

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

April 24, 2019

1:32 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Senator Mike Shower

**COMMITTEE CALENDAR**

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 BILL NO. 80

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

- MOVED SB 80 OUT OF COMMITTEE

SENATE BILL NO. 34

"An Act relating to probation; relating to a program allowing probationers to earn credits for complying with the conditions of probation; relating to early termination of probation; relating to parole; relating to a program allowing parolees to earn credits for complying with the conditions of parole; relating to early termination of parole; relating to eligibility

for discretionary parole; relating to good time; and providing for an effective date."

- BILL HEARING CANCELED

#### PREVIOUS COMMITTEE ACTION

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)
04/23/19	(S)	Heard & Held
04/23/19	(S)	MINUTE(JUD)

04/24/19 (S) JUD AT 1:30 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)  
04/23/19 (S) Heard & Held  
04/23/19 (S) MINUTE(JUD)  
04/24/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

BEVERLY SCHOONOVER, Acting Director  
Alaska Advisory Board on Alcoholism and Drug Abuse  
Alaska Mental Health Board  
Department of Health and Social Services (DHSS)  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 52 to modernize the language and limit youth access to alcohol.

LEE ELLIS, President  
Brewers Guild of Alaska  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 52.

JAN HILL, Member  
Title 4 Review Steering Committee  
Haines, Alaska

**POSITION STATEMENT:** Testified in support of SB 52.

LOGAN DANIELS, Volunteer  
Healthy Voices Healthy Choices  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 52 to modernize the language and limit youth access to alcohol.

KATI CAPOZZI, President and CEO

Alaska State Chamber of Commerce  
Eagle River, Alaska

**POSITION STATEMENT:** Testified in support of SB 80.

LAURA BONNER, representing herself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 80.

BETHANY MARCUM, Executive Director  
Alaska Policy Forum  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 80.

SENATOR CHRIS BIRCH  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as sponsor during the hearing on SB 80.

#### **ACTION NARRATIVE**

[1:32:57 PM](#)

**CHAIR SHELLEY HUGHES** called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Kiehl, Micciche, Reinbold, and Chair Hughes.

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

[1:33:19 PM](#)

CHAIR HUGHES announced that the first 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."

CHAIR HUGHES made opening remarks.

[1:33:54 PM](#)

SENATOR MICCICHE said he looks forward to hearing from the public.

[1:34:16 PM](#)

CHAIR HUGHES opened public testimony on SB 52.

[1:34:32 PM](#)

BEVERLY SCHOONOVER, Acting Director, Alaska Advisory Board on Alcoholism and Drug Abuse, Alaska Mental Health Board, Department of Health and Social Services (DHSS), Juneau, stated that the agencies she oversees are statutorily charged with planning and coordinating behavioral health services funded by the state. The boards are in support of SB 52, which provides a much-needed update to the Title 4 provisions and includes prevention measures to reduce underage drinking. She said that the agencies have made progress to reduce underage drinking. According to the annual youth risk behavioral survey (YRBS) over the last 25 years there have been declines in the percentage of youth starting drinking before 13 years of age. However, the department knows that underage drinking, including binge drinking occurs in Alaska. In 2017, nearly 15 percent of the students surveyed in the YRBS reported binge drinking in the past 30 days. She related that is four or more drinks in a row for females and five or more drinks in a row for males. Underage drinking, especially binge drinking is harmful to adolescent brain development. The department does not want Alaska's teenagers engaging in other risky behaviors while under the influence of alcohol. The department believes the preventative measures outlined in SB 52 will reduce underage drinking in Alaska for the following reasons. SB 52 would hold adults who supply alcohol to youth accountable by maintaining current penalties for furnishing alcohol to a minor, especially if it causes the youth harm or is a repeat offense, both of which are felonies under the bill. This bill also provides much needed resources for enforcement of Title 4 by increasing license fees, many of which have not been increased in decades, which has continued to limit the ABC Board's ability to do its job. This includes ensuring that businesses do not sell or serve alcohol to minors. She thanked Senator Micciche for sponsoring this bill for his steadfast leadership to the large group of diverse contributors who have worked hard to find solutions through compromise and move these changes forward for the last seven years.

[1:36:29 PM](#)

LEE ELLIS, President, Brewers Guild of Alaska, Anchorage, stated support for SB 52. He said that over the multi-year process of developing the compromises in this bill, the bill is fair. It is not considered a gift to the Brewers Guild of Alaska, but it is fair to every stakeholder in the process. He said that his group

would like to honor that process by supporting this bill. He further wanted to support the efforts by Senator Micciche and others who have been involved in the process. He said that the bill will benefit the industry by cleaning up the regulations that affect it. He said brewery startups often must hire an attorney to sort through the regulatory process to open a business. Manufacturers have been a bright spot in the economy in the last few years in Alaska. Anything that would make it easier to assist entrepreneurs will benefit the industry. The bill will still maintain regulation on the tap room and the three-tier system that is critical for wholesalers, manufacturers, and retailers. This has been the best work by all these groups, which is the reason the guild supports it.

