

SB

404

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3/10/88 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: Finance

\*\*FISCAL NOTE(S) ATTACHED Yes \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

2/10/83

DATE TURNED INTO OFFICE 3/18/88

Mr. President:

C&RA Committee considered SB 404

transportation and municipal regulation and taxation of alcoholic beverages.

and recommended:

replace with CS for SB 404  same title  
 attached amendment(s) and  new title

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted and attached

\*\* Committee  attached or  adopted fiscal note(s)  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

Tim Kelly  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS

Mike Spitzer - do not pass  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Arthur Stangorluti Do Pass.  
Chairman signature and recommendation

Committee Backup Attached

5-1723B ✓

Ford  
3/9/88

Original sponsor: Binkley

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IN THE SENATEBY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 404 (C&amp;RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to transportation and municipal  
regulation and taxation of alcoholic beverages."

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

\* Section 1. AS 04.16 is amended by adding a new section to read:

Sec. 04.16.125. TRANSPORTATION OF ALCOHOLIC BEVERAGES BY COMMON CARRIER. (a) A person may not use a common carrier to transport alcoholic beverages unless the alcoholic beverages and any shipping container holding them are clearly labeled and readily identifiable as alcoholic beverages or as containing alcoholic beverages.

(b) This section does not apply to a person transporting less than two gallons of wine or malt beverages, or less than one gallon of distilled spirits.

(c) In this section, "common carrier" means a motor vehicle, watercraft, aircraft, or railroad car available for public hire to transport freight.

\* Sec. 2. AS 04.21.010(a) is amended to read:

(a) A municipality may adopt ordinances governing the importation, barter, sale, and consumption of alcoholic beverages within the municipality [AS NECESSARY FOR THE ORDERLY CONDUCT OF THE BUSINESS OF SELLING ALCOHOLIC BEVERAGES WITHIN THE MUNICIPALITY] and may ban possession of alcoholic beverages under AS 04.11.498(d) or (e). An ordinance adopted under this section may not be inconsistent with this title or regulations adopted under this title.

\* Sec. 3. AS 04.21.010(c) is amended to read:

1 (c) A municipality may not impose taxes on alcoholic beverages  
2 except a

3 (1) property tax [TAXES] on alcoholic beverage inventories;

4 (2) sales tax [TAXES] on alcoholic beverage sales if sales  
5 taxes are imposed on other sales within the municipality; [AND]

6 (3) sales tax [TAXES] on alcoholic beverage sales that were  
7 in effect before July 1, 1985; and

8 (4) sales and use tax on alcoholic beverages if the sale of  
9 alcoholic beverages within the municipality has been prohibited under  
10 AS 04.11.490.

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
TIM KELLY, Vice Chairman  
RICK HALFORD  
MIKE SZYMANSKI  
FRED ZHAROFF



P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4989

## Senate Community and Regional Affairs Committee

March 3, 1988

TO: Senate Community and Regional Affairs Committee Members

FROM: Senate C&RA Staff *ME*

RE: SB 404 - "An Act relating to transportation and municipal regulation and taxation of alcoholic beverages"

SB 404 changes three aspects of the law dealing with the transportation, importation, and taxation of alcohol.

Section 1 requires alcohol transported on a common carrier (more than two gallons of wine or beer or more than one gallon of distilled spirits) to be clearly labeled as alcohol.

Section 2 allows municipalities to regulate the importation of alcohol into their communities.

Section 3 would allow a community to impose a sales and use tax on alcoholic beverages if the municipality has banned the sale of alcohol.

This bill has zero fiscal notes from the Departments of Revenue and the Department of Public Safety. The Department of Community and Regional Affairs has not submitted a fiscal note but has indicated the bill will have no financial impact upon it.

A representative from the Department of Revenue will be at the meeting. Public Safety has indicated they will not be able to be at the meeting but has submitted a position paper supporting the bill.

BILL NO: SB 404

DATE: 3/2/88

TITLE: "An Act relating to transportation and municipal regulation and taxation of alcoholic beverages."

