

HB

125

<TARGET><BILL>HB 125</BILL><SUBJECT>HB
125</SUBJECT><COMM>HFIN27</COMM></TARGET>

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSHB 125 (L&C)
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) HB125-DCCED-ABC-02-17-12 Dept. Affected DCCED
Title Alcoholic Beverage Control Board Appropriation Alcoholic Beverage Control Board
Allocation Alcoholic Beverage Control Board
Sponsor Legislative Budget and Audit
Requester House Finance OMB Component Number 2690

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	
OPERATING EXPENDITURES								
Personal Services		1,142.1						
Travel		85.9						
Services	228.5	285.5						
Commodities		24.6						
Capital Outlay	19.0	0.1						
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	247.5	1,538.2	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF		0.4					
1005	GF/Prgm (DGF)	247.5	1,414.1					
1037	GF/MH (UGF)							
1007	I/A Rcpts (Other)		123.7					
TOTAL		247.5	1,538.2	0.0	0.0	0.0	0.0	0.0

POSITIONS		(Thousands of Dollars)						
Full-time			11					
Part-time								
Temporary								

CHANGE IN REVENUES								

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required;
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

This fiscal note was updated to reflect: the Governor's FY13 budget request for the ABC Board and the sunset of the Alcohol Beverage Control Board on June 30, 2012.

Prepared by JoEllen Hanrahan, Director
Division Administrative Services
Approved by Susan K. Bell, Commissioner
Commerce, Community, and Economic Development

Phone 465-2506
Date/Time 2/17/12 11:00 AM
Date 2/19/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSHB 125 (L&C)

Analysis

HB 125 moves the Alcoholic Beverage Control (ABC) Board to the Department of Commerce, Community, and Economic Development (DCCED) from the Department of Public Safety (DPS). This move will require one-time costs for resources to migrate the existing Written Orders and Licensing Application from DPS to the DCCED environment. In addition, additional resources will be necessary to align the ABC Board with the DCCED cost allocation plan for Commissioner's Office and Administrative Services support. Ongoing support covered under the allocation plan includes costs for fiscal, information technology, budget, procurement, human resource assistance, and the Commissioner's office.

Services include an increase of \$39.8 to cover the administrative support costs in DCCED. This amount is net of the amount that DPS currently allocates to the ABC Board budget component for Commissioner Office and Administrative support. In DPS, these components are funded primarily by general fund which allows DPS to allocate less cost to their agencies. In contrast, in DCCED these components are primarily funded with inter-agency receipts which require that the majority of costs be allocated to the department agencies. DCCED has an approved cost allocation plan based on both weighted positions and various level of effort calculations for the services provided. Under DCCED, the total allocated costs to the ABC Board for Commissioner and Administrative Services is \$62.8; netting this amount against the current DPS budgeted allocation results in a \$39.8 needed increase to ABC's current authorization.

Services also include the one-time cost (\$188.7) of migrating two database applications to the DCCED environment and re-integrating ABC Board staff access back into the DPS APSIN Case Management System. These costs are based on task order rates applied to projected hours. Migrating the database applications will entail an assessment of the application code itself and an analysis of the methodologies by which these applications were designed to operate within the DPS network, hardware, and application environments. Preliminary discussions between DCCED and DPS technical staff have identified differences in security implementations, database implementations, reporting generation platforms, network structures, Active Directory environments, and identity management methodologies for user accounts that these systems currently use. Modern applications are deeply tied into the multiple layers and components that comprise today's technology environments; separating an application from its current environment and transplanting it into another environment is possible, but can be quite complex because of these links.

By federal law, DPS is required to have additional security levels for its CJIS systems and part of that implementation is a separate active directory managed by DPS. The security models and implementations are different for DPS and DCCED. The ABC Board applications are dependent upon the DPS Active Directory system and an interface with Novell Access Manager System; neither of these exist or are configured to work within DCCED's environment. The ABC applications allow liquor establishment clerks across the state to access the Written Order application through the Active Directory; DCCED security environment does not parallel this model.

New underlying support models will need to be designed, developed and configured for integration into the DCCED environment. The ABC Board database applications "AD hooks" will need to be re-coded and re-pointed to the new models. To migrate to DCCED, the architecture must meet industry best practices and the state security standards established by the Department of Administration Enterprise Technology Services division. The migration to the DCCED environment will require analysis, planning, testing, remediation and implementation. Hardware and software components will have to be purchased as these applications cannot be transferred with their supporting hardware platforms from DPS because of other DPS applications that rely on the same hardware infrastructure. Capital outlay includes a one-time increase to replace equipment that is currently integrated into the DPS network and will not be transferred to DCCED.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSHB 125 (L&C)
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) HB125-DCCED-ASD-02.20-12 Dept. Affected DCCED
 Title Alcoholic Beverage Control Board Appropriation Executive Administration
 Allocation Administrative Services
 Sponsor Legislative Budget and Audit
 Requester House Finance OMB Component Number 1028

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0
Travel	0.0		0.0	0.0	0.0	0.0	0.0
Services	0.0		0.0	0.0	0.0	0.0	0.0
Commodities	0.0		0.0	0.0	0.0	0.0	0.0
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required;
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

This fiscal note updates to the new 2012 form and zeros out costs to Administrative Services as no fiscal impact is anticipated.

Prepared by Kate Bowns, Budget Manager
 Division Administrative Services
 Approved by JoEllen Hanrahan, Director Administrative Services
Commerce, Community, and Economic Development

Phone 465-2506
 Date/Time 2/20/12 10:00 AM
 Date 2/20/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSHB 125 (L&C)

Analysis

HB 125 moves the Alcoholic Beverage Control Board to the Department of Commerce, Community, and Economic Development from the Department of Public Safety.

No fiscal impact is anticipated for the Division of Administrative Services.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version HB125
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) HB125CS(L&C)-DPS-ABC-02-13-12 Dept. Affected Public Safety
 Title ALCOHOLIC BEVERAGE CONTROL BOARD Appropriation Statewide Support
 Allocation Alcoholic Beverage Control Board
 Sponsor House Rules Committee by Request of LB&A
 Requester (H) FIN OMB Component Number 2690

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13					
Personal Services	(1,142.1)	1,142.1					
Travel	(85.9)	85.9					
Services	(285.5)	285.5					
Commodities	(24.6)	24.6					
Capital Outlay	(0.1)	0.1					
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	(1,538.2)	1,538.2	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF	(0.4)	0.4				
1005	GF/Prgm (DGF)	(1,414.1)	1,414.1				
1037	GF/MH (UGF)						
1007	I/A Rcpts (Other)	(123.7)	123.7				
TOTAL		(1,538.2)	1,538.2	0.0	0.0	0.0	0.0

POSITIONS							
Full-time	-11	11					
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Fund source code was corrected to reflect 123.7 is Interagency receipts.

Prepared by Shirley Gifford, Director
 Division Alcoholic Beverage Control Board
 Approved by Joseph A. Masters, Commissioner
Department of Public Safety

Phone (907) 269-0351
 Date/Time 2/13/12 8:23 AM
 Date 2/13/2012

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. HB125

Analysis

This bill transfers the Alcoholic Beverage Control (ABC) Board from the Department of Public Safety to the Department of Commerce, Community, and Economic Development (DCCED).

This fiscal note shows the transfer out of Public Safety's budget of the amounts included in the Governor's FY2013 ABC Board budget request.

2/20/12

Final Report
of the
**Alaska Criminal Justice
Assessment Commission**



May 2000

Executive Summary

The Alaska Criminal Justice Assessment Commission (CJAC) was created in 1997 when the National Institute of Corrections selected the State of Alaska to participate in the federally-funded Criminal Justice System Project. The Governor's Criminal Justice Cabinet¹ sought participation in the project to study the problem of prison overcrowding. Its goal was to bring together representatives from across the criminal justice system spectrum and members of the public to participate in the review and to collectively develop recommendations to alleviate the problem. Once Alaska was accepted into the project, Governor Tony Knowles, Chief Justice Warren Matthews, Senate President Mike Miller, and House Speaker Gail Phillips appointed the members of the Criminal Justice Assessment Commission. All three branches of government were represented on the Commission along with a number of other groups and individuals with interests in criminal justice issues.

The Commission began meeting in July of 1997. Participants included representatives from: Alaska's Supreme, Superior and District Courts; the Alaska Court System administration; the Criminal Justice Cabinet; the Public Defender Agency; the Office of Public Advocacy; the Alaska State Legislature; the Alaska Judicial Council; Victims for Justice; the Alaska Native Justice Center; and the substance abuse treatment community. The Commission used a consensus model to carry out its work and develop recommendations.

The Commission created five committees to carry out its work:

- Alcohol Policy Committee;
- Decriminalizing the Mentally Ill Committee;
- Pretrial Practices and Procedures Committee;
- Probation and Parole Committee; and
- Sentencing Committee.

Committee membership included representatives of state and local agencies, treatment providers, and other interested organizations and individuals. Each committee held regular meetings to study issues and generate recommendations and proposals to present to the Commission. The recommendations adopted by the Commission are summarized below.

¹ In 1995, Governor Knowles directed that a group of his cabinet members meet on a regular basis for the purpose of coordinating efforts in the area of criminal justice planning. This group, consisting of the Attorney General and the Commissioners of the Departments of Public Safety, Corrections, and Health and Social Services, is referred to as the Criminal Justice Cabinet.

Alcohol Policy Committee Recommendations

The Commission supports an increase in the statewide excise tax on alcoholic beverages by measures such as Initiative 99ATAX.

Goals: To reduce crime and child abuse, to increase public safety, and to reduce costs of criminal justice system agencies.

Commentary: The Commission believes the excise tax on alcoholic beverages should be increased. Studies show that when the price of alcohol is increased, the amount of alcohol consumed by every type of drinker decreases. A decrease in consumption reduces the number of alcohol-associated problems - violent crime, child abuse, sexual assault, suicide, motor vehicle fatalities, and drunk-driving - all of which result in immense costs to the state. According to a 1989 estimate by the State Office of Alcoholism and Drug Abuse, the state spends \$184,829,417 annually in costs associated with substance abuse. In 1999 dollars, that cost is now \$245,823,125. A tax increase would cost nothing to implement. Yet, it could potentially realize great savings through a reduction in costs associated with alcohol abuse.

Taxes on alcoholic beverages have fallen by almost 75 percent since 1961. In 1961, the tax on the average alcoholic drink was equivalent to \$0.47 in 1997 dollars. In 1997, the average tax on an alcoholic drink in Alaska was only \$0.13. The legislature has not increased alcohol taxes in Alaska since 1983.

The \$.25 per drink tax increase proposed in Initiative 99ATAX would generate \$70 million dollars each year in new tax income. A portion of this, used within the constitutional limits for state spending, could fund rehabilitative treatment programs and services that, in turn, would lead to further savings through decreased recidivism and decreased demand for state services.

Action Needed: Requires substantive legislation but no new funding.

Implementing Agencies: The legislature and the Department of Revenue.

2. **The Commission supports legislation allowing municipalities to tax alcoholic beverages at a rate independent of the rates used for other sales.**

Goals: To reduce crime and child abuse, to increase public safety, and to reduce costs of criminal justice system agencies.

4. **The responsibility for coordination of, and education on, alcohol policy should be vested in one person, rather than shared by many.**

Goals: To reduce crime, child abuse and neglect, and other consequences of alcohol addiction, and to reduce the costs associated with those consequences.

Commentary: The Commission believes that the state must address the problem of alcohol abuse using a highly visible, focused, and coordinated approach. Many Commissioners, including those from Law, Public Safety, Health and Social Services and Administration, currently share responsibility for dealing with the impact of alcohol abuse. No one person has the responsibility to develop policies and implement measures that go to the root of the problem. At the federal level, the creation of a cabinet level drug "czar" has dramatically enhanced public visibility of the drug problem and has focused attention on coordinated approaches to the problem. This administration should consider the creation of a similar position for alcohol issues. Due consideration also should be given to broadening and strengthening the existing Governor's Advisory Board on Drug and Alcohol Abuse.

Action Needed: Requires substantive legislation and funding.

Implementing Agencies: The legislature and the executive branch.

5. **The legislature should increase the number of members on the Alcohol Beverage Control Board from five to seven, with the two additional members representing the public health or medical community and the law enforcement community.**

Goals: To make the Alcohol Beverage Control Board more reflective of and responsive to the public's interests.

Commentary: Given the pervasive impact of alcohol on Alaska society, it is imperative that the public interest be fairly represented in each and every decision of the ABC Board. AS 04.06.020 mandates that two members of the board be actively engaged in the alcoholic beverage industry. Historically though, at least one other member of the board has created a majority for alcohol dispenser interests because of past experience in the industry. While

Goal: To decrease rural and Bush crime by decreasing unlawful drinking in dry towns.

Commentary: In rural and Bush Alaskan communities, the amount of violent crime is directly proportional to the amount of alcohol consumed by the residents. The majority of villages in four rural regions (those surrounding Bethel, Nome, Kotzebue, and Point Barrow) have responded by prohibiting the sale and importation of alcohol, but the hub communities in these four regions remain either “damp” or “wet.” The Commission believes that measures designed to restrict the availability of illegally-imported alcohol in the dry areas of Alaska will reduce violent crime in those areas.

The Legislature should amend AS 04.11.010(c) to reduce by half the amount of alcohol necessary to trigger the “possession for sale” presumption. The legislative change to AS 04.11.010(c) should include a point system for each type of alcoholic beverage, so that liquor laws can be better monitored and enforced. The proposed amendment is:

- (c) In a criminal prosecution for possession of alcoholic beverages for sale in violation of (a) of this section, the fact that a person possessed more than [12 LITERS OF DISTILLED SPIRITS, 24 LITERS OR MORE OF WINE, OR 12 GALLONS OR MORE OF MALTED BEVERAGES] **24 points or more individually or in combination of distilled spirits, wine, or malt beverages** in an area where the sale of alcoholic beverages is restricted or prohibited under A.S. 04.11.491 creates a presumption that the person possessed the alcoholic beverages for sale. **This is based on the following point system: 1 liter of distilled spirits = 4 points; 1 liter of wine = 2 points; 1 liter of malted beverages = 1 point.**

Action Needed: Requires substantive legislation. Initially, legislation may lead to a need for increased funding due to a potential increase in the number of bootlegging violations. However, this initial spike in violations (and funding) is not expected to continue for the long-term. The Commission anticipates an overall reduction in criminal justice system costs through a reduction in alcohol-related crime.

- 7(c). **The Office of the Governor should strongly request that the United States Postal Service put a higher priority on curtailing the illegal mailing of alcohol to dry communities and increase its level of cooperation with state, local and tribal law enforcement.**

Goals: To decrease alcohol-related crime in dry communities and reduce criminal justice system costs.

Commentary: The Chief Inspector of the U.S. Postal Service for the Alaska Region could greatly increase the interception of illegally imported alcohol by placing a higher priority on stopping alcohol importation by mail. Increased cooperation with state, local and tribal law enforcement in cases involving violations would have a strong deterrent value in local communities. Last year, the majority of alcohol violations discovered by postal employees were not forwarded to state enforcement officials for follow-up investigation or prosecution. More prosecutions would deter future violations.

Action Needed: Requires agency policy change or action. Initially, may lead to a need for increased funding due to a potential increase in the number of violations. However, this initial spike in violations (and funding) is not expected to continue for the long-term. The Commission anticipates an overall reduction in criminal justice system costs through a reduction in alcohol-related crime.

Implementing Agencies: The Governor, the court system, law enforcement agencies, prosecution and defense agencies, and the United States Postal Service.

8. Recommendations relating to underage drinkers.

- 8(a). **The Commission's successor organization should evaluate and recommend programs for diversions, incentives for treatment, and enhanced consequences to better modify underage drinking behaviors without triggering the appointment of counsel and jury trials. The successor organization should explore the feasibility of creating a new misdemeanor offense for repeat minor consuming alcohol offenders, and of changes to administrative driver's license revocations to encourage treatment.**

show 89 percent of the defendants who completed Youth Court, by successfully satisfying their court-imposed conditions, did not come back to the justice system before their eighteenth birthday. The Commission believes that use of youth courts to help reduce underage drinking for offenders 18 to 20 warrants further study. Because the Youth Court system is staffed principally by unpaid volunteers, it costs little to operate. Greater use in youthful offender cases could lead to substantial savings for all criminal justice system agencies and the Department of Motor Vehicles.

Action Needed: Requires action by the Commission's successor organization.

Implementing Agency: The Commission's successor organization.

9. **The State should increase the number of substance abuse treatment beds for Alaskans in need of intensive residential alcohol treatment.**

Goals: To decrease crime, recidivism and related costs by treating alcohol abuse and addiction.

Commentary: Alcohol programs that provide the intensive residential treatment needed by many long-term or chronic alcohol abusers are constantly and severely short of space. The few existing programs usually refuse treatment to clients who have a previous history of violence, even though effective treatment of these persons could provide a great public benefit by reducing future violent crime. The treatment bed shortage also means that few resources exist to permit the involuntary commitment of alcoholics, who pose a risk to themselves or others, resulting in the use of expensive jail beds. More programs are needed.

Action Needed: Requires agency policy action and funding.

Implementing Agencies: The legislature, the Department of Corrections, and the Department of Health and Social Services.

10. **The Department of Health and Social Services should review the progress made in the use of Title 47 civil commitment procedures for alcoholics and addicts and consider further changes to reduce jail stays by chronic substance abusers.**

12. **The state should encourage the development of a standard information release form and a standard interpretation of that form to be used among various substance abuse treatment providers and state agencies.**

Goals: To get addicted offenders into treatment quickly, to facilitate treatment monitoring, and to achieve savings by avoiding duplicative action.

Commentary: Federal and state laws impose confidentiality requirements on substance abuse assessment and treatment information. These create significant barriers to the sharing of information between treatment providers and state agencies working with a client. Clients may sign a release that permits the information to be released, but differing interpretations of releases based on differing reasons for their existence result in limited use of the release. Development of a standardized release form(s) for limited purposes would speed the assessment and treatment of offenders and reduce delay and duplication of effort.

Action Needed: Requires agency policy action but no new funding.

Implementing Agencies: The Department of Corrections and the Department of Health and Social Services.

13. **State agencies, treatment providers, tribal entities, and community organizations should collaborate to establish programs and procedures that emphasize the treatment and monitoring of underlying alcohol, drug and inhalant abuse and psychological disorders.**

Goals: To reduce recidivism, by directly addressing the underlying addiction and mental health problems contributing to criminal conduct, and to reduce criminal justice system costs.

Commentary: The federal government and state and local governments are beginning to believe that treating an offender's addiction or mental disability may be the best way to prevent recidivism. Jurisdictions are using a variety of different approaches to provide offenders with treatment. Some divert offenders prior to entry of a plea and dismiss cases after successful completion of treatment. Some allow only for post-plea participation with probation conditions that require monitoring and treatment. Programs may be designed for juvenile offenders or adults, felons or misdemeanants. Some

Implementing Agency: The court system in cooperation with treatment programs.

15. **The state should encourage the expansion of the Department of Health and Social Services Alcohol Safety Action Program (ASAP) through legislation and funding.**

Goals: To increase the success of alcohol and substance abuse treatment and thus reduce probation revocations and recidivism.

Commentary: ASAP screens offenders for problem drinking, refers offenders to treatment programs, and monitors compliance with court-ordered alcohol treatment. The legislature created ASAP in 1977 to identify problem drinkers early in their contacts with the criminal justice system. Administered through the state Department of Health and Social Services, ASAP screens all persons convicted of driving while intoxicated for alcohol problems. For ten years, it also monitored other offenders' compliance with drug and alcohol treatment, anger management, counseling, parenting training, and other matters. ASAP also monitored court-ordered random drug-screening tests, and forwarded positive results to prosecutors. ASAP provides the only routine supervision for misdemeanor offenders who are not supervised by parole/probation officers.

Alcohol abuse is a major factor in domestic violence ["DV"] assaults. An estimated 50 percent of the 3,000 DV protective order requests filed in Anchorage in 1998 were alcohol or drug-related. Courts can order an alcohol assessment and treatment when issuing a six-month DV order, but they rarely do so because no monitoring is available. If the scope of its monitoring abilities were expanded, ASAP could perform this function.

Between 1988 and 1995, ASAP's caseload almost doubled but its budget shrank. It closed five offices and significantly cut back on monitoring offenders' compliance with treatment. Many misdemeanants' compliance with court-ordered treatment is no longer monitored. The Commission views the Alcohol Safety Action Program (ASAP) as one of the most important alcohol abuse intervention tools in the state. The Commission strongly recommends that the legislature restore funds to ASAP and expand its monitoring ability.

make it worthwhile on an overall cost-benefit analysis. Federal and state agencies that fund alcohol treatment have criteria that programs must meet before receiving funding. Programs that incorporate “cultural” elements do not always meet these agencies’ criteria. Establishing the effectiveness of new or alternative treatment modalities to the satisfaction of these agencies is often difficult. Many Native offenders therefore go untreated. For example, many treatment programs require literacy skills. If a young Native client lacks literacy skills, it may be appropriate to encourage him or her to obtain a GED and become literate. A different approach may be more appropriate for an older Native client whose lack of literacy is more related to bilingual issues and who is returning to a village. Very few programs currently exist that can respond appropriately to these needs. The Commission believes the state should support the development of treatment programs that incorporate appropriate cultural elements to treat Alaska Natives.

Action Needed: Requires agency policy action but no immediate funding.

Implementing Agencies: The legislature, the Department of Health and Social Services, and the Department of Corrections.

18. **Judges who sentence individuals with alcohol issues should ensure that offenders are assessed for treatment. Specific treatment programs should not be required unless justified by a prior assessment.**

Goal: To avoid unnecessary complications in meeting sentencing requirements.

Commentary: Some rural treatment providers expressed concern that sentencing judges order offenders to complete a *specific* treatment program before the offender had undergone an alcohol assessment. They also expressed concern that many of their clients did not understand why the judge ordered alcohol treatment, noting that this lack of understanding prevents effective treatment. They asked that sentencing judges ensure offenders are assessed for treatment, that they consider the assessment’s recommendations regarding treatment, and that they explain to the offender why they are requiring alcohol assessment and treatment.

Action Needed: Requires possible agency policy action but no new funding.

assessment and treatment decisions, as well as time spent waiting for trial and, if convicted, sentencing decisions.

Action Needed: Requires agency policy action but no new funding.

Implementing Agencies: The Department of Corrections, the Department of and Health and Social Services, and, possibly, the court system.

21. **State and local agencies should develop adequate facilities and services, including housing, to address the unique needs of offenders who are suffering from both serious mental disabilities and substance abuse problems.**

Goals: To reduce recidivism and to reduce the number of admissions and lengths of stay in DOC and API beds.

