

SB 51

12 (511)  
T.M.R.

FISCAL NOTE

REQUEST:

Revision Date: 03/15/88  
Title: "An Act increasing the penalty for certain unlicensed manufacture, sale possession, or barter of alcoholic beverages."  
Sponsor: Senator Binkley  
Requestor: Rules Committee

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: 03/15/88

Approved by Commissioner: Hugh Malone Date: 03/15/88  
Agency: Department of Revenue

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

*[Signature]*  
**RECEIVED**  
MAR 16 1988

LEGISLATIVE FINANCE

*Fiscal Notes  
received and forwarded  
on after bill  
R/o.*

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: CS for SB51  
PUBLISH DATE: 1/25/88

*S. Weller*  
*1/26/88*

FISCAL NOTE

REQUEST:

Revision Date: 1/25/88  
Title: \_\_\_\_\_

Agency Affected: ABC Board  
BRU: \_\_\_\_\_

Sponsor: Sen. Binkley  
Requestor: Senate Rules

Components: operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Royce Weller *RW* Phone: 465-2300  
Division: Commissioner's Office Date: 1/25/88

Approved by Commissioner: Hugh Malone *RW for* Date: 1/25/88  
Agency: Revenue

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

RECEIVED  
JAN 26 1988

LEGISLATIVE FINANCE

*S. Kuter*  
*1/26/88*

FISCAL NOTE

REQUEST

Revision Date: \_\_\_\_\_ Agency Affected: Public Safety  
Title: "An Act increasing the penalty for certain unlicensed manufacture..." BRU: Alaska State Troopers  
Sponsor: Senator Binkley Components: Detachments & CIB  
Requestor: Senate Rules Narcotics

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
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						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
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.

*JMK*  
*1/25/88* Prepared by: Francis C. Allan Phone: 269-5691  
Division: Alaska State Troopers Date: \_\_\_\_\_

Approved by Commissioner: *Arthur Engstrom* Date: 1-25-88  
Agency: Public Safety

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

RECEIVED  
JAN 26 1988

5 (Rules)?

FISCAL NOTE

REQUEST:

Revision Date: January 22, 1988.  
Title: "An Act increasing the penalty...  
unlicensed...alcoholic beverages."  
Sponsor: Sen. Binkley  
Requestor: Senate Rules  
Agency Affected: Department of Law  
BRU: Prosecution  
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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 FUND		-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)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
Division: Administrative Services Date: January 22, 1988  
Approved by Commissioner: Richard I. Pegues / FOR /  
Grace Berg Schaible, Atty. Gen. Date: January 22, 1988  
Agency: Department of Law

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

RECEIVED  
JAN 23 1988

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 51 (Rules)

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.

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 at this time. 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. There has been renewed local interest in some rural communities for increased enforcement. In the event that a sharp increase in the number of cases referred to the department occurs, addition of one prosecutor at Bethel may become necessary. About one-half of the reported violations have occurred in the Bethel service area.

SENATE COMMITTEE REPORT

FURTHER:

4/8/87

DATE TURNED INTO OFFICE

4/10/87

Mr. President:

FINANCE

Committee considered

SB 51

relating to alcohol.

and recommended:

[ ] replace with CS FOR \_\_\_\_\_ ) [ ] same title
[ ] or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ ) [ ] new title

[ ] attached amendment(s) and

[x] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to \_\_\_\_\_

[ ] letter of intent adopted \_\_\_\_\_

Committee [x] attached or [ ] adopted fiscal note(s)

[ ] new [ ] updated or [x] previous H & FN
[x] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Handwritten signatures of committee members under the 'MEMBERS SIGNING DO PASS' heading.

Blank lines for 'OTHER RECOMMENDATIONS'.

Handwritten signature of the Chairman with 'Do Pass' written next to it, under the heading 'Chairman signature and recommendation'.

