

HB

372

Revision Date: _____ Dept. Affected: Revenue
 Title: Restaurant & Eating Place Liquor License BRU: Alcoholic Beverage Control Board
Hb 372 Component: ABC Board
 Sponsor: Rep. Rokeberg
 Requestor: House Labor Commerce Committee COMPONENT SERIAL NO. 100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost \$ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Douglas B. Griffin
 Division: Alcoholic Beverage Control Board
 Approved by Commissioner: _____
 Agency: Department of Revenue

Phone: 907-277-8638
 Date: 1/16/96
 Date: 1/19/01

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

Cross references. — For legislative findings and purpose in connection with the 1995 enactment of subsection (g), see § 1, ch. 3, SLA 1995 in the Temporary and Special Acts.

Effect of amendments. — The first

1995 amendment, effective July 9, 1995, added subsection (g).

The second 1995 amendment, effective July 1, 1995, repealed subsection (c), relating to filing of a \$2,500 cash bond or surety bond with the application.

Sec. 04.11.100. Restaurant or eating place license. (a) A restaurant or eating place license authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises.

(b) A license may be issued under this section only if the board determines that the premises to be licensed are a bona fide restaurant or eating place.

(c) A license may be issued under this section only if the sale and service of food and alcoholic beverages and any other business conducted on the licensed premises of the restaurant or eating place is under the sole control of the licensee.

(d) The biennial fee for a restaurant or eating place license is \$600.

(e) A license may be renewed under this section only if the licensee provides evidence to the board's satisfaction that gross receipts from the sale of food upon the licensed premises constitute no less than 50 percent of the gross receipts of the licensed premises for each of the two preceding calendar years.

(f) Notwithstanding the provisions of (b) and (e) of this section, upon written application and approval of the local governing body, the board may issue or reissue a restaurant or eating place license and exempt the licensee from the requirements of (b) and (e) of this section. A licensee exempt as provided in this subsection shall provide food items for sale on the premises as shown on a menu approved by the board and available to patrons. The board may not

(1) issue or reissue a license as provided under this subsection if

(A) the issuance or reissuance would result in more than one exempt restaurant or eating place license for every 10 restaurant or eating place licenses allowed under the provisions of AS 04.11.400(a)(2) or (3);

(B) the premises would be located in a building having a public entrance within 200 feet of the boundary line of a school or a church building in which religious services are being regularly conducted; for purposes of this subparagraph, the 200-foot prohibition is measured from the outer boundary line of the school or the public entrance of the church building by the shortest pedestrian route to the nearest public entrance of the restaurant or eating place;

(2) reissue a restaurant or eating place license as exempt as provided under the provisions of this subsection if the license was issued under the provisions of AS 04.11.400(g); or

(3) transfer an exempt license issued under this subsection to another person. (§ 2 ch 131 SLA 1980; am § 4 ch 93 SLA 1985; am §§ 2, 3 ch 63 SLA 1993; am § 5 ch 101 SLA 1995)

**RESOLUTION
OF THE
SPENARD COMMUNITY COUNCIL
SCCR -95**

A RESOLUTION ESTABLISHING SUPPORT FOR REPEAL OF A PORTION OF HCS CSSB 87(JUD) RELATING TO ALCOHOLIC BEVERAGE CONTROL.

WHEREAS, the Anchorage Municipal Charter Article VIII grants unto a duly recognized Community Council the basic right of self-determination, and

WHEREAS, the Spenard Community Council being a duly organized community council under Section 2.40.010 of the Municipal Code, and

WHEREAS, the Spenard Community Council area has one hundred and seventeen liquor licences within it's boundaries, and

WHEREAS, Spenard has twenty seven percent of all Anchorage liquor licenses within it's boundaries, and

WHEREAS, Spenard has only six percent of the population of Anchorage within it's boundaries, and

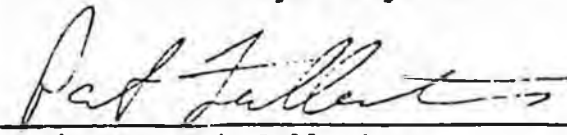
WHEREAS, the Spenard Community Council has experienced a long and ongoing negative effect from the ravages of alcohol, and

WHEREAS, because of our ongoing experiences with the alcohol industry, and

WHEREAS, alcohol influences eighty percent of all convicted criminals in the state of Alaska, and

WHEREAS, the availability of alcohol increases consumption, and

BE IT THEREFORE RESOLVED, that the Spenard Community Council requests and supports the repeal of that section of HCS CSSB 87(JUD) which allows ten percent of Restuarant or eating place licenses to be exempt from the fifty percent food provision of license requirements. We further ask that no exempt licenses approved subsequent to this act be given grandfather rights.