Commentary: DOC estimates that, on a given day, 77 percent of the mentally ill inmates (679 individuals) treated by DOC staff are “dual-diagnosis,” having both substance abuse disorders and mental health disorders. Offenders suffering both from mental disabilities and from alcohol or drug addiction often have unique treatment needs based on their “dual-diagnosis.” Violent or aggressive behavior is not unusual for these individuals, making treatment problematic. All of the existing community-based programs exclude violent offenders. Part of the Community Mental Health/API 2000 Project will create state-supported dual diagnosis treatment beds in Anchorage. It also will provide psychiatric treatment in conjunction with detoxification and substance abuse treatment. DHSS will use federal funds to design cross-cultural and cross-diagnosis training for mental health and substance abuse providers and to streamline the delivery of services to individuals with dual diagnoses. The state should continue to support this project and ensure that sufficient beds are made available at the community level. The state should also explore ways to expand Medicaid funding streams for substance abuse and mental health services. In addition, the state should support the creation of more treatment programs for dually-diagnosed offenders who are incarcerated. The only DOC programs with a specific treatment component targeted at meeting the needs of inmates with co-occurring substance abuse and mental illness are the substance abuse groups held on DOC’s mental health units. Additionally, although not specifically

Alcohol Policy Committee Recommendations

The Commission supports an increase in the statewide excise tax on alcoholic beverages by measures such as Initiative 99ATAX.

Goals: To reduce crime and child abuse, to increase public safety, and to reduce costs of criminal justice system agencies.

Commentary: The Commission believes the excise tax on alcoholic beverages should be increased. Studies show that when the price of alcohol is increased, the amount of alcohol consumed by every type of drinker decreases. A decrease in consumption reduces the number of alcohol-associated problems - violent crime, child abuse, sexual assault, suicide, motor vehicle fatalities, and drunk-driving - all of which result in immense costs to the state. According to a 1989 estimate by the State Office of Alcoholism and Drug Abuse, the state spends \$184,829,417 annually in costs associated with substance abuse. In 1999 dollars, that cost is now \$245,823,125. A tax increase would cost nothing to implement. Yet, it could potentially realize great savings through a reduction in costs associated with alcohol abuse.

Taxes on alcoholic beverages have fallen by almost 75 percent since 1961. In 1961, the tax on the average alcoholic drink was equivalent to \$0.47 in 1997 dollars. In 1997, the average tax on an alcoholic drink in Alaska was only \$0.13. The legislature has not increased alcohol taxes in Alaska since 1983.

The \$.25 per drink tax increase proposed in Initiative 99ATAX would generate \$70 million dollars each year in new tax income. A portion of this, used within the constitutional limits for state spending, could fund rehabilitative treatment programs and services that, in turn, would lead to further savings through decreased recidivism and decreased demand for state services.

Action Needed: Requires substantive legislation but no new funding.

Implementing Agencies: The legislature and the Department of Revenue.

2. **The Commission supports legislation allowing municipalities to tax alcoholic beverages at a rate independent of the rates used for other sales.**

Goals: To reduce crime and child abuse, to increase public safety, and to reduce costs of criminal justice system agencies.

Commentary: Under present Alaska law, cities may not impose a sales tax on alcohol that is higher than the tax imposed on the sale of any other item. See AS 4.21.010(c). Permitting cities to exercise their discretion to tax alcoholic beverages at a rate determined by the community, independent of the taxes assessed on other sales, would produce many of the same benefits described in the commentary to Recommendation B-1 above.

Action Needed: Requires substantive legislation but no new funding.

Implementing Agencies: The legislature and local communities.

3. The legislature should remove the statutory cap and increase wholesale license fees to fund increased enforcement of Title 4 statutes.

Goal: To provide better enforcement of laws regarding sales and distribution of alcohol.

Commentary: Enforcement of Title 4 laws regarding the sale and distribution of alcohol needs to be more aggressive. More aggressive enforcement requires additional funding for more enforcement personnel. Increasing the revenue generated through license fees, which are already earmarked for local enforcement of Title 4, is an appropriate and reasonable means to generate additional revenue.

Under existing law, liquor wholesalers pay a licensing fee calculated on the amount of sales that they complete, up to a statutory cap of \$10,000 (the maximum license fee charged to a wholesaler who distributes more than \$1,000,000 of alcoholic beverages.) The legislature should remove the cap on those fees. A wholesaler who sells \$2,000,000 worth of alcoholic beverages should be expected to pay a higher licensing fee than someone selling half that amount. Increasing the wholesale liquor license fees would generate approximately \$350,000 to \$500,000 in new revenue.

Action Needed: Requires substantive legislation but no funding.

Implementing Agencies: The legislature, the Department of Revenue, and local communities.

4. The responsibility for coordination of, and education on, alcohol policy should be vested in one person, rather than shared by many.

Goals: To reduce crime, child abuse and neglect, and other consequences of alcohol addiction, and to reduce the costs associated with those consequences.

Commentary: The Commission believes that the state must address the problem of alcohol abuse using a highly visible, focused, and coordinated approach. Many Commissioners, including those from Law, Public Safety, Health and Social Services and Administration, currently share responsibility for dealing with the impact of alcohol abuse. No one person has the responsibility to develop policies and implement measures that go to the root of the problem. At the federal level, the creation of a cabinet level drug "czar" has dramatically enhanced public visibility of the drug problem and has focused attention on coordinated approaches to the problem. This administration should consider the creation of a similar position for alcohol issues. Due consideration also should be given to broadening and strengthening the existing Governor's Advisory Board on Drug and Alcohol Abuse.

Action Needed: Requires substantive legislation and funding.

Implementing Agencies: The legislature and the executive branch.

5. The legislature should increase the number of members on the Alcohol Beverage Control Board from five to seven, with the two additional members representing the public health or medical community and the law enforcement community.

Goals: To make the Alcohol Beverage Control Board more reflective of and responsive to the public's interests.

Commentary: Given the pervasive impact of alcohol on Alaska society, it is imperative that the public interest be fairly represented in each and every decision of the ABC Board. AS 04.06.020 mandates that two members of the board be actively engaged in the alcoholic beverage industry. Historically though, at least one other member of the board has created a majority for alcohol dispenser interests because of past experience in the industry. While

alcohol dispenser interests should be represented on the board, adding two members, one from the public health or medical community and one from the law enforcement community, will provide a broader range of interests and ensure that the public interest is better protected. Additional travel and lodging costs for two individuals for the regular meetings of the Alcohol Beverage Control Board would be minimal.

Action Needed: Requires substantive legislation and minimal additional funding.

Implementing Agencies: The legislature and the Department of Revenue.

6. **The legislature should remove the law enforcement functions of the Alcohol Beverage Control Board from the Department of Revenue and place them in the Department of Public Safety.**

Goals: To improve enforcement of Title 4 liquor laws and thus reduce violent crime and other harmful consequences of alcohol abuse.

Commentary: The enforcement authority of the Alcoholic Beverage Control Board is undermined by a lack of investigative personnel as well as by the lack of clarity in its mandate. The purpose of the Department of Revenue is to raise revenue, not to assist law enforcement. To ensure quality enforcement of Title 4, this function should be moved to a law enforcement department. Licensing functions would remain with the Alcoholic Beverage Control Board.

Action Needed: Requires substantive legislation but no new funding.

Implementing Agencies: The legislature, the Department of Revenue, and the Department of Public Safety.

7. **Recommendations relating to dry communities.**

- 7(a). **The legislature should take steps to deter illegal alcohol sale and possession in dry communities by amending AS 04.11.010(c) to decrease the amount of alcohol that individuals may presumptively possess for their own use.**

Alaska State Legislature
HOUSE FINANCE COMMITTEE

Agenda
1:30 PM

Monday, February 20, 2012

HB 125 ALCOHOLIC BEVERAGE CONTROL BOARD
UPDATED-NEW Fiscal Note (DPS) \$ previous #3
UPDATED-NEW Fiscal Note (DCCED) \$ previous #2
UPDATED-NEW Fiscal Note (DCCED) Zero previous #1

HB 279 EXTENDING CERTAIN BOARDS & COMMISSIONS
CS WorkDraft CSW HB 279 FIN 27-LS0944\I
New Fiscal Note (DPS) \$ previous #3
New Fiscal Note (DCCED) \$ previous #1

Possible Testifiers:

Rod Combellick, Deputy Director for the Division of Geological and Geophysical Surveys (DNR)

✓ RJ
✓ DG
✓ TW
LG

MN ✓
MC ✓
XBE ✓
MD ✓

AF
✓

BS
✓

BT
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Effort to reduce drunken driving deaths is succeeding***Was recent police liquor enforcement detail downtown justified?***

— MARK MEW —

(02/16/12 07:40:38)

News that the Anchorage Police Department has been conducting a liquor enforcement detail downtown has generated a lot of public interest. Comments suggest there are some common misconceptions about the nature of such details, how and why they are conducted, and what are APD's motives. I would like to clarify some facts, and also talk about our rationale for engaging in these activities.

Title 4 of the Alaska Statutes and Title 10 of the Anchorage Municipal Code are the laws books for decades. Many people are expressing surprise to learn that it is illegal for a drunken person to knowingly remain on a licensed premise, and that it is illegal for an employee of the establishment to -- with criminal negligence -- serve a drunken person.

APD has conducted periodic enforcement operations in bars and other establishments for as long as any of us at APD can remember. Typically, we do them when circumstances indicate a particular need. For example, officers may notice that a lot of OUI arrests originate at a particular bar or establishment. So, it makes sense for officers to check on that establishment and make sure they are not serving alcohol to people already badly impaired. Operations are generally of short duration. Sometimes we announce them in advance; sometimes we make surprise visits. In this last instance, we announced our intentions to the media twice.

The definition of "drunken person" we use for purposes of over service cases comes from Title 4. This is the same definition that the servers learn when they pursue their professional certification. Such a "drunken person" is nearly always significantly more intoxicated than the .08 "per se" limit for drunk driving with which most people are familiar. One should not confuse the two legal standards. They are different.

It's also worth noting that most establishments serving alcohol in Anchorage are doing a responsible job; during the recent effort, the vast majority of the downtown bars were found to be serving legally. Twenty of 26 bars checked were free from violations. The violators, however, were found to be serving alcohol to persons who were clearly inebriated, as evidenced by vomiting or falling off bar stools, for example. This is not a practice most communities want to accept or encourage by looking the other way.

It is no secret that Anchorage's rates for reported domestic violence and sexual assault are among the nation's highest. We are trying very hard at present to reverse this devastating statistic, and cracking down on establishments that promote extreme intoxication are part of that effort. Many of our sexual assaults occur downtown, or result from a meeting of victim and perpetrator downtown. A lot of alcohol is served downtown. It is true that suppressing over use of alcohol downtown won't of itself solve the DV and rape problems, but it can sure put a dent in both. Doing so is one part of our adopted strategy to combat interpersonal violence.

We recently announced our "Zero for Twelve" traffic enforcement campaign (a project different from but related to the aforementioned bar effort). Ten years ago, there were 20 alcohol-related fatal traffic collisions in Anchorage. In 2011, there were three. Our goal for 2012 is none -- zero. At

a press conference in December, we mentioned the proliferation of bars downtown, and warned that downtown would get a fair amount of attention. We said then -- and I reiterate now -- that addressing over service in bars has a supporting role in the anti-drunk driving effort.

Everybody wants to enjoy Anchorage's vibrant downtown district. There are celebrations, displays and performances of the arts, shopping, fine dining, and -- yes -- great spirits. But the pursuit of happiness does not extend to the destruction of lives. When it comes to alcohol, most people understand where the line is between fun and potential tragedy.

Mark Mew has served as chief of the Anchorage Police Department since 2009.

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Crackdown on bar drinking is law enforcement excess

Was recent police liquor enforcement detail downtown justified?

DARWIN A. BIWER JR.

(02/15/12 19:03:01)

In an ADN article last month ("Police crackdown on bar drunkenness, Jan. 9) I, among others, was quoted about my reaction to several Anchorage Police Department (ADP) arrests for "Drunk on Premise" violations.

That article set off a firestorm of reactions. The public was generally appalled at the APD behavior. In the electronic version of the ADN article there were well over 600 comments, with more still being added, most agreeing with my assertions. A TV station, viewed statewide, sent a film crew all the way to Girdwood (an hour's drive) to personally interview me. I also received a call from ABC News' national headquarters in New York about Anchorage's problem cops. Subsequently, a reporter from the Alaska Public Radio station called as did a local talk show host.

I believe that the police actions and the reasons behind the public outcry are because the police behavior has never been accurately disclosed. Only the police version has previously been aired. The plight of law-abiding bar owners being targeted for persecution is finally being exposed.

Title 4, the Alaska Statutes and Regulations that govern alcohol consumption, make it illegal to be drunk on a liquor licensed property. There is no statute about "over serving" a patron. The reason being that it is a subjective judgment on the part of the observer as to whether a person is "visibly impaired."

Stumbling, fumbling with money or even vomiting are not necessarily signs of "over serving." A sprained ankle or knee, forgetting one's glasses, nervousness or food poisoning can induce nausea.

Cops who enter an establishment to observe drinking behavior are not as qualified as TAP (Teaching Alcohol Professionals) trained servers. First off, cops get little or no training in enforcing Title 4. No police attend CHARR's four-hour TAP classes that are mandatory in Alaska for all servers of alcohol.

APD is only interested in making arrests without regard to whether it's a "good" arrest that will hold up in court. The more arrests the better. This action is to convince the public that the cops are doing their job and earning their overtime.

The number of arrests is very different from the number of convictions.

Especially important to APD is to give the public the impression that bars are hotbeds of criminal activity by not following liquor laws. It puts the blame on bars for violent crimes. In actuality, violent crimes occur primarily in private residences where persons are drinking without the benefit of the trained supervision as found in bars.

Alaska is recognized as among the best in the nation in the reduction of DUI arrests and prohibiting underage persons from obtaining alcohol from liquor licensees. And yet we are still accused of being irresponsible servers. From the opening of any bar until the closing minute, bartenders and

servers are the sole enforcers of liquor laws. There are no APD cops during the day, during the week or any time during the rest of the year unless specifically called by the establishment.

The recent sweep of 26 bars, where 20 were perfectly in compliance, resulted in 20 arrests of patrons and four of servers. We definitely will find out if the courts will uphold the officer's judgment on who may or may not be over served.

Darwin A. Biwer Jr. is the owner of the downtown bar Darwin's Theory and board chairman of the Alaska Cabaret, Hotel, Restaurant and Retailers Association (CHARR).

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Analysis of strategies designed to reduce sales of alcohol and tobacco to underage persons

A preliminary report

Prepared for the
Alaska Alcoholic Beverage Control Board

by

Marny Rivera, Ph.D.

Khristy Parker, B.A.

JC 1202

January 19, 2012



UAA Justice Center
UNIVERSITY of ALASKA ANCHORAGE

Justice Center

University of Alaska Anchorage


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Executive Summary

This study was requested by the Alaska Alcoholic Beverage Control Board (ABC) which is responsible for enforcing age-of-sale laws. The purpose of the study was to identify ways enforcement practices for alcohol could be modified to achieve higher rates of compliance as are seen in tobacco enforcement.

Following are the key findings.

Key Findings

Consumption:

- Even though Alaska and the U.S. have both seen decreases in adolescent use of alcohol, Alaska has seen larger decreases overall.
- Youth consumption of alcohol and tobacco in Alaska has consistently decreased since 1995.
- Twice as many youth in Alaska self-reported recent alcohol use as reported recent cigarette use. Due to higher youth prevalence rates, controlling underage access to alcohol poses more difficulties than controlling underage access to tobacco.
- Adolescent use of tobacco has been declining consistently, both statewide and nationally. Due to the lack of data for 2011 for the U.S., it is impossible to determine how Alaska compares to national data for the same time. However, based on 2009 data, Alaska has a lower rate of tobacco use than the country as a whole.
- Adult consumption of alcohol in Alaska declined from 2001 until 2008 when it began to increase. Nationwide, adult alcohol consumption has consistently declined since 2001.
- Two to three times as many adults in Alaska consume alcohol as smoke tobacco on a regular basis. As a result of higher adult prevalence rates, youth access to alcohol is likely greater than youth access to tobacco.
- In Alaska, adult consumption of tobacco has consistently decreased since 2001.
- Fewer people are starting to smoke, and those who smoke cigarettes are smoking less regularly.

Compliance Checks:

- Effective compliance checks and enforcement of laws can reduce sales of age-restricted products to minors and are associated with reductions in use of such dangerous substances.
- Compliance checks are a retail enforcement strategy that should be conducted as part of a multi-pronged effort to reduce underage drinking.
- Communication efforts (i.e., via media) to merchants and the community should take place in conjunction with compliance checks.
- Conducting at least two compliance checks per year at all outlets is associated with increased compliance.

- Mandatory photo identification checks at point of purchase for all alcohol sales, and using tools like electronic verification techniques, reduces the likelihood that alcohol will be sold to underage persons.
- Rewards for compliant employees or retail outlets have been associated with increased compliance.
- Ongoing merchant training and education is preferable to one-time training for agents and employees, especially in establishments where alcohol has been sold to underage persons.
- Rates of compliance and violation cannot safely be compared across locations or substances due to differences in compliance checking procedures and computation of results.

Sanctions:

- Graduated sanctions of increasing severity for multiple violations of age of sales laws can deter licensees and their agents and employees from selling alcohol to underage persons.
- Civil penalties are faster, easier, and cheaper to administer than criminal penalties since they do not require prosecution through the court system.
- Civil penalties including license suspensions and fines against licensees can be used in addition to, or instead of, sanctions against individual agents or employees.
- Penalizing licensees for sales of dangerous products to underage persons is more likely to lead to policy and practice changes in hiring, training, and supervision that reduce alcohol sales to minors.

Funding and Resources:

- State statutes are designed to deter sales of alcohol to underage persons by stringently sanctioning violators of this law. Certainty of sanctions is a key element of deterrence.
- State statutes allow for license suspensions and civil financial penalties against licensees whether they or their agents or employees sell alcohol to underage persons. Deterring sales of alcohol to underage persons necessarily requires implementing stringent sanctions not just having them written into law.
- Adequate state funding of compliance checking and other enforcement is essential in order to effectively reduce sales of alcohol to underage persons.
- Food and Drug Administration (FDA) regulations have led to substantially greater federal funding for tobacco enforcement efforts since 1998. Alcohol enforcement efforts have not, and do not, receive the same level of federal funding. The Synar Amendment creates significant motivation to reduce sales of tobacco to underage persons through the risk of losing block grant funding if minimum noncompliance rates are not achieved.
- Licensing fees and financial penalties for violations can be used to fund compliance checks and merchant education efforts.
- Limited resources necessitate effective partnerships with agencies or organization that have a shared desire to reduce underage access to and use of dangerous substances.
- Expanding and building on current partnerships can assist in prevention efforts.

- Partnerships can include federal or state agencies, national non-profit organizations, and local coalitions, among others.
- Partnerships may provide volunteer personnel or staff, educational materials or efforts for merchants, community, and youth, and other resources like funding.

Taxes:

- Alcohol taxes have not kept pace with inflation, resulting in a missed opportunity for funding of important alcohol control policies.
- Higher state alcohol excise taxes reduce consumption, especially by those with less disposable income (i.e., teens) and provide a funding source for prevention and intervention programs within the state.

Key Recommendations:

Based on a careful review of existing literature, Alaska statutes, compliance check practices, sanctions data, and other resources, recommendations are provided for improving compliance with alcohol age-of-sale laws in Alaska. Recommendations are made in the following areas:

- Improving enforcement efforts.
- Enhancing funding and resources for merchant education and compliance check enforcement efforts.
- Developing a multi-pronged underage drinking reduction strategy.
- Collecting data and evaluating enforcement efforts.

See Recommendations and Conclusions starting on page 28 for a complete list of recommendations.

Introduction

This study was requested by the Alaska Alcoholic Beverage Control Board (ABC) which is responsible for enforcing age-of-sale laws. The purpose of the study was to identify ways enforcement practices for alcohol could be modified to achieve higher rates of compliance as are seen in tobacco enforcement.

A comparison was made of compliance check results for tobacco and alcohol in Alaska from 2006 to 2011. The data show a higher compliance rate with laws prohibiting tobacco sales to minors than for alcohol sales to minors for four of the five years (See Table 8.). This gap in compliance between alcohol and tobacco raised the question of whether the severity of the statute, and/or sanctions, for these different age-of-sale laws was the key factor influencing lower violation rates for tobacco. With the ultimate goal of increasing compliance and reducing retail access to alcohol by underage persons, the ABC Board contracted with the UAA Justice Center to conduct a policy analysis to determine how to improve underage alcohol control efforts. This policy analysis sought to answer the following research questions:

- Is the classification and response to tobacco sales to underage persons as a violation (similar to a traffic ticket - rather than a misdemeanor) an influential factor in the rate of illegal sales? What other factors may explain the decrease in tobacco sales to underage persons over time (in Alaska and nationwide)?
- Would changing the classification and response to sales of alcohol to underage persons from a misdemeanor to a violation reduce the number illegal sales and increase compliance?
- What factors influence rates of compliance with laws prohibiting the sale of alcohol and/or tobacco to underage persons?
- How do policies and enforcement efforts designed to reduce underage access to tobacco differ from underage access to alcohol (i.e., effects, agencies responsible, resources, punitive consequences, compliance levels, social forces, etc.)?

The policy analysis is presented in this report. We begin by examining the problems of alcohol and tobacco consumption in Alaska and the U.S. Rates of alcohol consumption in Alaska are higher than the nationwide average and this presents a double-edged problem. First, long-term reductions in adult alcohol consumption and associated consequences likely require the prevention of underage drinking. Second, adults provide alcohol to underage persons through retail and social sources. Higher rates of adult consumption are associated with higher rates of youth access to alcohol.

We next reviewed alcohol and tobacco prevention and intervention efforts at both the federal and state levels to determine how different efforts may have influenced alcohol and tobacco compliance rates and to identify best practices that can be used to increase compliance with age-of-sale laws for alcohol. Compliance checks programs are reviewed to demonstrate that these checks, when conducted by law enforcement and when violations result in sanctions, can reduce access to underage persons and therefore reduce youth consumption. Trend and sanction data for alcohol and tobacco enforcement in Alaska is also presented, since the certainty and severity of sanctions likely influences their ability to deter sales to minors. In this section, funding and

resources, including excise taxes, for alcohol and tobacco are also reviewed to determine if resource disparities affect compliance rates and to identify potential revenue sources.

