

**S B**

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# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 3/12/97

FURTHER: Finance

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 5-2-98

Judiciary Committee considered

SENATE BILL NO. 138

"An Act relating to regulation of alcoholic beverages; relating to alcoholic beverage licenses and to regulation of alcoholic beverage licensees; relating to liability of a person who provides alcoholic beverages; and providing for an effective date."

and recommends:

- be replaced with CS FOR SB 138 (JUD)
- adopt previous CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Ch. Ellis</i>	<input checked="" type="checkbox"/>	<i>Mike Miller</i>	<input checked="" type="checkbox"/>		
<i>JJ</i>		<i>Keane</i>			<input checked="" type="checkbox"/>
		<i>Alan Farrell</i>	<input checked="" type="checkbox"/>		
<b>CHAIR:</b> <i>Christine Taylor</i>	<input checked="" type="checkbox"/>	<b>CHAIR:</b>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
<i>REVENUE - ABCB</i>	<i>4-28-98</i>	<input checked="" type="checkbox"/>	

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 138

#1  
ADOPTED

1 Page 6, following line 30:

2 Insert new bill sections to read:

3 **\*\* Sec. 15.** AS 04.16.170(b) is amended to read:

4 (b) A person transporting alcoholic beverages into the state may not sell those  
5 alcoholic beverages [TO A PERSON NOT LICENSED UNDER THIS TITLE,] unless  
6 the alcoholic beverages are sold to a person licensed under AS 04.11.160 or are  
7 used for religious, industrial, pharmaceutical, or medical purposes.

8 **\* Sec. 16.** AS 04.16.170 is amended by adding new subsections to read:

9 (c) If the director determines that a person has violated (b) of this section, the  
10 director shall by certified mail order the person to cease and desist further violations.  
11 If a person receiving the notice to cease and desist does not, within 30 days after  
12 receiving the notice, produce evidence that the applicable alcoholic beverage tax  
13 imposed under AS 43.60 has been paid, it shall be presumed that the person has  
14 violated (b) of this section. This subsection does not apply to a person who holds a  
15 permit issued by the Federal Bureau of Alcohol, Tobacco and Firearms authorizing  
16 interstate shipment of alcoholic beverages.

17 (d) If the director determines that a person holding a permit issued by the  
18 Federal Bureau of Alcohol, Tobacco and Firearms authorizing interstate shipment of  
19 alcoholic beverages has violated (b) of this section, the director shall notify the  
20 Federal Bureau of Alcohol, Tobacco and Firearms of the violation by certified mail  
21 and request the bureau to take appropriate action."

22 Renumber the following bill sections accordingly.

23 Page 7, line 12:

1 Delete "sec. 17"

2 Insert "sec. 19"

A M E N D M E N T

#12  
NOT ADOPTED

OFFERED IN THE SENATE  
TO: SB 138

1 Page 3, following line 9:

2 Insert a new bill section to read:

3 **\*\* Sec. 4.** AS 04.11.100(g) is amended to read:

4 (g) A restaurant or eating place licensee

5 (1) operating under a license issued under (f) of this section shall offer  
6 a full-service menu of food items available to the public during all times that beer or  
7 wine is served or consumed; the menu must be approved by the board;

8 (2) may only provide entertainment on the licensed premises between  
9 the hours of 6:00 p.m. [3:00 P.M.] and 9:00 p.m. [11:00 p.m. UNLESS APPROVED  
10 BY THE DIRECTOR AFTER WRITTEN REQUEST BY THE LICENSEE FOR A  
11 SPECIFIC OCCASION]; in this paragraph, "entertainment" includes dancing, karaoke,  
12 live performances, or similar activities, but does not include recorded or broadcast  
13 performances without live participation."

14 Renumber the following bill sections accordingly.

15 Page 3, line 12, following "license":

16 Insert ", if the restaurant or eating place license was issued before October 1,  
17 1996."

18 Page 5, following line 22:

19 Insert a new bill section to read:

20 **\*\* Sec. 10.** AS 04.11.340 is amended by adding a new paragraph to read:

21 (10) the license was issued under AS 04.11.135 to a holder of a  
22 restaurant or eating place license."