[ ] Committee Backup Attached

A/B

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SB 51  
 Publish Date: \_\_\_\_\_  
 Revision Date: \_\_\_\_\_  
 Title: An Act relating to Alcohol  
 Agency Affected: ABC Board  
 BRU: ABC  
 Sponsor: Senator Binkley  
 Requestor: \_\_\_\_\_  
 Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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 *for* Reynold Walker Phone: 277-8638  
 Division: ABC Board Date: 2/13/87  
 Approved by Commissioner: Hugh Malone *for* Reynold Walker Date: 2/13/87  
 Agency: Department of Revenue

Distribution (by Agency preparing fiscal note):

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

A/B

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SB 51  
Publish Date: \_\_\_\_\_

REQUEST  
Revision Date: \_\_\_\_\_  
Title: "An Act relating to alcohol."  
Sponsor: Sen. Binkley  
Requestor: Senate State Affairs

Agency Affected: Public Safety  
BRU: Alaska State Troopers  
Components: Detachments and C.I.B.  
Narcotics

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
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						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	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)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan *FCA*  
Division: Alaska State Troopers

Phone: 269-5691  
Date: 1/26/87

Approved by Commissioner: William R. Niemi *WRNiemi*  
Agency: Public Safety

Date: 1-26-87-1/30/87

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

A/B

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

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

Bill Version: Senate Bill No. 51  
Publish Date: \_\_\_\_\_

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

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

Sponsor: Senator John Binkley  
Requestor: Senator John Binkley

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						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	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						
<b>TOTAL</b>						

**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 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. Ladwig  
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

P/B

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

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

Bill Version: SB 51

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

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

Agency Affected: Department of Law

Title: "An Act relating to alcohol."

BRU: Prosecution

Sponsor: Sen. Binkley

Components: All

Requestor: Sen. Binkley

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, C' AIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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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, Director

Phone: 465-3672

Division: Administrative Services

Date: Feb. 12, 1987

Approved by Commissioner: Grace Berg Schaible

Date: Feb. 12, 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. SB 51

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.

Introduced: 1/19/87  
Referred: State Affairs, Health, Education  
and Social Services, Judiciary  
and Finance

5-0155A

1 IN THE SENATE

BY BINKLEY

2

SENATE BILL NO. 51

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.

# Senator Johne Binkley

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



Finance Committee  
Co-Chairman

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

April 9, 1987

TO: Senate Finance Committee  
FROM: Senator Johne Binkley *Johne Binkley*  
RE: Senate Bill 51 - "An Act relating to alcohol."

Bootlegging in communities where there is a restriction on alcohol is a serious crime. Communities that have adopted a local option law recognize how serious alcohol problems are and how devastating these problems are to their community. Community police and public safety officers work very hard and at great expense to apprehend and convict bootleggers. Under current law, most offenders are charged with a Class A Misdemeanor. The District Attorney in Bethel estimates that two dozen misdemeanor cases are referred to his department each year and two or three felony cases. This bill would raise the penalty for bootlegging in a local option area to a Class C Felony.

### Current Law

Under current law the person would be charged with the misdemeanor offense unless the following circumstances were present:

- \*the person had been previously convicted of bootlegging
- \*the sale was made to a minor
- \*the quantity of the sale was of a specified amount
  - 12 liters or more of distilled spirits  
(a little more than 17 quarts)
  - 24 liters or more of wine  
(about 6½ gallons)
  - 45 liters or more of malt beverages  
(approximately six cases)

If any of the above circumstances have occurred the person is charged with the felony offense.

Penalties

A Class A Misdemeanor carries a maximum jail term of one year and a fine of up to \$1,000. Typical sentences in the Bethel courts are 30-90 days with a fine double the value of the alcohol involved.

A Class C Felony carries a maximum jail term of five years and a fine of up to \$5,000 (for the first conviction). A second "Class C Felony" charge also carries a two year presumptive term.

Communities in my district feel strongly that the stiffer penalty will be a greater deterrent to the bootlegger. Under present law when the bootlegger is caught and charged with the Class A Misdemeanor, he is educated in how the legal system works; he learns to improve his system, and how not to get caught. Bootlegging in a local option community is a serious crime. By increasing the penalties to the more serious Class C Felony charge we will send a clear message to those who would break the law that lawbreaking will not be tolerated.

alty 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.

