

HB

64

**HOUSE COMMITTEE REPORT**

7)

Date referred: 2/25/87

FURTHER REFERRALS:

DATE: 4/3/87

The Finance Committee has considered HB 64

"An Act relating to alcohol."

**RECOMMENDS:**

- replace with CS HB 64 (Jud.)  the same title
- attached amendment(s)  a new title
- 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  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note
- zero with analysis  same as previous zero fiscal note published 2/13/87

**SIGNING DO PASS?**

ADAMS Robert Adams

POURCHOT Pat Pourchot

LARSON Ronald J. Larson

GOLL Rita Goll

SNACK-HAMMER Bill Snack-Hammer

BOYER Mark Boyer

RIEGER Steve Rieger

WALLIS Ken Wallis

BROWN Tas Brown

**SIGNING OTHER RECOMMENDATIONS:**

FRANK W. Frank

DAVIS ...

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Robert Adams  
Chairman's signature

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: HB 64

Publish Date: HOUSE 2/13/87

Revision Date: \_\_\_\_\_

Agency Affected: Department of Law

Title: "An Act relating to alcohol."

BRU: Prosecution

Sponsor: Repr. Hoffman

Components: All

Requestor: Repr. Hoffman

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: Feb. 4, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.

Date: Feb. 4, 1987

Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 64

2/13/87

This bill amends AS 04.16.200(b) by reclassifying the illegal sale of alcoholic beverages from a class A misdemeanor to a class C felony.

A total of 45 such violations were referred to the department last year for prosecution. About one-half of those reported violations occurred in the Bethel service area.

Although this change will require some additional work on our part, preparing these cases for grand jury, this addition does not warrant fiscal note costs because of the small number of cases involved. Our estimate assumes that the same enforcement pattern will continue. However, if police agencies substantially increase their enforcement activities, because of the increased penalties available for felons, it may be necessary to request increased appropriation at a later time. In any event, the department will not be able to respond to a marked increase in this area at this time due to the serious budget shortfalls it now faces.

STATE ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 64  
Publish Date: HOUSE 2/13/87

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An act relating to alcohol"

Agency Affected: Department of Corrections  
BRU: \_\_\_\_\_

Sponsor: Representative Hoffman  
Requestor: Representative Hoffman

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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
---------	---	---	---	---	---	---

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						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This bill is expected to have only a minor impact on inmate populations.

Prepared by: Susie Riley, Budget Analyst Phone: 465-3376  
Division: Administrative Services Date: 01/26/87

Approved by Commissioner: William W. Ludwig Date: 01/26/87  
Agency: Department of Corrections

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST \_\_\_\_\_

Bill Version: HB 64  
Publish Date: HOUSE 2/13/87

Revision Date: \_\_\_\_\_  
Title: An Act relating to Alcohol

Agency Affected: ABC Board  
BRU: ABC

Sponsor: Hoffman  
Requestor: \_\_\_\_\_

Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Patrick L. Sharrock *For*  
Division: ABC Board

Phone: 277-8638  
Date: 2/10/87

Approved by Commissioner: Hugh Malone *RW for*  
Agency: Department of Revenue

Date: 2/10/87

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

# STATE OF ALASKA

LYMAN F. HOFFMAN  
REPRESENTATIVE

P O BOX 5  
JUNEAU, ALASKA 99811  
(907) 465-4530, 465-4453

## HOUSE OF REPRESENTATIVES

### DISTRICT 25

AKIACHAK  
AKIAK  
ATMAUTLUAK  
BETHEL  
CHEFORNAK  
FFK  
GOODNEWS BAY  
KASIGLUK  
KIPNUK  
KONGIGANAK  
KWETHLUK  
KWIGLINGOK  
MEKORYUK  
NAPAKIAK  
NAPANKIAK  
SEWTOK  
NIGHTMUTE  
NUNAHITCHUK  
OSCARVILLE  
PLATINUM  
QUINHAGAK  
TOKSOOK BAY  
TUNSTUTLIAK  
TUNUNAK

### M E M O R A N D U M

TO: Representative Al Adams, Chairman House Finance

FROM: Representative Lyman Hoffman *Lyman*

DATE: March 25, 1987

SUBJ: HB 64 "An Act increasing the penalty for certain unlicensed manufacture, sale, possession, or barter of alcoholic beverages."

Penalties for bootlegging in communities which have adopted a local option law would be increased by HB 64. The bill would raise the penalty for first time offenders to a Class C Felony. Under current law the charge is a Class A Misdemeanor unless the bootlegger has been previously convicted (sale to a person under 19 years of age, or has sold over a designated volume). Bootlegging in communities where there is a restriction on alcohol is a serious crime. Communities with local option laws realize how serious alcohol problems are and they know how devastating alcohol is to their community. Community police and public safety officers work very hard and at great expense, to apprehend and convict bootleggers---on misdemeanor charges. The end result is the education of first time offenders, the bootleggers learn how to improve their system and how to not get caught. In District 25, communities feel strongly that the stiffer penalty will be a greater deterrent to bootleggers.

Original sponsor: Hoffman

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 64 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act increasing the penalty for certain unlicensed  
7 manufacture, sale, possession, or barter of alcoholic  
8 beverages."

9

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

10

\* Section 1. AS 04.16.200(a) is amended to read:

11

(a) Except as provided under (b) of this section, a [A] person

12

who violates AS 04.11.010 is, upon conviction, guilty of a class A  
13 misdemeanor.

14

\* Sec. 2. AS 04.16.200(b) is repealed and reenacted to read:

15

(b) A person who violates AS 04.11.010 in an area where the

16

results of a local option election have, under AS 04.11.490 - 04.11.-

17

500, prohibited the board from issuing, renewing, or transferring one

18

or more types of licenses or permits under this title in the area is,

19

upon conviction, guilty of a class C felony.

# STATE OF ALASKA

LYMAN E. HOFFMAN  
REPRESENTATIVE

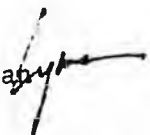
RECEIVED  
907 543-3543

## HOUSE OF REPRESENTATIVES

DISTRICT 25  
AKIAK  
AKIAK  
AFMAUTLUK  
BETHEL  
CHEFORNAK  
EET  
GOODNEWS BAY  
KASIGLUK  
KIPUK  
KONGGANAK  
PWEETHUK  
RWIGLINGOK  
MEKORYUK  
NAPAKIAK  
NAPAKIAK  
SEWTOK  
SIGHEMUTE  
SUNAPTHULE  
OSCARVILLE  
PLAINUM  
QUINAGAK  
TOKSOK BAY  
TUNTULIAK  
TUNTUNAK

### MEMORANDUM

TO: Representative Al Adams

FROM: Representative Lyman Hoffman 

DATE: March 18, 1987

RE: Age question for elections

Per your request, it appears it would be difficult to implement an age restriction on local option elections.