Lastly, based on a thorough review of directly relevant research studies and Alaska data, recommendations and conclusions are provided regarding enforcement efforts, funding and resources, a multi-pronged underage alcohol prevention strategy, and efforts to gather data for purposes of evaluation.

Alaska is not alone in the need to improve alcohol enforcement efforts. This is a nationwide issue. The ABC Board is to be commended for commissioning this study to identify ways to improve enforcement efforts with the ultimate goal of reducing retail underage access to alcohol, underage drinking, and resulting consequences associated with underage alcohol use in our state.

Problem Statement and Background

According to the Alaska Department of Health and Social Services, Alaska has one of the highest per capita alcohol consumption rates in the nation, and the prevalence of alcohol dependence and alcohol abuse at 14 percent is twice the national average of seven percent.

Of special concern is the prevention of alcohol use by adolescents in the state. Underage use of alcohol has far-reaching effects on local and national levels. The social costs of underage drinking include traffic crashes, crime, physical and mental health issues, and poor performance in school. The economic costs of teenage drinking including law enforcement, health care, education, treatment, and other services increase as resources are diverted to address teenage drinking (Alcohol Epidemiology Program, 2000).

Adult consumption rates are of concern because teens are often able to access alcohol through adults who acquire it legitimately. By lowering adult consumption rates, access to alcohol by teens can be reduced. This is important because research shows that the earlier teenagers start drinking, the more likely they will develop addiction problems as they age. Researchers found that when the drinking age was raised to 21, the rate of alcohol consumption and alcohol-related problems decreased among 18- to 20-year-olds. In addition, those who started drinking later in life drank less and drank less often (Alcohol Epidemiology Program, 2000).

For this report, we examined data from two similar state and national studies – BRFSS and YRBSS - sponsored by the Centers for Disease Control (CDC) about the behavior of adults and adolescents when it comes to alcohol and tobacco use both by Alaskans, and by the country as a whole. This data will help shed light on the gravity of the problem being experienced in Alaska as compared to the rest of the U.S.

Adult Consumption Data

Data about adult consumption of alcohol and tobacco was collected from the Behavioral Risk Factor Surveillance System (BRFSS) which is a state-based system of surveys that collect

information on various behaviors that contribute to health risks and injury. The following information is data collected about adult use of alcohol and tobacco from BRFSS.

Adult Alcohol Consumption

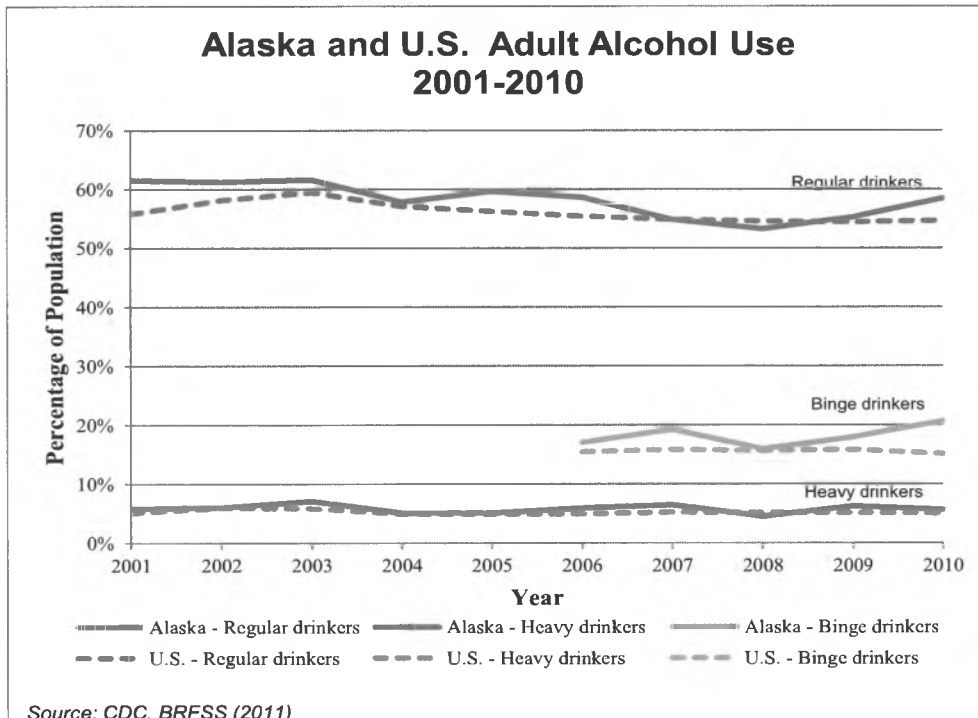
	AK	U.S.
Regular drinkers	58.4 %	54.6 %
Heavy drinkers	5.6	5.0
Binge drinkers	20.6	15.1

Data from the BRFSS shows that in 2010, Alaska had a higher percentage of regular drinkers (adults who have had at least one drink in the past 30 days), heavy drinkers (adult men having more than two drinks per day or adult women having more than one drink per day), and binge drinkers (males having five or more drinks on one occasion or females having four or more drinks on one occasion) than

the U.S. as a whole. (See Table 1.)

The rate of regular adult drinkers in Alaska has declined from 2001 to 2010, but is currently on the rise, along with the rate of binge drinkers. The number of heavy drinkers has stayed fairly consistent over the years. (See Figure 1 for trend data. See Appendix, Figures 8-10 for detailed charts.)

Figure 1. Adult Alcohol Consumption, Alaska and U.S., 2001-2010



Adult Tobacco Consumption

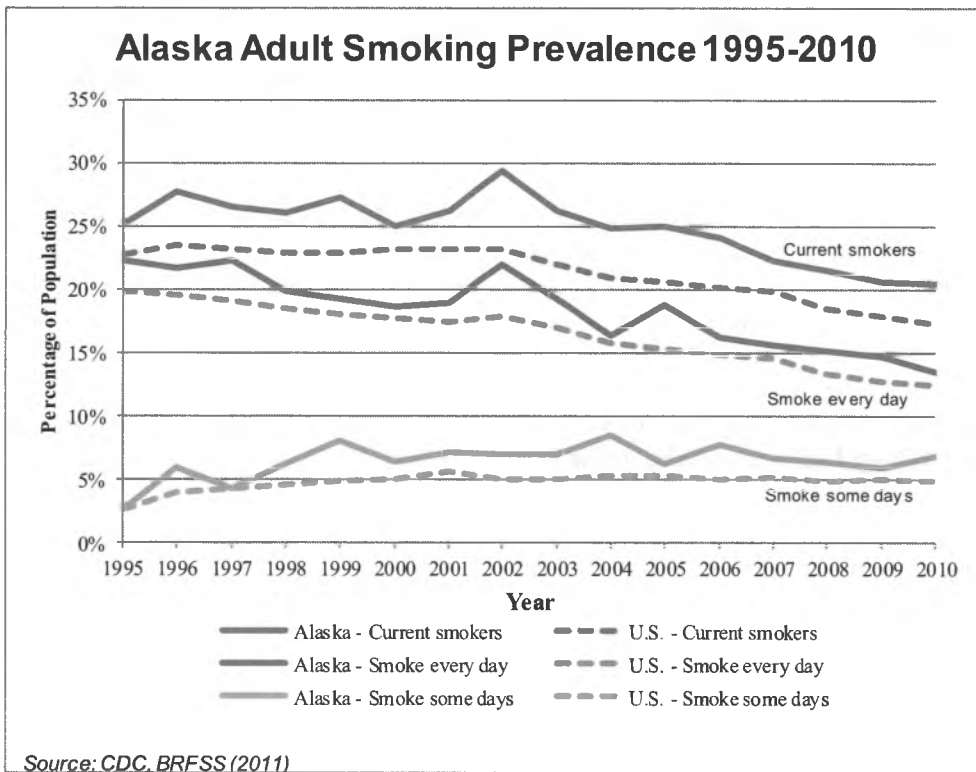
	AK	U.S.
Adults who are current smokers	20.4 %	17.3 %
Smoke everyday	13.5	12.4
Smoke some days	6.8	4.8
Former smoker	26.1	25.2
Never smoked	53.6	56.0

Alaska has a higher number of current adult smokers, daily smokers, smokers that only smoke some days, and former smokers. (See Table 2.)

Although Alaska has a higher rate of smokers than the U.S. as a whole, the rates of current smokers, everyday smokers, and sometimes smokers have declined from 1995 to 2010 – and are expected to continue trending down in the foreseeable future.

(See Figure 2 for trend data. See Appendix, Figure 11 for detailed graph.)

Figure 2. Adult Tobacco Consumption, Alaska and U.S., 1995-2010



Adolescent Consumption Data

Data about adolescents was collected from the Youth Risk Behavior Surveillance System (YRBSS – or YRBS as it’s known in Alaska) of high school students in Alaska and nationwide. The survey was first implemented at the national level in 1990. The CDC sponsors national and state surveys every two years (odd-numbered years). Although there were difficulties in administering the survey during some years, Alaska was able to obtain representative statewide data in 1995 to use as a baseline. There is a gap in data from 1995 until 2003 due to implementation and validity issues. The following data on adolescent alcohol and tobacco use were obtained from CDC publications of YRBS results. National results for the 2011 YRBS were not available at the time of this publication. The most recent national data is for 2009.

Underage Alcohol Consumption

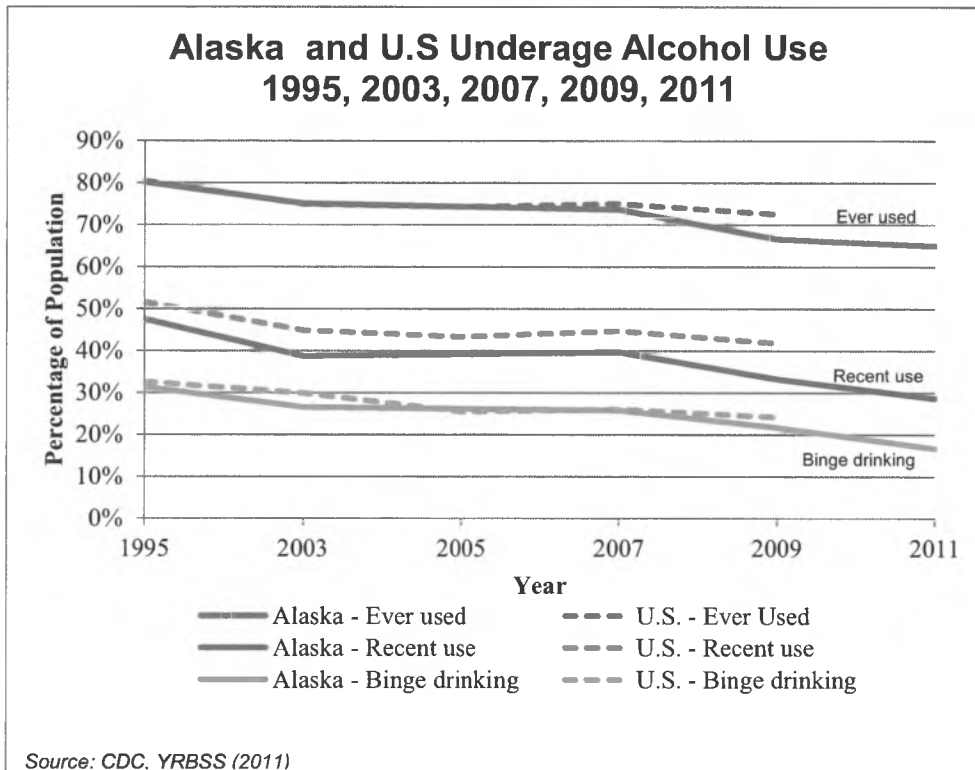
	AK (2011)	U.S. (2009)
Ever used alcohol	65.0 %	72.5 %
Current alcohol use	28.6	41.8
Binge drinking	16.7	24.2

Data from the YRBS shows that in 2011, Alaska had a lower percentage of youth who had ever drunk alcohol, currently use alcohol (youth who have had at least one drink in the past 30 days), and binge drinkers (five or more drinks in a row within a couple of hours on at least one day) than the U.S. in 2009. (See Table 3.)

The rates of youth in Alaska who have had at least one drink in their lifetime decreased from 80 percent to 65 percent during 1995-2011. (See Appendix, Figures 12-14 for detailed graphs.) In addition, rates of current alcohol use decreased from 48 percent to 29 percent and binge drinking decreased from 31 percent to 17 percent for Alaskan youth during 1995-2011. (See Figure 3 for trend data.)

Pre-teen alcohol use also declined significantly from 1995-2011, from 37 percent to 17 percent of youth reporting that they had used alcohol prior to age 13.

Figure 3. Underage Alcohol Consumption, Alaska and U.S., 1995-2011



Underage Tobacco Consumption

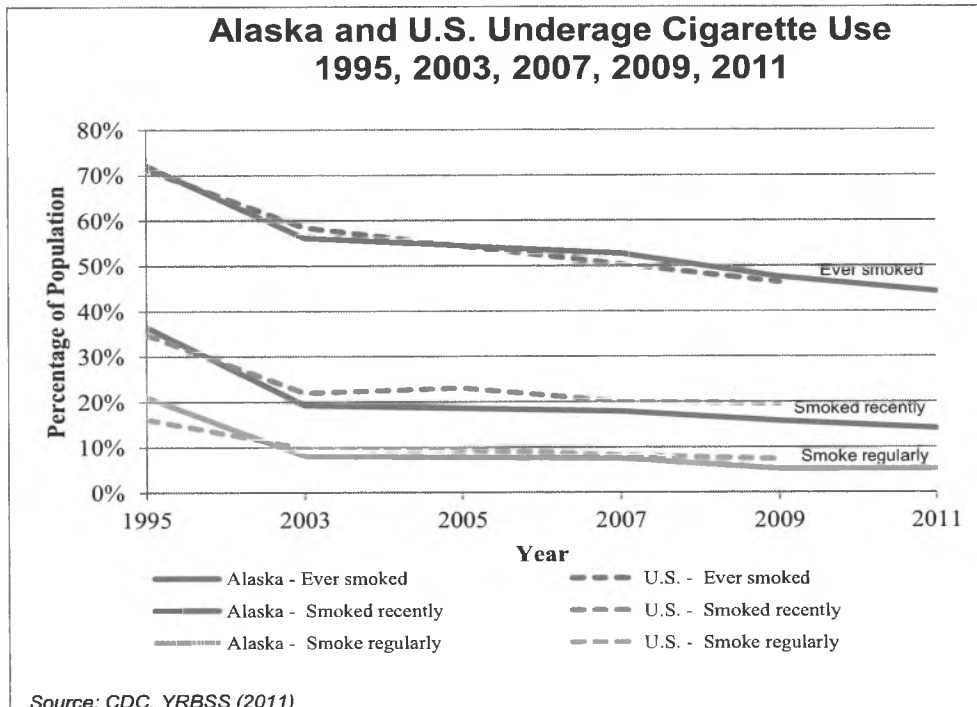
	AK (2011)	U.S. (2009)
Ever smoked cigarette	44.3 %	46.3 %
Current cigarette use	14.1	19.5
Frequent cigarette use	5.2	7.3

Similarly, data from the YRBS shows that in 2011, Alaska had a lower percentage of youth who had ever smoked a cigarette, currently use cigarettes (youth who have smoked at least one cigarette in the past 30 days), and frequent smokers (smoking 20 or more days of the 30 days prior to the survey) than the U.S. in 2009. (See Table 4.)

The rate of youth in Alaska who have smoked at least one cigarette in their lifetime decreased from 72 percent to 44 percent during 1995-2011. (See Appendix, Figures 15-17 for detailed graphs.) In addition, the rate of current cigarette use decreased from 37 percent to 14 percent and frequent smoking decreased from 21 percent to five percent for Alaskan youth during 1995-2011. (See Figure 4 for trend data.)

Pre-teen tobacco use also declined significantly from 1995-2011, from 31 percent to 11 percent of youth reporting that they had used tobacco prior to age 13.

Figure 4. Underage Tobacco Consumption, Alaska and U.S., 1995-2011



Comparison of alcohol and tobacco consumption

In general, alcohol is more pervasive in society than tobacco; more than half of the population use alcohol while less than 30 percent use tobacco.

Adult consumption of alcohol in Alaska declined from 2001 until 2008 when it began to increase, while tobacco consumption has consistently decreased since 2001. However, nationally, alcohol and tobacco consumption by adults has consistently declined since 1995. The reduction in alcohol and tobacco consumption for adults has impacts on youth access to these age-controlled products.

Youth consumption of alcohol and tobacco has consistently decreased in Alaska and the U.S. since 1995. However, the current consumption rates among youth indicate a need for further age-dependent control efforts.

Figure 5. Adult Tobacco and Alcohol Consumption, Alaska and U.S., 1995-2010

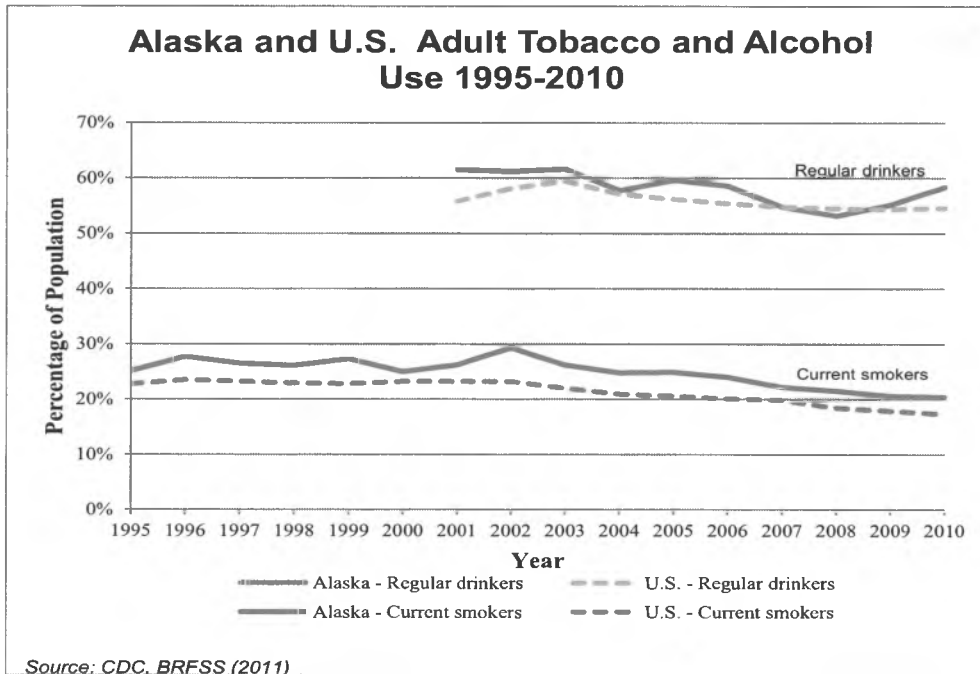
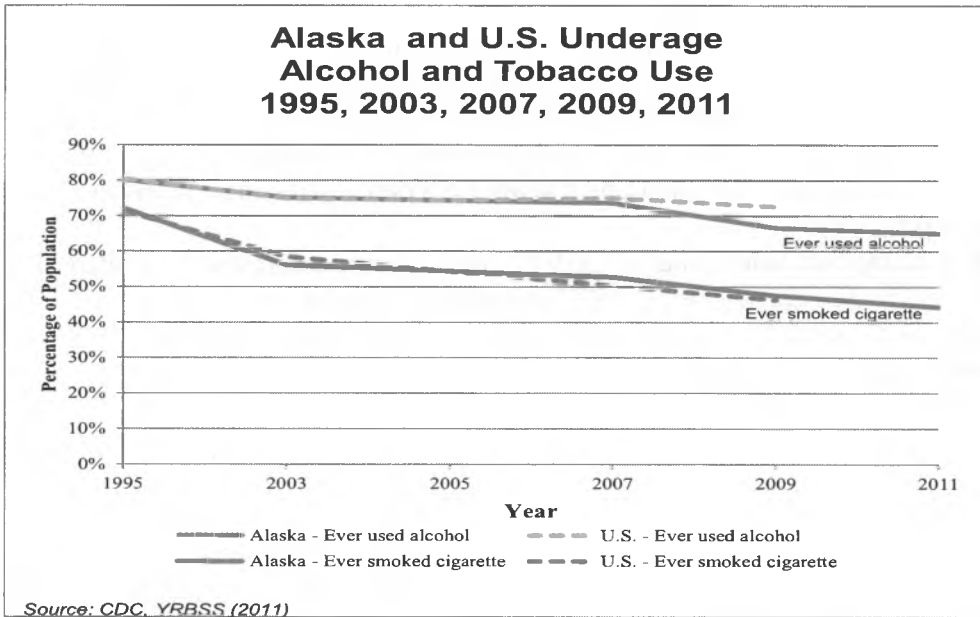


Figure 6. Underage Alcohol and Tobacco Consumption, Alaska and U.S., 1995-2011



Prevention and Intervention Efforts

Federal Involvement

Alcohol

The earliest intervention by the federal government related to underage drinking was the National Minimum Drinking Age Act of 1984, which forced states to raise the minimum drinking age to 21, or lose federal transportation funding. The next major federal action occurred in 2004 when the National Research Council (NRC) and the Institute of Medicine (IOM) released a report entitled *Reducing Underage Drinking: A Collective Responsibility* that called for coordinated action at the federal, state and local levels to reduce youth access to alcohol.

In 2004, Congress created the Intergovernmental Coordinating Committee on the Prevention of Underage Drinking (ICCPUD) with representatives from federal agencies that already had underage drinking prevention programs or activities. This committee guides policy and program development across the federal government with respect to underage drinking. Following is a list of the federal agencies involved in ICCPUD and their specific tasks related to preventing underage drinking (SAMHSA, 2011):

- Health and Human Services (HHS) Administration for Children and Families (ACF) – Promote economic and social well-being of families through programs that strengthen protective factors and reduce risk factors with underage drinking.
- HHS Centers for Disease Control and Prevention (CDC) – Strengthen scientific foundation for prevention of underage and binge drinking through various public health surveys and epidemiological studies.
- HHS/National Institutes of Health (NIH) National Institute on Alcohol Abuse and Alcoholism (NIAAA) – Conduct and support alcohol-related research while collaborating with other researchers and disseminating research findings to the community.
- HHS/NIH National Institute on Drug Abuse (NIDA) – Conduct research on health aspects of drug abuse and addiction and rapidly disseminates research to inform policy and improve practice.
- HHS Office of the Surgeon General (OSG) – Disseminate information to citizens for improving health and reducing risk in role as chief health educator.
- HHS Substance Abuse and Mental Health Services Administration (SAMHSA) – Support local efforts to prevent underage drinking, outreach and collaboration with interested parties.
- Department of Defense (DOD) – Prevent and reduce alcohol consumption by underage military personnel.
- Department of Education (ED) Office of Safe and Drug-Free Schools (OSDFS) – Support programs that prevent illegal use of alcohol, tobacco or other drugs.
- Department of Justice (DOJ) Office of Juvenile Justice Delinquency Prevention (OJJDP) – Enforcing Underage Drinking Laws (EUDL) - a nationwide state and community-based multidisciplinary effort to prevent access to and consumption of alcohol by those

under the age of 21 with emphasis on enforcement of underage drinking laws and implementation of programs that use best and most promising practices.