(e) A person who sends, transports, or brings alcoholic beverages into a municipality or established village in violation of AS 04.11.496 is, upon conviction,

(1) guilty of a class A misdemeanor if the quantity imported is less than 12 liters of distilled spirits, 24 liters of wine, or 45 liters of malt beverages; or

(2) guilty of a class C felony if the quantity imported is 12 liters or more of distilled spirits, 24 liters or more of wine, or 45 liters or more of malt beverages. (§ 3 ch 131 SLA 1980; am §§ 12, 13 ch 109 SLA 1983)

**Effect of amendments.** — The 1983 amendment substituted "21 years of age" for "19 years of age" in paragraph (2) of subsection (b) and in subsection (c).

#### NOTES TO DECISIONS

**This section does not violate equal protection.** — Penalties based upon quantity and type of alcoholic beverage do not violate equal protection. *Harrison v. State, Ct. App. Op. No. 400 (File No. 7407), 687 P.2d 332 (1984).*

**Or due process.** — Restriction of the defense of lack of profit to misdemeanor prosecutions under subsection (a) of this section does not constitute a violation of due process; the section treats all persons charged with felonies alike and, therefore, fairly. *Harrison v. State, Ct. App. Op. No. 400 (File No. 7407), 687 P.2d 332 (1984).*

**Statutory distinction between a misdemeanor and a felon based solely on the type and quantity of alcoholic beverages imported does not violate due process;** the greater the volume of alcoholic beverages imported, the greater the potential for abuse, whether importation is for sale or personal use. *Harrison v. State, Ct. App. Op. No. 400 (File No. 7407), 687 P.2d 332 (1984).*

**This section is substantive offense, and an essential element of a conviction under paragraph (b)(1) of this section is a defendant's prior conviction under AS 04.11.010.** *Morgan v. State, Ct. App. Op. No. 244 (File No. 6805), 661 P.2d 1102 (1983).*

**Were courts to construe subsection (b) of this section as merely a sentence enhancement provision, the state would be able to convict a defendant of a felony while completely circumventing both the grand jury and the trial jury on the issues of whether the alleged offense occurred in a local option area, whether it involved a sale or an offer to sell to a minor, whether it in-**

**involved a sale or an offer to sell a substantial quantity of specific beverages, and/or whether the accused had a prior AS 04.11.010 conviction.** *Morgan v. State, Ct. App. Op. No. 244 (File No. 6805), 661 P.2d 1102 (1983).*

**Conviction and sentence affirmed.** — See *Azzarella v. State, Ct. App. Op. No. 490 (File No. 7050), P.2d (1985).*

**Sentence modification.** — A trial judge who sentenced a worst offender to two maximum consecutive terms of one year for conviction of one count of selling alcoholic beverages without a license and one count of possession of alcoholic beverages for sale in a local option area, with 275 days of the first sentence suspended, was clearly mistaken in imposing consecutively the unsuspended portion of the offender's jail term for selling alcoholic beverages without a license, where the judge specifically commented at sentencing that the chances for the offender's rehabilitation seemed good and that there was no reason to believe the offender would be inclined to resume a criminal lifestyle. In order to impose consecutive sentences that exceed the maximum sentence for the single most serious count, the sentencing court must expressly find that the full term of imprisonment is necessary for the protection of the public. *Peruski v. State, Ct. App. Op. No. 568 (File No. A-956), 711 P.2d 573 (1985).*

**Jail sentence inappropriate.** — Where an air taxi operator flew passengers who had alcoholic beverages into a village where importation of alcoholic beverages is unlawful, a jail sentence was not appropriate where the misdemeanor



FAIRBANKS

# Daily News - Miner

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22 Pages

## Native elders 'declare war' on alcohol and drug use

By KATHI BERRY  
Staff Writer

The elders of the Athabascan Nation have "declared war" on all those who are associated with alcohol and drug abuse, according to a resolution passed after the Tanana Chiefs Conference last week.

"The use of alcohol and drugs offers nothing to our Native villages but broken spirits, broken families, pain, grief, suffering and death," the resolution says.

The two-page document was passed unanimously by the delegates representing 43 villages on the TCC board, according to Will Mayo, TCC program director.

A similar resolution to ban alcohol and drugs from the villages was passed by board members of Doyon, Ltd., but taken back later for reconsideration.