Thank you.

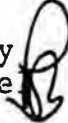
STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITAL  
JUNEAU ALASKA 99801  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 18, 1987

SUBJECT: Age for voting  
TO: Representative Lyman Hoffman  
FROM: Richard A. Bradley  
Legislative Counsel 

Lee Goodman has asked that I comment on the question whether the legislature (or a municipality) may raise the voting age to 21 for a particular election.

I have advised him that in my opinion the Alaska Constitution is quite clear in answering the question negatively.

The provisions of art. V, sec. 1 address the question; the provision provides:

SECTION 1. QUALIFIED VOTERS. Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election.  
A voter shall have been, immediately preceding the election, a thirty day resident of the election district in which he seeks to vote, except that for purposes of voting for President and Vice President of the United States other residency requirements may be prescribed by law. Additional voting qualifications may be prescribed by law for bond issue elections of political subdivisions.

In my view, the material emphasized addresses the question. Moreover, I consider it so explicit that the legislature has no discretion to vary the age either up or down for any purpose.

If I may be of further assistance, please advise.

RAB:mkr  
m10/016

A SEARCH FOR CONTROL:  
THE EFFECT OF ALCOHOL ON  
PUBLIC RIGHTS AND PRIVATE WRONGS



REPORT TO THE LEGISLATURE  
JOINT SPECIAL COMMITTEE ON LOCAL OPTION LAWS

Representative John Binkley, Chairman  
Senator John Sackett  
Senator Vic Fischer  
Senator Edna DeVries  
Representative Katie Hurley  
Representative John Sund

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E X E C U T I V E   S U M M A R Y

---

March 1986

Prepared by  
Laurie H. Otto  
Otto & Constantino, Attorneys at Law  
P. O. Box 9028  
Bethel, Alaska 99559

A SEARCH FOR CONTROL:  
THE EFFECT OF ALCOHOL ON  
PUBLIC RIGHTS AND PRIVATE WRONGS

EXECUTIVE SUMMARY

Introduction

The numbers of social problems stemming from alcohol abuse in Alaska are staggering. The ravaging effects of alcohol are particularly acute in the isolated native communities of rural Alaska.

As a result of the enactment of the present local option law, villagers are precluded from banning alcohol. Many villagers want the power to ban alcohol in their communities because they believe that alcohol prohibition is a way to prevent serious social problems from occurring. Moreover, many villagers and expert analysts believe that existing bans on importing alcohol cannot be enforced unless possession of alcohol is also banned.

In response to requests made by the city councils of several communities in the Yukon-Kuskokwim Delta, the Fourteenth Legislature created the Joint Special Committee on Local Option Laws. The mandate of the Committee was to take testimony and collect data on the question of banning possession of alcoholic beverages within a community.

Eighteen hearings were held by the Committee during the months of November and December 1985. Hearing locations were limited by financial and time constraints to communities located in the western and northern areas of Alaska. These two areas were chosen because most of the communities which have taken advantage of the existing local option law are in western and northern Alaska.

Two significant facts were made clear to the Committee as a result of the hearing testimony. First, villagers want to have strong and healthy communities. However, their ability to turn this desire into reality is limited because they do not have meaningful input into, and thus control over, most of the governmental decisions that directly affect their lives. Second, the problems related to alcohol abuse in the villages cut across every aspect of community and family life.

After considering a vast body of evidence, the Committee found that the harm caused by alcohol abuse is so pervasive, serious and overwhelming that villages should have the authority to ban possession of alcohol. The Committee, therefore, proposed legislation that would add a new alternative to the present local option law and that would allow communities to implement a ban on alcohol. Violation of a ban on possession of alcohol would be punishable by a fine and violators would not receive a criminal record.

The proposed legislation authorizes the Alaska Supreme Court to set a bail forfeiture schedule for violations of the law. Because the statute allows for bail forfeiture, persons not contesting a citation for possessing alcohol could simply mail the appropriate amount of bail to the nearest court in lieu of a fine. Because many villagers have limited access to cash, community services performed under the direction of the city or village council could be substituted for cash bail. One hour of community service would be equal to \$5.00 in cash. Confiscation and forfeiture of liquor possessed in violation of the ban would be permitted.

#### History of Alcohol Regulation in Alaska

From the time of initial Russian contacts with native Alaskans, through the present-day local option legislation, alcohol regulation has been a consistent theme of law enforcement in rural Alaska. Until the last ten to twenty years, federal statutes, state statutes, village ordinances, and community sanctions have all been used as control mechanisms to prohibit rural Alaskans from using alcohol.

Most recently, the legislature adopted the existing local option law in 1980. Under the local option statute, communities that want to limit the importation or distribution of alcoholic beverages can hold elections and choose one of several options for regulating alcohol. The available options are:

1. Prohibition of the sale of alcohol;
2. Prohibition of the sale and importation of alcohol;
3. Restriction of the types of license available for selling alcohol (i.e., beer and wine only);
4. Restriction of alcohol sales to community-owned liquor stores.

#### Studies of Alaska's Local Option Law

In-depth studies have shown that communities are adopting a wide variety of control measures, including the local option law, in an attempt to prevent residents from abusing alcohol. The local option law is an indirect method of controlling alcohol-related behavior and is used because villages do not have direct control over either the use of alcohol by community

members or the resulting alcohol-related deviant behavior. Local option is considered to be a significant and indispensable tool because it helps prevent problems from occurring.

The most frequently used option allows for banning the sale and importation of alcohol. The use of the most restrictive option reflects the desire of many villages to severely limit access to alcohol. If villages could totally prohibit both the manufacture and possession of alcohol, many communities would opt for complete prohibition.

In the communities that have implemented the local option law, there has been a significant reduction in alcohol-related dangerous behavior. After adoption of the local option law, communities have less public drinking and public drunkenness, declines in the amount of alcohol-related interpersonal violence and accidents, and marked improvements in the physical appearance and scholastic performance of the children of drinking parents.

In addition to the direct benefits, other positive side effects of the local option law have been identified. These benefits resulted from the process used in making the decision to regulate alcohol. By implementing the law through an election, the burden of responsibility for the law shifted from the council and village leaders to the entire voting population. As a result, both lawmaking and enforcement have been made easier.