- Department of Treasury/Alcohol and Tobacco Tax and Trade Bureau (TTB) – Collect taxes in accordance with federal law.
- Department of Transportation (DOT) National Highway Traffic Safety Administration (NHTSA) – Develop, promote, and implement effective educational, engineering, and enforcement programs to end preventable tragedies and reduce economic costs associated with vehicle use and highway travel, including underage drinking.
- Federal Trade Commission (FTC) – Monitor alcohol advertising for unfair practices and deceptive claims and report to Congress.
- Office of National Drug Control Policy (ONDCP) – Establish policies, priorities, and objectives for the Nation’s drug control program.

Each department represented in ICCPUD has its own focus, and sometimes multiple foci, to combat underage alcohol use. However, despite this seemingly massive federal effort, alcohol control has been left largely to the states. Consequently, there is not organized federal funding for the prevention of underage alcohol use on a scale comparable to the funding for the prevention of underage tobacco use. Thus, there is no mechanism by which the federal government may use the threat of withholding funds from states which are less successful in their underage alcohol prevention efforts. In contrast, the federal government has the authority to withhold significant funding from states which do not comply with federal laws regarding underage tobacco prevention efforts.

In December 2006, Congress passed the Sober Truth on Preventing (STOP) Underage Drinking Act. The Act states that “a multi-faceted effort is needed to more successfully address the problem of underage drinking in the United States.” The STOP Act clearly delineates that states have regulatory authority over alcohol distribution and sales, while the federal government has a role in supporting state efforts. Further, the STOP Act identifies states as being responsible for prevention of underage alcohol use.

The STOP Act requires HHS to collect data on enforcement activities, prevention programs, and state expenditures. HHS delegated this task to SAMHSA, which collects data from each state about their efforts toward prevention of underage drinking and presents this information to Congress on an annual basis (U.S. Department of Health and Human Services, 2011). Although the STOP Act requires monitoring and reporting of state and local efforts to Congress, it does not tie any sort of state compliance to federal funding. Overall, federal funds in relation to underage drinking prevention are spent on research, outreach, and monitoring, rather than enforcement (Institute of Medicine, 2004).

Tobacco

In July 1992, Congress enacted the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, which includes an amendment aimed at decreasing youth access to tobacco. The Synar Amendment requires states to enact and enforce laws prohibiting the sale or

distribution of tobacco products to individuals under the age of 18. As a result of the Synar Amendment, SAMHSA issued the Synar Regulations which require that states:

- Have in effect a law prohibiting any manufacturer, retailer, or distributor of tobacco products from selling or distributing such products to any individual younger than age 18.
- Enforce this law.
- Conduct annual, unannounced inspections in a way that provide a valid probability sample of tobacco sales outlets accessible to minors.
- Negotiate interim targets and a date to achieve a noncompliance rate of no more than 20 percent (SAMHSA required that each state reduce its retailer violation rate (RVR) to 20 percent or less by FFY 2003).
- Submit an annual report detailing state activities to enforce its law.

In addition to setting targets for states, the Synar Amendment established penalties for noncompliance. States may lose up to 40 percent of their Substance Abuse Prevention and Treatment (SAPT) Block Grant funds (which largely fund substance abuse prevention and treatment programs) if they are noncompliant with Synar Regulations. However, states may avoid losing the SAPT Block Grant funds by an alternative penalty mechanism through which the state stipulates to commit state funds to improve compliance with the law (SAMHSA, 2011). Tying block grant funds to compliance has had the effect of increasing enforcement efforts, with pressure being applied by substance abuse prevention and treatment entities that would otherwise lose funding for their programs (Forster & Wolfson, 1998).

In 1996, the Food and Drug Administration (FDA) issued a rule entitled “Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents,” which strengthened and supported the policy of compliance checks as a mechanism to reduce underage smoking (Forster & Wolfson, 1998). The FDA regulations made it a violation of federal law to sell tobacco products to anyone under the age of 18 years. New regulations also required retailers to check photo ID of anyone appearing to be under 27 years of age. Sales of cigarettes became more restricted through regulation prohibiting retailers from selling anything less than a full pack of cigarettes (minimum of 20 cigarettes), prohibiting of sales through vending machines, banning of self-service displays of tobacco products, and prohibiting of free samples of tobacco products.

In June 2010, the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) became law. Though largely a reiteration of the 1996 regulations, the Tobacco Control Act gives the FDA new authority to regulate the manufacture, marketing, and distribution of tobacco products. The Tobacco Control Act requires the FDA to contract with states to inspect retail establishments in their jurisdiction (FDA, 2010).

State of Alaska

Alcohol

“The Alcoholic Beverage Control Board is established as a regulatory and quasi-judicial agency for control of the manufacture, barter, possession, and sale of alcoholic beverages in the state” (AS 04.06). For administrative purposes, the ABC Board is currently under Department of Public Safety; these two entities are jointly responsible for the enforcement of laws prohibiting sales of alcohol to underage persons.

As it relates to retail sales of alcoholic beverages to persons under the age of 21, AS 04.16.052 says that:

A licensee or an agent or employee of the licensee may not with criminal negligence allow another person to sell, barter, or give an alcoholic beverage to a person under the age of 21 years within licensed premises...; allow a person under the age of 21 years to enter and remain within licensed premises; allow a person under the age of 21 years to consume an alcoholic beverage within licensed premises.

A person who violates this law is guilty, upon conviction, of a class A misdemeanor. Possible suspensions or revocations for licensees, agents, or employees of licensees who are convicted of AS 04.16.052 ordered by the board include the following:

- 1st conviction: suspension of license for not more than 45 days
- 2nd conviction (within 5 years): may suspend license for not more than 90 days
- 3rd conviction (within 5 years): license may be suspended or revoked

The law has been interpreted in such a way that agents or employees of licensees may face criminal prosecution. Licensees have not faced license suspensions when their agents or employees are convicted of selling alcohol to persons under the age of 21 years. Licensees rarely face prosecution or administrative sanctions and license suspensions unless the licensee sells directly to a minor.

Training

Licensees and employees who sell alcoholic beverages must complete an ABC Board approved alcohol server education course and pass a written test. The certification is effective for three years during which time the person shall complete an approved course or successfully complete a written test demonstrating an understanding of course subjects. Clearly, requiring an alcohol server education course every three years ensures licensees and employees receive the most pertinent information in preventing sales to underage persons. However, this basic training serves only to reduce the liability of licensees and motivation of ABC Board enforcement to develop effective, long-term strategies that promote compliance. Additional training can be used as leverage with violating licensees if in exchange for voluntary supplemental training, sanctions for violating licensees/outlets are reduced (Forster & Wolfson, 1998). The ABC Board approves alcohol server education courses and also provides and encourages on-going merchant education

efforts to promote compliance. However, additional training is only provided upon the request of the licensee, though the ABC Board should strategically provide training to all licensees who do not pass compliance checks.

Increased training efforts and regular compliance checks must be adequately funded to be effective. Compliance checks and training can be self-supporting if a portion of licensing fees and all or a portion of fines and fees for violations are used to fund education and enforcement efforts (Forster and Wolfson, 1998, p. 213). If such fines and fees are insufficient, “[s]tates may need to consider the adequacy of funding for their alcohol control agencies including how effectively resources are utilized, to enable the agencies to undertake the committee’s recommended enforcement efforts” (Institute of Medicine, 2004)

Tobacco

In Alaska, the Tobacco Enforcement Division is housed in the Department of Health and Social Services. Violations of laws prohibiting sales of tobacco to underage persons are reported to and enforced by the Alaska Attorney General’s office. Administrative sanctions for such violations are handled by the Department of Commerce, Community, and Economic Development.

As it relates to retail sales of tobacco products to minors, AS 11.76.100 states: “a person commits the offense of selling or giving tobacco to a minor if the person negligently sells a cigarette, a cigar, tobacco, or a product containing tobacco to a person under 19 years of age...” A person who violates this law is guilty of a violation upon conviction. The fine associated with the seller who is convicted for this violation is not less than \$300 or greater than \$500. The civil penalty for a person who holds an endorsement to sell tobacco products, or an agent or employee of the endorsement holder who violates the law is as follows:

- 1st conviction: suspension of license for 20 days and civil penalty of \$300
- 2nd conviction (within 2 years): suspension of license for 45 days and civil penalty of \$500
- 3rd conviction (within 2 years): suspension of license for 90 days and civil penalty of \$1,000
- Each additional offense (within 2 years): suspension of 1 year and civil penalty of \$2,500
- The statute also specifies that suspensions can be reduced by 10 days or less if “the person holding the business license endorsement had adopted and enforced an education, a compliance, and a disciplinary program for agents and employees of the person.”

Age-of-Sale Laws: Differences between Alcohol and Tobacco

There are several differences between statutes in Alaska that are designed to prevent retailers from selling alcohol and tobacco to underage persons. Persons who violate age of sale laws for alcohol can be convicted of a misdemeanor whereas persons who violate similar laws for tobacco only face conviction for a violation. As a result, misdemeanor alcohol cases must undergo prosecution in the courts. Tobacco violations are handled administratively by the DCCED. The statute regarding sale of alcohol to underage persons refers to criminal negligence while the statute regarding sale of tobacco to underage persons refers only to negligent behavior. The greater degree of culpability associated with convictions for sales of alcohol to underage persons

may make it more difficult to convict individuals for violating this law than for selling tobacco to underage persons.

As it is written in the statute, license suspensions associated with convictions for alcohol sales are more stringent than for sales of tobacco to underage persons. In fact, the potential length of suspension for alcohol sales is twice as long as that for tobacco and includes the possibility of license revocation with the third offense. Civil fines for sales of alcohol to underage persons are far more severe than for sales of tobacco (\$10,000 for first alcohol conviction versus \$300 for first tobacco conviction). Graduated sanctions for alcohol sales to underage persons can be implemented for multiple violations within a five-year period for alcohol but only a two-year period for tobacco. Such sanctions have the potential to generate enormous revenue if implemented regularly for violations. However, such fines are rarely implemented for alcohol violations (See Sanctions section of this report). Potential penalties for underage alcohol sales are more stringent than for underage tobacco sales violations. However, actual imposition of sanctions are often less severe for alcohol than tobacco violations.

Compliance Checks

In order to carry out a compliance check, a representative sample of alcohol outlets is selected. At each outlet in the sample, a buyer who appears to be underage attempts to purchase alcohol without presenting age identification (ID). If the outlet sells alcohol to the buyer, it is considered noncompliant. If the outlet refuses to sell to the buyer, it is considered in compliance. Details of this procedure vary, but the basic process is similar in all alcohol purchase surveys (Pacific Institute for Research and Evaluation, 1999). The process is also similar in tobacco compliance checks.

Justification for compliance checks

Although law enforcement is challenged by an overwhelming variety of demands and budget constraints, compliance checks must be conducted by law enforcement officials because businesses regularly sell alcohol to underage people (Alcohol Epidemiology Program, 2000, p. 7). Compliance checks are designed to promote regular identification checks in order to reduce sales of alcohol to minors, with threat of sanctions for failing to do so. During alcohol purchase attempts made by researchers across the United States, youthful-appearing buyers were able to purchase alcohol without any questions at least 50 percent of the time (Alcohol Epidemiology Program, 2000). The average frequency with which underage persons were able to purchase alcohol underscores the need for law enforcement to conduct compliance checks in order to deter such sales. Having law enforcement officers be responsible for conducting compliance checks would provide a relatively easy way to promote compliance with laws prohibiting sales of age-restricted products to underage buyers - this would send a strong message to retailers that such sales are unacceptable (Forster & Wolfson, 1998).

Illegal sales to minors can be prevented, but most communities need valid information in order to do the most effective job of prevention. Compliance checks can provide this information. They also:

- Tell us who is selling to minors and how often.
- Raise community awareness and build support for reducing sales to minors.
- Inform merchants that they are being monitored by the community.
- Aid law enforcement.
- Help monitor the impact of prevention strategies (Pacific Institute for Research and Evaluation, 1999).

Effective compliance checks and enforcement of laws are associated with reductions in the purchase and use of age-restricted products. A variety of studies have found that compliance checks and enforcement of laws reduces the likelihood that minors are able to purchase age-restricted products from retailers (Grube, 1997; Biglan, Ary, Smolkowski, Duncan, & Black, 2000; Wagenaar, et al., 2000; Willingham, n.d.). Effective compliance checks reduce underage access to age-restricted products. In a longitudinal multi-state study, researchers found an inverse relationship between rates of merchant compliance and self-reported smoking by youth (DiFranza, Savageau, & Fletcher, 2009). Controlling for other factors DiFranza, Savageau, and Fletcher (2009) estimated that for each percent increase in average merchant compliance, the likelihood that youth in that area reported smoking cigarettes on a daily basis declined by two percent. Controlled studies have also found that effective enforcement reduced use of age-restricted products even more than merchant education programs (Forster & Wolfson, 1998). The strongest outcomes would likely be found where compliance checking and enforcement of laws were part of a multi-pronged effort that includes youth, merchant, community education, and other preventive measures.

Characteristics of effective compliance checks

For compliance checks to be effective, all merchant outlets need to be checked regularly for a sustained period. It is recommended that all merchants receive more than one compliance check per year, rather than conducting multiple checks on violating outlets (Institute of Medicine, 2004). Giving complying outlets at least a 364-day reprieve from subsequent checks, as is done in Alaska, is more likely to promote complacency than compliance. While two checks per year may be considered the minimum standard, researchers have found compliance more likely in outlets that were checked two or more times in a six-month period (Forster & Wolfson, 1998). The best effects of compliance checks have been found not only when outlets are checked regularly but when regular compliance checks take place over a prolonged period of time. Waggener et al. (2000) found the highest compliance rates in cities where merchants were checked at least twice per year for a full two-year period.

Regular compliance checks should be combined with communication to both retailers and the community to maximize effectiveness. Retailers should be notified that compliance checks are being conducted. Beyond one-time trainings, attempts should be made to regularly educate licensees as well as their agents or employees, about the laws regarding age-restricted products, and to present strategies for merchants to avoid sales to underage buyers. Such strategies may include mandatory identification checks for all sales of age-restricted products and electronic or other means of verifying age at the point of sale. Violation rates have been reduced when retailers have been notified of compliance or violation rates in their establishment and when

compliance is rewarded, such as giving small gift certificates to complying merchants. It is important to pair communication with retailers and rewards for compliance with regular compliance checks in order to prevent complacency. Complacency may result from merchants' belief that their recent refusal to sell to an underage buyer as part of a compliance check means their establishment will not face another compliance check for a full year. Since retailers provide only one source of age-restricted products to underage buyers, compliance checks and other community-wide prevention efforts should be publicized in the media in order to bolster community norms against underage drinking and tobacco use. A well-publicized multi-pronged prevention that includes compliance checks is essential in order to reduce access to age-restricted products from both retail *and* social sources (emphasis added) (Institute of Medicine, 2004).

Administrative penalties against licensees

State laws commonly prohibit sales of age-restricted products like alcohol and tobacco with misdemeanor charges (Forster & Wolfson, 1998). Alaska's statute prohibiting sales of alcohol to underage persons is in line with most other states. Compliance is generated through graduated sanctions including fines, temporary suspensions of licenses (first offense), and permanent revocation of licenses for multiple offenses (Institute of Medicine, 2004). Alaska's alcohol statutes, as they are written, have the potential to promote compliance with the law. Administrative or civil charges and substantial penalties are recommended for communities who have no other enforcement options (Alcohol Epidemiology Program, 2000). Alcohol statutes in Alaska may be seen as superior to other states, because they allow for both criminal and civil penalties for selling alcohol to underage persons. Civil penalties are more likely to promote compliance because they are faster, easier, and cheaper to administer than criminal penalties which require action through the court system (Forster & Wolfson, 1998). It is recommended that states aiming to strengthen compliance checking programs institute and enforce strict civil penalties.

Civil penalties are recommended in addition to, rather than instead of, criminal penalties in states like Alaska that currently prohibit sales of alcohol with misdemeanor charges. Moving from misdemeanor charges and their associated penalties to violations is not likely to increase compliance with laws prohibiting sales of alcohol to underage persons. Compliance checks and sanctions for violations are designed to deter merchants from selling to underage buyers. Effective deterrence requires swift, certain, and severe penalties for rational actors who violate the law. The type of charge or penalty (misdemeanor versus violation or civil) employed is less of an important factor in promoting compliance than who endures the sanction. Penalizing only agents or employees who sell to underage buyers has at best a narrow and shallow effect. Only one individual employee at the outlet is deterred and the deterrent effect for that outlet only lasts as long as that individual is employed there.

Sanctions that affect licensees (in addition to or instead of employees) are more likely to have a broader and deeper effect than sanctions against individual employees, because the sting of the sanction will be diffused to all employees and can lead to strategies that promote long-term compliance. Compliance with age-of-sale laws is more likely when "...sanctions can be imposed on managers or business owners, rather than, or in addition to salespersons..." (Forster &

Wolfson, 1998). Penalties such as license suspensions are reasonably severe, and are more likely to impact (or lead to the development of) policies and practices that promote compliance. Effective policies and practices regarding hiring, training, supervising, and checking age identification of all customers are essential to promoting compliance and reducing sales of age-restricted products to underage buyers (Alcohol Epidemiology Program, 2000). That the burden of creating policies that prevent underage buyers from accessing dangerous products sold by retailers is on the licensees who sell these products in their stores was acknowledged in the Alaska Supreme Court decision in Godfrey v. State of Alaska: “In summary, when an industry engages in commercial activity that routinely exposes the public to significant harm, the legislature has a legitimate interest in holding the industry’s licensed participants accountable for all conduct in exercising the license, not just for the licensee’s personal negligence or fault.”

In a 2005 study of ABC Boards in the U.S., the NHTSA concluded that ABC Boards nationwide had the following issues when it came to administrative penalties against licensees (NHTSA, 2005):

- Statutory maximum penalties differ from penalty guidelines.
- Penalty guidelines are broad and lack consideration for aggravating and/or mitigating circumstances.
- Penalties imposed differ from penalty guidelines.
- Lack of adequate record keeping for data analysis.

Alaska Alcohol Enforcement Data

Trends

The ABC Board sets goals for compliance checks for each fiscal year based on region. The highest compliance check goals are for the more densely populated and easily accessible areas. For example, ABC Board has set a goal to do compliance checks in 75 percent of the establishments in the Municipality of Anchorage, while setting a much lower goal of 25 percent for rural communities off the road system.

In FY2011, ABC Board met their goals for compliance checks in all eight regions. (See Table 5.) In that same period, there was a three percent increase in compliance; with 104 more compliance checks completed than in FY2010.

Table 5. FY2011 Alcoholic Beverage License Compliance Checks

Regions	# Licenses	# Checked	Goal	FY2011
Municipality of Anchorage	415	311	75 %	75 %
Fairbanks North Star Borough	168	94	50	56
City and Borough of Juneau	73	46	50	63
Southeast Alaska, except Juneau	184	72	35	39
Matanuska-Susitna Borough	179	91	50	51
Kenai Peninsula Borough	197	100	50	51
Rural communities on the road system	150	53	35	35
Rural communities off the road system	147	37	25	25

Source: State of Alaska Alcoholic Beverage Control Board

For a five-year period beginning in FY2007 and ending in FY2011, ABC Board was inconsistent in meeting their compliance check goals. Compliance check goals were met in FY2011 for every region; however, the goals were not met in the previous four years. In the City and Borough of Juneau and rural communities off the road system, compliance check goals were met in four out of five years. Three of the five years saw compliance checks goals met for the Municipality of Anchorage, the Matanuska-Susitna Borough, and the Kenai Peninsula Borough. Finally, compliance check goals were met in two of the five years for the Fairbanks North Star Borough, Southeast Alaska (except Juneau), and rural communities on the road system. (See Table 6.)

Table 6. FY2007-2011 Alcoholic Beverage License Compliance Checks

Regions	Goal	FY2007	FY2008	FY2009	FY2010	FY2011
Municipality of Anchorage	75 %	113 %	29 %	60 %	84 %	75 %
Fairbanks North Star Borough	50	41	59	44	40	56
City and Borough of Juneau	50	106	61	45	74	63
Southeast Alaska, except Juneau	35	50	13	25	27	39
Matanuska-Susitna Borough and Kenai Peninsula Borough	50	55	--	--	--	--
Matanuska-Susitna Borough	50	--	39	29	57	51
Kenai Peninsula Borough	50	--	59	27	23	51
Rural communities on the road system	35	43	29	21	15	35
Rural communities off the road system	25	28	37	26	0	25

Note: Prior to FY2008, MSB and KPBB were reported as combined data

Source: State of Alaska Alcoholic Beverage Control Board

Sanctions

According to data provided by the ABC Board, 66 licensees have been sanctioned since 2003. The median sanction for suspensions of license to sell alcohol lasted for seven days. The data show that the actual imposed time for license suspensions was nearly 70 percent less than the ordered sanction length for the time period 2003-2011. (See Table 7.) The median ordered sanction in this time period was a 45-day license suspension. However, the median amount of

time suspended (reduced) from the suspension was 38 days, resulting in an actual median length of license suspension of seven days. (See Appendix, Tables 11-13 for more detail.)

The data also show that the same sanction is consistently given for both seller training violations (lack of mandatory training) and furnishing alcohol to minors. Providing the same or similar sanctions for these two disparate violations sends the message that furnishing to minors is only as important as having properly trained staff. In fact, sanctions should be more severe when alcohol is furnished to a minor because it creates an unsafe and illegal situation for the adolescent, an immediate public safety threat, and indicates that the staff member is not properly trained - thus compounding the violation.

These inconsistencies further support the findings of the National Highway Traffic Safety Administration in 2005. NHTSA determined that penalties for alcohol law violations are far from certain and, when imposed, are not severe enough to deter future violations. Increasing penalties, and imposing them, would have a greater deterrent effect (NHTSA, 2005).

