HB

47

(9)

COMMITTEE REPORT

HOUSE

1/24/79

FURTHER:

Date: _____

Mr. Speaker:

The Committee on Judiciary has had HB 47

"An Act relating to the sale of alcoholic beverages; eff. date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Rolle Stiller D. Pass
Terry Martin
Richard Greene
Patrick G. O'Connell
T Buckholdt
Nels A. Anderson Jr.
H Malone
Edward A. Pan

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Edward A Pan
CHAIRMAN

H 60 (Rev. 12/78)

(9)

COMMITTEE REPORT

HOUSE

2/12/79

FURTHER:

Date: _____

Mr. Speaker:

The Committee on (Returned to) JUDICIARY has had HB 47

with amendments offered 2/12/79

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 47 [X] same title [ ] new title

and recommends Do Pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Russell, D. Ivs
Thorsteinson
Neil D. Anderson
Ellerd
Asay

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Patricia McCallum - Read amendment
Tom Hunter - Read amendment
Addy - Read amendment

Chairman

H 60 (Rev. 12/78)

AMENDMENT

OFFERED IN THE HOUSE: BY: Brown Randolph

To: CS HOUSE BILL No. 47

SENATE BILL No. _____

PAGE: 1-2 LINE: _____

Delete all language.

Substitute.

Section 1. AS 04.15.090 is repealed.

Introduced: 1/24/79
Referred: Judiciary

IN THE HOUSE BY PARR

HOUSE BILL NO. 47

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the sale of alcoholic beverages; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 04.15.090 is amended to read:

Sec. 04.15.090. PROHIBITION WITH RESPECT TO CERTAIN PERSONS [FEMALES] IN CONNECTION WITH THE SALE OF BEVERAGES UPON LICENSED PREMISES. (a) No [FEMALE] person employed in any capacity or for any purpose by the holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or by the operator or manager thereof may solicit or encourage the purchase of any beverage, alcoholic or otherwise, by patrons of the licensed premises for consumption by the patrons or by the [FEMALE] person; nor may the [FEMALE] person accept a beverage, alcoholic or otherwise, purchased by a patron of the establishment.

(b) No [FEMALE] person, whether an employee or patron of a licensed beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary may remain about the premises of the establishment and solicit any beverage, alcoholic or otherwise, from a patron of the establishment, whether the beverage is for himself [HERSELF], the patron, or another.

(c) No holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or an operator or manager thereof may permit a [FEMALE] person employed by him, in any capacity or for any purpose, to solicit or encourage the

purchase of any beverage, alcoholic or otherwise, by patrons of the licensed premises for consumption by the patron or by the [FEMALE] person; nor may the holder, operator, or manager permit an [A FEMALE] employee to accept any beverage, alcoholic or otherwise, purchased or offered by a patron of the licensed premises.

(d) No holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or an operator or manager thereof may permit any [FEMALE] person to remain about the premises of the establishment and solicit any beverage, alcoholic or otherwise, from a patron of the licensed premises, whether the said beverage be for himself [HERSELF], the patron, or another.

(e) A holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or the operator or manager thereof, or an [A FEMALE] employee thereof who violates this section is guilty of a misdemeanor.

(f) A [FEMALE] person, not an employee of any licensed premises described in this section, who violates (b) of this section is guilty of a misdemeanor.

* Sec. 2. AS 04.15.090(e) and (f) are amended to read:

(e) A holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or the operator or manager thereof, or an employee thereof who violates this section is guilty of a class B misdemeanor.

(f) A person, not an employee of any licensed premises described in this section, who violates (b) of this section is guilty of a class B misdemeanor.

* Sec. 3. Section 2 of this Act takes effect January 1, 1980.

Introduced: 1/24/79
Referred: Judiciary

IN THE HOUSE BY PARR

HOUSE BILL NO. 47

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ELEVENTH LEGISLATURE - FIRST SESSION

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(b) No [FEMALE] person, whether an employee or patron of a licensed beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary may remain about the premises of the establishment and solicit any beverage, alcoholic or otherwise, from a patron of the establishment, whether the beverage is for himself [HERSELF], the patron, or another.

