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HOUSE COMMITTEE REPORT

(5)

Date Referred: March 12, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/27/90

HESS

The COMMUNITY & REGIONAL AFFAIRS Committee considered: CSSB 374 (JUD)

CS SB NO. 374 (Judiciary) DEFINITION OF ALCOHOLIC BEVERAGES

"An Act amending the definition of 'alcoholic beverage'; and providing for an effective date."

- [] be replaced with _____ [] the same title
[] a new title
- [] have attached amendment(s)
- [] do pass
[] do not pass
 no recommendation
individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [] fiscal impact
zero fiscal note
[] zero with analysis

APPROVES PREVIOUS:

[] fiscal note(s) published:

zero fiscal notes(s) published:
Public Safety, Dep't of Revenue

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Eileen P. McKeon McKeon
Ernest A. Kubina Kubina
Cheri Davis C. DAVIS

Eileen P. McKeon

Chairman's signature

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO

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April 26, 1990

The Honorable Eileen P. MacLean
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Re: CSSB 374(Jud) -- definition of
"alcoholic beverage"

Dear Representative MacLean:

Yesterday your legislative assistant, Rena Bukovich, asked that we provide you with an explanation of why the Governor introduced SB 374, a bill that redefines the "alcoholic beverage." As set out in the Governor's transmittal letter, the bill was introduced to correct an unintended problem that was caused by the new definition of "alcoholic beverage" that was adopted last year in CSHB 181(Jud). In order to understand the Governor's concern, it is useful to consider why, prior to passage of last year's law, the definition of "alcoholic beverage" applied to beverages intended for human consumption that contained any amount of alcohol.

Before 1986, communities had the authority to ban the sale or importation, but not the possession, of alcoholic beverages. During extensive committee hearings on whether legislation to ban possession should be considered, many rural residents testified that people circumvented bans on importation by manufacturing homebrew. In part, horror stories about the abusive use of homebrew led to the legislative decision that allowed communities to ban possession of alcohol. To make the law banning possession of alcoholic homebrew enforceable, the definition of "alcoholic beverage" was amended in 1986 to include any substance intended for human consumption that contained alcohol.

For prosecutions under the definition of "alcoholic beverage" that passed during the 1989 session, the state is required to prove that a beverage contained more than 0.5% by volume of alcohol at the time of possession. In cases involving commercially produced alcoholic beverages, proof of percent of alcohol by volume is simple. In contrast, proving the percent of

The Honorable Eileen P. MacLean

April 26, 1990

Page 2

alcohol in homebrew at one particular point in time is more difficult.

For example, if law enforcement officers seized a vat of homebrew as evidence and shipped a sample to the state crime laboratory for analysis of the percent of alcohol, fermentation of the beverage would continue during shipment and until analysis. Further, the rate of fermentation is not constant and varies for each vat of homebrew. As a result, if the definition of alcoholic beverage includes a threshold level of anything other than 0.0% alcohol by volume, prosecution of offenders for possession of homebrew in local option areas will be more difficult.

The current definition of alcoholic beverage weakens local option laws banning possession of alcohol, and may undercut the state's ability to prosecute local option violations based on possession of homebrew. As a result, in order to make local bans on the possession of alcohol enforceable, the governor introduced SB 374 to clarify that in local option areas, it is not necessary to prove the percent of alcohol that is contained privately produced alcoholic beverages.

Please let me know if I can provide you with any additional information about CSSB 374 (Jud).

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 

Laurie V. Otto
Assistant Attorney General

LHO:me-198