Chairman, Pat Fullerton

FEB 08 1996



*Alaska Cabaret, Hotel,
Restaurant & Retailers Association*

*341 E. 56th, Suite 200 • Anchorage, Alaska 99518
(907) 563-8133 • Fax: (907) 563-8640
Toll Free in Alaska: (800) 478-2427*

February 2, 1996

Representative Norman Rokeberg
Alaska State Legislature
Juneau, Alaska

Dear Representative Rokeberg,

At the January 30, 1996 CHARR Board of Directors meeting, House Bill No. 372 which you have sponsored was discussed at great length. The Board has directed me to communicate our position to you. CHARR supported the adoption of Senate Bill 87 last year which was introduced to correct problems in existing ABC statutes. CHARR historically has opposed the concept of increasing the number of any type of retail beverage alcohol license available and we continue to oppose any expansion of this number. We support this intent of your legislation but we do feel that the title of House Bill No. 372 is unnecessarily broad.

We appreciate the opportunity to comment on the legislation and the consideration you have shown us.

Yours truly,

A handwritten signature in cursive script that reads "Carol Wilson".

Carol Wilson
Executive Director

BASIS 24 PAGES SELECTED Committee Minutes
have to hold the election to change or remove or adopt an option they want.

MR. SHARROCK said there are other technical amendments, a few of which are somewhat new, that the board also suggested or desired. Those are insignificant in his mind, except maybe one that they had asked to be included in this version of the bill, which is a provision to convert restaurant licenses in the community if that restaurant business person wants to have entertainment. It does not create a new class of license, it allows a person to convert a beer and wine or restaurant license into what he refers to as a semi-tavern license. The reason the bill chose not to create a new license by regulation is because if it did, then that many more licenses would be available under the population limitation provisions and the board did not want to do that at all. The board thought it would be easier to address it under one class of license already. You may recall the Cirman case the board had a year or so ago, and this is the board's proposed solution to that kind of thing, to help people out that run into that problem, that run a different sort of business that is not a full-fledged restaurant.

*House
Judiciary
Committee
5/5/95*

Selection=>
PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12
HELP EXIT MENU PRINT END FUD FIRST LAST QUIT
SMA 02 A01C117 MUM LPT1 A

BASIS 24 PAGES SELECTED Committee Minutes
Re said the sectional analysis addresses the different things the board felt was appropriate.

Number 600

REPRESENTATIVE FINKELSTEIN asked what the outcome was of the Cirman case.

MR. SHARROCK answered that the proprietor submitted to the board what he believed was a sufficient menu for food to be served at the restaurant, which was somewhat expanded from what the board had looked at before, and the board accepted it.

REPRESENTATIVE FINKELSTEIN asked what the current composition of the board was.

MR. SHARROCK answered that, as required by law, there are two members from the industry.

Number 650

Selection=>
PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12
HELP EXIT MENU PRINT END FUD FIRST LAST QUIT
SMA 02 A01C117 MUM LPT1 A



DEPARTMENT OF REVENUE

ALCOHOLIC BEVERAGE CONTROL BOARD

TONY KNOWLES, GOVERNOR

530 W 7TH AVE.
ANCHORAGE, ALASKA 99501-6698

February 9, 1996

Representative Norman Rokeberg
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99801-1182
FAX: 907-465-2040

RE: HB 372 - Liquor licenses issued to a restaurant or eating place

Dear Representative Rokeberg:

This letter is drafted in response to our telephone conversation on February 8, 1996. We discussed HB 372, a bill you have introduced to repeal AS 04.11.100(f). This provision, passed last year as part of SB 87, allows a restaurant or eating place licensee (commonly referred to as a beer and wine license) to become "exempt" from some requirements normally placed on a bona fide restaurant.