CONTACT: Col. Robert E. Jent

DEPARTMENT OF PUBLIC SAFETY

Movement of alcoholic beverages by common carrier to "dry" rural communities is often made in unlabeled containers making identification difficult for law enforcement authorities.

Passage of this legislation will assist in maintaining a stricter control of alcoholic beverages being transported to local option villages.

The Department of Public Safety supports this legislation.

*for* Arthur English  
Arthur English, Commissioner  
Department of Public Safety

FISCAL NOTE

REQUEST

Revision Date: \_\_\_\_\_ Agency Affected: Public Safety  
 Title: "An Act relating to . . . alcoholic beverages." BRU: Alaska State Troopers  
 Sponsor: Sen. Brinkley Components: Detachments and VPSO  
 Requestor: Senate C&RA Contract/Support \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	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  
 Division: Alaska State Troopers

Phone: 269-5691  
 Date: 3/2/88

Approved by Commissioner: *F. H. Anderson, Dep. Comm.*  
 Agency: Public Safety

Date: 3-2-88

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to transportation and municipal regulation and taxation of alcoholic beverages."  
Sponsor: Senator Binkley  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: ABC BOARD  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Patrick L. Sharrock, Director Phone: 277-8638  
Division: Alcoholic Beverage Control Division Date: 03/02/88

Approved by Commissioner: Hugh Malone Date: 03/02/88  
Agency: Department of Revenue

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

5-1723B

Ford  
3/11/88

THIS CS →  
NOT THE 3/9/88  
VERSION

Original sponsor: Binkley

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 404 (C&amp;RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to transportation and municipal  
7 regulation and taxation of alcoholic beverages."

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

9 \* Section 1. AS 04.16 is amended by adding a new section to read:

10 Sec. 04.16.125. TRANSPORTATION OF ALCOHOLIC BEVERAGES BY COMMON  
11 CARRIER. (a) A person may not use a common carrier to transport  
12 alcoholic beverages into an area that has restricted the sale of  
13 alcoholic beverages under AS 04.11.490, 04.11.492, or 04.11.500 unless  
14 the shipping container holding the alcoholic beverages is clearly  
15 labeled as containing alcoholic beverages.

16 (b) This section does not apply to a person transporting less  
17 than two gallons of wine or malt beverages, or less than one gallon of  
18 distilled spirits.

19 (c) In this section, "common carrier" means a motor vehicle,  
20 watercraft, aircraft, or railroad car available for public hire to  
21 transport freight.

22 \* Sec. 2. AS 04.21.010(a) is amended to read:

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25 municipality [AS NECESSARY FOR THE ORDERLY CONDUCT OF THE BUSINESS OF  
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9 (4) sales and use tax on alcoholic beverages if the sale of  
10 alcoholic beverages within the municipality has been prohibited under  
11 AS 04.11.490.

5-1723B ✓  
Ford  
3/9/88

NOT THIS  
CS

Original sponsor: Binkley

1 IN THE SENATE

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AFFAIRS COMMITTEE

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10 AS 04.11.490.

*Jamie Adair*

1 IN THE SENATE

BY BINKLEY

2

SENATE BILL NO. 04

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to transportation and municipal regulation and taxation of alcoholic beverages."

*title*  
*Local Delivery community*

7

8

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

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distilled spirits.

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(c) In this section, "common carrier" means a motor vehicle,

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boat, aircraft, or railroad car available for public hire to transport

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freight.

*large watercraft*

21

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10 AS 04.11.490.  
11

*handling fee*  
*maybe title fee*

# Senator Johne Binkley

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Senate Finance Committee

P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985



Finance Committee  
Co-Chairman

March 3, 1988

The Honorable Arliss Sturgulewski  
Chairman, Community and Regional Affairs  
Alaska State Senate  
Room 427 Capitol Building  
Juneau, AK 99811

Dear Senator Sturgulewski:

Today your committee will hear SB 404 relating to transportation and municipal regulation and taxation of alcohol. I would like to offer the following to the committee for its consideration.