Villagers' concerns about alcohol are not based on moral judgments about drinking, or a desire to intrude on the power of individuals to make decisions about their personal health. The primary reason people want to ban alcohol is because it is intimately related to the deaths of village members. The deaths of young people are of particular concern because many villagers believe that the survival of their culture is completely dependent on the caliber of future community leaders, many of whom are dying in alcohol-related incidents.

#### The 1985 Local Option Hearings

Alcohol is involved in a wide range of social problems occurring in Alaska communities. Some of the problems described during the testimony are:

- \* Virtually all of the violent crime is alcohol related, as is a majority of all types of criminal activity in Alaska.
- \* A large number of deaths, including suicides, are alcohol related.
- \* Children of alcohol abusers suffer problems with their schooling. They do not get enough sleep at night and do not get their homework done because of parents drinking and partying in the home.

- Most cases of child abuse and neglect involve alcohol abuse. Many children of drinkers suffer from malnourishment, and some have health problems caused by mothers drinking during pregnancy.
- Children of drinkers follow in their parents' footsteps by using and abusing alcohol.
- Elders become uneasy and fearful, and cannot eat or sleep, as a result of concern about the behavior of alcohol abusers. This fear and unease causes problems which require medical intervention.
- The use and abuse of alcohol is threatening the structure of the extended family. Children and grandchildren in some families are either excluded, or exclude themselves, from extended family activities in an effort to be protected from alcohol abusers.
- Alcohol abusers can interrupt critically important subsistence activities.
- Essential and irreplaceable family tools, such as snowmachines and boat engines, are broken or destroyed by persons under the influence of alcohol.

### The Social Costs of Alcohol Abuse

The overall level of alcohol consumption, regardless of beverage source, determines the prevalence of dangerous drinkers and alcohol-related problems, both nationally and within Alaska. Alaska has a high rate of annual consumption in comparison to both the rest of the world and the rest of the United States. Moreover, Alaska has historically shown a dramatic increase over the years in the average annual alcohol consumption rate.

In analyzing which factors most affect per capita consumption rates, a recent study pointed to three variables: the cost of alcohol, the hours in which alcohol is available for sale, and the number of outlets in which alcohol may be purchased. Thus, states with "strict, tight or conservative" liquor laws were found to have low per capita consumption rates, and states with "permissive, loose, or liberal" liquor laws had high per capita consumption.

Chronic alcohol consumption has toxic effects on every part of the body, with medical consequences ranging from slight impairments of physical condition to life-threatening diseases. The most common location of the disease is the liver; however, alcohol may also directly injure the gastro-intestinal tract, muscles, and the pancreas. The cardiovascular system, the nervous system, and the endocrine system may be damaged by alcohol. Finally, there is evidence of a strong association between chronic alcohol use and cancer of the stomach, large intestine, pancreas, and liver.

Studies have consistently shown that alcoholics and heavy drinkers have significantly higher death rates than the rest of

the population. The numbers of homicides, suicides, and accidental deaths are increased as a result of alcohol. Native Alaskans have a particularly high alcohol-related suicide rate. The leading cause of death in Alaska is "accidents" and the rate of accidental death is over twice the national average. A majority of Alaska's accidental deaths are alcohol-related.

Alcohol and violent crime are inseparable in Alaska. Many different studies have shown the close link between criminal activity and the abusive use of alcohol. The highest correlation between alcohol and crime is with violent acts committed in rural Alaska.

Studies have shown that a strong relationship exists between problem drinking and spouse abuse. The domestic violence problems linked to alcohol were not limited to incidents of spouse abuse; child abuse and parent abuse have also been found to be common. In comparing men who abuse their spouses with those who do not, researchers have found that the abusers had a history of exposure to spouse abuse in their childhood home. These findings suggest that spouse abuse may become more widespread as children from violent homes make families of their own.

Heavy drinking during pregnancy increases the risk of miscarriage and can result in alcohol-related birth defects. When consumed in large amounts, alcohol can cause fetal alcohol syndrome.

There is a substantial relationship between having an alcoholic parent and development of alcoholism. Children of alcoholics are frequent victims of incest, child neglect, and other forms of violence and exploitation. In 90% of child abuse cases, alcohol is a significant factor. Children of alcoholics are prone to experience a range of psychological difficulties, including learning disabilities, anxiety, attempted and completed suicide, eating disorders, and compulsive achieving.

The economic cost to society from alcohol abuse is high. Various methodologies have been used for measuring the cost of alcohol abuse to the State of Alaska in dollars. One study concluded that the total cost for fiscal year 1984, including direct and indirect costs, was \$195,500,000. Another analysis of the economic cost of alcohol abuse during the same period found the cost to be \$185,294,061.

### Legal Issues Presented by Proposal to Ban Alcohol

Under federal law, states are given the power to absolutely prohibit, or to limit and regulate, traffic in intoxicating liquors within their borders. The Alaska Supreme Court has recognized that the legislature has the power to impose either complete prohibition or any other conditions deemed necessary to protect the people of the state.

A ban on the possession of alcohol would not violate the protection given to individual privacy rights in the Alaska Constitution. The courts have repeatedly held that the right to privacy must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. "No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely," according to the Alaska Supreme Court.

The Court has found that there is an unmistakable correlation between alcohol consumptions and poor health, death, family violence, child abuse, and crime. Based on this correlation, the court has upheld the portion of the current local option law which allows communities to ban the specific reference to previous rulings of the Alaska Supreme Court that had expressly recognized "the deleterious effects of consuming alcoholic beverages" and that had expressly found alcohol to be more dangerous than either marijuana or cocaine.

#### Committee Findings

**Finding Number One:** The abusive use of alcohol interferes in a serious manner with the health, safety, rights, and privileges of Alaskans, and with the public welfare.

**Finding Number Two:** The public health and welfare will, in fact, suffer if the abusive use of alcohol is not controlled.

**Finding Number Three:** The prohibition of alcohol in rural Alaska villages is an effective tool for controlling the abusive use of alcohol.

**Finding Number Four:** Serious crimes, and a wide variety of other social problems, could be prevented if the possession of alcohol were prohibited.

**Finding Number Five:** There is a strong and unmistakable correlation between alcohol consumption and poor health, fetal damage, death, suicide, crime, family violence, family stability, and child abuse.

**Finding Number Six:** The level of dangerous alcohol-related behavior is directly tied to the level of alcohol consumption, and the level of alcohol consumption is directly tied to both the cost and availability of alcohol. A law prohibiting possession would limit the availability of alcohol, and would increase the cost of illicitly-available liquor.

**Finding Number Seven:** The dangers resulting from alcohol abuse are particularly acute in rural Alaska because the communities are small, isolated, without adequate law enforcement, without adequate health care facilities, and populated by people who are closely related and interdependent.