An exempt licensee would need to provide food items, but would not need to necessarily meet the requirement of AS 04.11.100(e) that 50 percent of gross receipts of a licensed premises come from the sale of food. Under the "exempt" status the establishment could also be exempt from the constraint of 15 AAC 104.305 that live entertainment be provided only from 6 p.m. to 9 p.m.

Based on my research of the history of SB 87, the "exempt" provision was a compromise designed to address a request from some restaurant owners that wished to provide entertainment later into the evening and entertainment purveyors who wanted the ability to serve beer and wine. There was discussion of creating a new type of license or additional licenses like those allowed for the promotion of tourism (AS 04.11.400(d)) or public convenience (AS 04.11.400(g)). However, this alternative would have created additional licenses in a market that is already saturated based on population quotas contained in the statute.

The "exempt" approach to restaurant and eating place licenses was decided to best meet the expressed need because it would:

- 1) not create additional licenses, but merely allow existing licensees within the population quota to expand entertainment offerings;
- 2) require approval of the local governing body to exempt the licensee;
- 3) limit the number of exempt licensees to 10% of the restaurant or eating place licenses (the calculation based on general population limitations of one restaurant license for each 1,500 population or fraction of the adjusted population would be as follows for the Municipality of Anchorage: $229,775 \text{ divided by } 1,500 = 154 \times 10\% = 15$; Based on the same formula the City of Fairbanks: 2 exempt licenses and the City and Borough of Juneau: 2 exempt license;
- 4) require the sale of food items as shown on a menu approved by the ABC Board;
- 5) prohibit issuance of an eating place exemption to establishments licensed under public convenience provisions (AS 04.11.400(g)) and (15 AAC 104.335); and
- 6) prohibit transfer of an exempt license to another person.

These controls are important and valuable. However, it is clear, as noted in the testimony before the Senate Finance Committee last year (see enclosed minutes), the intent and result of the exempt provision is to allow the application of a beer and wine license beyond a setting where dining is the preeminent activity. This allows for a limited number of beer and wine licensees to operate, at times, as a tavern or, to use the words of Mr. Sharrock in explaining Section 4 of SB 87 to the Senate Finance Committee, a "semi-tavern."

To date, the ABC Board has approved "exempt" status for Legal Pizza and Railway Brewing Company in Anchorage and the ABC Board will consider the request from Chandalar Inn in the Matanuska-Susitna Borough at its board meeting of February 14 to 16. China Express, Ichiban Japanese Restaurant, Sushi Gardens, and Fiori D'Italia of Anchorage are in the process of requesting exempt designations and will be considered at a subsequent ABC Board meeting.

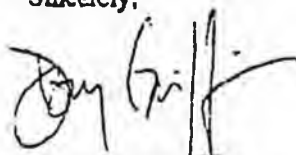
SB 87 contained a number of provisions important to the hospitality industry. The ABC Board and its staff acted to assist the Legislature and the industry in drafting legislation that would strike the proper balance between adequately regulating the alcoholic beverage trade and allowing freedom for entrepreneurs to meet public demand for expanded entertainment and recreation options.

Let me express the considered and informed consent demonstrated by the Nineteenth Legislature during its first session last year and Governor Knowles' general agreement with SB 87 when he signed it into law as Chapter 3, SLA 1995. The ABC Board is proceeding in implementing the provisions of this new law. I and the Board stand ready to work with you on HB 372 or any other legislation you wish to offer to find the proper balance in regulation of the alcoholic beverage industry for the welfare of all Alaskans.

The ABC board will be in Juneau February 15 and 16 and will be available to discuss your bill further. The Board meetings will be held at the Juneau Assembly Chambers and the board is staying at the Westmark the evening of February 15, 1996.

Feel free to contact me further regarding HB 372 or any other matter related to alcoholic beverage regulations.

Sincerely,



Douglas B. Griffin
Director

Enclosures: Senate Finance Committee Minutes

cc: ABC Board Members
Bob Bartholomew, Legislative Liaison



Anchorage, Alaska
Subsidiary of Hectoliters, Inc.