The purpose behind this bill is to make a bootlegger's job more difficult and the job of law enforcement easier. In the first section, the requirement is made that any alcohol shipped via common carrier must be clearly labeled and readily identifiable as alcohol. The ABC Board currently has regulations which requires alcohol packaged by the licensee be "conspicuously" labeled as containing alcohol (see 15 AAC 104.645(d) attached); the provisions of this legislation would place the burden on the shipper, whether or not he is a licensee.

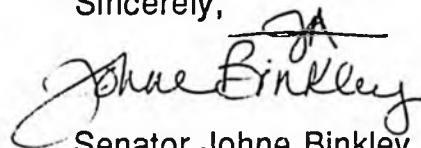
Section 2 adds to AS 04.21.010(a) that a municipality may adopt ordinances governing the importation of alcohol. Current law allows for the adoption of ordinances necessary for the "orderly conduct of the business of selling." However, many problems exist in those communities where the sale has been prohibited but importation has not. This provision will allow those communities to deal with the problems importation causes in the way that works best for them. It ties into 15 AAC 104.645(e) which stipulates that a local option community which has banned the sale of alcohol only may designate a community delivery site. Other ordinances that might be adopted could be 1) a cooling-off period between the time the alcohol arrives in the community and the time it can be picked up by the purchaser; 2) a requirement that only that person in whose name the order is placed may pick it up; or 3) the payment of a sales tax, which is the topic of Section 3.

AS 04.11.610 provides that the annual liquor license fees collected within a municipality shall be refunded semi-annually to the municipality. The refund is contingent upon the municipality enforcing "local ordinances, laws of the United States and the state, and the regulations relating to the manufacture

and sale of alcoholic beverages in the state..." Obviously, a municipality which has banned the sale of alcohol does not have any license fees to be refunded. Therefore, Section 3 allows a municipality which has banned the sale but not the importation of alcohol to enact a sales and use tax on imported alcohol. The amount collected would help to offset the cost of operating a community delivery site as well as the general costs to the community associated with alcohol use.

This bill is basically a local option bill. It gives communities the local control which they have stated time and time again is necessary to combat the problems of alcohol abuse in rural Alaska. I would greatly appreciate the Committee's favorable consideration of this important piece of legislation.

Sincerely,

A handwritten signature in cursive script that reads "John Binkley". The signature is written in dark ink and is positioned above the printed name.

Senator John Binkley  
Yukon-Kuskokwim and  
Interior Rivers

jka

(4) a numbered form, provided by the board or the licensee, containing a dated, signed, and sworn statement of a judge, magistrate, postmaster, or peace officer that the purchaser is known to him or her to be at least 21 years of age.

(c) Alcoholic beverages may be sold in response to a written order only if the written order is signed and dated by the purchaser, describes in reasonable detail the type and quantity of alcoholic beverages being ordered, refers by number to the purchaser's proof-of-age document required by (b) of this section, and bears a signature reasonably determined by the licensee to match that on the proof-of-age document. The licensee must note on the order that the signature and proof-of-age document number referred to on the order match those on the proof-of-age document. The written order may be modified by the licensee if the modification is in accordance with an oral or written communication from the purchaser. If a modification is made, the licensee must note on the original order the date of modification and the manner in which the modification was requested by the purchaser.

(d) A licensee may not package or deliver alcoholic beverages in response to a written order until full payment is received at the licensed premises. The alcoholic beverages may be personally delivered on the licensed premises to the purchaser or to an individual specifically authorized in the written order to receive the purchase and deliver it to the purchaser, or may be shipped by common or regulated carrier to the purchaser. If the purchaser gives a delivery site under (e) of this section, the order must be shipped to that delivery address that is in a community that has a specified community site. An order that is shipped must be packaged by the licensee in a parcel that bears a non-removable label that identifies the licensee, shows the written order number assigned under (g) of this section, and states conspicuously that the package contains alcoholic beverages.