1 Renumber the following bill sections accordingly.

2 Page 7, line 11:

3 Delete "Section 12"

4 Insert "Section 14"

5 Page 7, line 12:

6 Delete "sec. 17"

7 Insert "sec. 19"

0-LS0773VE.5  
Ford  
5/1/98

AMENDMENT #3

ADOPTED

OFFERED IN THE HOUSE  
TO: SB 138

1 Page 6, following line 4:

2 \*\* Sec. 11. AS 04.11.400(d) is amended to read:

3 (d) The board may approve the issuance or transfer of ownership of a  
4 beverage dispensary or restaurant or eating place license without regard to (a) of this  
5 section if it appears that the issuance or transfer will encourage the tourist trade by  
6 encouraging the construction or improvement of

7 (1) a hotel, motel, resort, or similar business relating to the tourist  
8 trade with a dining facility or having kitchen facilities in a majority of its rental rooms  
9 and at least a minimum number of rental rooms required according to the population  
10 of or number of existing beverage dispensary or club licenses in the established  
11 village, incorporated city, unified municipality, or population area established under  
12 (a) of this section in which the facility will be located, as follows:

- 13 (A) 10 rental rooms if the population is less than 1,501;
- 14 (B) 20 rental rooms if the population is 1,501 - 2,500;
- 15 (C) 25 rental rooms if the population is 2,501 - 5,000;
- 16 (D) 30 rental rooms if the population is 5,001 - 15,000;
- 17 (E) 35 rental rooms if the population is 15,001 - 25,000;
- 18 (F) 40 rental rooms if the population is 25,001 - 50,000; and
- 19 (G) 50 rental rooms if the population is greater than 50,000;

20 and

21 (H) 35 rental rooms if the total number of existing beverage  
22 dispensary or club licenses in the established village, incorporated city,  
23 unified municipality, or population area is greater than four times the  
24 number of beverage dispensary licenses that is allowed under (a) of this  
25 section; or

0-LS0773VE.5

1 (2) an airport terminal."

2 Renumber the following bill sections accordingly.

3 Page 7, line 11:

4 Delete "Section 12"

5 Insert "Section 13"

6 Page 7, line 12:

7 Delete "sec. 17"

8 Insert "sec. 18"

0-LS0773VE.6  
Ford  
5/1/98

A M E N D M E N T

#4  
ADOPTED

OFFERED IN THE HOUSE

TO: SB 138

1 Page 6, lines 17 - 22:

2 Delete "[THE PROHIBITION AGAINST ISSUANCE OF A RESTAURANT OR  
3 EATING PLACE LICENSE IMPOSED UNDER THIS SUBSECTION DOES NOT APPLY  
4 TO A RESTAURANT OR EATING PLACE LICENSE ISSUED ON OR BEFORE  
5 OCTOBER 1, 1996 OR A RESTAURANT OR EATING PLACE LICENSE ISSUED  
6 UNDER AN APPLICATION FOR A RESTAURANT OR EATING PLACE LICENSE  
7 APPROVED ON OR BEFORE OCTOBER 1, 1996]"

8 Insert "The prohibition against issuance of a restaurant or eating place license imposed  
9 under this subsection does not apply to a restaurant or eating place license issued on or before  
10 October 1, 1996, or a restaurant or eating place license issued under an application for a  
11 restaurant or eating place license approved on or before October 1, 1996."

ALSO - DELETED SECTION 15 - ADOPTED

Revision Date: April 28, 1998 Dept. Affected: Revenue  
 Title: Regulation of Alcohol BRU: Alcoholic Beverage Control Board  
 Component: Alcoholic Beverage Control Board  
 Sponsor: (S) FIN  
 Requestor: (S) JUD COMPONENT SERIAL NO. 100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1001 CBRF						
1048 University of AK receipts						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year cost \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

This legislation represents priority changes recommended by the Alcoholic Beverage Control Board (ABC).  
 There is no fiscal impact on ABC's program operating budget.

Prepared by: Doug Griffin, Director  
 Division: Alcoholic Beverage Control Board  
 Approved by Commissioner: Wilson L. Condon  
 Agency: Revenue

Phone: 277-8638  
 Date: April 28, 1998  
 Date: April 28, 1998

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# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF REVENUE

550 W. 7TH AVENUE, STE. 350

### ALCOHOLIC BEVERAGE CONTROL BOARD

Anchorage, Alaska 99501-6698

Phone 907-277-8638

FAX: 907-272-9412

March 18, 1997

Senator Honorable Robin Taylor  
Chairman, Senate Judiciary Committee  
State Capitol  
Juneau, Alaska 99801-1182

**FAXED**  
3-19-97

RE: SB 138

Dear Senator Taylor:

The Senate Finance Committee introduced SB 138 at the request of the Alcoholic Beverage Control Board and its initial referral is to the Senate Judiciary Committee. This letter briefly explains the need for the bill.

This legislation amends Title 4 of Alaska Statutes to accomplish four different purposes: (1) to clarify that "bootleggers" have no civil liability immunity; (2) to clarify what is required of a limited liability company that applies for or holds a liquor license; (3) to modify the brewpub provision and other provisions of the statute to allow restaurant or eating place liquor licensees as well as beverage dispensary licensees to operate as brewpubs; and (4) to modify the package store license statutes to allow package stores to make deliveries for weddings and other types of social gatherings and to allow package stores to deliver wine or champagne with a floral arrangement gift basket to a hotel or cruise ship guest.