Table 7. ABC License Suspension Sanctions, 2003-2011

Year	Number of Sanctions	Sum of Days of Ordered License Suspension	Sum of Days of Ordered License Suspension - Suspended	Sum of Days of Ordered License Suspension - Imposed	Percent of Ordered Sanction Actually Imposed
2003	1	30.0	23.0	7.0	23.3%
2004	—	--	—	—	--
2005	2	75.0	0.0	75.0	100.0%
2006	19	447.0	281.0	166.0	37.1%
2007	7	184.0	136.0	48.0	26.1%
2008	13	396.0	294.00	102.0	25.8%
2009	4	165.0	91.00	74.0	44.8%
2010	13	525.0	429.00	96.0	18.3%
2011	7	360.0	248.00	102.0	28.3%
2003-2011	66	2182.0	1502.00	670.0	30.7%

Source: Alaska Alcoholic Beverage Control Board (2011)

Looking at the sanctions data in comparison to compliance check data from 2006-2011, a disturbing trend becomes apparent. Out of 727 reported instances of noncompliance, only 63 licensees received sanctions from the ABC Board. This means that less than nine percent of all occurrences of noncompliance resulted in license suspensions. (Note: Complete data for 2003-2005 are not available.)

Caution about comparisons

The literature on compliance checks for both alcohol and tobacco cautions against making comparisons among and between different locations as well as across substances, because the process of conducting compliance checks varies greatly. For instance in some states “surveys” are conducted whereas in other states law enforcement officers conduct the checks. Surveys in this case are similar to compliance checks in that underage persons enter stores and attempt to purchase age-restricted products. However, these surveys are conducted without the assistance of law enforcement, so retailers who sell to minors go unpunished. Surveys can be a useful tool for providing information on who is selling to minors, but they are a weaker tool for promoting compliance with age of sale laws than compliance checks involving law enforcement where violations result in criminal and/or civil penalties.

Methodological problems also prevent meaningful comparisons. For example, different compliance checking programs use underage buyers of different ages, genders, and ethnicities; there are differences in the training and supervision of underage buyers; and an insufficient pool of buyers to conduct checks at all retail outlets (Forster & Wolfson, 1998). In Alaska, there are differences between compliance checks for tobacco and for alcohol. For tobacco, a Synar sample is done between June 1 and September 30 in places that underage buyers are allowed to be. During other times of the year, all tobacco retailers are checked. Moreover, the ABC Board must approve underage buyers who are used in alcohol compliance checks, whereas underage tobacco buyers used in compliance checks do not face the same limitations. Finally, rates of compliance and violation for sales of alcohol and tobacco in Alaska should not be directly compared because tobacco figures generated for the Synar report undergo a weighting procedure that differentially weights the results of checks conducted in rural and urban areas. Violations in rural areas are weighted more heavily for tobacco. No such weighting procedures are used in the reporting of alcohol compliance and violation rates.

A comparison between alcohol and tobacco compliance check rates in Alaska shows that the violation rates for alcohol sales to minors generally decreased from 2006 to 2011. In comparison, the weighted violation rates for tobacco sales to minors (under 19 years) fluctuated during 2006-2011, although they were consistently under the 20 percent rate required by Synar. (See Table 8.) Nonetheless, tobacco violation rates were lower than alcohol violation rates for five of the six years.

Table 8. Alaska Alcohol and Tobacco Compliance Check Violation Rates, 2006-2011

State Fiscal Year	Alcohol			Tobacco
	# Vendor Checks	# Sales	Violation Rate	Violation Rate
2006	874	169	19.3 %	9.4 %
2007	1037	190	18.3	13.6
2008	609	82	13.5	9.2
2009	614	83	13.5	15.1
2010	700	105	15.0	9.0
2011	804	98	12.0	7.6

Source: State of Alaska Alcoholic Beverage Control Board (2011)

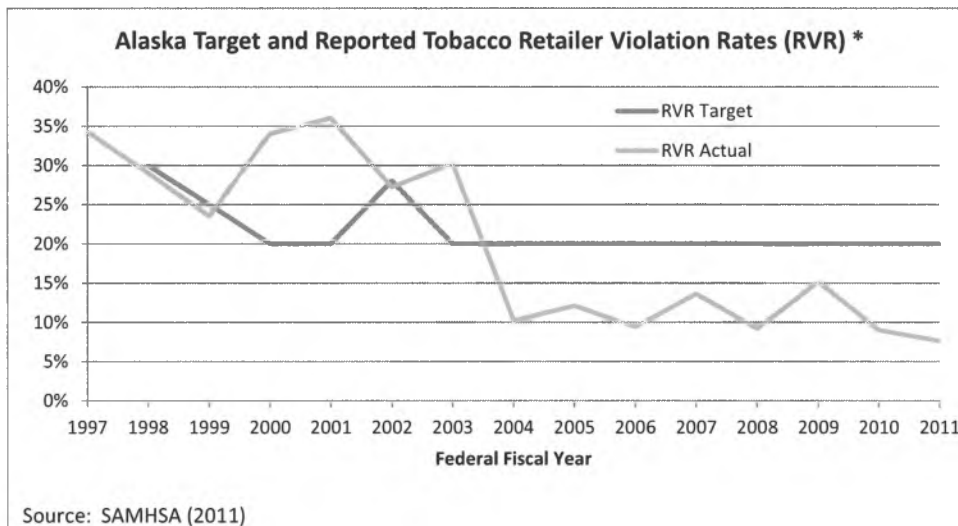
Alaska Tobacco Enforcement Data

Trends

In 2011, the Tobacco Enforcement Unit in Alaska completed 414 compliance checks with a Retailer Violation Rate (RVR) of less than eight percent. The standard set by the Synar program is 20 percent RVR.

Trend data show that RVRs have declined from nearly 35 percent (1997) to less than 10 percent (2011). Although rates appear to have increased many times over the time period, this fluctuation may be the result of the weighting applied to compliance checks in rural areas. For example, even one violation in a rural area may cause the RVR to increase significantly.

Figure 7. Tobacco Retailer Violation Rates



Sanctions

According to data from the DCCED, 155 licensees have been sanctioned since June 2008. Of those, 112 have resulted in suspensions of tobacco sales. The median length of suspension is 18 days, with a minimum of 9 days and a maximum of “lifetime ban.” Specifics about the reason for the sanctions were not provided for every case. (See Table 9.)

It is worth noting that although ABC Board has much stronger statutory sanctions available to them, noncompliant tobacco retailers consistently experience more stringent sanctions than noncompliant alcohol retailers.

Table 9. DCCED License Suspension Sanctions, 2008-2011

Year	Number of Sanctions	Sum of Days of License Suspension	Average Days of License Suspension	Median Days of License Suspension
2008	20	533	26.65	19
2009	37	4065	109.86	14
2010	39	707	18.13	18
2011	16	239	14.94	16
2008-2011	112	5544	49.50	18

Source: Alaska Department of Commerce, Community and Economic Development (2011)

Out of 124 reported instances of noncompliance (2008-2011), 112 licensees received sanctions. This means that 90% of all occurrences of noncompliance resulted in license suspensions.

Funding and other resources

Alcohol

Funding of alcohol enforcement programs through the ABC Board is severely limited. Alaska, along with other states, receives a block grant from OJJDP for programs to help prevent underage drinking. The ABC Board receives an Enforcement of Underage Drinking Laws (EUDL) grant through the Department of Health and Social Services (DHSS) from the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The grant provides annually, on a fiscal cycle, \$100,000 that covers the salary and benefits of one investigator. The grant is not sufficient to cover the salaries of the underage buyers, overtime, travel and lodging, or undercover funds, nor is it sufficient to provide ongoing merchant education (S. Gifford, personal communication, December 2011). Unfortunately, the lack of sufficient resources is not unique to Alaska. Lack of alcohol enforcement agents nationwide is a direct result of lack of resources (NHTSA, 2005).

Partnerships

Limited resources for promoting compliance with laws prohibiting sales of alcohol to underage persons necessitates the development of partnerships between ABC Board and enforcement officers and organizations or agencies like Volunteers of America Alaska's Communities Mobilizing for Change on Alcohol and Alaska's Cabaret, Hotel, Restaurant, and Retailer's Association, who also want to reduce underage access to alcohol. Such partnerships have been able to provide volunteer personnel or staff, educational materials or efforts for merchants, community, and youth, and other resources like funding. The expansion of partnerships could supply media coverage or support local ordinances or policy changes designed to reduce underage access to alcohol.

Not only is underage tobacco enforcement in Alaska well-funded, tobacco enforcement both in Alaska and nationwide is supported by a host of non-profit organizations (American Cancer Society, American Lung Association, American Heart Association, and the American Medical Association, among others) as well as granting organizations like the Robert Wood Johnson Foundation and federal agencies including the SAMHSA and the CSAP. Alaska's tobacco enforcement has been a resource-rich partner in enforcing age-of-sale laws across the state. However, differing age restrictions for sales of alcohol (21) and tobacco (19) makes combining enforcement efforts problematic. Studies have shown that well-funded prevention efforts have resulted in higher rates of compliance.

It should be noted that Alaska's Strategic Prevention Framework State Incentive Grant (SPF SIG) has selected underage drinking as one of two focus areas. Six communities in Alaska have received grant funding intended to reduce underage drinking and adult binge drinking. In addition, the Director of the Alaska Alcoholic Beverage Control Board is an active member of the Alaska Interagency Coordinating Committee on the Prevention of Underage Drinking (ACCPUD), currently a subcommittee of the SPF SIG. The ACCPUD is updating the State of Alaska Plan to Reduce and Prevent Underage Drinking (2009). The plan includes recommendations for limiting access of underage persons to alcohol by strengthening compliance check programs. However, no direct funding or other resources have been generated to implement this strategy. ACCPUD and SPF SIG are partners with ABC Board in reducing underage drinking and have the potential to include compliance checks and enforcement of age-of-sale laws as one component of a multi-pronged statewide underage drinking prevention effort.

Tobacco

The CDC updated its best practice recommendations in October 2007. For Alaska, the CDC recommends an investment of \$10.7 million per year for comprehensive tobacco prevention and cessation efforts and \$16 million for a fully funded effort. In 2011, Alaska is one of only two states that currently funds tobacco prevention programs above the CDC-recommended level, if both state and federal funding are counted (Jessen, 2010).

Tobacco grants/block grants

In FY2008, Alaska received approximately \$107.9 million in tobacco-derived revenue; \$7.55 million in state general funding and \$1.27 million in federal funding was appropriated for FY2008 tobacco prevention and cessation efforts (Alaska Department of Health and Social Services, 2009). In FY2012, Alaska has allocated \$10.8 million on tobacco prevention and cessation, one million more than was allocated in FY2011. Roughly \$175,000 was allocated in 2011 for the Alaska Tobacco Enforcement and Education program according to the DHSS budget overview. Although this budget does not cover all personnel costs, three full-time investigators, a half-time administrative clerk, and multiple student interns are part of the tobacco enforcement program. Alaska's Comprehensive Tobacco Prevention Plan includes: community-based programs, school-based programs, enforcement to reduce illegal underage sales, counter-marketing media, cessation support services (Quitline), tobacco price increases, smoke-free indoor air policies, data collection and program evaluation, and management and administration. Only a small amount of this funding is used for youth access enforcement.

Although there is no dedicated federal source of funding set aside for states to use in implementing the Synar requirements, states may expend funds from the primary prevention set aside of their Substance Abuse Prevention and Treatment (SAPT) Block Grant for carrying out the administrative aspects of the requirements, such as the development of the sample design and the conducting of the inspections. SAPT Block Grant funds may not be used to fund enforcement of youth tobacco access laws (SAMHSA, 2011). The FDA will begin its contract with Alaska in 2012 to conduct compliance checks as required under the Tobacco Control Act. With this contract will come additional funding for tobacco enforcement efforts.

Master Settlement Agreement

In 1998, the Attorneys General of 46 states signed the Master Settlement Agreement (MSA) with the four largest tobacco companies in the United States to settle state lawsuits to recover billions of dollars in costs associated with treating tobacco-related illnesses. The MSA requires the tobacco industry's participating manufacturers to make annual payments to the states, estimated at \$246 billion over the first 25 years. Alaska has received approximately \$218 million through 2008. The Alaska Legislature has obligated 80 percent of this revenue to repay capital construction bonds; the remaining 20 percent is deposited annually in the Tobacco Use Education and Cessation Fund (AS 37.05.580) (Alaska Department of Health and Social Services, 2009). The Tobacco Use Education and Cessation Fund provides financial resources for comprehensive smoking education, tobacco use prevention, and tobacco control programs (AS 37.05.580).

Taxes

Alcohol

Nationwide, alcohol tax rates are low in comparison to taxes on tobacco products. Alcohol tax rates have not kept pace with inflation, thus making alcohol cheaper today than it was 50 years

ago. In order to adjust alcohol prices to match inflation, taxes would need to be increased by a factor of three on beer to match 1960 values (Institute of Medicine, 2004).

Evidence-based research indicates that increasing the price of alcohol is an effective method to prevent underage drinking. Underage drinking is more responsive to price increases because youth have less discretionary income and purchase alcohol at package stores, rather than at bars and restaurants (Institute of Medicine, 2004).

Tobacco

Alaska receives more than \$100 million in annual revenue from tobacco sources: approximately \$75 million in tobacco tax revenue and another \$32 million in MSA payments. The Tobacco Use Education and Cessation Fund was created to receive a small portion of the state's tobacco-derived funds annually, which are then available for appropriation to support tobacco prevention efforts. (Alaska Department of Health and Social Services, 2009)

In Alaska, 76 cents of every dollar of cigarette tax revenue goes to the "School Fund" used for schools. The rest goes to the general fund. Nine percent of revenue is directed into the Tobacco Use Education and Cessation Fund which finances the state's tobacco control and prevention programs (American Lung Association, 2011).



Recommendations and Conclusions

Enforcement Efforts

Alaska already has statutory penalties sufficient to deter licensees from noncompliance. The ABC Board has the authority and discretion to impose penalties for noncompliance. Even though the ABC Board has the tools it needs to effectively regulate the sale of alcohol to underage buyers, it appears that changes to the methods used to enforce alcohol control laws are needed to help reduce underage alcohol use. We recommend the following:

- Amend ABC Board regulations to implement a penalty structure, including mandatory license suspensions and revocations and mandatory fines. The penalty structure should have graduated sanctions of increasing severity for multiple violations of age-of-sale laws.
- Amend ABC Board regulations to specify aggravating and mitigating circumstances and how they affect penalties.
- Hold the licensees responsible for all activities under the license: hold licensees responsible for the actions of their employees, not just their own personal actions. This will encourage more thorough training and law-abiding policies at the point of sale.
- Impose sanctions that are in line with the statutory penalty structure to promote consistency.
- Strengthen enforcement efforts by conducting more than one compliance check every six months at each licensed location in the state. If licensees do not know how many

compliance checks they may be subject to in any given time period, they will be less complacent about compliance.

- Pair compliance checks with communication efforts (i.e., via media) to merchants and the community.
- Provide rewards for compliant employees or retail outlets, since such rewards have been associated with increased compliance.
- Require identification checks for everyone purchasing alcohol – do not make the agent or employee attempt to ascertain age. Consider electronic techniques (i.e., Real ID/magnetic strip reader).
- Conduct compliance checks as part of a multi-pronged effort to reduce underage drinking.

Funding and Resources

It is important that funding and resources to the ABC Board be set at a level to allow for increased enforcement efforts. We recommend the following strategies to achieve the necessary funding:

- Increase the cost of licensing, or require yearly (rather than biennial) licensing. Increasing the license fees would create additional funding for ongoing merchant education and enforcement efforts.
- Increase excise taxes on alcohol to keep pace with inflation, and provide a funding resource.

Multi-pronged Strategy

Reducing underage access to alcohol requires a multi-pronged strategy and participation by a variety of entities.

- Develop and implement a program similar to the tobacco model, that is an adequately funded, coordinated, and multi-pronged underage alcohol prevention and intervention plan for the State of Alaska to reduce underage drinking.
- Utilize the effective strategies that are part of Alaska's Comprehensive Tobacco Prevention Plan.
- Fund a multi-pronged strategy through increased taxation, license fees, licensee penalties, and other sources.

Data and Evaluation

- Collect and report data on compliance and violation rates, repeat violators, case dispositions, and criminal and civil sanctions for violation of alcohol age-of-sale laws.
- Evaluate alcoholic beverage control and enforcement efforts for the State of Alaska.