(c) No holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or an operator or manager thereof may permit a [FEMALE] person employed by him, in any capacity or for any purpose, to solicit or encourage the

purchase of any beverage, alcoholic or otherwise, by patrons of the licensed premises for consumption by the patron or by the [FEMALE] person; nor may the holder, operator, or manager permit an [A FEMALE] employee to accept any beverage, alcoholic or otherwise, purchased or offered by a patron of the licensed premises.

(d) No holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or an operator or manager thereof may permit any [FEMALE] person to remain about the premises of the establishment and solicit any beverage, alcoholic or otherwise, from a patron of the licensed premises, whether the said beverage be for himself [HERSELF], the patron, or another. that person deleted

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* Sec. 2. AS 04.15.090(e) and (f) are amended to read:

(e) A holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or the operator or manager thereof, or an employee thereof who violates this section is guilty of a class B misdemeanor.

(f) A person, not an employee of any licensed premises described in this section, who violates (b) of this section is guilty of a class B misdemeanor.

* Sec. 3. Section 2 of this Act takes effect January 1, 1980.

(b) The provisions of § 100(b) of this chapter relating to penalties for violation of this title apply also with respect to penalties for violation of municipal ordinances adopted under the authority of (a) of this section. (§ 35-4-18 ACLA 1949; am § 2 ch 131 SLA 1957; am § 2 ch 197 SLA 1959; am § 1 ch 86 SLA 1960; am § 1 ch 120 SLA 1967)

Effect of amendment. — The 1967 amendment designated the former section as subsection (a) and added subsection (b).

Legislative committee report. — For report on ch. 120, SLA 1967 (HB 255), see 1967 House Journal, p. 539.

Prohibition against additional taxes on liquor inapplicable to consumer's sales tax — See Juneau. Alas. & Juneau-Douglas Independent School Dist. v. Baranof Hotel. Inc., 1 Alas. L.J. No. 6, p. 12 (June, 1963).

Sec. 04.15.080. Giving of intoxicating liquor to persons under the age of 19 years. (a) A person or firm, company, corporation or an employee thereof who sells, barters, gives or delivers to a person under the age of 19 years, any intoxicating liquor is guilty of a misdemeanor, and upon conviction is punishable by imprisonment of not more than one year, or by a fine of not more than $500, or by both.

(b) The term "person" as used in this section does not include a parent as to his own child, a guardian as to his ward or a licensed physician or nurse in giving medical treatment. (§ 1 ch 71 SLA 1959; am § 23 ch 245 SLA 1970)

Effect of amendment. — The 1970 amendment substituted "19" for "21" in subsection (a).

Legislative committee report. — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

Stated in Miller v. State, Sup. Ct. Op. No. 589 (File No. 986), 462 P.2d 421 (1969).

Sec. 04.15.090. Prohibition with respect to certain females in connection with the sale of beverages upon licensed premises. (a) No female person employed in any capacity or for any purpose by the holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or by the operator or manager thereof may solicit or encourage the purchase of any beverage, alcoholic or otherwise, by patrons of the licensed premises for consumption by the patrons or by the female person; nor may the female person accept a beverage, alcoholic or otherwise, purchased by a patron of the establishment.

(b) No female person, whether an employee or patron of a licensed beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary may remain about the premises of the establishment and solicit any beverage, alcoholic or otherwise, from a patron of the establishment, whether the beverage is for herself, the patron, or another.

(c) No holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or an operator or manager thereof may permit a female person employed by him, in any capacity or for any purpose, to solicit or encourage the purchase of any beverage, alcoholic or otherwise, by patrons of the licensed premises for consumption by the patron or by the female person; nor may the holder, operator, or manager permit a female employee to accept any beverage, alcoholic or otherwise, purchased or offered by a patron of the licensed premises.

(d) ~~No holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or an operator or manager thereof may permit any female person to remain about the premises of the establishment and solicit any beverage, alcoholic or otherwise, from a patron of the licensed premises, whether the said beverage be for herself, the patron, or another.~~

(e) A holder of a license for a beverage dispensary establishment, club, roadhouse, restaurant, or common carrier dispensary, or the operator or manager thereof, or a female employee thereof who violates this section is guilty of a misdemeanor.