**Finding Number Eight:** The most damaging type of abusive alcohol-related behavior is that which affects innocent victims, such as children and elders. Children are particularly vulnerable, and as a result of parental alcohol abuse, suffer from a broad range of serious problems.

**Finding Number Nine:** The abusive use of alcohol perpetuates an escalating pattern of crime and violence from generation to generation.

**Finding Number Ten:** The most serious harm to the innocent victims of alcohol abuse takes place in private homes and behind closed doors. In communities that have chosen to ban the sale and importation of alcohol, and that have significant alcohol-related social problems, most drinking takes place in private homes.

**Finding Number Eleven:** The economic cost of alcohol abuse is high and cannot be afforded by either the state or rural communities.

**Finding Number Twelve:** A significant number of rural Alaska communities want, and would use, the authority to ban possession of alcohol. These communities have had a long-standing belief that alcohol should be completely banned, and this belief is based on a lengthy history of alcohol prohibition in rural villages.

**Finding Number Thirteen:** The policy decision to ban possession of alcohol is one that must be made by local governments. If local authorities are precluded from making such a decision, self-government efforts are undermined, respect for the state legal system is lost, and the public welfare is damaged.

**Finding Number Fourteen:** Although Alaska law permits communities to ban the sale and importation of alcoholic beverages, the present law is unenforceable because the possession of alcoholic beverages, including homebrew, is permitted.

#### Committee Conclusions

The severity of Alaska's problems with alcohol cannot be overemphasized, or exaggerated. Alcohol-induced tragedies have become a reality of daily life across the entire state. Every possible tool must be available for use in combatting the threat posed by alcohol.

Since Alaska communities are extremely diverse, the tools available to fight alcohol abuse must be equally varied. Approaches to controlling alcohol that are effective in urban areas are unlikely to work in the rural villages of the state. Similarly, alcohol control mechanisms that help stop the disintegration of homogenous and isolated villages, would be completely out of place in a complex urban community. Laws must be flexible enough to provide solutions to the problems faced in all communities.

Villagers repeatedly told the Committee that they want the power to completely prohibit alcohol. The broad range of problems that are associated with alcohol abuse, and which are set forth in the Committee Findings of Fact, legally and morally justify legislative action that grants villages that power. Therefore, the recommendation of the Committee is that the local option law be amended and that communities be granted the power to ban possession of alcohol

ality had not been before the court. *Frontier Saloon, Inc. v. ABC Bd.*, Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

The outcome in one proceeding could not result in the subsequent deprivation of rights that had not been litigated or subject to deprivation in the prior proceeding. *Frontier Saloon, Inc. v. ABC Bd.*, Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

Sentence under former law affirmed. — See *Williams v. State*, Sup. Ct. Op. No. 1939 (File No. 4263), 600 P.2d 741 (1979); *Hampton v. State*, Sup. Ct. Op. No. 2283 (File No. 4711), 623 P.2d 318 (1981).

Cited in *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Collateral references. — 45 Am. Jur. 2d, *Intoxicating Liquors*, §§ 416-426; 48 C.J.S., *Intoxicating Liquors*, §§ 289-296.

Right of one charged with unlawful sale of intoxicating liquor to be informed of name or identity of purchaser before trial. 5 ALR 409.

Criminal responsibility of purchaser of liquor sold in violation of law. 5 ALR 786; 74 ALR 1110; 131 ALR 1322.

Revocation of license in exercise of police power. 121 ALR 541.

Revocation of liquor license of one person as ground for refusal of license to another. 153 ALR 836.

**Sec. 04.16.200. Unlicensed persons.** (a) A person who violates AS 04.11.010 is, upon conviction, guilty of a class A misdemeanor.

(b) A person who violates AS 04.11.010 in an area where the results of a local option election have, under AS 04.11.490 — 04.11.500, prohibited the board from issuing, renewing, or transferring one or more types of licenses or permits under this title in the area is, upon conviction, guilty of a class C felony, if

(1) the person has previously been convicted of a violation of AS 04.11.010;

(2) the sale or offer for sale was made to a person under 21 years of age; or

(3) the quantity of alcoholic beverages sold or offered for sale is 12 liters or more of distilled spirits, 24 liters or more of wine, or 45 liters or more of malt beverages.

(c) It is an affirmative defense to a prosecution under (a) of this section that no profit was involved in the solicitation or receipt of an order for the delivery of an alcoholic beverage. However, the affirmative defense created under this subsection is not available in a prosecution of a person charged with selling or offering for sale alcoholic beverages to a person under 21 years of age.

(d) Upon conviction of a person of a violation under (a) of this section, the court shall impose a minimum sentence of imprisonment of not less than 10 consecutive days. The execution of the sentence may not be suspended and probation or parole may not be granted until the minimum imprisonment provided in this subsection has been served. Imposition of sentence may not be suspended except upon the condition that the defendant be imprisoned for no less than the minimum period provided in this subsection.

Title 3  
Agriculture and Animals

Title 4  
Alcoholic Beverages

Title 5  
General Provisions

Title 6  
Industries

POSITION PAPER  
ON  
HOUSE BILL NO. 64

"An Act relating to alcohol."

The Department of Health and Social Services strongly supports HB 64.

Penalties for violating AS 04.11.010 must at least nullify the profit motive and increase the personal as well as financial costs of selling alcohol in a local option area. Presently, the potential for large profits with limited punitive consequences of a misdemeanor offense may increase the chances of violating AS 16.200(b)

Requiring the first offense to be a felony may eliminate the transfer of large amounts of alcohol by individuals willing to suffer the consequences of a misdemeanor at least once. Non resident bootleggers especially have been active until they "spend" their misdemeanor. Nevertheless, regional residents participate but with a less organized methodology. This bill covers all individuals engaged in this illegal activity.

The relationship between alcohol and a multitude of health and social problems is clearly shown by research. The desire by rural people to live in an alcohol-free environment is clearly demonstrated by their vote. The documented testimony of the village elders on HB 700 clearly shows their understanding of this problem and the emotional commitment to dealing with alcohol abuse in their communities. The testimony repeatedly requests stronger action by the State; HB 64 is a step in that direction.

Recommended by: *Matthew C. Felix*  
.....  
Matthew C. Felix  
Coordinator  
Office of Alcoholism  
and Drug Abuse

Date: *4/1/87*  
.....

Approved by: *Myra M. Munson*  
.....  
Myra M. Munson  
Commissioner  
Department of Health  
and Social Services

Date: *4/2/87*  
.....