1964 Lous...o Drive • Anchorage, Alaska 99517 • Telephone 907-243-7778 • Fax 907-243-7778

February 24, 1996

Representative Norm Rokeberg
Alaska State Legislature

RE : House Bill No. 372 (Repeal of AS 04.11.100(f))

Dear Representative Rokeberg,

I would like to voice my objection to House Bill No. 372 which is being introduced by Rep. Bettye Davis and yourself.

This bill as written would effect our business in a very negative way. We have made business decisions, leased property from the State of Alaska, purchased equipment and designed our establishment with this license in mind. We currently hold one of the licenses you are advocating to have repealed.

We have been working with the Alaska Railroad in their effort to develop the Ship Creek drainage into less of an industrial area and more into upscale business oriented area. We are not an establishment that is either a nuance or eyesore to the community.

The repeal of our licence would effect us financially in excess of \$800,000 based upon our current investment. If this were a renewable natural resource issue such as commercial fishing or timber, where the revocation of the licence would result in the potential of a resource continuing or increasing, then I may be persuaded. But to repeal a licence that, has been approved by the State of Alaska Alcohol, Beverage and Control Board, the local Community Council, the Municipality of Anchorage twice (police dept. included) and has been the focus of four separate public forums along with being not transferable to another site, is not defensible.

If the legislature wishes to repeal a licensing law, while grandfathering in the businesses that have licences, while I don't agree, at least that would follow a more common practice on licenses.

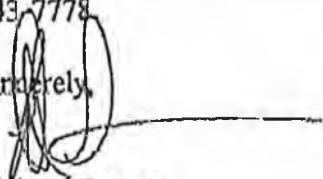
I would very much appreciate a copy of the Bill No. 372's summary papers so I could better understand your position and the precedent for repealing licences on

approved operations with no community documented problems. In addition, I want to know when this bill will be presented to the committee, whether you or the committee intend to attach this bill to other legislation or the bill will be part of group of bills to be voted upon as a group

Please respond by contacting me at (907) 243-7775 or fax a response to (907)

243-7778

Sincerely,



Richard Sassara

cc: Rep. Bettye Davis
Rep Cynthia Toohey
Rep. Con Bundy
Committee on State Affairs Members
Committee on Labor and Commerce Members



Subsidiary of Hectoliters, Inc.

1994 Loussau Drive • Anchorage, Alaska 99517 • Telephone 907-243-7778 • Fax 907-243-7778

March 8, 1996

Representative Norman Rokeburg
State Capital
Juneau, Alaska 99801-1182

RE : Bill #372

Dear Rep. Rokeburg:

Thank you very much for responding to my letter of February 24, 1996 regarding my concern on HB #372. There are a couple items of interest I would like to bring to your attention that you may not be familiar with in regards to the Exempt Restaurant Licence.

You indicate that the passage of this bill (repeal of our licence) would require us to serve food. On the contrary, if you read the statute, an Exempt Restaurant Licence requires you to have a full menu like any restaurant. The menu itself, requires review and approval by the Alcohol, Beverage and Control Board (ABC). This bill does not establish another "bar"/"tavern", but allows a true full service restaurant to have entertainment past 9:00pm. It should also be noted the entertainment style and type are reviewed by the ABC Board as well.

In addition, you stated that the Anchorage Municipal Assembly and the Spenard Community Council support HB #372. I find this interesting due to the fact that my licence and two others that I am familiar with were unanimously approved by the Municipal Assembly during four separate public hearings. I can not speak for the Spenard Community Council but the Downtown Community Council has gone on record supporting my licence and others. I made a public presentation to that body, which is a requirement of the Municipal Assembly and the ABC Board. My point being, if the local government and public oppose this licence, why did the Government entities approve unanimously and they be no public opposition. As the statute reads, this licence requires approval not just a non-objection like every other type of liquor licence. This licence gets more scrutiny then even a full Liquor Dispensary Licence.

To clear up a misconception, please also be aware that this licence does not generate additional licences. These licences are re-issuing of restaurant licences and they do not exceed the number allowed by population count.

I did not receive the sponsor statement and other materials indicated to be with your correspondence.

Thank you once again for your attention to my concerns on HB #372 and should you have any question please do not hesitate to contact me at (907) 243-7775.

Sincerely,



Richard K. Sassara

cc: House State Affairs Committee Members
House Judiciary Members
Representative Cynthia Toohey
Representative Con Bunde
Representative Betty Davis