[1:38:17 PM](#)

JAN HILL, Member, Title 4 Review Steering Committee, Haines, stated that she was a member of the Title 4 review steering committee and has been involved throughout the process. She has served as cochair of the local option subcommittee with Chris Simon, formerly of the Alaska Department of Education and Early Development. She emphasized that Title 4 very much needs to be modernized and SB 52 is a huge step forward. She related the subcommittee talked extensively about the impacts of alcohol on dry and damp communities, alcohol-related crimes, and the need to improve Title 4 in order to increase enforcement. While much work still needs to be done with local option laws, SB 52 makes some important changes. One of these is to give rural communities access to existing data about legal alcohol sales and deliveries, so law enforcement can understand the flow of alcohol into rural Alaska. Another change is regulating Internet sales to ensure that a person in a dry community is not using this loophole to get around the monthly order limits in existing laws. She stated her support for SB 52. She urged members to pass the bill this year.

[1:39:58 PM](#)

LOGAN DANIELS, Healthy Voices Healthy Choices, Anchorage, said that a friend's brother was killed by a 16-year-old drunk driver in the Lower 48. He said that anything that can be done to modernize the regulations and limit youth access to alcohol will be a step in the right direction.

[1:41:25 PM](#)

CHAIR HUGHES, after first determining no one wished to testify, closed public testimony on SB 52.

[SB 52 was held in committee.]

## SB 80-INITIATIVE SEVERABILITY

[1:41:41 PM](#)

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

[1:42:07 PM](#)

CHAIR HUGHES opened public testimony on SB 80.

[1:42:29 PM](#)

KATI CAPOZZI, President and CEO, Alaska State Chamber of Commerce, Eagle River said that her nonprofit organization was founded in 1953 to promote a positive business environment in Alaska. The Alaska State Chamber of Commerce (State Chamber] represents hundreds of businesses, manufacturers, and local chambers of commerce across the state. These companies employ more than 100,000 hard-working Alaskans, she said. The State Chamber believes that SB 80 is necessary to maintain the integrity of the signature-gathering process for a ballot measure.

She explained that once voters sign their names to specific ballot measure language, their support should be applied only to the exact language to which they lent their names. If any court or courts decide to alter or remove language from the initiative, it cannot be assumed that the voters' support remains. If a court severs language from a proposed ballot measure, it should be mandatory that initiative proponents support the revised language that actually appears on the ballot.

MS. CAPOZZI said the State Chamber supports SB 80 because it will correct a deficiency that has been overlooked in the ballot initiative process. Further, the organization also believes that this bill will result in fewer protracted legal battles once ballot-measure proponents understand that if any section of the initiative does not pass constitutional muster, the proponents would be required to revert to the signature gathering stage of the process. Passage of SB 80 should result in more carefully-crafted-ballot measures at the outset, she said. This would result in a smoother, more predictable process for all parties, whether the parties support or oppose the ballot measure in question.

[1:44:22 PM](#)

LAURA BONNER, representing herself, Anchorage, said that she is a 47-year retiree who strongly opposes SB 80. She offered her belief that this bill would usurp the peoples' power in the initiative process. Gathering the number of signatures in all 40 districts to place an initiative on the ballot takes considerable time, effort, and expense. If SB 80 were to pass, if even one word was changed, added, or deleted that process would need to start over. She has signed numerous petitions over the years, sometimes just because she wanted to see the issue come before the voters, she said. She said she has seen legislators support a proposed bill [in committee] but vote against it on the floor because the bill was amended, or the legislator obtained more information on the bill. It is the floor vote that matters in the legislature; likewise, it is a person's vote during the election that matters in terms of an initiative. She expressed concern that SB 80 would stifle Alaskans' constitutional rights. Although she is not an attorney, she has concerns about potential constitutional issues related to this bill.

[1:46:31 PM](#)

BETHANY MARCUM, Executive Director, Alaska Policy Forum, Anchorage, said that Alaska is fortunate to have a constitutionally enshrined ballot initiative process. Not all states trust their citizens to participate directly in the legislative process. Most Alaskans would agree this is an important right. In order for the initiative process to continue to have value for future generations of Alaskans, it is imperative that the integrity of the process is ensured. Currently, a loophole created by past Alaska Supreme Court decisions allow the courts to tamper with the initiative language. She related that when the courts remove unconstitutional provisions, the end result is that the language voters see on their ballots may be different than the language in the petition booklet that voters signed. This is what happened last year with Ballot Initiative 1, she said. She characterized it as an injustice to voters. Further, the legislature can be stripped of its role to act as a counterbalance in the process. The legislature has the right to pass legislation that is substantially the same as proposed initiatives, thus removing those initiatives from the ballot. When courts change the language, the legislature loses its ability to provide oversight on the process. She urged members to consider [SB] 80 to rectify this situation.