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE  
POUCH KC  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 319  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

February 24, 1987

The Honorable Lyman Hoffman  
Alaska State House  
P.O. Box V  
Juneau, Alaska 99811

Re: Average sentences in bootlegging cases

Dear Representative Hoffman:

At the request of your staff I have reviewed sentencing statistics in bootlegging prosecutions since 1984 to determine the average sentence imposed. The results of my review show that about 250 misdemeanor and 20 felony cases resulted in conviction and sentences during that time.

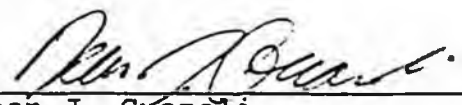
Of the misdemeanors, 90% of which were handled by our offices in Barrow, Bethel, Nome and Kotzebue, the average sentence was about 10 days in jail and a fine of about \$250. (The maximum sentence for a class A misdemeanor is one year in jail and a \$5,000 fine.)

Of the felony cases, most of which occurred in northern and western Alaska, the average sentence was about three months in jail and a fine of about \$500. (The maximum sentence for a class C felony is five years in jail and a \$50,000 fine; the "presumptive" sentence is two years for a second felony offender and three years for a third offender, but there is no required sentence for a first felony offender.)

If I can be of further assistance, please contact me.

Very truly yours,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:   
Dean J. Guaneli  
Assistant Attorney General

DJG:so-78

A SEARCH FOR CONTROL:  
THE EFFECT OF ALCOHOL ON  
PUBLIC RIGHTS AND PRIVATE WRONGS



REPORT TO THE LEGISLATURE  
JOINT SPECIAL COMMITTEE ON LOCAL OPTION LAWS

Representative John Binkley, Chairman  
Senator John Sackett  
Senator Vic Fischer  
Senator Edna DeVries  
Representative Katie Hurley  
Representative John Sund

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EXECUTIVE SUMMARY

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March 1986

Prepared by  
Laurie H. Otto  
Otto & Constantino, Attorneys at Law  
P. O. Box 9028  
Bethel, Alaska 99559

A SEARCH FOR CONTROL:  
THE EFFECT OF ALCOHOL ON  
PUBLIC RIGHTS AND PRIVATE WRONGS

EXECUTIVE SUMMARY

Introduction

The numbers of social problems stemming from alcohol abuse in Alaska are staggering. The ravaging effects of alcohol are particularly acute in the isolated native communities of rural Alaska.

As a result of the enactment of the present local option law, villagers are precluded from banning alcohol. Many villagers want the power to ban alcohol in their communities because they believe that alcohol prohibition is a way to prevent serious social problems from occurring. Moreover, many villagers and expert analysts believe that existing bans on importing alcohol cannot be enforced unless possession of alcohol is also banned.

In response to requests made by the city councils of several communities in the Yukon-Kuskokwim Delta, the Fourteenth Legislature created the Joint Special Committee on Local Option Laws. The mandate of the Committee was to take testimony and collect data on the question of banning possession of alcoholic beverages within a community.

Eighteen hearings were held by the Committee during the months of November and December 1985. Hearing locations were limited by financial and time constraints to communities located in the western and northern areas of Alaska. These two areas were chosen because most of the communities which have taken advantage of the existing local option law are in western and northern Alaska.

Two significant facts were made clear to the Committee as a result of the hearing testimony. First, villagers want to have strong and healthy communities. However, their ability to turn this desire into reality is limited because they do not have meaningful input into, and thus control over, most of the governmental decisions that directly affect their lives. Second, the problems related to alcohol abuse in the villages cut across every aspect of community and family life.

After considering a vast body of evidence, the Committee found that the harm caused by alcohol abuse is so pervasive, serious and overwhelming that villages should have the authority to ban possession of alcohol. The Committee, therefore, proposed legislation that would add a new alternative to the present local option law and that would allow communities to implement a ban on alcohol. Violation of a ban on possession of alcohol would be punishable by a fine and violators would not receive a criminal record.

The proposed legislation authorizes the Alaska Supreme Court to set a bail forfeiture schedule for violations of the law. Because the statute allows for bail forfeiture, persons not contesting a citation for possessing alcohol could simply mail the appropriate amount of bail to the nearest court in lieu of a fine. Because many villagers have limited access to cash, community services performed under the direction of the city or village council could be substituted for cash bail. One hour of community service would be equal to \$5.00 in cash. Confiscation and forfeiture of liquor possessed in violation of the ban would be permitted.

#### History of Alcohol Regulation in Alaska

From the time of initial Russian contacts with native Alaskans, through the present-day local option legislation, alcohol regulation has been a consistent theme of law enforcement in rural Alaska. Until the last ten to twenty years, federal statutes, state statutes, village ordinances, and community sanctions have all been used as control mechanisms to prohibit rural Alaskans from using alcohol.

Most recently, the legislature adopted the existing local option law in 1980. Under the local option statute, communities that want to limit the importation or distribution of alcoholic beverages can hold elections and choose one of several options for regulating alcohol. The available options are:

1. Prohibition of the sale of alcohol;
2. Prohibition of the sale and importation of alcohol;
3. Restriction of the types of license available for selling alcohol (i.e., beer and wine only);
4. Restriction of alcohol sales to community-owned liquor stores.

#### Studies of Alaska's Local Option Law

In-depth studies have shown that communities are adopting a wide variety of control measures, including the local option law, in an attempt to prevent residents from abusing alcohol. The local option law is an indirect method of controlling alcohol-related behavior and is used because villages do not have direct control over either the use of alcohol by community

members or the resulting alcohol-related deviant behavior. Local option is considered to be a significant and indispensable tool because it helps prevent problems from occurring.

The most frequently used option allows for banning the sale and importation of alcohol. The use of the most restrictive option reflects the desire of many villages to severely limit access to alcohol. If villages could totally prohibit both the manufacture and possession of alcohol, many communities would opt for complete prohibition.

In the communities that have implemented the local option law, there has been a significant reduction in alcohol-related dangerous behavior. After adoption of the local option law, communities have less public drinking and public drunkenness, declines in the amount of alcohol-related interpersonal violence and accidents, and marked improvements in the physical appearance and scholastic performance of the children of drinking parents.

In addition to the direct benefits, other positive side effects of the local option law have been identified. These benefits resulted from the process used in making the decision to regulate alcohol. By implementing the law through an election, the burden of responsibility for the law shifted from the council and village leaders to the entire voting population. As a result, both lawmaking and enforcement have been made easier.

Villagers' concerns about alcohol are not based on moral judgments about drinking, or a desire to intrude on the power of individuals to make decisions about their personal health. The primary reason people want to ban alcohol is because it is intimately related to the deaths of village members. The deaths of young people are of particular concern because many villagers believe that the survival of their culture is completely dependent on the caliber of future community leaders, many of whom are dying in alcohol-related incidents.