"Philosophically, we are in agreement with the resolution, but at least one board member wants to make some changes," said Morris Thompson, president. "We can only speculate that he wants to make the wording stronger in some areas."

The resolution adopted by TCC

was drawn up by Denakkanaage, an advocacy group for Native elders. In the document, the elders ask village councils and village courts within TCC to "strongly consider the use of traditional Native justice mechanisms and banish bootleggers and drug pushers from the villages."

Banishment of bootleggers is the next step after villages adopt the state's local option law to make alcohol consumption illegal, Mayo said.

"As it is, the state law lacks teeth," he said. "People are beginning to despair that they will never be able to do anything through the state law. At times, it seems non-enforceable."

Villagers have to stage a "sting" operation before they can get enough proof to get a bootlegger arrested, Mayo said.

"Then, very often, the bootlegger gets a light penalty in court and comes right back to the village again," he said. "It's not a very strong deterrent to him or others who who want to set up illegal sales."

Villages would all have different



WILL MAYO  
"Law lacks teeth"

ways of enforcing traditional banishment, Mayo said.

"This could work if everyone in the village got behind it and decided to oust the guy," he said. "Bootleggers are not people who fly around with a plane load of booze. These are people who live in the community. They are everyone's cousin."

Through the resolution, the elders also ask that a comprehensive (See ALCOHOL, Back Page)

## ALCOHOL

(Continued from page 1)

sive alcohol and drug prevention program be set up in each village and that each school incorporate a comprehensive drug prevention course in their curriculum.

They further resolved that no alcohol will be served at any TCC function "as an example to our children and to each other," and that any TCC employee with a drug or alcohol problem will be given the option to receive treatment or be immediately terminated from employment.

Some of the impetus for the resolution came from the movie, "The Honor of All," shown during the convention. The movie tells the story of one couple who worked against threats, hatred and violence to turn a Canadian village with a near 100 percent alcoholism rate into a town that is now 95 percent sober.

"The movie helped, but to attribute the resolution to it is an oversimplification," Mayo said. "Native elders have been fighting this all along. They are sick of seeing their grandchildren die and the neglect, domestic violence and the sorrow that alcoholism brings."

**'87 TCC Convention****Villages told economic progress means defeating alcohol and drugs**

Alcohol and drug abuse is destroying the fabric of Native village life, delegates to TCC's 1987 convention declared, and neither social nor economic development can occur until it is stopped.

"Economic development and sobriety are one and the same," keynote speaker Phil Lane said. "As long as the tribal leadership is abusing alcohol and drugs, no matter what you try economically is going to fail."

The message came through clearly to the 42 delegates at the convention held in the Wood Center Ballroom on the University of Alaska-Fairbanks campus. Following through on the conference theme of "Tribal Strength Through Self-Sufficiency," the delegates passed tough resolutions giving villages the power to deal with substance abuse and economic development on the local level. The first resolution of 110 passed at the convention recognized alcohol and drugs as the single greatest threat to Native health, life and cultural values. It directed TCC to pursue all available funds to start prevention programs using elders, village volunteers, village councils and youth. It urged village councils and village courts to pass and enforce tough liquor ordinances. And it directed that no alcohol be served at any future TCC function.

The delegates set specific goals for rural economic development. They said that TCC should promote village-based industries that take advantage of local resources and skills. The priorities include developing markets for fish products, furs, tourism and wood products.

But, according to keynote speaker Phil Lane, development depends on sobriety. Lane is a leader in the Four Worlds Project based in Canada. He worked closely with the people of Alkali Lake, a Native village in British Columbia that treated its alcohol problem through local action. Lane's practice is to treat the individual alcoholic within the context of his culture and to revive traditional values.

"The process of guiding development must come from within the culture," he said. "Development must involve all elements of the human being. All parts of the community must be

*Continued from Page 1*

related — spiritual, economic and political. People need a vision and must feel appreciated."

A key to Lane's success has been in the wisdom of Native elders and the respect they are given in the community. Development must come from within the culture.

"Tribal self-sufficiency is based on the teaching that the hurt of one is the hurt of all and the honor of one is the honor of all," he said.