(f) A female person, not an employee of any licensed premises described in this section, who violates (b) of this section is guilty of a misdemeanor. (§§ 1, 2 ch 80 SLA 1959; am § 1 ch 3 SLA 1964)

Effect of amendment.—The 1964 amendment so changed this section that a detailed comparison is impractical.

This law is referred to in common parlance as the B-girl statute. Alaska Alcoholic Beverage Control Bd. v. Malcolm, Inc., Sup. Ct. Op. No. 208 (File No. 363), 391 P.2d 441 (1964).

A "B-girl" is a woman employed, frequently on a commission basis, to entertain and listen to bar patrons and encourage them to spend freely Alaska Alcoholic Beverage Control Bd. v. Malcolm, Inc., Sup. Ct. Op. No. 208 (File No. 363), 391 P.2d 441 (1964).

It matters not whether the girls are bona fide entertainers. The mischief aimed at in the B-girl statute and branded as illegal is the employment by the licensee of female persons in a beverage dispensary, on a compensatory basis, for the direct or principal purpose of soliciting sales of intoxicants to patrons of the licensed premises. Alaska Alcoholic Beverage Control Bd. v. Malcolm, Inc., Sup Ct Op. No. 208 (File No. 363), 391 P.2d 441 (1964).

Sec. 04.15.100. Penalties for violation of title or municipal ordinance. (a) A person who violates any provision of this title other than § 80 of this chapter is guilty of a misdemeanor, and upon conviction is punishable by imprisonment of not more than one year, or by a fine of not more than $500. Each violation is a separate offense.

(b) Upon conviction of a licensee for a violation under (a) of this section, or for violation of a municipal ordinance adopted by

Sec. 04.15.090. Prohibition with respect to certain females in connection with the sale of beverages upon licensed premises.

This section constitutes overbroad discrimination and is unconstitutional. Dawn v. State, Superior Court, 4th Jud. Dist., C.A. No. 72-140 (1973).

Sec. 04.15.100. Penalties for violation of title or municipal ordinance.

The penalty imposed by the board is not automatic. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

The use of the word "may" rather than the directive "shall" in subsection (b), indicates a discretionary power. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

The reference to "upon the direction of the majority of its members" clearly contemplates a vote, which would be a hollow gesture if the suspension authority were not discretionary. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

The choice of the duration of the penalty by the board creates a further area of discretion. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

An interest in a lawful business is a species of property entitled to the protection of due process. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

Suspension of a liquor license would represent a potential economic loss to its business. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

Thus, due process requires notice and hearing before suspension. — Absent an emergency situation in which the public health, safety or welfare require summary action, the due process clause of the United States Constitution and Alaska Const., art. I, § 7, require that adequate notice and a meaningful opportunity to be heard must be afforded to liquor licensees before their licenses can be suspended. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

A hearing would permit the owner of the business to present arguments in mitigation of the penalty to be assessed, and would assure that the board's action was not taken solely on the basis of ex parte communications to it. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

Although AS 44.62.330(d) does not require hearing. — Under AS 44.62.330(d), a hearing is not required before an alcoholic beverage dispensary license is suspended, although it would be permissible if the Alcoholic Beverage Control Board chose to grant it. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

The hearing required need not be an elaborate one. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

Due process does not require a full-scale hearing in every situation to which due process applies. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

Board need not make written findings, etc. — Because the determination to be made in suspending a license is simply whether to impose a temporary sanction and, if imposed, its extent rather than an adjudication of guilt or innocence, it is not necessary for the Alcoholic Beverage Control Board to make written findings or to file a written opinion explaining its action, so long as it reaches a decision after hearing the licensee's presentation. Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

Additional penalty not to be imposed on basis of prior determination. — The Alcoholic Beverage Control Board may not exercise its discretion by imposing a penalty solely on the basis of a determination in a prior proceeding in which the question of this additional penalty was not before the court. Frontier Saloon, Inc. v. Alcoholic Beverage Control