#### The 1985 Local Option Hearings

Alcohol is involved in a wide range of social problems occurring in Alaska communities. Some of the problems described during the testimony are:

- \* Virtually all of the violent crime is alcohol related, as is a majority of all types of criminal activity in Alaska.
- \* A large number of deaths, including suicides, are alcohol related.
- \* Children of alcohol abusers suffer problems with their schooling. They do not get enough sleep at night and do not get their homework done because of parents drinking and partying in the home.

- Most cases of child abuse and neglect involve alcohol abuse. Many children of drinkers suffer from malnourishment, and some have health problems caused by mothers drinking during pregnancy.
- Children of drinkers follow in their parents' footsteps by using and abusing alcohol.
- Elders become uneasy and fearful, and cannot eat or sleep, as a result of concern about the behavior of alcohol abusers. This fear and unease causes problems which require medical intervention.
- The use and abuse of alcohol is threatening the structure of the extended family. Children and grandchildren in some families are either excluded, or exclude themselves, from extended family activities in an effort to be protected from alcohol abusers.
- Alcohol abusers can interrupt critically important subsistence activities.
- Essential and irreplaceable family tools, such as snowmachines and boat engines, are broken or destroyed by persons under the influence of alcohol.

### The Social Costs of Alcohol Abuse

The overall level of alcohol consumption, regardless of beverage source, determines the prevalence of dangerous drinkers and alcohol-related problems, both nationally and within Alaska. Alaska has a high rate of annual consumption in comparison to both the rest of the world and the rest of the United States. Moreover, Alaska has historically shown a dramatic increase over the years in the average annual alcohol consumption rate.

In analyzing which factors most affect per capita consumption rates, a recent study pointed to three variables: the cost of alcohol, the hours in which alcohol is available for sale, and the number of outlets in which alcohol may be purchased. Thus, states with "strict, tight or conservative" liquor laws were found to have low per capita consumption rates, and states with "permissive, loose, or liberal" liquor laws had high per capita consumption.

Chronic alcohol consumption has toxic effects on every part of the body, with medical consequences ranging from slight impairments of physical condition to life-threatening diseases. The most common location of the disease is the liver; however, alcohol may also directly injure the gastro-intestinal tract, muscles, and the pancreas. The cardiovascular system, the nervous system, and the endocrine system may be damaged by alcohol. Finally, there is evidence of a strong association between chronic alcohol use and cancer of the stomach, large intestine, pancreas, and liver.

Studies have consistently shown that alcoholics and heavy drinkers have significantly higher death rates than the rest of

the population. The numbers of homicides, suicides, and accidental deaths are increased as a result of alcohol. Native Alaskans have a particularly high alcohol-related suicide rate. The leading cause of death in Alaska is "accidents" and the rate of accidental death is over twice the national average. A majority of Alaska's accidental deaths are alcohol-related.

Alcohol and violent crime are inseparable in Alaska. Many different studies have shown the close link between criminal activity and the abusive use of alcohol. The highest correlation between alcohol and crime is with violent acts committed in rural Alaska.

Studies have shown that a strong relationship exists between problem drinking and spouse abuse. The domestic violence problems linked to alcohol were not limited to incidents of spouse abuse; child abuse and parent abuse have also been found to be common. In comparing men who abuse their spouses with those who do not, researchers have found that the abusers had a history of exposure to spouse abuse in their childhood home. These findings suggest that spouse abuse may become more widespread as children from violent homes make families of their own.

Heavy drinking during pregnancy increases the risk of miscarriage and can result in alcohol-related birth defects. When consumed in large amounts, alcohol can cause fetal alcohol syndrome.

There is a substantial relationship between having an alcoholic parent and development of alcoholism. Children of alcoholics are frequent victims of incest, child neglect, and other forms of violence and exploitation. In 90% of child abuse cases, alcohol is a significant factor. Children of alcoholics are prone to experience a range of psychological difficulties, including learning disabilities, anxiety, attempted and completed suicide, eating disorders, and compulsive achieving.

The economic cost to society from alcohol abuse is high. Various methodologies have been used for measuring the cost of alcohol abuse to the State of Alaska in dollars. One study concluded that the total cost for fiscal year 1984, including direct and indirect costs, was \$195,500,000. Another analysis of the economic cost of alcohol abuse during the same period found the cost to be \$185,294,061.

### Legal Issues Presented by Proposal to Ban Alcohol

Under federal law, states are given the power to absolutely prohibit, or to limit and regulate, traffic in intoxicating liquors within their borders. The Alaska Supreme Court has recognized that the legislature has the power to impose either complete prohibition or any other conditions deemed necessary to protect the people of the state.

A ban on the possession of alcohol would not violate the protection given to individual privacy rights in the Alaska Constitution. The courts have repeatedly held that the right to privacy must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. "No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely," according to the Alaska Supreme Court.

The Court has found that there is an unmistakable correlation between alcohol consumptions and poor health, death, family violence, child abuse, and crime. Based on this correlation, the court has upheld the portion of the current local option law which allows communities to ban the specific reference to previous rulings of the Alaska Supreme Court that had expressly recognized "the deleterious effects of consuming alcoholic beverages" and that had expressly found alcohol to be more dangerous than either marijuana or cocaine.

#### Committee Findings

**Finding Number One:** The abusive use of alcohol interferes in a serious manner with the health, safety, rights, and privileges of Alaskans, and with the public welfare.

**Finding Number Two:** The public health and welfare will, in fact, suffer if the abusive use of alcohol is not controlled.

**Finding Number Three:** The prohibition of alcohol in rural Alaska villages is an effective tool for controlling the abusive use of alcohol.

**Finding Number Four:** Serious crimes, and a wide variety of other social problems, could be prevented if the possession of alcohol were prohibited.

**Finding Number Five:** There is a strong and unmistakable correlation between alcohol consumption and poor health, fetal damage, death, suicide, crime, family violence, family stability, and child abuse.

**Finding Number Six:** The level of dangerous alcohol-related behavior is directly tied to the level of alcohol consumption, and the level of alcohol consumption is directly tied to both the cost and availability of alcohol. A law prohibiting possession would limit the availability of alcohol, and would increase the cost of illicitly-available liquor.

**Finding Number Seven:** The dangers resulting from alcohol abuse are particularly acute in rural Alaska because the communities are small, isolated, without adequate law enforcement, without adequate health care facilities, and populated by people who are closely related and interdependent.

**Finding Number Eight:** The most damaging type of abusive alcohol-related behavior is that which affects innocent victims, such as children and elders. Children are particularly vulnerable, and as a result of parental alcohol abuse, suffer from a broad range of serious problems.