In a panel discussion following Lane's speech, an inmate from the Fairbanks Correctional Center addressed the same theme. Harold Napoleon, who was released just for the morning to speak to the convention, said that alcohol and drugs are tearing Alaska Native people apart.

"I came from a place where there are 140 of your sons and brothers," he said. "I have one thing in common with you. All of us have lost family members because of alcohol."

He said the battles Alaska Natives are fighting on the political front are not important unless they find a way to stop alcohol abuse.

"What good is land and sovereignty to a people torn apart by alcohol?" he asked. "Native corporations are trying to make a profit, but what good is money if we are dying? If we lose our land, it's going to be because we are drunk. Everyone is going to have to be a warrior, and the weapons are honesty, love and caring."

Napoleon urged people to go back to the villages and work locally instead of waiting for government agencies to solve the

problem.

"It won't take money," he said. "If money could solve this problem, it would have been solved a couple of hundred million dollars ago. I pray, and the men I left behind today pray, that you solve this problem."

TCC President Spud Williams agreed, saying, "We're one family. We've got to take these things in hand."

One by one, speakers from the audience came forward to tell of their experiences with alcohol and the need for reform. Ann Fischer, a teacher from Beaver who brought to the convention several students from the village said that alcohol and drugs are destroying her community and causing many kids to drop out of school.

Jonathon Solomon of Fort Yukon said that Natives must demand that those people representing them are always sober. "I don't want anybody with red eyes in the morning representing me," he said.

And Al Grant of Tanana said, "If we're going to be true representatives of our people, we have to do it with sober minds. Let's fight this thing. We're in a war now."

Spud Williams said that everyone — from the federal and state governments to elders, youth and village councils — is finally recognizing alcohol and drug abuse as the most serious problem in rural Alaska. He said TCC is developing a comprehensive alcohol plan for the region, and funding approved under a new federal law will support increased local control.

But if the goal of the villages is tribal strength through self-sufficiency, the villages must include a sound plan for economic development as well as an end to alcohol and drug abuse. Spud Williams explained that TCC has taken the lead in expanding village business. A TCC-sponsored fur cooperative in the Fort Yukon area

(4)

# EDITORIAL

## *The war against alcohol and drugs*

Strong families and close communities are the two most important weapons in the war against alcohol and drug abuse.

In one strongly worded resolution at this year's convention, the TCC board of Directors has demanded action against the single greatest threat to village life. Speaker after speaker at the convention declared war against booze and dope. They said that Native people have the power to change the pattern of abuse, but first they must admit that responsibility lies not with others but with themselves.

Statistics have proved that tribal identity is a force in breaking the cycle of abuse. Native Americans youth involved in alcohol or dangerous drugs have very little identity with families or tribes. And, more often than not, young Natives who stay away from alcohol and drugs choose family over peer activities. A strong self-image grew from family and cultural ties.

Tribal strength is the power of villages to control alcohol and drug abuse locally. TCC has consistently supported the right of village councils to establish liquor ordinances and the authority of tribal courts to enforce them. Such local control is more appropriate and effective than the state law enforcement and court systems.

Underlying TCC's regionwide effort is a reliance on traditional Athabaskan values and the conviction that the people themselves can win this war through their families and their communities. TCC's plan also includes providing information in schools and supporting students who avoid drugs. Professional counselors and volunteer workers in the villages have organized response teams to attack the problem locally. And a new TCC-sponsored facility near Fairbanks is being developed as a regional training center to serve people referred from the jails and substance abuse treatment centers.

All these plans indicate a determination to treat the problem locally rather than relying on outside professionals who do not understand tribal strength or Athabaskan values. Elders can be a leading group in teaching pride in the Native heritage. Denakkanaaga, the regional elders group, works year around to promote the traditions the Athabaskan people have valued for generations. Among them are sharing with the community and caring for those who need help. These values lead to the strong self-image and family ties that are so important in preventing drug and alcohol abuse.

Winning the war against alcohol and drugs must involve all parts of the community, from individuals themselves to village councils, leaders, elders and chiefs. As Phil Lane told those assembled at the TCC convention, "Tribalism is one mind and heart and many bodies."