Resources

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Appendix

Figure 8. Adult Alcohol Use – Drink Regularly

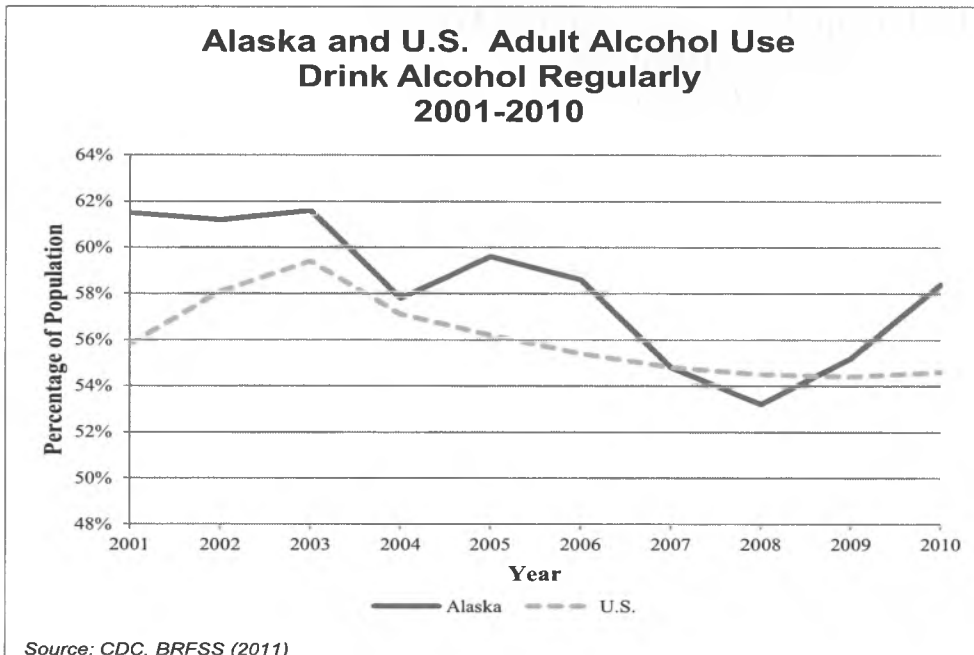


Figure 9. Adult Alcohol Use – Heavy Drinkers

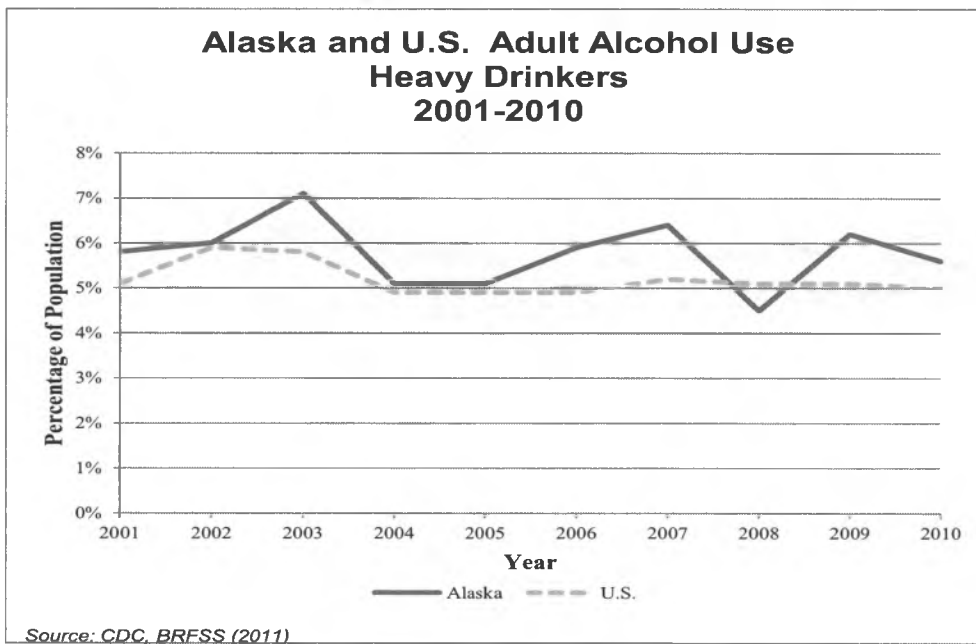


Figure 10. Adult Alcohol Use – Binge Drinkers

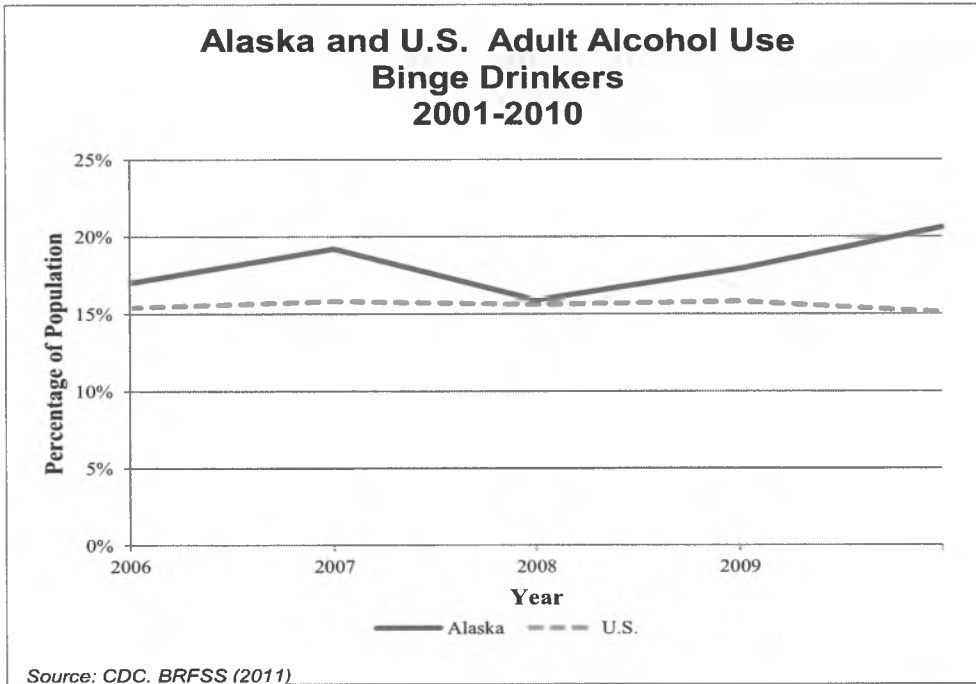


Figure 11. Adult Smoking Stages

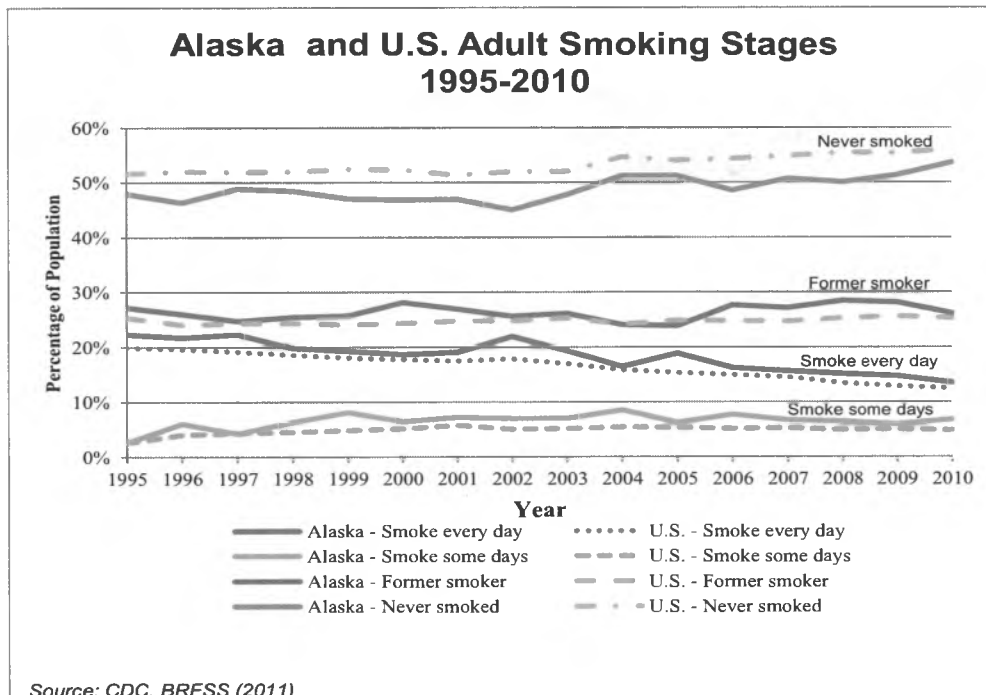


Figure 12. Underage Alcohol Use - Lifetime

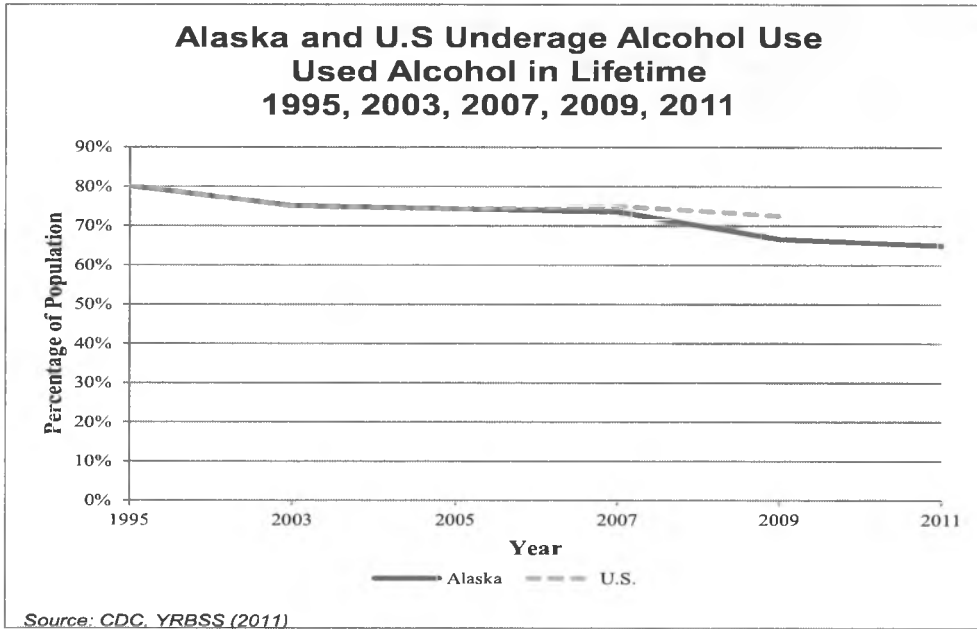


Figure 13. Underage Alcohol Use – Last 30 Days

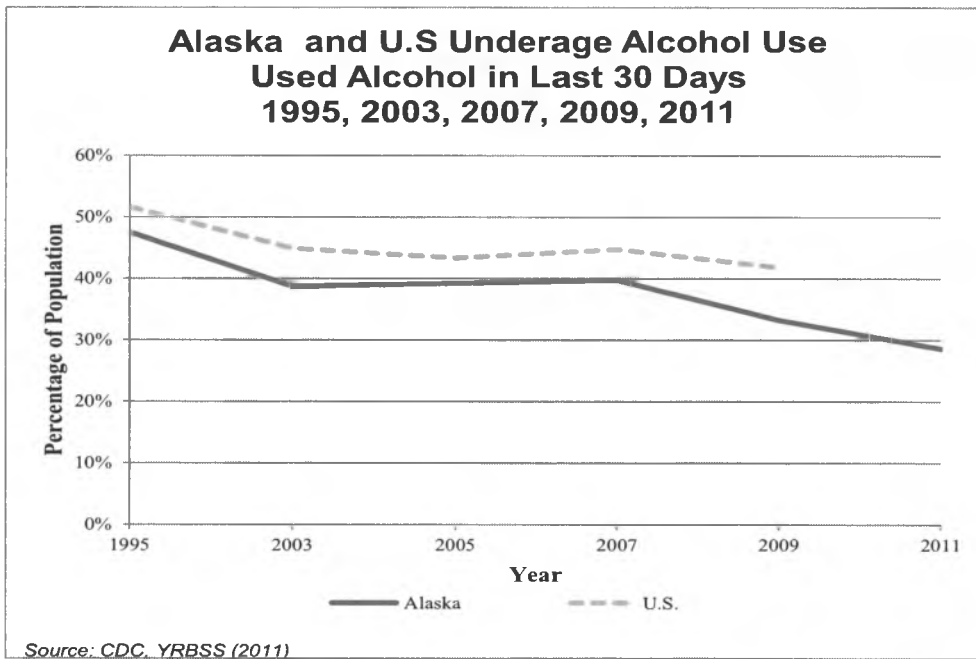


Figure 14. Underage Alcohol Use – Binge Drinking

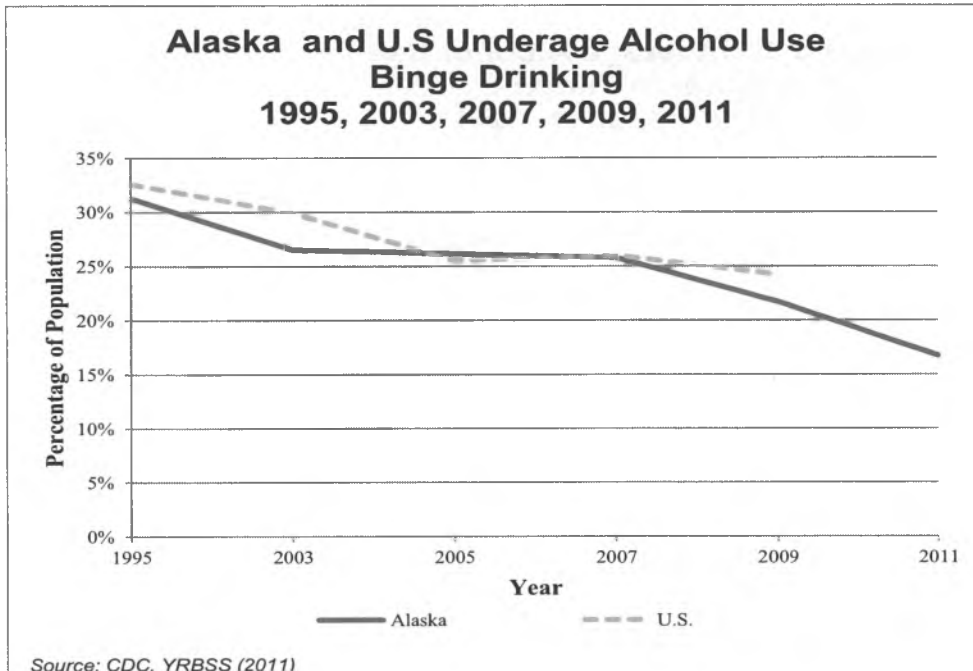


Figure 15. Underage Cigarette Use - Lifetime

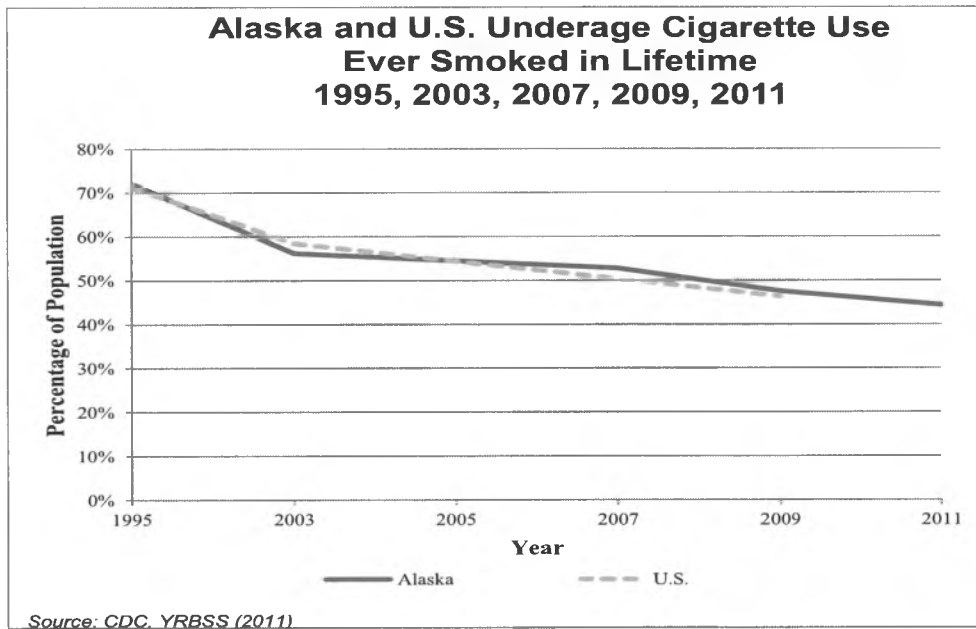


Figure 16. Underage Cigarette Use – Last 30 Days

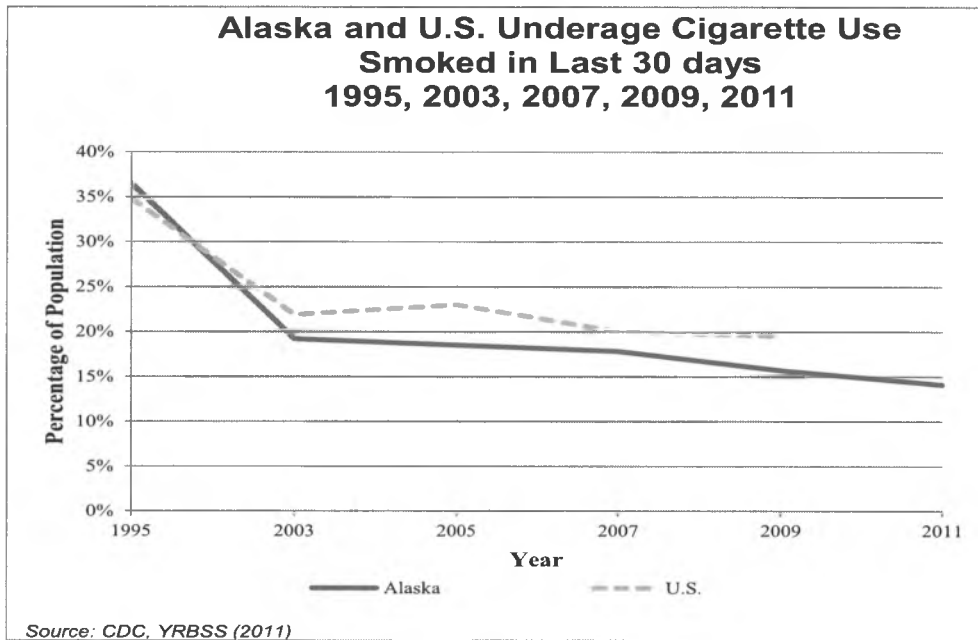


Figure 17. Underage Cigarette Use – 20 of Last 30 Days

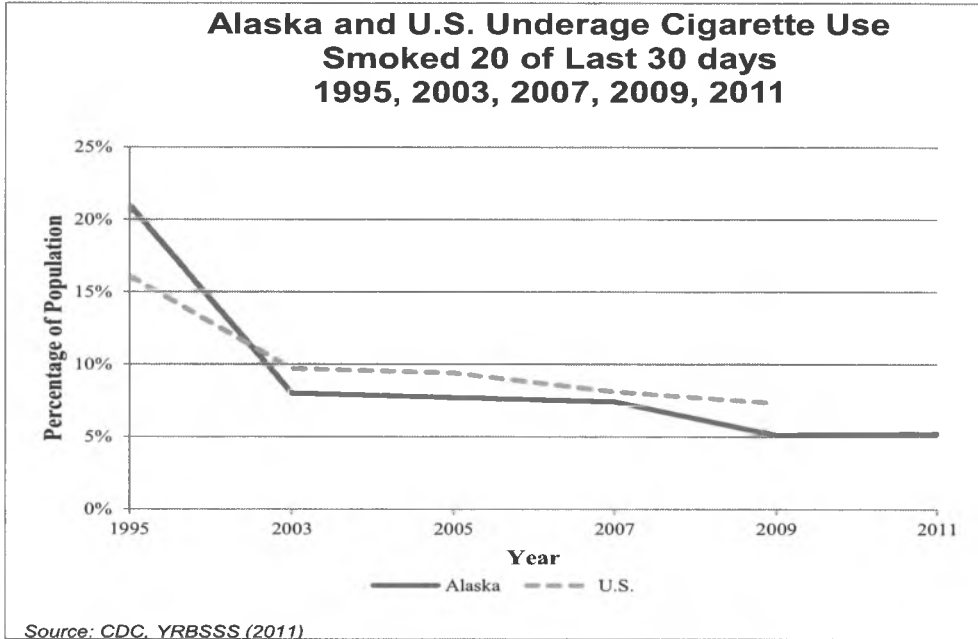


Table 10. Enforcement Efforts Comparison: Alcohol v. Tobacco

	Tobacco	Alcohol
Department Responsible	Department of Health and Social Services	Department of Public Safety
Federal Laws	Synar Amendment	STOP Act
State Laws & Penalties	<p>Seller:</p> <p>Violation: \$300</p> <p>Owner:</p> <p>AS 43.70.075 (2007)</p> <p>First offense: \$300 and license suspension for 20 days;</p> <p>Second offense (within 2 years): \$500 and license suspension for 45 days</p> <p>Third offense (within 2 years): \$1,000 and suspension for 90 days</p> <p>Additional (within 2 years): \$2,500 and suspension of 1 year</p>	<p>Class A Misdemeanor</p> <p>Both licensee and agents of licensee</p> <p>AS 04.11.570/13AAC 104.540</p> <p>First conviction/offense: up to \$10,000 fine and license suspension up to 45 days</p> <p>Second conviction/offense (within 5 years): up to \$30,000 fine license suspension up to 90 days</p> <p>Third (or more) conviction/offense (within 5 years): up to \$50,000 fine and license "may" be revoked or suspended (no set time)</p> <p>Board may impose civil fines not to exceed \$50,000 or three times the monetary gain realized by the licenses as a result of violation, whichever is greater.</p>
State Statute	<p>AS 11.76.100(a)</p> <p>A person commits the offense of selling or giving tobacco to a minor if the person (1) negligently sells a cigarette, a cigar, tobacco, or a product containing tobacco to a person under 19 years of age; (2) is 19 years of age or older and negligently, exchanges or gives a cigarette, a cigar, tobacco, or a product containing tobacco to a person under 19 years of</p>	<p>AS 04.16.052</p> <p>"A licensee or an agent or employee of the licensee may not with criminal negligence (1) allow another person to sell, barter, or give an alcoholic beverage to a person under the age of 21 years within licensed premises; (2) allow a person under the age of 21 years to enter and remain within licensed premises except as provided in AS 04.16.049 ; (3) allow a person under the age of 21 years to consume an alcoholic beverage within licensed premises; (4) allow a person</p>

	age; or (3) maintains a vending machine that dispenses cigarettes, cigars, tobacco, or products containing tobacco.	under the age of 21 years to sell or serve alcoholic beverages.”
Financial Resources	AK appropriation: \$9,839,800 FY2011. Funding at over 100% level recommended by CDC Excise taxes: Fund tobacco control and prevention programs Federal funds: Master Settlement Agreement from tobacco industry	AK appropriation: None Excise taxes: None Federal funds: See Enforcement Resources
Enforcement Resources and Source	\$175,000 – 2011 allocation for the Alaska Tobacco Enforcement and Education program in DHSS budget	\$100,000 - Enforcement of Underage Drinking Law (EUDL) grant from Department of Health and Human Services/Office of Juvenile Justice Delinquency Prevention
Current Licensees Subject to Compliance Checks	951 (Synar Strata) ~1,500 (approximate total, including Synar Strata)	1,513
Merchant Education (or other) Resources	It's the Law We Card Philip Morris Action Against Access	Training for Alcohol Professionals (TAP) Training Intervention Procedures (TIPS) Techniques in Alcohol Management (TAM) ServeSafe Alcohol Server Training Course

Table 11. ABC Sanction Data 2003-2011, Ordered License Suspensions Days

Year	Number of Sanctions	Sum of Days of License Suspension	Average Days of License Suspension	Median Days of License Suspension
2003	1	30.0	30.0	30.0
2004	0	0.0	0.0	0.0
2005	2	75.0	37.5	37.5
2006	19	447.0	24.8	22.5
2007	7	184.0	26.3	30.0
2008	13	396.0	30.5	45.0
2009	4	165.0	41.3	45.0
2010	13	525.0	40.4	45.0
2011	7	360.0	51.4	45.0
2003-2011	66	2182.0	33.6	45.0

Source: Alaska Alcoholic Beverage Control Board (2011)

Table 12. ABC Sanction Data 2003-2011, Days Suspended from License Suspensions

Year	Number of Sanctions	Sum of Days of Suspended Sanction	Average Days of Suspended Sanction	Median of Days of Suspended Sanction
2003	1	23.0	23.0	23.0
2004	0	0.0	0.0	0.0
2005	2	0.0	0.0	0.0
2006	19	281.0	35.1	38.0
2007	7	136.0	27.2	38.0
2008	13	294.0	32.7	38.0
2009	4	91.0	30.3	38.0
2010	13	429.0	35.8	38.0
2011	7	248.0	41.3	38.0
2003-2011	66	1502.0	34.1	38.0

Source: Alaska Alcoholic Beverage Control Board (2011)

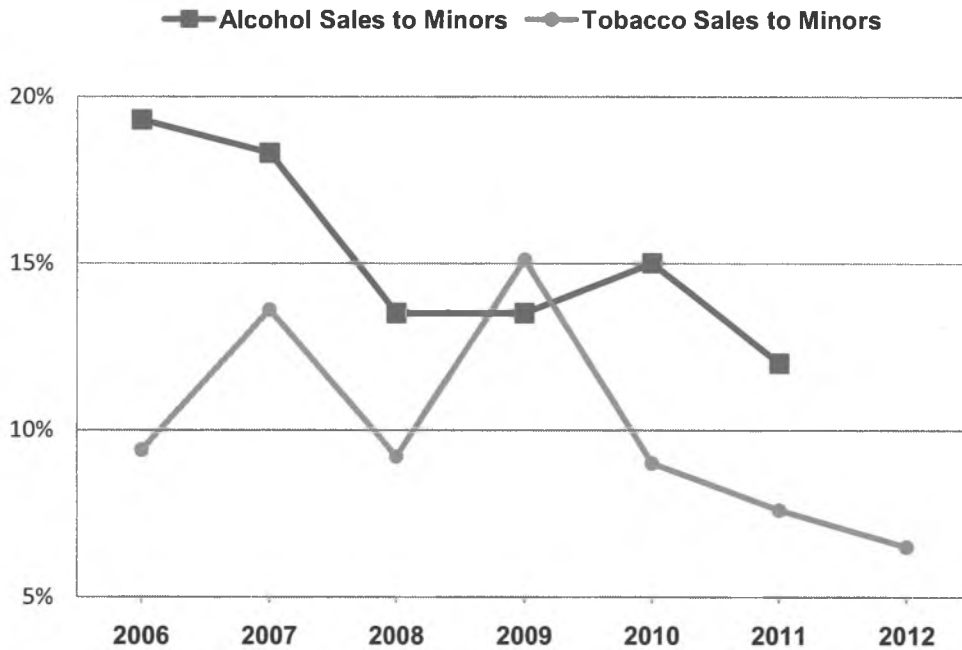
Table 13. ABC Sanction Data 2003-2011, Actual Days of License Suspensions

Year	Number of Sanctions	Sum of Days of Actual Sanction	Average of Days of Actual Sanction	Median of Days of Actual Sanction
2003	1	7.0	7.0	7.0
2004	0	0.0	0.0	0.0
2005	2	75.0	37.5	37.5
2006	19	166.0	8.7	7.0
2007	7	48.0	6.9	7.0
2008	13	102.0	7.8	7.0
2009	4	74.0	18.5	11.0
2010	13	96.0	7.4	7.0
2011	7	102.0	14.6	7.0
2003-2011	66	670.0	10.2	7.0

Source: Alaska Alcoholic Beverage Control Board (2011)

**Alaska Alcohol vs. Tobacco Sales to Minors
SFY2006 – 2012**

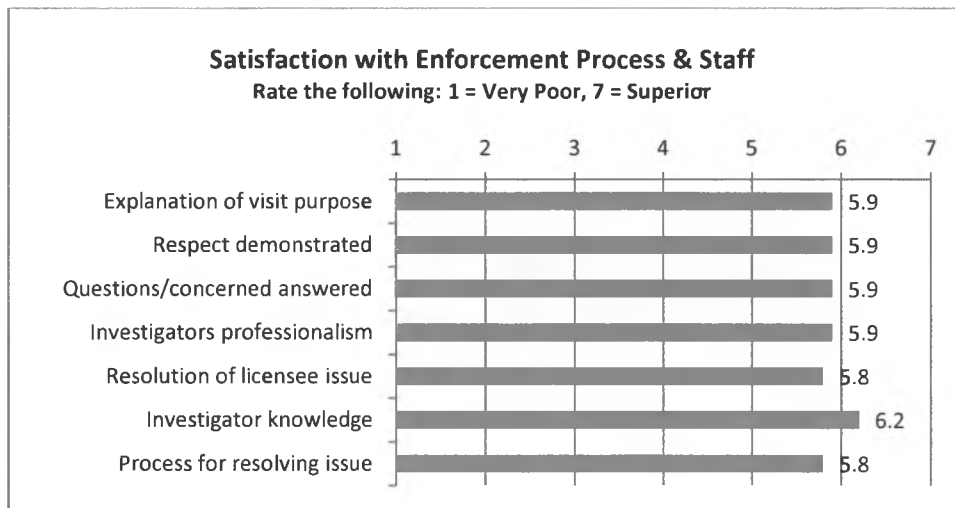
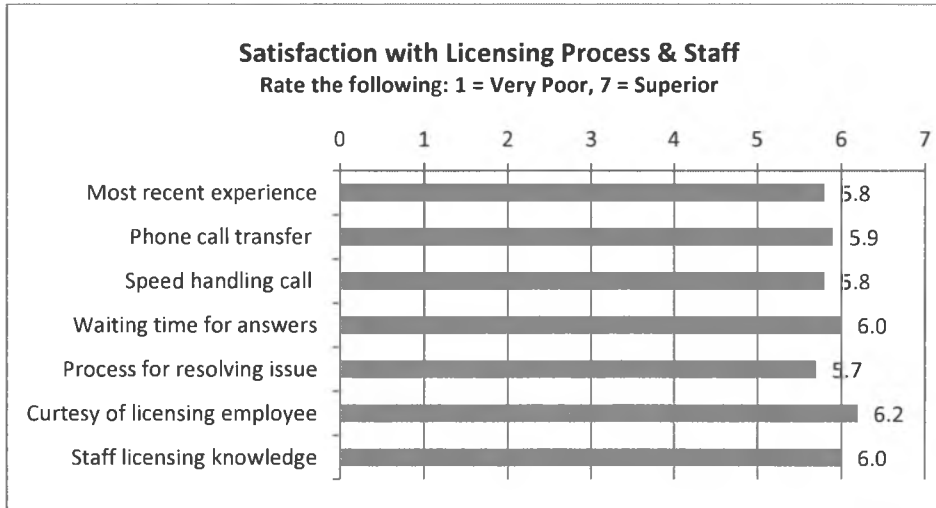
SFY	Alcohol Sales to Minors			Tobacco Sales to Minors*
	A	B	C	
	# Vendor Checks	# Sales	Violation Rate (B / A)	
2006	874	169	19.30%	9.40%
2007	1,037	190	18.30%	13.60%
2008	609	82	13.50%	9.20%
2009	614	83	13.50%	15.10%
2010	700	105	15.00%	9.00%
2011	804	98	12.00%	7.60%
2012	n/a	n/a		6.50%



- * Alaska tobacco sales to minors are represented by the Synar Retailer Violation Rate (RVR). (The federal Synar Amendment requires states to conduct investigations related to the sale of tobacco to minors.)
- * Alcohol sales data is from the Alcoholic Beverage Control (ABC) Board. The Tobacco sales data is from the Department of Health and Social Services- Division of Behavioral Health (DHSS-DBH).

