

SB

51

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 10 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 recommendation:

further referral to _____

letter of intent adopted and attached

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

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Ruth Kelly

Joe Josephson

William L. Hendry

Jan Fark

Ruth Kelly

 Chairman signature and recommendation

Committee Backup Attached

Senator Johne Binkley

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



Finance Committee
Co-Chairman

MEMORANDUM

February 24, 1987

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Senator Johne Binkley *Johne*

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. This bill would raise the penalty to a Class C Felony.

Senate Bill 51 repeals and reenacts AS 04.16.200(b) to provide that a bootlegger in a local option area is, upon conviction, guilty of 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
 - 24 liters or more of wine
 - 45 liters or more of malt beverages

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

Senator Mitch Abood
February 24, 1987
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Penalties

A Class A Misdemeanor carries a maximum jail term of one year and a fine of up to \$1,000.

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-

volved 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), 661 P.2d 1102 (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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 51
Publish Date: _____

REQUEST _____

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 *Patrick L. Sharrock*
Division: ABC Board

Phone: 277-8638
Date: 2/13/87

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

Date: 2/13/87

Distribution (by Agency preparing fiscal note):

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

**STATE OF ALASKA 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 | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|----------------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|----------------|---|---|---|---|---|---|

| | | | | | | |
|----------------|---|---|---|---|---|---|
| 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 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. Ladwig

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

FEB 16 1987

REQUEST: _____

Bill Version: SB 51
Publish Date: _____

Revision Date: _____
Title: "An Act relating to alcohol."

Agency Affected: Department of Law
BRU: Prosecution

Sponsor: Sen. Binkley
Requestor: Sen. Binkley

Components: All

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, Director Phone: 465-3672
 Division: Administrative Services Date: Feb. 12, 1987
 Approved by Commissioner: Richard I. Pegues / RSP
Grace Berg Schauble 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.

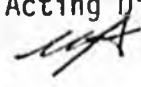
Although this change will require some additional work on our part, preparing these cases for grand jury, this addition does not warrant fiscal note costs because of the small number of cases involved. Our estimate assumes that the same enforcement pattern will continue. However, if police agencies substantially 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.

BILL NO: SB 51

DATE: 1/26/87

TITLE: "An Act relating to alcohol."

CONTACT: Maj. Walter J. Gilmour
Acting Director



POSTAL TELEGRAPH
DEPARTMENT OF PUBLIC SAFETY

The Division of Alaska State Troopers supports passage of this legislation.

This legislation changes the current statute to reflect a concern over continuing violations over local option laws by making violators subject to a class C felony, regardless of previous convictions or age of the perpetrator.

Although no additional enforcement effort is anticipated as a result of the passage of this legislation, it will provide a stronger disincentive to violate the local option elections.



WILLIAM R. NIX
Acting Commissioner

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 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

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. Nix *W.R.N.*
Agency: Public Safety
Distribution (by preparer):

Date: 1/26/87 *1/30/87*

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