

HB

240

24-LS0734B
Luckhaupt
4/29/06

CS FOR HOUSE BILL NO. 240(RLS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to brewery and brewpub licensing and to free samples of beer and**
2 **wine provided by beverage dispensary licensees, wholesale licensees, and wholesale malt**
3 **beverage and wine licensees."**

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

5 *** Section 1.** AS 04.11.090 is amended by adding a new subsection to read:

6 (h) Unless prohibited by AS 04.16.030, a holder of a beverage dispensary
7 license may provide a small sample of beer or wine free of charge to a customer on the
8 licensed premises. Notwithstanding AS 04.11.015, a holder of a beverage dispensary
9 license may advertise and promote the free samples to the public. A municipality may
10 not prohibit or restrict a holder of a beverage dispensary license from advertising,
11 promoting, offering, or providing free samples under this subsection.

12 *** Sec. 2.** AS 04.11.130(b) is amended to read:

13 (b) The holder of a brewery license may sell beer in quantities of
14 (1) not more [LESS] than five gallons a day to an individual who is

1 present on the licensed premises **for consumption off the premises:**

2 (2) more than five gallons **a day** to a person who is licensed under this
3 title, or in another state or country.

4 * **Sec. 3.** AS 04.11.130 is amended by adding a new subsection to read:

5 (e) Unless prohibited by AS 04.16.030, a holder of a brewery license may sell
6 not more than 24 ounces a day of the brewery's product to a person for consumption
7 on the premises if

8 (1) the brewery does not allow live entertainment, televisions, pool
9 tables, dart games, dancing, electronic or other games, game tables, or other
10 recreational or gaming opportunities on the premises where the consumption occurs;

11 (2) the brewery does not provide seats at the counter or bar where the
12 product is served; and

13 (3) the room where the consumption occurs is not open before 9:00
14 a.m. and serving of the product ends not later than 8:00 p.m.

15 * **Sec. 4.** AS 04.11.135(a) is amended to read:

16 (a) A brewpub license authorizes the holder of a beverage dispensary license
17 to

18 (1) manufacture on premises licensed under the beverage dispensary
19 license not more than **465,000** [150,000] gallons of beer in a calendar year;

20 (2) sell beer manufactured on premises licensed under the beverage
21 dispensary license for consumption on the licensed premises or other licensed
22 premises of the beverage dispensary licensee that are also licensed as a beverage
23 dispensary;

24 (3) sell beer manufactured on the premises licensed under the beverage
25 dispensary license in quantities of not more than five gallons **a** [PER] day to an
26 individual who is present on the licensed premises **for consumption off the premises;**

27 (4) provide a small sample of the brewpub's beer manufactured on the
28 premises free of charge unless prohibited by AS 04.16.030; [AND]

29 (5) sell beer manufactured on the premises licensed under the beverage
30 dispensary license to a person licensed as a wholesaler under AS 04.11.160; sales
31 under this paragraph may not exceed **37,200 gallons in a calendar year, including**

1 under this paragraph may not exceed 37,200 gallons in a calendar year, including
2 sales under (6) of this subsection; and

3 (6) sell not more than 6,200 gallons in a calendar year of beer
4 manufactured on the premises to a person who is licensed under this title, or in
5 another state or country, if the premises licensed under the beverage dispensary
6 license are located in a community with a population of 75,000 or more [15,000
7 GALLONS OR THE AMOUNT SOLD UNDER THIS PARAGRAPH IN
8 CALENDAR YEAR 2001, PLUS 10 PERCENT, WHICHEVER AMOUNT IS
9 GREATER].