**First**, this bill clarifies that while social hosts continue to have immunity for civil liability for serving alcoholic beverages, those who illegally traffic in alcoholic beverages will not be afforded that immunity. A case decided by the Alaska Supreme Court in 1996, *Chokwok v. Worley*, 912 P.2d 1248 (Alaska 1996), upheld civil immunity for social hosts even when serving minors. Section 15 of this bill makes it clear that "bootleggers" would not have the same civil liability immunity as the social host. This bill would amend the social host immunity provision at AS 04.21.02. to specifically hold "bootleggers" liable for injuries resulting from the intoxication of someone to whom they illegally sell or provide alcoholic beverages. Representative Ivan and other representatives introduced a similar provision this session as HB 22. House Bill 22, in amended form, has passed the House and was recently heard by your committee.

**Second**, this bill clarifies (in Sections 1,2,3,8,10,11,13, and 16) what is required of a limited liability company (LLC) applying or holding a liquor license in Alaska. Although a new chapter to Title 10 (AS 10.50.010-10.50.995) was enacted in 1994 to establish limited liability companies in Alaska, the new law did not address liquor license application procedures or reporting requirements under Title 4 merely because the entity is an LLC. This bill would impose the same requirements on LLC's as are now set out for corporations under Title 4. There is nothing in the legislative history of AS 10.50 that would suggest that there was any intent to allow an LLC to escape the responsibilities and obligations imposed on a liquor licensee in Alaska under Title 4. Hence, that is stated in this bill in Section 16.

**Third**, this proposed legislation amends the brewpub statute to allow for growth in Alaska of businesses wishing to manufacture beer and ale as part of a bona fide restaurant operation. There is a national trend of growth

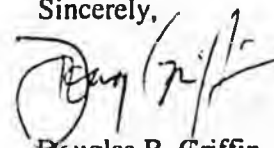
in small batch craft breweries and often they are associated with a restaurant. In Alaska, a restaurant selling beer and wine could only be licensed to engage in this type of business if it also became licensed as a brewery. In 1996, with the passage of HB 372, the Legislature prohibited the restaurant/brewery combination and directed the Alcoholic Beverage Control Board to hold public hearings to determine if and how brewpubs should be licensed and regulated in Alaska. The ABC Board held a series of public meetings that were well attended. And many people in the hospitality industry testified on how brewpubs should be addressed under Alaska's beverage alcohol laws. The brewpub portion found in Sections 4,5,9,12,14, and 17 of this bill represents the product of this public process.

This bill continues the prohibition of co-owning a restaurant and brewery and instead allows a restaurant licensee to obtain a brewpub permit under AS 04.11.135. Presently, only beverage dispensary licensees may have a brewpub license. The bill attempts to preserve to the greatest extent possible the proven three tier for manufacture, wholesale distribution, and retail sales of alcoholic beverages. It does this by taking restaurants out of the brewery business, limiting brewpub production to 75,000 gallons a year (unless a waiver is granted by the ABC Board), requiring brewpub beer not sold on premises to be distributed through wholesalers, and prohibiting the sale of up to five gallons of beer per person per day from brewpubs for off premise consumption. The bill eliminates the "grandfathered" restaurant/brewery businesses and provides additional time for them to "convert" their licenses to the more appropriate restaurant/brewpub license. The ABC Board believes that this proposal strikes the right balance between flexibility for this new manufacturing industry and a clear and orderly regulatory framework to protect the public.

**Fourth**, this bill would allow package stores to make deliveries of a certain type in a very controlled manner. Package stores would be allowed to deliver a bottle or two of wine as part of gift basket to tour ships and hotels. During normal business hours the package store could deliver alcohol that has already been paid for to the site of weddings, wedding receptions, or other special occasions. Again, the ABC Board has attempted to allow this benefit to businesses and the consumer to be tempered with conditions and requirements that will protect the public safety and welfare from abuse or inappropriate use of alcoholic beverages.

I hope that the Legislature will give this important proposal its full consideration. I will be happy to answer any questions you have on this proposal.