(e) A municipality or established village that has adopted a local option under AS 04.11.490 to prohibit the sale of alcoholic beverages in the community may designate a community delivery site, subject to the board's approval, for the delivery of alcoholic beverages shipped to individuals in the community. The community delivery site must be secure from unauthorized access and must be controlled by the local governing body to assure protection of orders for purchasers. The site must be open for pick-up by purchasers at least three hours each day except weekends and state holidays. Alcoholic beverages may be claimed from the community delivery site only by the purchaser named on the package label. The purchaser must sign for the order on a form stating that the beverages are not for resale. The local governing body may impose reasonable storage and

handling of  
delivery of  
the notice  
shipped in

(f) T  
are convicted  
AS 04.16.2  
store license  
beverages  
board give  
prohibited

(g) F  
written order  
document.  
after delivery  
log of written  
documents  
written on  
the order  
to which is

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places one  
more than  
gallons of  
practice of

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the licensee  
packed and  
actions at  
11/29/81.

Sec. 04.11.580. Surrender or destruction of license. (a) A license issued under this title shall, if the board so directs, be surrendered on demand to a peace officer, agent, or officer of the board.  
(b) The licensee shall surrender a current license to the board within 10 days after the loss or vacation of the licensed premises.  
(c) If the license is destroyed, the licensee shall notify the board.

Sec. 04.11.590. Disposition of money. (a) Money collected from licenses under this title shall be transferred by the board to the Department of Revenue and deposited in the general fund.  
(b) A fee prescribed by the board in addition to fees authorized under this title shall be transferred to the Department of Revenue and deposited in the general fund.

Sec. 04.11.610. Refund to municipalities. (a) Annual license fees, excluding annual wholesale license fees, collected within a municipality shall be refunded semi-annually to the municipality.  
(b) If the officers of a municipality fail to actively enforce local ordinances, laws of the United States and the state, and the regulations relating to the manufacture and sale of alcoholic beverages in the state,

the commissioner of revenue may deny the refund provided for under (a) of this section until the board finds the enforcement of the ordinances, laws and regulations is resumed.

(c) The Department of Revenue shall recover any amounts erroneously refunded under (a) of this section. The Department of Revenue shall schedule repayments of erroneously refunded amounts over a sufficient period of time to minimize financial hardship to the municipality involved.

The office is in Bethel, and owes its staying power to a ready accumulation of unimpounded currency shoved through a slot beneath tinted, bullet-proof glass.

The cash, \$100 and \$200 at a time, comes from bootleggers and whiskey drinkers wiring money orders to Anchorage liquor stores.

The office is a humming camp, nourishing the outwaters of Alaska's fearsome river of booze. Though Alascom shut its other Bush telegram counters over the past decade, the Bethel office is different. The continuous flow of alcohol money orders and

4,402, to the Alutiansham hamlet of Birch Creek, population 40, have chosen to restrict the sale or possession of booze.

But residents of those places and the authorities who enforce the laws readily admit that even in the most restrictive villages, where arriving travelers are frisked for flasks, there are still ways for the booze to get in.

Some of it is due to the ingenuity of bootleggers. By uncorking a jug and filling it to the brim before hiding it in a suitcase, they can avoid the telltale gurgle a conscientious baggage handler might detect. Plastic bottles have eliminated the risk of breakage — and the giveaway odor.

It is 1:15 p.m. on a Friday afternoon in October. A steady flow of customers has journeyed to the silver-sided building, beside the huge satellite dish, where Alascom conducts its telegram business. It is just up a dirt street from the Kuskokwim River and the office of Bush Air Service, whose owner was recently charged with transporting liquor to a dry village.

In walks a man with bushy-blond hair. "You must be glad it's Friday," says the Alascom agent, making small talk. "What difference does it make to me?" replies the customer. "One day of the week is the same as the next." He wires \$172 to Party Time Liquor in Anchorage.

The next customer, a Native man with the smell of liquor on his breath, sends \$219.74 to

International Liquor, also in Anchorage.

"Hello, Al," a clerk says to another man. "\$189.50, Party Time," he replies. He pushes a wad of bills through the window, she gives him back some change. Then she walks to the teletype machine. In seconds, the message beams from the dish outside to the satellite Aurora, and back down to the Alascom office in Anchorage. In minutes, a check is ready for Party Time.

#### ORDERS FROM ANIAK

Like Bethel and a half-dozen other communities in Alaska, the Kuskokwim River village of Aniak has banned the sale of booze, but not its possession or importation.

money order snipped by Express Mail to a liquor store in Anchorage.