Pride in culture is at the center of Native life. Tribes throughout the TCC region are working to defeat alcohol and drug abuse themselves rather than waiting for government agencies to do it for them. The rewards for winning are tribal strength and self-sufficiency.

*Looking forward to seeing you at the Elder Conference in Northway  
JWE 2-3-4  
57*



# Bethel Police Department

P. O. BOX 388 | BETHEL, ALASKA 99559

April 1, 1987

Senator John Binkley  
P.O. Box V  
Juneau, Alaska 99811

REF: Senate Bill 51

Dear Senator Binkley:

Sale of Liquor Without a License, commonly called "bootlegging", is a very serious problem for the Yukon-Kuskokwim region. Bootlegging certainly plays a major role in criminal activity and life-threatening situations in this area.

In 1985, Bethel police officers responded to approximately 11,000 calls for assistance. These calls ranged from curfew violations to homicides. I can safely say that approximately 95% of the crime-related calls and investigations were alcohol-related. Approximately 1,100 people were incarcerated at the state jail in Bethel for "protective custody" during this same period, simply for being incapacitated by alcohol in a public place.

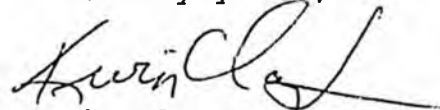
The question is always asked, "where does all the alcohol come from-Bethel's supposed to be a dry town"? Well, the answer to that question is simple, the majority of alcohol involved in criminal activity as well as care for protective custodies is bootleg liquor. Unfortunately, the penalty for selling liquor without a license is certainly no deterrent. The money made (and to be made) bootlegging far outweighs the cost to the bootlegger of a misdemeanor conviction. In studying the sentencing for bootleggers, one learns quickly that a misdemeanor is more of an inconvenience than punishment. Bootlegging is a "business" for many people in this small town, and a lucrative one, at that. The misdemeanor penalty for bootlegging makes it extremely frustrating for the police officers who are required to spend many man-hours and considerable funds developing and producing strong, prosecutable S.O.L.W.O.L. cases, and for the District Attorney who must also spend considerable time and money taking the case to court, the end result usually being a minor fine and a possible day or two in jail, or in some cases, an "SIS" (Suspended Imposition of Sentence). An SIS means that the second time around, when the conviction should result in a felony, the defendant is again only facing a misdemeanor because the first offense has been forgiven.

PAGE 2

I feel that a misdemeanor conviction for a first time bootlegger is not at all a sufficient deterrent. I strongly support Senate Bill 51, and Senator Binkley's efforts to help reduce this criminal activity.

If there are any further questions, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Kevin Clayton".

Kevin Clayton  
Chief of Police

**TANANA CHIEFS CONFERENCE, INC.**  
**Board of Directors**

Resolution No. 87-1

**Supporting Native Elders in Their Fight Against Alcohol and Drugs**

- WHEREAS, there are many problems which threaten our survival as a Native people, but none have such a devastating impact on our villages and families as does the problem of alcohol and drug abuse; and
- WHEREAS, the use of alcohol and drugs offers nothing to our Native villages but broken spirits, broken families, pain, grief, suffering and death; and
- WHEREAS, the use of alcohol and drugs never has been and never will be of any value to our Native culture and Native people; and
- WHEREAS, since its introduction from other cultures, Native elders have warned their villages that alcohol and drugs are the greatest threat to health, life and cultural values; and
- WHEREAS, as the keepers and teachers of Native culture, the elders of today speak stronger than ever against alcohol and drugs and have committed themselves to bring their message against alcohol and drugs to their villages; and
- NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference Board of Directors that Governor Steve Cowper and every Alaska State legislature and member of Alaska's delegation in Congress support the efforts of the Interior villages in their fight against alcohol and drug abuse; and
- BE IT FURTHER RESOLVED that the Tanana Chiefs Conference Board of Directors direct TCC to pursue state, federal, local, and private sector funding to institute comprehensive region wide alcohol and drug prevention programs utilizing elders, concerned village volunteers, village councils and youth in each village and that these concerned village teams be afforded training and ongoing support; and
- BE IT FURTHER RESOLVED that the Village Councils and village courts pass ordinances against alcohol and drugs and strictly enforce these ordinances through their village courts; and
- BE IT FURTHER RESOLVED to protect our children and families, Village Councils and courts strongly consider the use of traditional Native justice mechanisms and banish bootleggers and drug pushers from our village; and
- BE IT FURTHER RESOLVED each school in each village includes a comprehensive drug prevention to their curriculum and actively implement preventive education at every grade level; and
- BE IT FURTHER RESOLVED as an example to our children and to each other, no alcohol to be served at any TCC function from this day forward; and