Sincerely,



Douglas B. Griffin  
Director

cc: Governors Office, Legislative Liaison  
Senate Finance Committee

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OFFERED IN THE SENATE

TO: SB 138

*NOT OFFERED*  
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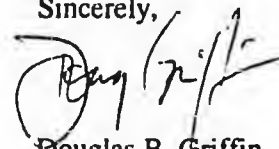
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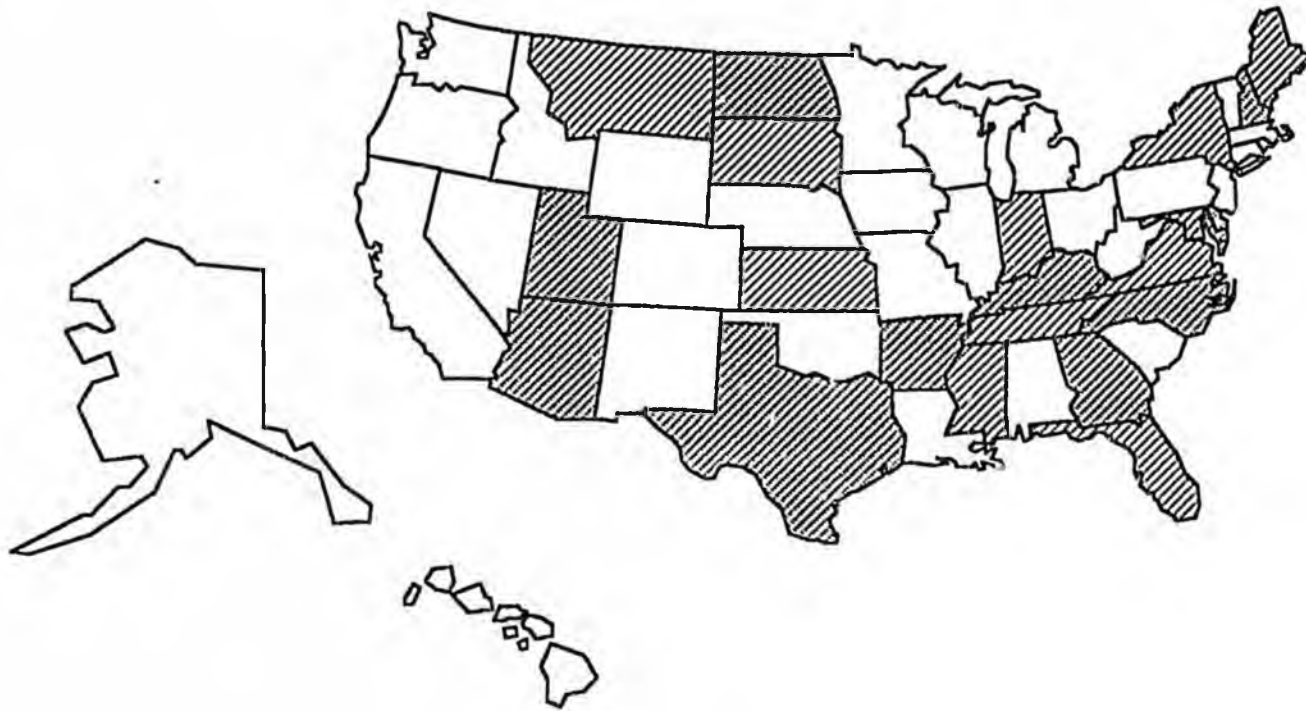


Douglas B. Griffin  
Director

cc: Governors Office, Legislative Liaison  
Senate Finance Committee

Americans for Responsible Alcohol Access

## Twenty-One States Prohibit Direct Shipping



Arizona, Arkansas, Delaware, Florida, Georgia, Indiana, Kansas, Kentucky, Maine, Maryland, Mississippi, Montana, New Hampshire, New York, North Carolina, North Dakota, South Dakota, Tennessee, Texas, Utah and Virginia

Source: National Conference of State Legislators, October/November 1997

# Americans for Responsible Alcohol Access

818 Connecticut Ave., NW / 2<sup>nd</sup> Floor / Washington, DC 20006 / Toll-free (888) 660-ARAA / DC (202) 216-9300 / araa@his.com

## Americans for Responsible Alcohol Access

### Members and Supporters

December 1997

#### *Members*

##### *Honorary National Chairman*

The Honorable Dennis C. Vacco  
Attorney General, State of New York

SADD (Students Against Destructive Decisions)

American Trauma Society

Emergency Nurses Association

National Association of Governors' Highway Safety Representatives (NAGHSR)

American Coalition for Traffic Safety

National Licensed Beverage Association

Emergency Nurses CARE (ENCARE)

National Association of Beverage Retailers

National Beer Wholesalers Association

National Association of Alcoholism & Drug Abuse Counselors

Virginia Alcoholic Beverage Control Board

Wine & Spirits Wholesalers of America

American Association of Motor Vehicle Administrators

Campaign for Alcohol Free Kids, Inc.

Coalitions for America

#### *Supporters*

National Highway Traffic Safety Administration (NHTSA)

Mothers Against Drunk Driving (MADD)



DENNIS C. VACCO  
Attorney General

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

December 12, 1997

Hon. James E. Doyle  
National Association of Attorneys General, President  
Attorney General of Wisconsin  
State Capitol  
P.O. Box 7857, Suite 114 East  
Madison, Wisconsin 53707-7857

Dear Attorney General Doyle:

I am writing to ask you to join me in a common sense effort to promote public safety by stopping the practice of direct shipping of beer, wine and liquor because this practice makes it easier for those under age to obtain these beverages.