[1:48:40 PM](#)

CHAIR HUGHES after first determining no one else wished to testify, closed public testimony on SB 80.

1:48:48 PM

SENATOR KIEHL referred to a memo with legal analysis from the Division of Legislative Legal Services, [Legal Services, Legislative Affairs Agency memo of 4/23/19 from Alpheus Bullard, Legislative Counsel] as to the constitutionality of SB 80. The memo cited the rule of construction, in Latin [expression unius est exclusio alterius" or "the expression of one thing is the exclusion of another".] In essence, the legal counsel interpreted that the Constitution of the State of Alaska provides some limits and strictures on the peoples' ability to exercise the legislative power directly, but having those limits and rules in place means that the legislature does not get to do other limits and rules on the peoples' power, at least not through statutes. He related a scenario he had with a constituent who was interested in obtaining a presidential candidate's tax returns. The Legislative Legal Research answer was the same, that the U.S. Constitution has a set of qualifications and the state does not get to add more qualifications, which is the same principle, he said. He said he would not hold up the bill today, but he does have concerns.

CHAIR HUGHES said she also reviewed the memo. She asked the record to reflect her comments, that the restrictions in Article XI, Section 7, of the Constitution of the State of Alaska, and read, "The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation.". She said she realizes that those are restrictions on content and not process.

She referred to the "Law-Making Power" in Article XII" of the Constitution of the State of Alaska, and read, "As used in this constitution, the terms 'by law' and 'by the legislature,' or variations of these terms, are used interchangeably when related to law-making powers. Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI."

CHAIR HUGHES asked whether this would create an imbalance between the initiative and what the people can do. She said that when the legislature passes a law, and the governor signs it, it can be appealed in court. The courts can find some sections in a bill could be found unconstitutional and pulled out, but the

rest of the bill stands. Thus, the legislature's process has severability. She asserted that SB 80 does not remove that ability because if an initiative were to pass and become law, 90 days after passage, if challenged, the court could remove parts that it deems unconstitutional, so the rest of the initiative would stand. She concluded that these "law-making powers" as being very balanced. This refers to severability in the process, she said.

She commented that one benefit is that the people putting forth initiatives will work harder to create accurate language during the drafting of initiatives. This would reduce time and effort spent by the Lieutenant Governor's office and by the Alaska Court System, she said. She acknowledged that the analogy of the balance and law-making power is not a perfect analogy. However, people are signing petitions based on the language that they believe will be on the ballot. If it is rewritten it could be likened to her duties, if she were to cosponsor a bill and vote in favor of it, but the bill is rewritten before the governor signs it. At that point her name is on a final bill that she voted for, yet it contains language she does not support.

CHAIR HUGHES characterized [SB 80] as being about the process, that the severability still stands for the initiative process after it becomes law. The courts could determine a part of it is not constitutional, but the rest would stand. She acknowledged that the Division of Legislative Legal [Services, Legislative Affairs Agency] does a good job, but she thinks that the restrictions in the Constitution of the State of Alaska are content related and that the severability still holds for the initiative process after it becomes law.

[1:55:37 PM](#)

SENATOR CHRIS BIRCH, Alaska State Legislature, Juneau agreed with the Chair's comments. He said that fundamentally it comes down to truth in advertising. He said that SB 80 would restore a check in the "checks and balances" of the constitutional framers' vision of the initiative process. The intent of the voters at the signature phase should matter, he said. When signing the petition, these voters are not giving their support to a general concept for legislation. The courts should not be empowered to divine the intent of those who support an initiative to guess what degree of changes would be permissible. The legislature has an obligation and right by the Constitution of the State of Alaska to stop an initiative by enacting similarly situated legislation. If the courts revise initiatives after the legislative review process, they deny the legislature

its right to review a revised initiative. He said he would appreciate the committee's support.

1:57:09 PM

SENATOR REINBOLD moved to report SB 80, work order 31-LS0185\U, Version U, from committee with individual recommendations and attached fiscal note(s).

CHAIR HUGHES found no objection. Therefore, SB 80 was reported from the Senate Judiciary Standing Committee.

1:57:34 PM

At-ease.

1:59:58 PM

CHAIR HUGHES reconvened the meeting and reviewed upcoming committee announcements.

2:00:24 PM

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 2:00 p.m.