ABC Board
2011 Licensee Survey*

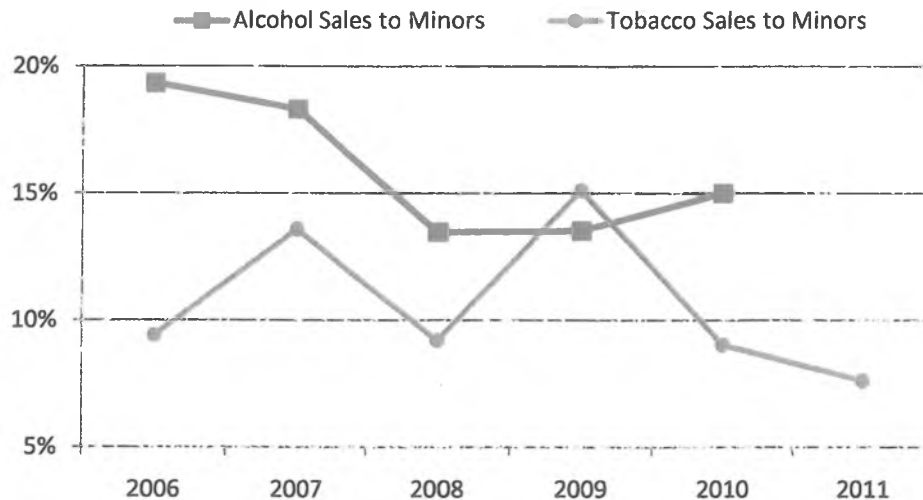
*Mental Health
TRUST*



*Data captured from 257 anonymous responses to the survey from licensees.

Alaska Alcohol vs. Tobacco Sales to Minors SFY2006 - 2011

SFY	Alcohol Sales to Minors			Tobacco Sales to Minors *
	A	B	C	
	# Vendor Checks	# Sales	Violation Rate (B / A)	
2006	874	169	19.3%	9.4%
2007	1,037	190	18.3%	13.6%
2008	609	82	13.5%	9.2%
2009	614	83	13.5%	15.1%
2010	700	105	15.0%	9.0%
2011	n/a	n/a		7.6%

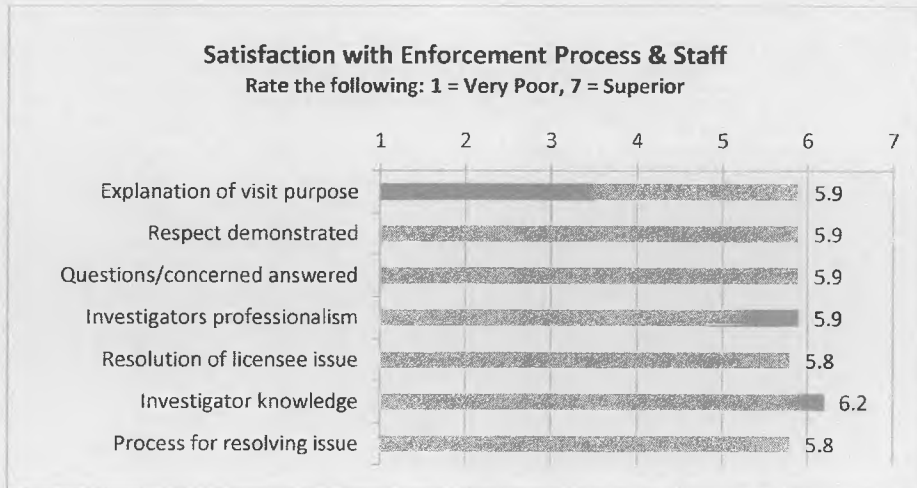
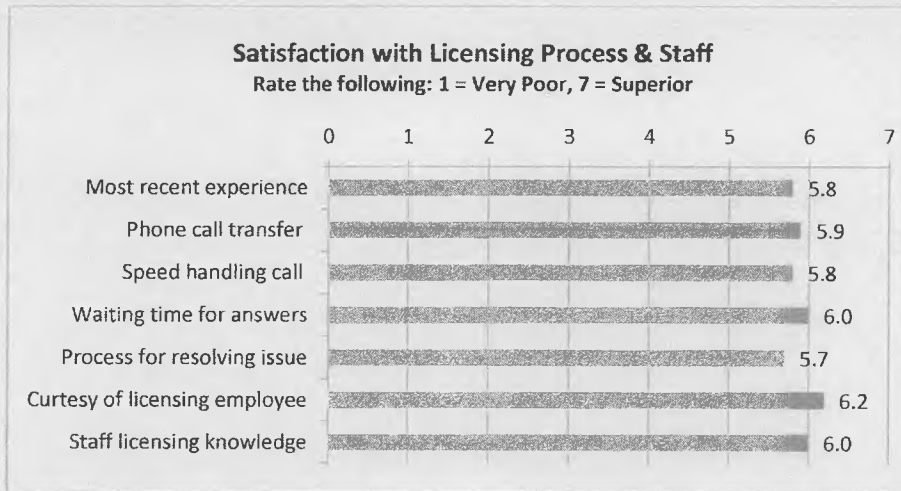


* Alaska tobacco sales to minors are represented by the Synar Retailer Violation Rate (RVR). (The federal Synar Amendment requires states to conduct investigations related to the sale of tobacco to minors.)

Synar investigations cross state fiscal years. For instance, the 2011 RVR reflects investigations conducted between June 1 and September 30, 2010. The 2011 RVR is provisional, pending federal approval.

Compiled by!
ALASKA MENTAL HEALTH TRUST Authority

**ABC Board
2011 Licensee Survey***



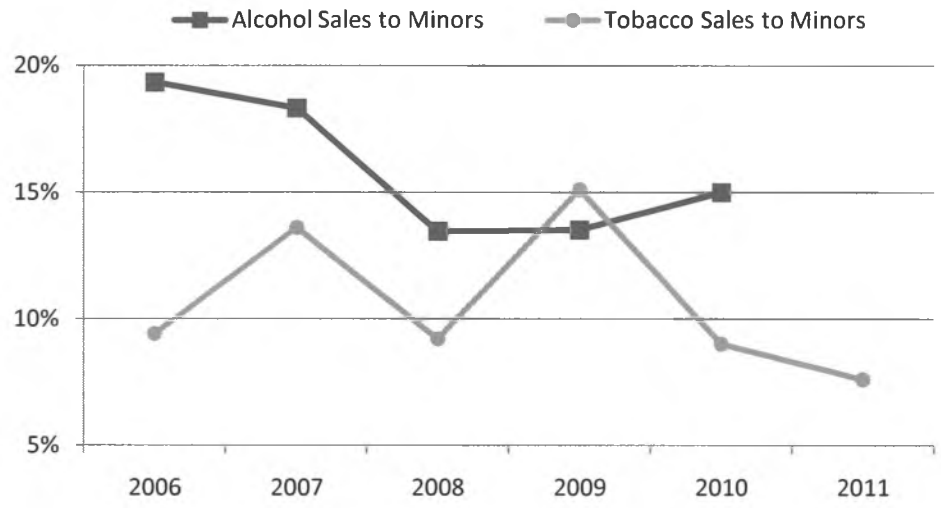
*Data captured from 257 anonymous responses to the survey from licensees.

Compiled by: Alaska Mental Health Trust Authority

4/6/11

Alaska Alcohol vs. Tobacco Sales to Minors SFY2006 - 2011

SFY	Alcohol Sales to Minors			Tobacco Sales to Minors *
	A	B	C	
	# Vendor Checks	# Sales	Violation Rate (B / A)	
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2009	614	83	13.5%	15.1%
2010	700	105	15.0%	9.0%
2011	n/a	n/a		7.6%



* Alaska tobacco sales to minors are represented by the Synar Retailer Violation Rate (RVR). (The federal Synar Amendment requires states to conduct investigations related to the sale of tobacco to minors.)

Synar investigations cross state fiscal years. For instance, the 2011 RVR reflects investigations conducted between June 1 and September 30, 2010. The 2011 RVR is provisional, pending federal approval.

Component: Alcoholic Beverage Control Board

Contribution to Department's Mission's

Protect the public from alcoholic beverage abuse by enforcing state laws regulating alcoholic beverage commerce.

Core Services

- Regulate alcoholic beverage commerce.
- License qualified persons to sell alcoholic beverages.
- Provide accurate liquor license and licensee information to the public.
- Provide up-to-date local option status of Alaska communities to the public.
- Enforce state laws governing alcoholic beverage commerce.
- Assist and train municipal police and Alaska State Troopers in alcoholic beverage law enforcement.

Results at a Glance

(Additional performance information is available on the web at <http://omb.alaska.gov/results>.)

END RESULT A: Eliminate harm to the public from underage access to alcoholic beverages.

- Rate of compliance with laws prohibiting the sale of alcoholic beverages to underage persons was 87% in FY2009, compared to 83% in FY2008.

Status of Strategies to Achieve End Result

- FY2009 targets for annual alcoholic beverage licensed establishments compliance checks were met in four of eight regions (50%)

Major Activities to Advance Strategies

- | | |
|--|--|
| <ul style="list-style-type: none">• Increase deterrence for selling to young-looking persons.• Recruit, hire, and train ABC Investigators. Recruit and train underage "assets" for compliance checks.• Communicate regarding success or failure with compliance check.• Notice of violations for licensees failing compliance checks. | <ul style="list-style-type: none">• Criminal citation for clerks/servers selling to underage persons.• Follow-up checks timely for licensees that fail compliance check.• Accusations against serial failures of compliance checks.• Suspend liquor licensees and levy fines on licenses convicted of selling alcohol to underage persons and other related Title 4 violations. |
|--|--|

Key Component Challenges

Investigator staffing remains at levels below those that existed prior to the construction of the Trans-Alaska Pipeline. Inadequate staffing prevents proactive enforcement and increases the danger to the public attributable to underage drinking and alcohol-related accidents and deaths. Compliance check successes by licensees are directly related to the numbers of compliance checks accomplished. Only one investigator is assigned through a grant to work compliance check and shoulder tap programs, and must do so with the assistance of already over-burdened local and state law enforcement.

New licenses for "outdoor recreation lodges" resulting from legislation passed in 2005 continue to present challenges for the board. Many of these lodges are located in rural parts of the state and board staff are balancing concerns from nearby communities, many of which restrict alcohol possession by local option, with the right of lodge owners to acquire and operate lodge licenses that allow service only to their guests and off-duty staff.

Newly enacted legislation allowing the courts to mandate alcohol-related offenders obtain "Alcohol Restricted" labeled driver's licenses or identification cards remains difficult for licensees and servers to enforce when subjects are

Alaska State Legislature
HOUSE FINANCE COMMITTEE

Agenda
8:30 AM

Wednesday, April 6, 2011

HB 125 ALCOHOLIC BEVERAGE CONTROL BOARD
NEW FISCAL NOTE CED \$ replaces published #1
Shirley Gifford ABC Board

HB 206 EXTEND ALCOHOLIC BEVERAGE CONTROL BOARD
FISCAL NOTE DPS \$
Jennifer Senette, staff Rep. Olson
Chief Thomas Clemson , Seward Police Chief

**Advisory Board on Alcoholism
and Drug Abuse**



Alaska Mental Health Board

ALASKA MENTAL HEALTH BOARD
ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE
431 NORTH FRANKLIN STREET, SUITE 200
JUNEAU, ALASKA 99801
(907) 465-8920

The Advisory Board on Alcoholism and Drug Abuse does not support moving the Alcoholic Beverage Control Board from the Department of Public Safety.

First, the Board expressly states its appreciation for the work of all the folks involved in this conversation: the ABC Board members and staff, the members of CHARR, the law enforcement community, social services and community organizations, and the legislative committees. It's not easy work. We want to reiterate that this is not an issue of good guys and bad guys. And it's not an issue of the merits or demerits of alcohol.

The stated intent of HB 125, based on the recommendation of the Legislative Budget and Audit Subcommittee, is to create "greater sensitivity on [the ABC Board's] part for the commercial benefits the industry generates for the State."

The Advisory Board on Alcoholism and Drug Abuse has had the chance to work together with the Cabaret, Hotel, Restaurant and Retailer's Association over the last two years. Not only have we furthered our shared priority of preventing fetal alcohol spectrum disorder through better public awareness efforts, the board has had the opportunity to learn more about how the industry and individual retailers promote responsible – and lawful – use of alcohol.

The retailers of alcoholic beverages in Alaska invest time, energy, and money to ensure that only lawful sales are made – whether to youth or to adults. Many retailers have strong histories of responsible sales practices and community efforts to promote responsible consumption, and those efforts should not be minimized. The fact that we have a 15% non-compliance rate is attributable not just to ABC Board efforts, but to the conscientiousness of retailers and their employees – and the training and supports provided by CHARR. However, even with this improvement, the rate of illegal sales of alcohol to minors remains nearly twice the rate of illegal sales to minors of tobacco.

Even with the heightened compliance rate, Alaska youth are reporting unacceptable levels of underage alcohol use. In 2009, 57% of alternative high school students and 33.2% of traditional high school students surveyed in the Youth Risk Behavior Survey reported having used alcohol in the past 30 days. That same year, 42.7% of alternative high school students and 21.7% of traditional high school students reported binge drinking in the past 30 days. Folks should not assume that youth get all their alcohol from retailers. While that is a certainly a source of alcohol — either directly or through improper purchases for minors by adults with less than great judgment (something shoulder tap checks are meant to catch) — other means of securing alcohol account for at least 1/3 of the ways young people report getting their hands on alcohol.

Because the major issue for ABADA is the consequences of the proposed move – and how it could affect the overall issues of underage drinking and alcohol abuse in Alaska – we looked at the reported youth alcohol use in states where the ABC Board is in a law enforcement agency like Public Safety and compared it to states where the alcoholic beverage control entity was within a non-law enforcement agency (such as Revenue or Commerce). Here’s what we learned:

Colorado, Georgia, Kansas, Mississippi, and Missouri all have the ABC Board within a non-law enforcement executive agency. In those states, the Youth Risk Behavior Survey data for 2009 showed slightly higher average rates for youth reporting ever having had an alcoholic drink and reporting a drink before age 13. More importantly, all those states had higher reported rates of youth alcohol use than Alaska:

- 1.3-5.8% higher reports of ever having had alcohol;
- 3.5-9.5% higher reports of having had alcohol before age 13; and
- 1.1-7.6% higher reports of having had alcohol at least once in the last month.

Three of these five states had rates of binge drinking 3-4% higher than Alaska’s. (See Table 1)

Comparing the rate of alcohol related underage driving fatalities in states with alcohol control within law enforcement agencies to the rate in states where alcohol control is not within law enforcement shows a similar difference. From data reported by The Century Council, a national nonprofit organization of distillers formed “to fight against drunk driving and underage drinking” and to promote “responsible decision making regarding beverage control,” we see a significant difference between states.

The national rate for underage driving fatalities in 2009 was 2/100,000. Alaska’s was 1.4/100,000, the approximate mean of seven states reviewed where alcohol control was within a law enforcement or public safety agency. Looking at Colorado, Georgia, Kansas, Mississippi, Missouri, Montana, South Carolina, South Dakota, West Virginia, and Wyoming (all states where the alcohol control agency is in an agency other than law enforcement), the average rate was 3.6/100,000 – two and a half times the rate of states that treat alcohol control as a public safety responsibility. (Source: *The Century Council, citing National Highway Traffic Safety Administration/FARS data, <http://www.centurycouncil.org/learn-the-facts/statefacts>.)*

The Legislature can provide guidance and express language about expectations to the ABC Board, in order to balance the concerns and needs of all the parties involved. You also have an existing mechanism for investigating and resolving citizen complaints about executive agencies: the Ombudsman.

I used to be an assistant ombudsman with the Alaska State Ombudsman, and I couldn’t remember seeing a complaint about the ABC Board come in while I was there. So I reviewed the matrix of investigations posted on the Ombudsman’s website, and I didn’t see any there either. Just to be sure, I call Linda Lord-Jenkins, the Ombudsman, and asked her about complaints about the ABC Board. She reviewed their database of complaints, which goes back to 2000. She found one complaint about the ABC Board, made in 2010 and still being investigated. One complaint in a decade.

The testimony provided to the Legislative Budget and Audit subcommittee, and to committees during the session, has been passionate. Clearly there are different positions that need to be resolved. Moving the ABC Board is a dramatic solution, and one not without cost. Such a solution should be the last resort, and not the first.

The Advisory Board on Alcoholism and Drug Abuse supports efforts to promote a collaborative relationship between the ABC Board and members of the industry. We can speak first hand of the benefits of partnership with CHARR and its members, and see opportunities for working together to reach common goals – one of them being ensuring that only lawful sales of alcohol are made. However, the data – the compliance rate, the availability and use of alcohol by underage youth, the disparity in outcomes between states with the ABC Board in public safety versus other agencies, and the lack of a record of complaints about the board's actions – indicate that the unintended consequences of HB 125 are too costly to Alaskan communities.



Questions Posed by the Committee:

How much does the State of Alaska spend on substance abuse prevention?

In FY11, \$5,330,200 was appropriated to the Comprehensive Action Prevention and Intervention Grant Component. (Source: 2010 Legislature – Operating Budget Allocation Summary for DHSS, online at: <http://www.legfin.state.ak.us/BudgetReports/LY2010/Operating/Enacted/HSS-AllocationSummary.pdf>.)

The Department of Health and Social Services provided \$3,987,679 in Comprehensive Behavioral Health Prevention and Early Intervention grant funds to 37 grantees. These grants address a wide array of prevention efforts (substance abuse, suicide, violence, etc.). The Division of Juvenile granted \$125,000 in underage drinking prevention/enforcement. (Source: DHSS FY 2011 Operating Grants Book, at 22-26.) For FY12, there is an open request for funding proposals for alcohol abuse prevention efforts, made possible by the SAMSHA Strategic Prevention Framework grant received by Alaska. The total amount available to grantees for FY12-FY14 is \$6.3m.

Additional information on comparison states:

Colorado

Alcoholic beverage control is within the state Department of Revenue. There is no state oversight board – it is an executive agency. The Liquor Enforcement Division oversees licensing and enforcement. They use an enforcement system like Alaska's, imposing criminal sanctions on the individual seller and administrative sanctions on the licensee. The reported non-compliance rates by country range from 0-37.5%, with an average compliance rate of 87.3%. This is comparable to Alaska's.

Colorado allocates a portion of its Substance Abuse Prevention and Treatment Block Grant to substance abuse prevention efforts (\$1,380,279 in FY2011). They also began a prevention campaign to change social norms this fiscal year (\$593,316 in FY11, projected to continue through FY2015). Individual communities in Colorado have received recent SAMHSA prevention grants (i.e. Frisco, CO).

Georgia

Alcoholic beverage control is within the Department of Revenue. There is no state oversight board – it is an executive agency. Counties have their own alcoholic beverage control boards.

The Alcohol and Tobacco Division collects all taxes and fees owed by individuals and businesses subject to Georgia's alcoholic beverage, tobacco and coin operated amusement machine laws and regulations. It provides assistance to taxpayers, license and permit applicants and others in the areas of alcohol, tobacco and coin operated amusement machines. It ensures compliance with Georgia laws and regulations relating to voluntary compliance and enforcement of beverage alcohol and tobacco products, coin operated amusement machines, motor fuel tax, motor carriers and motor vehicle registration. It also provides assistance to federal, other state and local governments and their law enforcement agencies. The Enforcement Section is charged with preventing the illegal production, importation, transportation, possession and sale of alcoholic beverage products, the transportation and sale of untaxed cigars and cigarettes, the use of unlicensed and unstamped coin operated amusement machines and the sale and furnishing of alcoholic beverages to underage persons. The investigators involved in enforcing alcoholic beverage laws work in partnership with local law enforcement.