What started many years ago as a cottage industry to provide connoisseurs with small quantities of micro-brew beer and wines from small vintners, has burgeoned into a *billion dollar-a-year* enterprise that is marketing beer, wine and liquor over the Internet and through toll-free telephone ordering services.

These direct-marketers cleverly play on the American love of convenience to argue for the free trade in alcohol beverages. But what they fail to mention is that direct shipping enables them to reap larger profits because they bypass the wholesale and retail control system and, in many cases, escape state taxation as well.

What's really at issue is something very fundamental -- the responsible, lawful control of and access to alcohol beverages. How far are we going to go to allow technology and expediency to usurp safeguards against underage access and state revenues?

In New York, we are going to take a very firm stand against this illegal activity because it is wrong on a number of fronts, not the least of which that it puts young people at greater risk.

At a time when alcohol abuse is rampant on college campuses, and alcohol-related traffic fatalities involving teenagers are up 5 percent, bucking the downward trend for the general population, the last thing state leaders should do is make it easier for young people to acquire alcohol.

Recently I was asked to serve as honorary national chairman of Americans for Responsible Alcohol Access (ARAA), an organization comprised of a number of prominent national safety organizations that are concerned about how direct shipping facilitates underage access to alcohol beverages.

Today, I am participating in a national news conference to document for the first time just how easy it is for the underage to acquire alcoholic beverages via the Internet and toll-free direct ordering.

Direct alcohol shippers like to argue that the underage access issue is a "red herring." I disagree. As part of ongoing efforts to discourage direct shipping of alcohol into New York, my office has conducted a series of sting operations, each of which documented receipt of the alcohol shipment by someone under age 21, no questions asked.

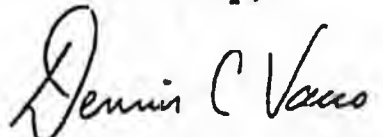
At the news conference, I showed videotape of one such sting and announced enforcement action against those involved.

I also released the results of a new national survey conducted for ARAA by Wirthlin Worldwide, a well-known and respected polling firm, that found that the American people overwhelmingly oppose the direct, uncontrolled shipping of alcohol beverages outside the licensed system.

Fully 85 percent agree that the sale of alcohol beverages over the Internet or through the mail should not be allowed because it would give minors easier access and could result in more abuse. They do not object to the Internet or toll-free phones as a means of placing an order, but they want the merchandise to be delivered through the licensed system, not to the doorstep. Sixty-four percent were concerned about the issue of revenue lost to states by direct shipping and recognized that revenue lost would need to be made up in other taxes for in-state residents.

I urge you to review your state laws and policies on this issue in the interest of ensuring that they are consistent with ensuring that young people do not access alcohol, a product that many years ago all states decided wisely to control and track in the interest of public health and safety.

Sincerely,



DENNIS C. VACCO  
ATTORNEY GENERAL

# The Washington Post

SATURDAY, DECEMBER 13, 1997

## Online Beer, Wine Ads Gain Teens' Attention

*Critics Call Direct-to-Home Sales Too Easy*

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By Beth Berselli  
Washington Post Staff Writer

---

Log on to the World Wide Web and pull up the site for Beer Across America, a Chicago-based beer-of-the-month club. There, you can order a six-pack of the club's featured beer, Neptune 66, a pale ale billed as "rich and full-bodied" with "a pleasantly bitter finish."

Hop to another site, the Best Buy Wine Club, and you'll find an \$89.95 bottle of an old-style California chardonnay, which has "a vivacious, crisp, well-delineated personality." Punch in your credit card number and a shipping address, and mark a box indicating you're older than 21, and within a few weeks the wine will be delivered to your doorstep.

While many customers appreciate the convenience of these direct-to-

home deliveries, some groups have begun a campaign against these cyber sales as being *too* convenient, saying the Internet makes alcohol too available to underage drinkers.

These critics railed against the "direct shippers" at a news conference in Washington yesterday. A newly formed coalition, Americans for Responsible Alcohol Access, outlined its opposition to what it calls the business of "cyberbooze."

"These Internet bootleggers routinely ignore state laws, making no attempt to determine if purchasers are of legal age," said New York State Attorney General Dennis C. Vacco, the coalition's honorary chairman. "As a result, teenagers who can't legally buy a can of beer at the corner store can get virtually any type of

See ADS, F2, Col. 1

# Online Direct-to-Home Sales of Alcohol Targeted by Teens

ADS, From F1

alcoholic beverage delivered right to their doorstep." He added that teenagers are among the most prolific Internet users and are likely to be home alone in the afternoon when deliveries are made.

At the press conference, Vacco showed footage of a recent sting operation conducted by his office, which uncovered 12 wine and liquor distributors that delivered alcohol to minors, Vacco said, with "no questions asked, no ID checked." Vacco said he is seeking civil charges against the companies as well as three delivery companies, United Parcel Service, FedEx and Airborne Express.