**Finding Number Nine:** The abusive use of alcohol perpetuates an escalating pattern of crime and violence from generation to generation.

**Finding Number Ten:** The most serious harm to the innocent victims of alcohol abuse takes place in private homes and behind closed doors. In communities that have chosen to ban the sale and importation of alcohol, and that have significant alcohol-related social problems, most drinking takes place in private homes.

**Finding Number Eleven:** The economic cost of alcohol abuse is high and cannot be afforded by either the state or rural communities.

**Finding Number Twelve:** A significant number of rural Alaska communities want, and would use, the authority to ban possession of alcohol. These communities have had a long-standing belief that alcohol should be completely banned, and this belief is based on a lengthy history of alcohol prohibition in rural villages.

**Finding Number Thirteen:** The policy decision to ban possession of alcohol is one that must be made by local governments. If local authorities are precluded from making such a decision, self-government efforts are undermined, respect for the state legal system is lost, and the public welfare is damaged.

**Finding Number Fourteen:** Although Alaska law permits communities to ban the sale and importation of alcoholic beverages, the present law is unenforceable because the possession of alcoholic beverages, including homebrew, is permitted.

#### Committee Conclusions

The severity of Alaska's problems with alcohol cannot be overemphasized, or exaggerated. Alcohol-induced tragedies have become a reality of daily life across the entire state. Every possible tool must be available for use in combatting the threat posed by alcohol.

Since Alaska communities are extremely diverse, the tools available to fight alcohol abuse must be equally varied. Approaches to controlling alcohol that are effective in urban areas are unlikely to work in the rural villages of the state. Similarly, alcohol control mechanisms that help stop the disintegration of homogenous and isolated villages, would be completely out of place in a complex urban community. Laws must be flexible enough to provide solutions to the problems faced in all communities.

Villagers repeatedly told the Committee that they want the power to completely prohibit alcohol. The broad range of problems that are associated with alcohol abuse, and which are set forth in the Committee Findings of Fact, legally and morally justify legislative action that grants villages that power. Therefore, the recommendation of the Committee is that the local option law be amended and that communities be granted the power to ban possession of alcohol

ality had not been before the court. *Frontier Saloon, Inc. v. ABC Bd.*, Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

The outcome in one proceeding could not result in the subsequent deprivation of rights that had not been litigated or subject to deprivation in the prior proceeding. *Frontier Saloon, Inc. v. ABC Bd.*, Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

Sentence under former law affirmed. — See *Williams v. State*, Sup. Ct. Op. No. 1939 (File No. 4263), 600 P.2d 741 (1979); *Hampton v. State*, Sup. Ct. Op. No. 2283 (File No. 4711), 623 P.2d 318 (1981).

Cited in *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Collateral references. — 45 Am. Jur. 2d, *Intoxicating Liquors*, §§ 416-426.

48 C.J.S., *Intoxicating Liquors*, §§ 289-296.

Right of one charged with unlawful sale of intoxicating liquor to be informed of name or identity of purchaser before trial. 5 ALR 409.

Criminal responsibility of purchaser of liquor sold in violation of law. 5 ALR 786; 74 ALR 1110; 131 ALR 1322.

Revocation of license in exercise of police power. 124 ALR 541.

Revocation of liquor license of one person as ground for refusal of license to another. 153 ALR 836.

Sec. 04.16.200. Unlicensed persons. (a) A person who violates AS 04.11.010 is, upon conviction, guilty of a class A misdemeanor.

(b) A person who violates AS 04.11.010 in an area where the results of a local option election have, under AS 04.11.490 — 04.11.500, prohibited the board from issuing, renewing, or transferring one or more types of licenses or permits under this title in the area is, upon conviction, guilty of a class C felony, if

(1) the person has previously been convicted of a violation of AS 04.11.010;

(2) the sale or offer for sale was made to a person under 21 years of age; or

(3) the quantity of alcoholic beverages sold or offered for sale is 12 liters or more of distilled spirits, 24 liters or more of wine, or 45 liters or more of malt beverages.

(c) It is an affirmative defense to a prosecution under (a) of this section that no profit was involved in the solicitation or receipt of an order for the delivery of an alcoholic beverage. However, the affirmative defense created under this subsection is not available in a prosecution of a person charged with selling or offering for sale alcoholic beverages to a person under 21 years of age.

(d) Upon conviction of a person of a violation under (a) of this section, the court shall impose a minimum sentence of imprisonment of not less than 10 consecutive days. The execution of the sentence may not be suspended and probation or parole may not be granted until the minimum imprisonment provided in this subsection has been served. Imposition of sentence may not be suspended except upon the condition that the defendant be imprisoned for no less than the minimum period provided in this subsection.

Title 3  
Agriculture and Animals

Title 4  
Alcoholic Beverages

Title 1  
General Provisions

Title 2  
Alcoholics

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE  
POUCH KC  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

February 24, 1987

The Honorable Lyman Hoffman  
Alaska State House  
P.O. Box V  
Juneau, Alaska 99811

Re: Average sentences in bootlegging cases

Dear Representative Hoffman:

At the request of your staff I have reviewed sentencing statistics in bootlegging prosecutions since 1984 to determine the average sentence imposed. The results of my review show that about 250 misdemeanor and 20 felony cases resulted in conviction and sentences during that time.


Of the misdemeanors, 90% of which were handled by our offices in Barrow, Bethel, Nome and Kotzebue, the average sentence was about 10 days in jail and a fine of about \$250. (The maximum sentence for a class A misdemeanor is one year in jail and a \$5,000 fine.)

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If I can be of further assistance, please contact me.

Very truly yours,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:   
Dean J. Guaneli  
Assistant Attorney General

DJG:so-78

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: CSHB 64 (JUD)

Publish Date: \_\_\_\_\_

REQUEST

Revision Date: \_\_\_\_\_

Title: "An Act relating to alcohol."

Agency Affected: Public Safety

BRU: Alaska State Troopers

Sponsor: Rep. Hoffman

Requestor: House Finance

Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan *G.C.A.*

Phone: 269-5691

Division: Alaska State Troopers

Date: 4/17/87

Approved by Commissioner: Arthur A. English *A. English*

Date: 4/23/87

Agency: Public Safety

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

RECEIVED

APR 27 1987

page \_\_\_\_ of \_\_\_\_

LEGISLATIVE FINANCE

*JMC*  
*4/23/87*

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: HB 64(JUL)Publish Date: HOUSE 2/13/87

Revision Date: \_\_\_\_\_

Title: "An Act relating to alcohol."Agency Affected: Department of LawBRU: ProsecutionSponsor: Repr. HoffmanComponents: AllRequestor: Repr. Hoffman

## EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

## FUNDING: (Thousands of Dollars)

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

## POSITIONS:

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

## ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, DirectorPhone: 465-3672Division: Administrative ServicesDate: Feb. 4, 1987Approved by Commissioner: Richard I. Pegues/FOR/ Grace Berg Schaible, Atty. Gen.Date: Feb. 4, 1987Agency: Department of Law

## Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)  
Senate Secretary

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 64

2/13/87

This bill amends AS 04.16.200(b) by reclassifying the illegal sale of alcoholic beverages from a class A misdemeanor to a class C felony.