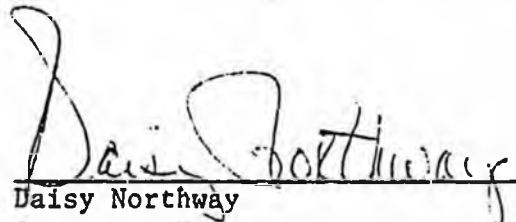
BE IT FURTHER RESOLVED any TCC employee determined to have a drug or alcohol problem be given the option to receive treatment or be immediately terminated from employment; and

BE IT FURTHER RESOLVED each Native person of strong body and mind lend their hand to help their elders and village leaders in this, their most serious task ; and

BE IT FURTHER RESOLVED for the spiritual well being of our children and families and for the survival and strengthening of our villages, from this day forward, let it be known that the elders of the Athabascan Nation have declared war on all those who are associated with alcohol and drug abuse.

C E R T I F I C A T I O N

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 19, 1987 at Fairbanks, Alaska and a quorum was duly established.



Daisy Northway  
Secretary-Treasurer  
Tanana Chiefs Conference, Inc.

Submitted by: Elder Delegates

Introduced: 1/19/87  
Referred: State Affairs, Health, Education  
and Social Services, Judiciary  
and Finance

5-0155A

1 IN THE SENATE

BY BINKLEY

2

SENATE BILL NO. 51

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.

SENATE COMMITTEE REPORT

FURTHER:

FINANCE

3/16/87

DATE TURNED INTO OFFICE \_\_\_\_\_

Mr. President:

JUDICIARY

Committee considered SB 51

~~relating~~ to alcohol.

and recommended:

[ ] replace with CS FOR \_\_\_\_\_ ) [ ] same title  
[ ] or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ ) [ ] new title

[ ] attached amendment(s) and

*majority* do pass

[ ] do not pass

[ ] no recommendation

individual recommendations

[ ] further referral to \_\_\_\_\_

[ ] letter of intent adopted \_\_\_\_\_

Committee [ ] attached or [ ] adopted fiscal note(s)

[ ] new [ ] updated or [  ] previous  
[  ] zero [ ] fiscal impact *++*

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*Walt Roney*  
*Jim Jordan*  
*Artis Fungels*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Walt Roney* Do pass  
Chairman signature and recommendation

[ ] Committee Backup Attached

SENATE COMMITTEE REPORT

FURTHER:

JUDICIARY  
FINANCE

2/26/87

DATE TURNED INTO OFFICE 3/13/87

Mr. President:

HESS

Committee considered SB 51

relating to alcohol.

and recommended:

replace with CS FOR \_\_\_\_\_ )  same title  
 or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ )  new title

attached amendment(s) and

<sup>majority</sup> do pass

do not pass

no recommendation

individual recommendations

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

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Rich. Hoffer  
J. Kottal  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Paul Frick Do Pass  
Chairman signature and recommendation

Committee Backup Attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 18 FEB 1987 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

\*\*FISCAL NOTE(S) ATTACHED 4 \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

FURTHER: HESS  
JUDICIARY  
FINANCE

1/19/87

DATE TURNED INTO OFFICE 2.25.87

Mr. President:

STATE AFFAIRS Committee considered SB 51

relating to alcohol.

and recommended:

- replace with CS \_\_\_\_\_  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)  
4-  zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*Rich Uehling*  
 \_\_\_\_\_  
*Joe Josephson*  
 \_\_\_\_\_  
*William T. Hendry*  
 \_\_\_\_\_  
*Jan Fark*  
 \_\_\_\_\_  
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 \_\_\_\_\_

*Rich Uehling*  
 \_\_\_\_\_  
 Chairman signature and recommendation

Committee Backup Attached