However, operators of beer and wine of the month clubs, many of which take orders over the Internet, dispute the characterizations. They say they police their sales, asking customers if they're 21 when they place the order and requiring them to show identification when the products are delivered. Most of the dozens of Web sites operating include warnings that underage drinkers cannot place or receive orders.

Furthermore, they say teenagers aren't likely to be among their customers. "No kid is going to want to buy a \$50 bottle of wine out of Napa Valley," said Todd Holmes, co-owner



A videotape of the sting by New York Attorney General Dennis Vacco shows a 19-year-old opening an alcohol order placed over the Internet.

of Beer Across America and International Wine Cellars, a company targeted by Vacco.

Another deterrent for teens, Holmes said, is that "there's no immediate gratification at all. What kid in their right mind would ever wait a month for a 12-pack of expensive beers to be delivered, to their parents' home? It's a joke."

The clubs said their target customer is usually older than 35 and has an annual income of at least \$50,000.

Underlying this debate, though, is the complex relationship between direct shippers, such as the beer and wine clubs, and alcohol wholesalers.

The U.S. alcohol industry operates in what's known as a "three-tier system" including producers, wholesal-

ers and retailers. In most states, only licensed wholesalers are permitted to distribute alcohol, and only to licensed retailers and restaurants. Through this system, states collect sales and excise taxes and enforce the legal drinking age.

The wine and beer clubs, which usually are licensed retailers in the states where they're located, say the wholesalers are using the underage drinking issue as an excuse to protect their own interests—and profits. They say the wholesalers don't want a wine club in California to ship their products to a customer who lives in say, Vermont, thereby leaving the wholesaler in that state out of the transaction.

"They're concerned about us for one reason and one reason only—it bypasses them," said Jim Lowe, owner of Hog's Head Beer Cellars, a Greensboro, N.C., beer club. "They can't go to the state and say, 'We're not getting our cut,' so they say, 'Look how easy it is for minors to get it.'"

Indeed, Americans for Responsible Alcohol Access acknowledges that it is funded by the Wine & Spirits Wholesalers of America, a national trade group. The coalition also includes the National Beer Wholesalers Association, as well as several safety groups such as Students Against De-

structive Decisions and the Emergency Nurses Association.

The wholesalers say they oppose direct selling of alcohol because it threatens the three-tier system, which was set up after Prohibition to ensure that states got their taxes and underage drinking laws were followed. They said up to \$100 million in state taxes are lost every year because of the direct sales.

Even alcohol awareness groups agree that direct shippers jeopardize the controls imposed by state and federal policies.

"This undoes the entire fabric of our social policy on alcohol control," said David L. Rosenbloom, director of Join Together, a Boston-based organization that helps community groups fight drug and alcohol abuse.

He and other opponents said they don't believe the clubs' claims of policing. "The notion that they're checking for ID is self-serving nonsense," he said. "It just doesn't happen; the deliveries are left at front doors."

## FOR MORE INFORMATION

For a list of the liquor distributors facing civil charges from the New York State Attorney General's Office, click on the above symbol on the front page of The Post's Web site at <http://www.washingtonpost.com>

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF REVENUE

### ALCOHOLIC BEVERAGE CONTROL BOARD

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March 18, 1997

Senator Honorable Robin Taylor  
Chairman, Senate Judiciary Committee  
State Capitol  
Juneau, Alaska 99801-1182

**FAXED**  
3-19-97

**RE: SB 138**

Dear Senator Taylor:

The Senate Finance Committee introduced SB 138 at the request of the Alcoholic Beverage Control Board and its initial referral is to the Senate Judiciary Committee. This letter briefly explains the need for the bill.

This legislation amends Title 4 of Alaska Statutes to accomplish four different purposes: (1) to clarify that "bootleggers" have no civil liability immunity; (2) to clarify what is required of a limited liability company that applies for or holds a liquor license; (3) to modify the brewpub provision and other provisions of the statute to allow restaurant or eating place liquor licensees as well as beverage dispensary licensees to operate as brewpubs; and (4) to modify the package store license statutes to allow package stores to make deliveries for weddings and other types of social gatherings and to allow package stores to deliver wine or champagne with a floral arrangement gift basket to a hotel or cruise ship guest.

**First**, this bill clarifies that while social hosts continue to have immunity for civil liability for serving alcoholic beverages, those who illegally traffic in alcoholic beverages will not be afforded that immunity. A case decided by the Alaska Supreme Court in 1996, **Chokwok v. Worley**, 912 P.2d 1248 (Alaska 1996), upheld civil immunity for social hosts even when serving minors. Section 15 of this bill makes it clear that "bootleggers" would not have the same civil liability immunity as the social host. This bill would amend the social host immunity provision at AS 04.21.02. to specifically hold "bootleggers" liable for injuries resulting from the intoxication of someone to whom they illegally sell or provide alcoholic beverages. Representative Ivan and other representatives introduced a similar provision this session as HB 22. House Bill 22, in amended form, has passed the House and was recently heard by your committee.