The one-day Express Mail service provided by the Aniak post office attracts booze customers from as far away as Kalskag, 25 miles downriver. In the summer, they make the two-hour journey by boat, and in winter, in a quarter of the time, by snowmachine or truck on the frozen river. If they make the mail deadline, they'll be back the next day to pick up their shipments at 1:30 p.m. when the Northern Air Cargo DC-6 roars into town.

Where do those orders go?

Primarily to a half-dozen liquor stores in Anchorage and Fairbanks that specialize in the Bush trade, some of which have teamed up with

airlines to offer drinkers a package deal.

#### 20-GALLON LIMIT

Since territorial days, Alaska has allowed people to place orders for alcoholic beverages through the mail for shipment by common carrier. In 1980, the legislature revamped the liquor code and eliminated restrictions on the amount that can be shipped.

Alcoholic Beverage Control Board regulations that went into effect in November require the liquor store to notify the board when an order is 20 gallons or more — the equivalent of about 8½ cases of Windsor Canadian in plastic bottles. Though the rule was supposed to detect bootleggers, loopholes remain, conceded Bill Roche, the commission's chief investigator. Bootleggers selling a case or two a week don't need to place single orders in such a large quantity, he said, and even if they did, they could avoid detection by splitting their orders among several stores, or having confederates place orders.

If 20 gallons proves too loose a restriction, Roche said, the board may change it.

The new rules will mainly affect the few stores that specialize in mail-order sales. In Anchorage, according to ABC board staff, they are Party Time Liquors, Value Liquor, International Liquor, Our Liquor and Brown Jug Warehouse.

mail-order competitor, Value

Liquor No. 3 on Jewel Lake Road.

The records don't show the proportion of liquor sold over the counter as opposed to mail order, and Party Time owners Michael and Paula Gallagher won't discuss their business. But their competitors estimate that as much as 75 to 80 percent of their sales from the Spenard store goes to the Bush.

In an interview in Bethel, a self-described bootlegger said he prefers Party Time because it understands his needs. Clerks ship the bottles in innocuous cartons, like those for potato chips, he said, so "no one can see what you are getting in the box."

And evidence now in court indicates that Party Time may have been increasing its sales by actively courting the bootleg trade. In addition to opening the operations of Party Time to public view, the unusual lawsuit, brought in Superior Court in Bethel, has shown the state liquor board to be ineffective in policing mail-order sales.

The suit, filed in 1986 and not yet tried, was brought by the parents of Moses Strauss Jr., a 20-year-old minor when he was struck by a Bethel city bus on Jan. 14, 1986, and suffered severe head injuries. The suit charges that Strauss was drunk at the time and that he bought his liquor from Malachy Polty, a customer of Party Time.

The Gallaghers declined to be interviewed. Through their attorney, they denied the Strausses' allegations. "We are confident we will be found blameless when all of the facts are presented to a judge and jury. However, we and our attorneys believe it is highly inappropriate to try cases in the press," they said in a prepared statement.

Depositions and documents obtained by the Strausses'

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represents 95 percent of the money wires out of Bethel. Though the liquor stores are 25 miles away, the network linking them with Alascom and the airlines guarantees same-day delivery and mocks Bethel's voter-approved ban on in-town liquor sales.

Alascom is one of dozens of legitimate enterprises whose decisions and policies, sometimes passively, sometimes not, have kept the dogdays wide open for bootleggers and consumers of w-grade whiskey in villages, both wet and dry. Alascom, like most of the others, says it shouldn't be asked to play policeman and go beyond the restrictions imposed by society itself. "It's judgment call we can't make," said spokesman Tom Jensen.

Yet the aftermath of those business choices is widespread death, violence, abuse and neglect — for adults whose vice it is to binge, and for children and other victims who find themselves trapped inside another's nightmare. A passive state liquor agency with a history of worthless regulations, an ineffective local option law, grant bootlegging and ambiguous community standards have kept the flood liquor unchecked. Because liquor starts out as a legal commodity, unlike marijuana, cocaine, gray- and black-market dealers openly take advantage of the network that ties together even the remotest parts of Alaska for legal commerce.