10 * Sec. 5. AS 04.11.135(d) is amended to read:

11 (d) Notwithstanding (a) of this section, the holder of a brewpub license who,
12 under the provisions of AS 04.11.450(b), formerly held a brewery license and a
13 restaurant or eating place license and who, under the former brewery license,
14 manufactured beer at a location other than the premises licensed under the former
15 restaurant or eating place license may

16 (1) manufacture not more than 465,000 [150,000] gallons of beer in a
17 calendar year on premises other than the premises licensed under the beverage
18 dispensary license;

19 (2) provide a small sample of the manufactured beer free of charge at
20 the location the beer is manufactured unless prohibited by AS 04.16.030; and

21 (3) sell the beer authorized to be manufactured under this subsection

22 (A) on the premises licensed under the beverage dispensary
23 license or other licensed premises of the beverage dispensary licensee that are
24 also licensed as a beverage dispensary;

25 (B) to a wholesaler licensed under AS 04.11.160; sales under
26 this subparagraph may not exceed 37,200 gallons in a calendar year,
27 including sales under (D) of this paragraph; [15,000 GALLONS OR THE
28 AMOUNT SOLD UNDER THIS SUBPARAGRAPH IN CALENDAR YEAR
29 2001, PLUS 10 PERCENT, WHICHEVER AMOUNT IS GREATER; OR]

30 (C) to an individual who is present on the premises described
31 under (A) of this paragraph, or where the beer is manufactured, in quantities of

1 not more than five gallons a [PER] day **for consumption off the premises;**
2 **and**
3 **(D) to a person licensed under this title, or in another state**
4 **or country, if the premises where the beer is manufactured are located in**
5 **a community with a population of 75,000 or more; sales under this**
6 **subparagraph may not exceed 6,200 gallons in a calendar year.**

7 * Sec. 6. AS 04.11.135(e) is amended to read:

8 (e) Notwithstanding (a) of this section, a brewpub license authorizes the
9 holder of a restaurant or eating place license to (1) manufacture on premises licensed
10 under the restaurant or eating place license not more than 465,000 [150,000] gallons of
11 beer in a calendar year; (2) sell beer manufactured on premises licensed under the
12 restaurant or eating place license for consumption on the licensed premises; (3) sell
13 beer manufactured on the premises licensed under the restaurant or eating place
14 license in quantities of not more than five gallons a [PER] day **for consumption off**
15 **the premises** to an individual who is present on the licensed premises; and (4) provide
16 a small sample of the brewpub's beer manufactured on the premises free of charge
17 unless prohibited by AS 04.16.030. A person who holds a brewpub license under this
18 subsection may not hold more than one brewpub license.

19 * Sec. 7. AS 04.11.160 is amended by adding a new subsection to read:

20 (h) Unless prohibited by AS 04.16.030, a holder of a wholesale license or a
21 wholesale malt beverage and wine license may provide a small sample of beer or wine
22 free of charge to a customer on the licensed premises of a beverage dispensary
23 licensee.

24 * Sec. 8. AS 04.16.015(a) is amended to read:

25 (a) On premises where alcoholic beverages are sold by the drink, a licensee or
26 a licensee's agent or employee may not

27 (1) **except as provided in AS 04.11.090(h)**, offer or deliver, as a
28 marketing device to the general public, free alcoholic beverages to a patron;

29 (2) deliver an alcoholic beverage to a person already possessing two or
30 more;

31 (3) sell, offer to sell, deliver alcoholic beverages to a person or group

- 1 of persons at a price less than the price regularly charged for the beverages during the
2 same calendar week, except at private functions not open to the general public;
- 3 (4) sell, offer to sell, or deliver an unlimited number of alcoholic
4 beverages to a person or group of persons during a set period of time for a fixed price;
- 5 (5) sell, offer to sell, or deliver alcoholic beverages to a person or
6 group of persons on any one day at prices less than those charged the general public
7 on that day, except at private functions not open to the general public;
- 8 (6) encourage or permit an organized game or contest on the licensed
9 premises that involves drinking alcoholic beverages or the awarding of alcoholic
10 beverages as prizes.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 240(L&C)
 (H) Publish Date: 4/18/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title "An Act relating to brewery and brew pub licensing." RDU Alcoholic Beverage Control Board
 Component ABC Board
 Sponsor House Judiciary Committee
 Requester House Labor and Commerce Committee Component No. 2690

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation will not have a fiscal impact on expenditures for the Department of Public Safety. A very small increase in revenues could be realized if any of the existing brewpubs were to upgrade to a brewery and pay the corresponding increased license fees.