**Second**, this bill clarifies (in Sections 1,2,3,8,10,11,13, and 16) what is required of a limited liability company (LLC) applying or holding a liquor license in Alaska. Although a new chapter to Title 10 (AS 10.50.010-10.50.995) was enacted in 1994 to establish limited liability companies in Alaska, the new law did not address liquor license application procedures or reporting requirements under Title 4 merely because the entity is an LLC. This bill would impose the same requirements on LLC's as are now set out for corporations under Title 4. There is nothing in the legislative history of AS 10.50 that would suggest that there was any intent to allow an LLC to escape the responsibilities and obligations imposed on a liquor licensee in Alaska under Title 4. Hence, that is stated in this bill in Section 16.

**Third**, this proposed legislation amends the brewpub statute to allow for growth in Alaska of businesses wishing to manufacture beer and ale as part of a bona fide restaurant operation. There is a national trend of growth

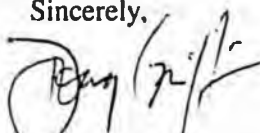
in small batch craft breweries and often they are associated with a restaurant. In Alaska, a restaurant selling beer and wine could only be licensed to engage in this type of business if it also became licensed as a brewery. In 1996, with the passage of HB 372, the Legislature prohibited the restaurant/brewery combination and directed the Alcoholic Beverage Control Board to hold public hearings to determine if and how brewpubs should be licensed and regulated in Alaska. The ABC Board held a series of public meetings that were well attended. And many people in the hospitality industry testified on how brewpubs should be addressed under Alaska's beverage alcohol laws. The brewpub portion found in Sections 4,5,9,12,14, and 17 of this bill represents the product of this public process.

This bill continues the prohibition of co-owning a restaurant and brewery and instead allows a restaurant licensee to obtain a brewpub permit under AS 04.11.135. Presently, only beverage dispensary licensees may have a brewpub license. The bill attempts to preserve to the greatest extent possible the proven three tier for manufacture, wholesale distribution, and retail sales of alcoholic beverages. It does this by taking restaurants out of the brewery business, limiting brewpub production to 75,000 gallons a year (unless a waiver is granted by the ABC Board), requiring brewpub beer not sold on premises to be distributed through wholesalers, and prohibiting the sale of up to five gallons of beer per person per day from brewpubs for off premise consumption. The bill eliminates the "grandfathered" restaurant/brewery businesses and provides additional time for them to "convert" their licenses to the more appropriate restaurant/brewpub license. The ABC Board believes that this proposal strikes the right balance between flexibility for this new manufacturing industry and a clear and orderly regulatory framework to protect the public.

**Fourth**, this bill would allow package stores to make deliveries of a certain type in a very controlled manner. Package stores would be allowed to deliver a bottle or two of wine as part of gift basket to tour ships and hotels. During normal business hours the package store could deliver alcohol that has already been paid for to the site of weddings, wedding receptions, or other special occasions. Again, the ABC Board has attempted to allow this benefit to businesses and the consumer to be tempered with conditions and requirements that will protect the public safety and welfare from abuse or inappropriate use of alcoholic beverages.

I hope that the Legislature will give this important proposal its full consideration. I will be happy to answer any questions you have on this proposal.

Sincerely,



Douglas B. Griffin  
Director

cc: Governors Office, Legislative Liaison  
Senate Finance Committee

## Fact Sheet: Underage Access Resulting From DIRECT SHIPPING OF ALCOHOLIC BEVERAGES

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### A Pandora's Box to Underage Access

Most Americans agree that direct shipping is a Pandora's Box to underage access. It's no secret that today's teenagers are savvy when it comes to acquiring alcohol. And direct shipment of alcohol to customers is an open invitation for youngsters to log on to the Internet, download "cyberliquor" or order via toll-free calls that don't show up on their parents' phone bill. A recent poll confirmed that most Americans believe this is a bad idea—85 percent believe "the sale of alcohol over the Internet or through the mail should not be allowed because it would give minors easier access to alcohol and could result in more abuse."<sup>1</sup>

### Alcohol-Related Teen Highway Fatalities On the Rise

At a time when alcohol-related teen highway fatalities are on the rise, *we should not be making it easier for teens to buy alcohol*. Ironically, direct shipping advocates say that concern about underage access to alcohol is a "red herring." Stings conducted by state officials from Colorado to New York prove that teens can readily obtain alcohol through the Internet and other direct shipping schemes. The facts point not to a "red herring," but should be a red flag for the public:

- Youth (ages 15-20) alcohol-related traffic fatalities increased by almost 5 percent in 1996. This is the first increase since 1990.<sup>2</sup>
- This increase bucks the alcohol trends: Alcohol-related traffic fatalities have been declining for many years among the general population and even among teens (down 50% over the past decade). There can be only one reason why alcohol-related teen traffic fatalities were up in 1996—more teens are getting access to alcohol and driving.
- Almost two out of five youth highway fatalities in 1996 involved alcohol. Young drivers were twice as likely as adult drivers to be involved in a fatal crash in 1996.
- In future years, demographics will place more teens at risk: By 2005, the youth population is expected to increase by 14 percent.
- More than half of high school seniors drank alcohol in 1996. Nearly a third were binge drinkers (five or more drinks in a row during the past two weeks)<sup>3</sup>

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<sup>1</sup> Source: Wirthlin Worldwide / November 1997

<sup>2</sup> Source: National Highway Traffic Safety Administration

## **Direct Shipping Removes Safeguards to Underage Access**

With direct shipping, teens don't have to worry about risks associated with purchasing from local outlets. No longer do they have to forge fake ID's and chance getting caught and arrested for buying alcohol at a store monitored by the police. All they have to do is dial a toll-free number or log on the Internet and mouse-click "Yes" to the question of whether they are of age. They can pay by credit card or even the new checking account debit cards which function much the same as a credit card. Indeed, most students go off to college these days with a credit card, yet most are not of legal drinking age until their junior year. Delivery truck drivers are not in the business of checking ID's – and in any case many direct shippers don't label their packages or intentionally list contents deceptively, such as "olive oil."

## **Direct Shipping Creates a Coast-to-Coast *Blood Border* for Underage Drinking**

Every state has set age 21 as the legal drinking age. This unity was intended to save lives by eliminating the former situation in the U.S. in which states had differing legal drinking ages. This created "blood borders" across which underage drinkers would drive to get access to alcohol. Passage of "21" laws in all states effectively eliminated the "blood borders." But Internet and toll-free direct shipment creates a new, *technological blood border* that touches every state.

## **Why Make It Easier for Young People to Acquire Alcoholic Beverages?**

The Internet was supposed to be an information superhighway...not a bootleggers bypass to easier alcohol access that detours around state and local regulations that encourage responsible control and usage of alcohol. Direct shippers say that kids cannot order alcohol on the Internet, but that's what was said about pornography. The truth is, you can get whatever you want on the Internet...without restriction. The Internet cannot verify age...and delivery truck drivers are not in the business of "carding" the recipients of packages they deliver.

## **America's View: Alcohol Is Different**

Most Americans don't regard beer, wine, and liquor in the same manner as other consumer products and don't think it should be sold in the same way. But those lobbying to legalize direct alcohol shipment to customers argue that ordering wine, beer, and liquor should be no different than ordering a garment from a clothing catalogue. A recent Wirthlin survey confirmed that they're out of step with most of America: Four out of five respondents believe "the sale and shipment of beer, wine, or liquor over the Internet or through the mail directly to consumers should not be allowed." Large majorities support the current licensed distribution system because, while not perfect, it does a relatively effective job of responsibly regulating alcohol and discouraging access to minors.

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<sup>1</sup> Source: National Institute on Drug Abuse

## **Direct Shippers Deliberately Confuse the Issue With False Arguments**

Supporters of direct shipping to consumers argue that kids aren't going to be ordering \$60 bottles of Chardonnay. That's true, but it's a false argument. Obviously, teenagers aren't going to order fine wine. Nor do they have to—virtually anything is available. Instead, they order lower-priced beer, wine, and liquor which also are available by direct shipment. Whether a \$60 bottle or \$4 bottle it's all ordered the same way and delivered the same way--right to the doorstep, often during after-school hours when parents are working. No wonder 85 percent of the American people oppose direct shipment because they know it makes it easier for underage access and abuse.

## **Wine Aficionados or Adolescents? "Reforms" Can't Tell the Difference**

"Reform" and "compromise" proposals pushed by the direct shipping lobby are fundamentally flawed because they rely on an honor system which cannot prevent shipments to minors and "dry" counties around the country. State agencies have neither the resources nor the authority to ensure that all shipped packages that might contain alcoholic beverages are not delivered to minors. The bottom line is that there is no way to devise a system of direct shipment to customer homes that effectively differentiates between connoisseurs and kids.

## **There is No Need for Direct Shipping**

Consumers in most states *already are able* to legally obtain brands not regularly available at their local outlets. Small producers have marketing and distribution vehicles such as Cellar Masters to get their brands to consumers through the existing licensed system. Also, wholesalers and retailers are willing to represent any of the brands of small producers that are being shipped illegally to consumers. But many direct-shippers are deliberately not cooperating because their goal is to dismantle the licensed alcohol control system.

*For additional information contact: Americans for Responsible Alcohol Access*  
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