling activities on their premises. She said that was at the request of wineries who wanted to advertise to seasonal visitors to come to their premises and purchase their products.

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MS. MORLEDGE continued [Sec. 04.09.440(a)].

Page 33, Lines 23-24: Clarifies that consumption of alcoholic beverages on a large resort is permitted whether under or not the locations are in the same building or under the same roof of the large resort.

MS. MORLEDGE said that this would allow customers at a large resort to move the wine from a bonfire to another location on the resort's property.

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MS. MORLEDGE continued. She turned to Section 27.

Page 55, Line 22 to Page 56, Line 10: Adds a new section to allow for the automatic transfer of a license if no action has been taken by the board within 60 days. This applies to restaurant and eating places with or without endorsements, and seasonal restaurant or eating place tourism license with or without endorsements.

MS. MORLEDGE said that this relates to the transfer of license to another person.

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MS. MORLEDGE continued. She turned to Section 45.

Page 65, Line 30 to Page 66, Line 2: Changes the authority to impose conditions or restrictions on a permit from the Director to the Board

Removed the prohibition for the holder of a manufacturer sampling license to advertise sampling activities. (Version U, Page 31, Lines 13-17)

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CHAIR HUGHES referred to Section 27 on the automatic transfer. She asked whether backlogs caused problems.

SENATOR MICCICHE acknowledged that some problems have occurred on the transfer of ownership when people buy a new restaurant or eating place. He said that this raises some timing issues and it is something he will probably have to reconsider. He supports the concept but thinks that some additional work needs to be done.

He referred to the next change on page 65-66. He said that this language change was to not give the director the opportunity to make changes that only the board can make. Currently, the director cannot put conditions on the permit. He said he thinks that people believe the conditions are negative. However, the reality is that the conditions would be positive. He said it

could slow down the process for people who have a minor problem to correct. Going through the process could slow things down and the event may be long over before the board meets. He said he understands the reason for the change, but it will need some work to function as intended.

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SENATOR MICCICHE thanked the Chair of the Senate Labor & Commerce Committee. He said it is a big bill and the committee made some important changes. He acknowledged that as mentioned a few more changes need to be worked on, but they will be minor ones.

SENATOR REINBOLD related her understanding that it has taken six or seven years for the sponsor to get to this point. She said a lot of work was done in the previous committee. She has several amendments. She said she is very supportive of this bill.

[SB 52 was held in committee.]

CHAIR HUGHES reviewed upcoming committee announcements.

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There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 7:01 p.m.