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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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Mary Van Nimwegen

SB 374

H. HESS

5/2/90

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 27, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/2/90

The HESS Committee considered:

CSSB 374 (JUDICIARY)

CS SB NO. 374 (Jud)

DEFINITION OF ALCOHOLIC BEVERAGES

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

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

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

- [] fiscal note(s) _____
[X] zero fiscal note(s) 3/2/90 / Rev. Ops
[] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass
No Rec
Amend

J. Ellis
W. J. Chambers
Mark Boyer
George J.

	Do Not Pass	No Rec	Amend
<i>Cheri Davis</i>		X	

J. Ellis
Chairman's Signature

HOUSE COMMITTEE REPORT

4/27

(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
- [X] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [] fiscal impact
- [X] zero fiscal note *Printed in the Senate*
- [] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published:
- [2] zero fiscal notes(s) published:
Our Safety & Rec 3/2/90

SIGNING DO PASS:

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

Eileen P. McKeon Maclean

Eugene A. Kubina Kubina

Cheri Davis C. DAVIS

Eileen P. McKeon

Chairman's signature

STEVE COWPER
GOVERNOR



374

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 8, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends the definition of "alcoholic beverage" in AS 04. The bill will resolve a difficulty that has arisen in connection with prosecuting certain local-option law violations.

In 1986, the legislature amended the definition of "alcoholic beverage" to mean fermented or distilled beverages that contained any amount of alcohol. Section 10, ch. 80, SLA 1986. This created an inconvenience with respect to the distribution of so-called "non-alcoholic" beverages which, in reality, contain some trace amounts of alcohol. The 1986 definition had the practical effect of limiting the distribution of "non-alcoholic" beverages to establishments that had liquor licenses issued under AS 04. This difficulty was resolved by CSHB 181(Jud), enacted in 1989, which changed the definition of "alcoholic beverage" to mean fermented or distilled beverages that contain one-half of one percent or more of alcohol by volume, whether produced commercially or privately. Section 2, ch. 88, SLA 1989.

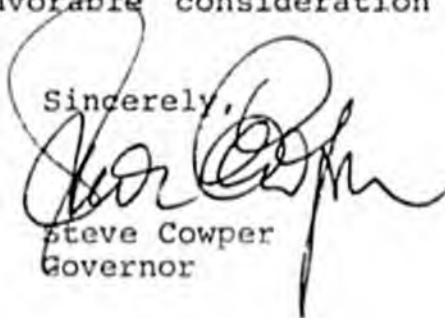
An unintended difficulty was created in that definition amendment. In areas that have voted, under AS 04.11.498, for example, to completely ban the possession of alcoholic beverages, the criminal division of the Department of Law has recognized that practical problems arise in prosecuting individuals who violate the law by producing "homebrew" alcoholic beverages. For example, if law enforcement officers seize a vat of homebrew as evidence and ship a sample to the state crime laboratory for analysis to determine the percentage of alcohol, fermentation of the

beverage would continue during the shipment and until the time of analysis. The rate of fermentation is not constant and varies for each vat of homebrew, and it would be very difficult to determine the percentage of alcohol at the time of seizure. As a result, prosecution of offenders for possession of homebrew in such a local-option area is difficult if the "threshold" level of alcohol in an "alcoholic beverage" is anything other than zero percent. If an "alcoholic beverage" is one that contains any amount of alcohol, "homebrew" prosecutions in such local option areas would be relatively simple because additional fermentation occurring between the time of seizure and the time of laboratory analysis would be irrelevant. It would be sufficient to prove that the homebrew contained alcohol in any amount.

For local-option areas, the attached bill creates an exception to the "general" definition of "alcoholic beverage." In such areas, any fermented or distilled beverage containing alcohol in any amount, whether produced commercially or privately, constitutes an "alcoholic beverage." To be consistent with the apparent intent of AS 04.21.015, relating to private manufacture of alcoholic beverages, this definition will apply in areas that have adopted any of the local-option prohibitions under AS 04.11.490 -- 04.11.500.

I urge your prompt and favorable consideration of this bill.

Sincerely,



Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Definition of Alcohol

Agency Affected: Public Safety
BRU: Alaska State Troopers

Sponsor: Rules Committee
Requestor: Governor

Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Enforcement of the changes made in this bill is not expected to have any fiscal impact on the State Troopers.

Changes in CS SB 374 (Jul) have no fiscal impact. This fiscal note is appropriate. *CK*

Prepared by: Gayle A. Horetski, Deputy Commissioner
Division: Commissioner's Office

Phone: 465-4322
Date: 11/02/89

Approved by Commissioner: *AE* Arthur English
Agency: Department of Public Safety

Date: 11/02/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Amend definition of alcoholic beverage and provide an effective date
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Dept. of Revenue
BRU: Alcoholic Beverage Control Board
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Patrick L. Sharrock, Director
Division: Alcoholic Beverage Control Board
Approved by Commissioner: [Signature]
Agency: Department of Revenue

Phone: 277-8638
Date: October 31, 1989
Date: Nov 3, 1989

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Changes in CSSB 374 (Ju)
have no fiscal impact.
This fiscal note is
appropriate.

CAC

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO

X CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
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PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 278-7424

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 M. Otto
Assistant Attorney General

LHO:me-198