A total of 45 such violations were referred to the department last year for prosecution. About one-half of those reported violations occurred in the Bethel service area.

Although this change will require some additional work on our part, preparing these cases for grand jury, this addition does not warrant fiscal note costs because of the small number of cases involved. Our estimate assumes that the same enforcement pattern will continue. However, if police agencies substantially increase their enforcement activities, because of the increased penalties available for felons, it may be necessary to request increased appropriation at a later time. In any event, the department will not be able to respond to a marked increase in this area at this time due to the serious budget shortfalls it now faces.

STATE ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

cc

REQUEST: \_\_\_\_\_

Bill Version: HB 64  
Publish Date: HOUSE 2/13/87

Revision Date: \_\_\_\_\_  
Title: "An act relating to alcohol"

Agency Affected: Department of Corrections  
BRU: \_\_\_\_\_

Sponsor: Representative Hoffman  
Requestor: Representative Hoffman

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This bill is expected to have only a minor impact on inmate populations.

Prepared by: Susie Riley, Budget Analyst  
Division: Administrative Services

Phone: 465-3376  
Date: 01/26/87

Approved by Commissioner: William W. Ludwig  
Agency: Department of Corrections

Date: 01/26/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST \_\_\_\_\_

Bill Version: HB 64  
Publish Date: HOUSE 2/13/87

Revision Date: \_\_\_\_\_  
Title: An Act relating to Alcohol

Agency Affected: ABC Board  
BRU: ABC

Sponsor: Hoffman  
Requestor: \_\_\_\_\_

Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Patrick L. Sharrock *For*  
Division: ABC Board

Phone: 277-8638  
Date: 2/10/87

Approved by Commissioner: Hugh Malone *RW for*  
Agency: Department of Revenue

Date: 2/10/87

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

# STATE OF ALASKA . .

LYMAN F. HOFFMAN  
REPRESENTATIVE

P O BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4530, 465-4453

## HOUSE OF REPRESENTATIVES

### DISTRICT 25

ANIACHAK  
AKIAK  
ATMAUTLUAK  
BETHEL  
CHEFORNAK  
EFF  
GOODNEWS BAY  
KASIGLUK  
KIPNUK  
KONGIGANAK  
KWETHLUK  
KWIGILLINGOK  
MEKORYUK  
NAPAKIAK  
NAPASKIAK  
NEWTOK  
NIGHTMUTE  
NUNAPITCHUK  
OSCARVILLE  
PLATINUM  
QUINHAGAK  
TOKSOOK BAY  
TUNTUTLIAK  
TUNUNAK

### MEMORANDUM

TO: Representative Al Adams, Chairman House Finance

FROM: Representative Lyman Hoffman *Lyman*

DATE: March 25, 1987

SUBJ: HB 64 "An Act increasing the penalty for certain unlicensed manufacture, sale, possession, or barter of alcoholic beverages."

Penalties for bootlegging in communities which have adopted a local option law would be increased by HB 64. The bill would raise the penalty for first time offenders to a Class C Felony. Under current law the charge is a Class A Misdemeanor unless the bootlegger has been previously convicted (sale to a person under 19 years of age, or has sold over a designated volume). Bootlegging in communities where there is a restriction on alcohol is a serious crime. Communities with local option laws realize how serious alcohol problems are and they know how devastating alcohol is to their community. Community police and public safety officers work very hard and at great expense, to apprehend and convict bootleggers---on misdemeanor charges. The end result is the education of first time offenders, the bootleggers learn how to improve their system and how to not get caught. In District 25, communities feel strongly that the stiffer penalty will be a greater deterrent to bootleggers.

216 4-3-87  
Rec'd 4-6-87

POSITION PAPER  
ON  
HOUSE BILL NO. 64

POSITION PAPER/Department of Health & Social Services

"An Act relating to alcohol."

The Department of Health and Social Services strongly supports HB 64.

Penalties for violating AS 04.11.010 must at least nullify the profit motive and increase the personal as well as financial costs of selling alcohol in a local option area. Presently, the potential for large profits with limited punitive consequences of a misdemeanor offense may increase the chances of violating AS 16.200(b)

Requiring the first offense to be a felony may eliminate the transfer of large amounts of alcohol by individuals willing to suffer the consequences of a misdemeanor at least once. Non resident bootleggers especially have been active until they "spend" their misdemeanor. Nevertheless, regional residents participate but with a less organized methodology. This bill covers all individuals engaged in this illegal activity.

The relationship between alcohol and a multitude of health and social problems is clearly shown by research. The desire by rural people to live in an alcohol-free environment is clearly demonstrated by their vote. The documented testimony of the village elders on HB 700 clearly shows their understanding of this problem and the emotional commitment to dealing with alcohol abuse in their communities. The testimony repeatedly requests stronger action by the State; HB 64 is a step in that direction.

Recommended by:

*Matthew C. Felix*  
.....  
Matthew C. Felix  
Coordinator  
Office of Alcoholism  
and Drug Abuse

Date:

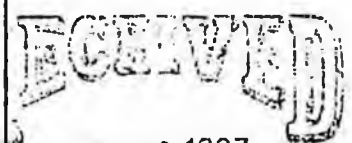
*4/1/87*  
.....

Approved by:

*Myra M. Munson*  
.....  
Myra M. Munson  
Commissioner  
Department of Health  
and Social Services

Date:

*4/2/87*  
.....



APR 06 1987

LEGISLATIVE FINANCE

Introduced: 1/22/87  
Referred: State Affairs,  
Judiciary and Finance

1 IN THE HOUSE

BY HOFFMAN

2

HOUSE BILL NO. 64

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to alcohol."

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

8 \* Section 1. AS 04.16.200(b) is repealed and reenacted to read:

9 (b) A person who violates AS 04.11.010 in an area where the  
10 results of a local option election have, under AS 04.11.490 - 04.11.-  
11 500, prohibited the board from issuing, renewing, or transferring one  
12 or more types of licenses or permits under this title in the area is,  
13 upon conviction, guilty of a class C felony.