Prepared by: Director Douglas B. Griffin
 Division: Alcoholic Beverage Control Board
 Approved by: Commissioner William Tandeske
 Agency: Department of Public Safety

Phone 907-269-0351
 Date/Time 3/21/06 9:02 AM
 Date 3/21/2006

Sponsor Statement HB 240
"An Act relating to brewery and brew pub licensing"

The Brewers Guild of Alaska represents six breweries and five brewpubs operating in the state of Alaska. We are a growing industry that employs hundreds of Alaskans. The Brewers Guild is united in this bill in an effort to foster more equitable competition with breweries and brewpubs from outside of Alaska, while not harming small breweries in Alaska. In the State of Alaska, brewpubs and brewery licenses are exclusive licenses with different competitive markets, although the regular citizen sees no difference in these entities. Both Brewpubs and Brewery Licensees benefit from this bill, but if any of the core content is changed, then there will be an inequitable competitive landscape for either the breweries or the brewpubs.

Brewpubs are legally restricted to sell to consumers for consumption on their licensed premises and, with limitations, to consumers for off-premise consumption and to all other licensees through a distributor. Breweries are legally restricted to sell their product for off-site consumption whether to consumers, wholesalers or other licensees; breweries are also allowed to provide free samples of their product. The proposed legislation is a compromise between these licensees in order to improve the competitive environments of brewpubs and breweries, while not creating a significant impact on the competitive environments of other interested licensees, such as dispensary license owners and distributors.

This legislation increases the amount of beer a brewpub can produce (often referred to as the "production cap") from 150,000 gallons to 465,000 gallons. This cap is based upon the typical industry definition of the top level of production of a "microbrewery." In addition, this legislation increases the amount of beer a brewpub can sell to a licensed wholesaler from 15,000 gallons to 46,500 gallons. Outside brewpubs do not have a cap on the amount of beer they can sell in Alaska.

Current law allows breweries to provide free samples of their products. This legislation allows breweries to also charge for samples as is now common in tasting rooms in other states. Although there have been concerns voiced that this allows breweries to act as "taverns", this legislation includes restrictions that will differentiate the tasting rooms from the "tavern" concept, such as limited on-premise sales of only their beer, restricted hours of operation and a well-defined environment. The sale of samples allows breweries to help defray the costs of on-premise sampling while still providing the promotional and educational aspects of product sampling.

Finally, this legislation allows brewpubs in Anchorage and Fairbanks to self-distribute up to 200 barrels of beer per year. Under current law, brewpubs are required to use a wholesaler to distribute any beer off-premise. However, sales at this level are not necessarily profitable for the wholesaler, so it is difficult for a brewpub to initially get its product to the market. This change could potentially eliminate a competitive advantage to breweries in smaller communities in our state, thus the limitation of a population of 75,000 has been put in place to not harm the smallest of breweries.

The Brewers Guild is in support of this bill in its entirety.

From: Rep McQuire's website

*http://ak.Republi-
cans.com*

Finance Office
3401 Denali St., 202-A
Anchorage, Alaska
99503



Gary J. Klopfer
Member Manager/Owner
Phone: (907) 561-2274
Fax: (907) 563-9354

March 28, 2006

House Labor & Commerce Committee Members

Re: HB 240 – Brewery & Brewpub Licensing

Dear Committee Members;

I am writing this letter in support of HB 240 and asking for your support of this bill.

Our fledgling brewing industry in Alaska has gone through many changes in the last ten years and this new legislation will continue to support our industry. As an industry, we employ hundreds of Alaskans, we pay ten of thousands of dollars in taxes, we buy millions of dollars in suppliers from Alaskan vendors and we have spent millions of dollars in construction and renovation costs for our establishments in Alaska. We have accomplished this in just the last ten years and I might add without any state subsidies or hand outs! All we ask for our industry is to be treated fairly and equitably considering our financial impact on the communities where we live.

As an industry, we formed the Brewers Guild of Alaska (BGA), to work together (breweries and brewpubs) on issues that we feel are in our best interest and in the interest of the citizens and the economy of Alaska. The BGA wholeheartedly supports this bill and I hope that you will support it also.

Thank you for your time and if you have any questions, please call me or email me at giklopfer@msn.com.

Sincerely,

Gary J. Klopfer



717 West Third Avenue, Anchorage, Alaska 99501 (907) 277-7727 www.alaskabeers.com

Craig Johnson

From: Ben Millstein/KODIAK ISLAND BREWING CO [bmills@ak.net]
Sent: Tuesday, March 28, 2006 2:00 PM
To: Craig Johnson
Subject: HB 240

Greetings to all interested persons,

As a member of the Brewer's Guild of Alaska running the Kodiak Island Brewing Company, LLC. I would like to express my support for HB240. The Guild has worked long and hard to arrive at a bill that we can all support, and that we believe addresses the concerns of businesses outside our guild. What we propose is in no way unusual when other state laws are examined. Please support this bill, and feel free to call me if you have any questions about it.

Thank you.

Ben Millstein
Manager,
Kodiak Island Brewing Co. LLC



4/14/08

Representative Lesli McGuire
Chair, House Judicial
State Capitol, Room 118
Juneau, AK 99801-1182

RE: HB 240, Brewery & Brewpub Licenses

Dear Representative McGuire:

The above referenced bill will change alcohol licensing laws for Brewers and Brewpubs. It also does away with the three-tier system which defines types of licenses in Alaska.

We have met with the Brewers and Brewpubs and decided in order for the majority (Beverage Dispensary Licenses) to agree with the bill, BDL's should also benefit from the licensing changes.

The Anchorage CHARR board members agreed to compromise with the following:
36 ounces for sale at Breweries
Closing at 8pm for Breweries
Delete "tasting rooms" or "rooms" from the bill and replace with licensed establishments
Insert amendment (below) to benefit BDL's

Recommended language by the Anchorage CHARR board to read as follows:

Notwithstanding (a) and (b) of this section, a beverage dispensary licensee or a licensee's agent or employee, or a holder of a general wholesale, wholesale beer beverage and wine licenses by non-resident brewer or the agent or employee of these licensees may provide, without charge, any customer a small sample of beer or wine for promotional purposes.

It was our understanding throughout our negotiations with the brewpubs this would be included in the bill. It has been brought to our attention there is denial by the brewpubs of supporting this amendment and the wholesalers have now backed off on pushing the amendment forward. Frankly, we are tired of the less than honorable approach this group has exhibited throughout the negotiations. We never would have met with the brewpubs and breweries if we knew this was the end goal. If the above amendment is not included in HB240, Anchorage CHARR will oppose this bill.

The issue is simplistic: If the Brewpubs want to brew more beer they should apply for a brewer's license. If the Breweries want to sell individual beer they should apply for a full beverage dispensary license. We have heard the brewpub and brewery excuses and know they are unsubstantiated.

The reality is: It is cheaper and easier to change licensing legislation than it is to purchase the proper license to accomplish goals. This bill with the above amendment is designed to benefit all licensees, not for the profit of a few. What we appear to have is a stalemate and request time for further negotiations regarding our amendment.

Thank you!

Sincerely,

Chuck Edwards
Government Affairs Chair

P.O. Box 111369, Anchorage, AK, 99511, 907 227-3423