Georgia was a 2006-2011 SAMHSA Strategic Prevention Framework State Incentive Grant recipient. Georgia's prevention efforts include "The Worst Drug of All" campaign (supported by USDOJ funding) aimed at children and youth and families. Online at: <http://connectwithkids.com/theworstdrugofall/pdf/ResourceGuide-TheWorstDrugOfAll.pdf>

Kansas

Alcoholic beverage control is within the Department of Revenue. There is no state oversight board. County boards of commissioners approve license applications. Kansas has 19 "dry" counties.

Enforcement efforts are by agency staff in conjunction with local/state law enforcement officers, trained in part by the board. The board has only administrative enforcement powers.

Kansas was a 2006-2011 SAMHSA Strategic Prevention Framework State Incentive Grant recipient. Individual communities in Kansas have received recent SAMHSA prevention grants (i.e. Lawrence, KS).

Mississippi

Alcoholic beverage control is within the Department of Revenue. Mississippi is a **control state**, meaning only state outlets sell alcoholic beverages (no licensees, no enforcement). About half the state's counties have exercised a local option ("dry counties"). There is no state board. (Mississippi provides a nice guide for local governments, online at <http://www.tax.ms.gov/docs/ABCBook2.pdf>.)

The alcoholic beverage control division is responsible for maintaining fair and equitable enforcement of the local option, prohibition, and beer laws in the state of Mississippi. To accomplish this mission, they have twenty-six law enforcement certified enforcement agents throughout the state.

Mississippi was a 2006-2011 SAMHSA Strategic Prevention Framework State Incentive Grant recipient.

Missouri

Alcoholic beverage control is within the Department of Revenue. Enforcement was moved to Public Safety in 2009, creating a bifurcated process at the state level. Compliance checks are conducted by Public Safety, with support from the division and funding from the Missouri Department of Transportation. Regulatory actions are performed by the board within Revenue. The Division of Alcohol and Tobacco Control is responsible for collecting taxes, consumer protection from tainted beverages, and enforcement of youth access to tobacco laws. The division conducts regular server trainings.

Missouri launched a school based prevention program in 2002, in five school districts, and utilizes a similar spectrum of community-based prevention efforts as Alaska (*see* <http://dmh.mo.gov/ada/progs/prevention.htm> for more information).

Individual communities in Missouri have received recent SAMHSA prevention grants (i.e. Cape Girardeau, Sikeston).



Comparison of Youth Risk Behavior Survey Data, States with Alcoholic Beverage Control in Safety Agencies vs. States with Alcoholic Beverage Control in Non-Safety Agencies

Because the major issue for ABADA is the consequences of the proposed move – and how it could affect the overall issues of underage drinking and alcohol abuse in Alaska – we looked at the reported youth alcohol use in states where the ABC Board is in a law enforcement agency like Public Safety and compared it to states where the alcoholic beverage control entity was within a non-law enforcement agency (such as Revenue or Commerce). Here's what we learned:

Alaska, Delaware, Idaho, Kentucky, and New Jersey all have the ABC Board within law enforcement agencies. In those states, the Youth Risk Behavior Survey data for 2009 all reflected an average rate of youth alcohol use (any drink, drink before age 13, drink in the last 30 days, binge drinking) below the national average.

Colorado, Georgia, Kansas, Mississippi, and Missouri all have the ABC Board within a non-law enforcement executive agency. In those states, the Youth Risk Behavior Survey data for 2009 showed slightly higher average rates for youth reporting ever having had an alcoholic drink and reporting a drink before age 13. More importantly, all those states had higher reported rates of youth alcohol use than Alaska:

- 1.3-5.8% higher reports of ever having had alcohol;
- 3.5-9.5% higher reports of having had alcohol before age 13; and
- 1.1-7.6% higher reports of having had alcohol at least once in the last month.

Three of these five states had rates of binge drinking 3-4% higher than Alaska's. (See Table 1)

Advisory Board on Alcoholism
and Drug Abuse



Alaska Mental Health Board

ALASKA MENTAL HEALTH BOARD
ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE
431 NORTH FRANKLIN STREET, SUITE 200
JUNEAU, ALASKA 99801
(907) 465-8920

Table 1

Public Safety States	US	Alaska	Delaware	Idaho	Kentucky	New Jersey	Average*
Ever had at least one drink of alcohol on at least 1 day	72.5	66.6	71.0	62.5	69.3	74.6	68.8
Drank alcohol for the first time before age 13 years	21.1	16.9	23.5	19.2	21.7	18.0	19.9
Had at least one drink of alcohol on at least 1 day	41.8	33.2	43.7	34.2	37.8	45.2	38.8
Had five or more drinks of alcohol in a row within a couple of hours on at least 1 day	24.2	21.7	23.7	22.3	23.6	26.7	23.6
Usually obtained the alcohol they drank by someone giving it to them	42.2	34.7	39.3	41.4	38.7	32.0	37.2
Had at least one drink of alcohol on school property on at least 1 day	4.5	3.0	5.0	3.5	5.2	NR	4.2

Revenue States	US	Colorado	Georgia	Kansas	Mississippi	Missouri	Average*
Ever had at least one drink of alcohol on at least 1 day	72.5	72.4	67.9	69.2	70.0	70.5	70.0
Drank alcohol for the first time before age 13 years	21.1	22.4	20.7	21.1	26.4	20.4	22.2
Had at least one drink of alcohol on at least 1 day	41.8	40.8	34.3	38.7	39.2	39.3	38.5
Had five or more drinks of alcohol in a row within a couple of hours on at least 1 day	24.2	25.1	18.8	25.5	19.7	25.3	22.9
Usually obtained the alcohol they drank by someone giving it to them	42.2	41.3	35.6	42.5	42.5	41.0	40.6
Had at least one drink of alcohol on school property on at least 1 day	4.5	4.1	4.2	3.2	4.3	3.0	3.8

* Simple Average

Source: Youth Risk Behavior Surveillance System, 2009

http://www.cdc.gov/HealthyYouth/yrbs/state_district_comparisons.htm

February 18, 2011



Alaska State Legislature
ABC Board Audit Review Subcommittee of the
Legislative Budget & Audit Committee

In August 2010, the Alcoholic Beverage Control (ABC) Board Audit Review Subcommittee, under the direction of the Legislative Budget and Audit Committee, held hearings related to the 2009 ABC Board Sunset Audit and the provisional one year extension of the ABC Board's operations. Specifically, the Subcommittee was tasked with performing an analysis of the Board and policy issues related to its 2004 transfer from the Department of Revenue to the Department of Public Safety, and to make recommendations regarding the continuance of its operations.

The Subcommittee held two meetings where it solicited testimony and data from both the alcohol industry and the regulatory and enforcement agencies providing oversight to it. On August 13, 2010, the Subcommittee received presentations from Alaska Cabaret, Hotel, Restaurant and Retailer's Association (CHARR), Anchorage CHARR and the Anchorage Responsible Beverage Retailers Association (ARBRA), as well as public testimony in the form of written submissions from individual licensees. Then, on August 27, 2010, the Subcommittee received a presentation on ABC Board operations from Director Shirley Gifford, testimony from Commissioner Masters of Department of Public Safety (DPS) and ABC Board Chairman Bob Klein, and updated audit information from the Legislative Audit Division.

Regarding recent audits, testimony indicated the administration and operations of the ABC Board have greatly improved under the tenure of Director Gifford, who received high praise from all parties. Testimony also indicated the 2004 move of the ABC Board to Public Safety had been successful in achieving the more rigorous enforcement atmosphere which had served as the original justification for the transference. These positive points were counter-balanced, however, by recognition that the cultural shift towards a more exclusively enforcement mentality had inadvertently created an adversarial relationship between the ABC Board and industry and, in the words of ABC Board Chair Klein, an apparent loss of recognition of and/or respect for the industry's "commercial aspects".

It is acknowledged by the ABC Board it will continue to perform its enforcement and oversight duties regardless of the Department under which it operates. It is further acknowledged by the Department of Public Safety (which provides administrative services to the Board but, by admission, exercises little or no directive control) it will continue to assist the ABC Board with its enforcement and compliance activities. Therefore, recognizing such a move should entail no diminishment of service by the ABC Board but is likely to engender a greater sensitivity on its part for the commercial benefits the industry generates for the State, it is the recommendation of the ABC Board Audit Review Subcommittee that the ABC Board be transferred to the Department of Commerce, Community and Economic Development.

Respectfully submitted by Subcommittee Members:

Senator Kevin Meyer, Chair
Representative Mike Hawker
Representative Bill Stoltze
Senator Linda Menard, Alternate

Alaska State Legislature Legislative Budget & Audit Committee

Interim:
716 West 4th Ave
Anchorage, Alaska 99501
(907) 269-0244



Session:
State Capitol Building
Juneau, Alaska 99801
(907) 465-4949

Representative Mike Hawker, Chairman

House Bill 125 Sponsor Statement

Short Title: Alcoholic Beverage Control Board

House Bill 125 transfers administration of the Alcoholic Beverage Control Board from the Department of Public Safety to the Department of Commerce, Community and Economic Development.

The Alcoholic Beverage Control Board was established as a regulatory and quasi-judicial agency for the oversight of the manufacture, barter, possession, and sale of alcoholic beverages in the state.

The Board was originally established in the Department of Revenue for administrative purposes only. Legislation in 2003 moved the Board to the Department of Public Safety. A subcommittee of the Legislative Budget and Audit Committee held hearings in Summer 2010 to determine the best Board location for administrative purposes. That subcommittee recommended moving the Board to the Department of Commerce, Community and Economic Development. House Bill 125 has been introduced to implement that recommendation.

Alaska is a "license" state with issuance of licenses by the board to private business. As the Alcoholic Beverage Control Board is primarily a commercial, regulatory agency, it should come under the Department of Commerce, Community and Economic Development, along with all other professional and industry regulatory boards and commissions. House Bill 125 does not restrict or change the enforcement responsibilities of the Board or of the Department of Public Safety.

Representative Mike Hawker

Alaska State Legislature



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House District 32:

Eagle River
Anchorage
Rainbow
Indian
Bird
Girdwood
Portage
Whittier
Sunrise
Hope

House Bill 125

Alcoholic Beverage Control Board

Summary of Changes

House Labor & Commerce Committee:

One amendment was made to House Bill 125 in Labor & Commerce.

The amendment added the following sentence on Page 2, Section 3, Lines 18-20:

Unless authorized by a search warrant described in 19 AS 12.35.010 - 12.35.120, nothing in this section authorizes the use of metal keys, 20 magnetic card keys, or identification cards to access private clubs.

The amendment is intended to limit the peace officer powers granted in the ABC Board statute to the ABC Board director and staff.

4/6/11



State of Alaska

Department of Public Safety

Alcoholic Beverage Control Board

Sean Parnell, Governor
Joseph A. Masters, Commissioner

February 15, 2011

COMPLAINT PROCEDURE

In the event any person believes he or she has not been treated fairly by any member of the Alcoholic Beverage Control Board the following procedure is instituted for his or her convenience. Following this procedure will give the public a range of options and give management an opportunity to investigate the concerns and take whatever action is appropriate.

1. Contact an immediate supervisor.

If the issue stems from licensing Records & Licensing Supervisor Lauren Edades can be contacted:

Lauren Edades
Records & Licensing Supervisor
Alcoholic Beverage Control Board
5848 E. Tudor Road
Anchorage, Alaska 99507
(907) 269-0359
lauren.edades@alaska.gov

If the issue stems from an enforcement issue Enforcement Unit Supervisor Robert Beasley can be contacted:

Robert Beasley
Enforcement Unit Supervisor
Alcoholic Beverage Control Board
5848 E. Tudor Road
Anchorage, Alaska 99507
(907) 269-0353
robert.beasley@alaska.gov

2. Contact the director:

In addition, the Director can always be contacted with any concerns regarding the operation of the agency:

Shirley Gifford
Director
Alcoholic Beverage Control Board
5848 E. Tudor Road
Anchorage, Alaska 99507
(907) 269-0351
shirley.gifford@alaska.gov

3. Schedule an appearance before the Board of Directors.

Call either Lauren Edades at 907-269-0359 or Shirley Gifford at 907-269-0351 to ensure a place on the agenda.

4. Attend a Board of Directors meeting during the Public Testimony period.

The Board of Directors meets five times per year. The public testimony period is scheduled first on the agenda after a short briefing. The date, time, and location of the board meetings are posted on the bottom of the first page on the ABC Board website: <http://www.dps.state.ak.us/abc/>

5. File a complaint with the Department of Public Safety's Office of Professional Standards:

The State of Alaska website is www.state.ak.us ; click on Departments - Public Safety - Commissioner's Office - Report Employee Conduct - Notice of Employee Conduct. The link is as follows: http://www.dps.state.ak.us/Comm/docs/DPS_Form_OPS-102.pdf

6. Contact the State of Alaska Ombudsman:

Linda Lord-Jenkins
Ombudsman
State of Alaska
P.O. Box 101140
Anchorage, Alaska 99510
(907) 269-5290
ombudsman@legis.state.ak.us

The State Ombudsman is not to take the place of the first five options; however, the complainant may choose to contact the Ombudsman instead. The Ombudsman's office is an independent agency set up to investigate matters involving state agencies.

Any member of the public should feel free to use one or more of the methods above for airing concerns regarding the conduct or performance of the ABC Board or its employees. In the event a person wishes to pass along accolades regarding the performance of any employee he or she may use any or all of numbers one through five above.

STATUTES RELATED TO THE ABC BOARD MOVE

Chapter 04.06. ALCOHOLIC BEVERAGE CONTROL BOARD

Sec. 04.06.010. Establishment of board.

There is established in the Department of Public Safety the Alcoholic Beverage Control Board as a regulatory and quasi-judicial agency. The Board is in the Department of Public Safety, but for administrative purposes only.

Sec. 04.06.020. Appointment and qualifications.

(a) The board consists of five members appointed by the governor and confirmed by a majority of the members of the legislature in joint session. A member of the board may not hold any other state or federal office, either elective or appointive. Two members of the board shall be persons actively engaged in the alcoholic beverage industry, except that no member may hold a wholesale license or be an officer, agent, or employee of a wholesale alcoholic beverage enterprise. Not more than two members of the board may be engaged in the same business, occupation, or profession. Three members of the board, at least one of whom shall reside in a rural area, shall represent the general public. A board member representing the general public or an immediate family member of a board member representing the general public may not have any financial interest in the alcoholic beverage industry. In this section,

(1) "immediate family member" means a spouse, child, or parent;

(2) "rural area" means a community that is not connected by road or rail to Anchorage or Fairbanks, that has a population of 6,000 or less or that has a population of more than 6,000 and has participated in a local option election under AS 04.11.491, and that is

(A) a city; for purposes of this subparagraph, "city" has the meaning given in AS 29.71.800;

or

(B) an established village that is located in a borough or in the unorganized borough.

(b) For purposes of (a)(2) of this section, the population of a community is the population of that community as determined under AS 29.60.860(c).

Sec. 04.06.030. Terms of office; chair.

(a) Members of the board shall be appointed for overlapping terms of three years.

(b) A vacancy occurring in the membership of the board shall be filled within 30 days by appointment of the governor for the unexpired portion of the vacated term.

(c) The board shall select a chairman from among its members.

Sec. 04.06.040. Per diem and expenses.

Members of the board do not receive a salary, but are entitled to per diem and travel expenses authorized by law for other boards and commissions.

Sec. 04.06.050. Meetings.

The board shall meet at the call of the chairman. The board shall also meet at least once each year in each judicial district of the state to study this title and to modify existing board regulations in light of statewide and local problems.

Sec. 04.06.060. Quorum and majority.

Three members of the board constitute a quorum for the conduct of business, except that a majority of the whole membership of the board must approve all applications for new licenses, and all renewals, transfers, suspensions, and revocations of existing licenses.

Sec. 04.06.070. Appointment and removal of director.

The governor shall appoint a director to serve as the executive officer of the board. The board may remove the director at its pleasure, and the governor may remove the director for misconduct, misfeasance, or malfeasance in office. The governor may not remove the director unless the director is given a copy of the charges and afforded an opportunity to be publicly heard, in person or by counsel, in defense against the charges upon at least 10 days' notice. If the director is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the director and the findings based on the charges, together with a complete record of any hearing.

Sec. 04.06.075. Authority of director.

The director shall enforce this title and regulations adopted by the board.

Sec. 04.06.080. Delegation of authority.

The director shall issue, renew, transfer, suspend, or revoke all licenses and permits at the direction of the board. However, notwithstanding AS 04.11.070, the board may delegate authority to the director to temporarily grant or deny the issuance, renewal, or transfer of licenses and permits. The director's temporary grant or denial of the issuance, renewal, or transfer of a license or permit is not binding on the board. The board may delegate to the director any duty imposed by this title except its power to propose and adopt regulations.

Sec. 04.06.090. Powers and duties.

(a) The board shall control the manufacture, barter, possession, and sale of alcoholic beverages in the state. The board is vested with the powers, duties, and responsibilities necessary for the control of alcoholic beverages, including the power to propose and adopt regulations and to hear appeals from actions of the director, and from actions of officers and employees charged with enforcing the alcoholic beverage control laws and the regulations of the board.

(b) The board shall review all applications for licenses made under this title and may order the director to issue, renew, revoke, transfer, or suspend licenses and permits authorized under this title.

(c) When considering an application, the board may reduce the area to be designated the licensed premises below the area applied for when, in the judgment of the board, a reduction in area is necessary to ensure control over the sale and consumption of alcoholic beverages on the premises or is otherwise in the best interests of the public.

(d) The board may employ, directly or through contracts with other departments and agencies of the state, enforcement agents and staff it considers necessary to carry out the purposes of this title. The salaries of personnel of the board in the exempt service shall be set by the Department of Administration.

(e) The board shall promptly notify all licensees and municipalities of major changes to this title and to regulations adopted under this title. However, if changes only affect specific classifications of licenses and permits, the board need only notify those licensees and municipalities directly affected by the changes. Current copies of this title and current copies of the regulations adopted under it shall be made available at all offices in the state of the Department of Public Safety and the detachment headquarters and posts maintained by the division of Alaska state troopers in the Department of Public Safety.

Sec. 04.06.095. Statewide database.

The board, after consulting with package store licensees, shall create and maintain a statewide database that contains a monthly record of the alcohol purchased by, and shipped to, a person who resides in a municipality or established village that has restricted the sale of alcoholic beverages under AS 04.11.491 (a)(1), (2), or (3) or (b)(1) or (2). Except as otherwise specifically provided in this section, the information contained in the database is confidential and is not subject to inspection or copying under AS 40.25.110 - 40.25.220. Information in the database shall be purged one year after entry unless it is needed for criminal investigation or prosecution. Information in the database is available only to

- (1) a package store licensee, agent, or employee to consult before shipping alcohol to a purchaser in a restricted area as provided in AS 04.11.150(g);
- (2) a law enforcement officer;
- (3) a probation or parole officer;
- (4) the board; and
- (5) the person who is the subject of the information; the board shall adopt regulations concerning access by a person to information contained in the database of the purchases by, and shipments to, that person.

Sec. 04.06.100. Regulations.

(a) The board shall adopt regulations governing the manufacture, barter, sale, consumption, and possession of alcoholic beverages in the state that are consistent with this title and necessary to carry out the purpose of this title in a manner that will protect the public health, safety, and welfare. The regulations shall be adopted in accordance with AS 44.62 (Administrative Procedure Act).

(b) The subjects covered by regulations adopted under (a) of this section may include the following matters:

- (1) employment, conduct, and duties of the director and of regular and contractual employees of the board;
- (2) procedures for the issuance, denial, renewal, transfer, revocation, and suspension of licenses and permits;
- (3) terms and conditions of licenses and permits issued;
- (4) fees for licenses and permits issued for which fees are not prescribed by statute;
- (5) conduct of regular and special meetings of the board;
- (6) delegation to the director of routine administrative functions and powers;
- (7) the temporary granting or denial of issuance, transfer, and renewal of licenses;
- (8) manner of giving any notice required by law or regulation when not provided for by statute;
- (9) requirements relating to the qualifications of licensees, the conditions upon which a license may be issued, the accommodations of licensed premises, and board inspection of those premises;
- (10) making of reports by wholesalers;
- (11) purchase of fidelity bonds by the state for the director and the employees of the board;
- (12) prohibition of possession of alcoholic beverages by drunken persons and by minors;
- (13) required reports from corporations licensed under this title, including reports of stock ownership and transfers and changes of officers and directors;
- (14) creation of classifications of licenses or permits not provided for in this title;
- (15) establishment and collection of fees to be paid on application for a license or permit;
- (16) required reports from partnerships and limited partnerships licensed under this title, including reports of transferred interests of 10 percent or more;
- (17) required reports from limited liability organizations licensed under this title, including reports of the transfer of a member's interest if the transfer equals 10 percent or more of the ownership of the limited liability organization and any change of managers.

Sec. 04.06.110. Peace officer powers.

The director and the persons employed for the administration and enforcement of this title may, with the concurrence of the commissioner of public safety, exercise the powers of peace officers when those powers are specifically granted by the board. Powers granted by the board under this section may be exercised only when necessary for the enforcement of the criminally punishable provisions of this title, regulations of the board, and other criminally punishable laws and regulations, including investigation of violations of laws against prostitution and promoting prostitution described in AS 11.66.100 - 11.66.130

and laws against gambling, promoting gambling, and related offenses described in AS 11.66.200 - 11.66.280.

REPEAL:

Title 44. STATE GOVERNMENT

Chapter 44.41. DEPARTMENT OF PUBLIC SAFETY

Sec. 44.41.020. Powers and duties of department.

(e) The Department of Public Safety shall supply necessary clerical and administrative services for the Alcoholic Beverage Control Board.



March 30, 2011

House Finance Committee
Alaska State Legislature
Capitol Building
Juneau, Alaska 99801

Re: HB 125 Moving the ABC Board to DCCED

Dear House Finance Committee member,

On behalf of the Advisory Board on Alcoholism and Drug Abuse, we would like to first thank the sponsor for his dedication and work to improving the services systems that address the needs of Alaskan families and vulnerable populations (such as seniors and the disabled). We hope to present this letter as an opportunity to share the board's perspective on HB 125.

We agree that there are ways to promote a better working relationship between the alcoholic beverage industry (manufacturers, retailers, wholesalers, etc.) and the Alcoholic Beverage Control Board to achieve the common goal of fair and responsible enforcement of the laws governing alcoholic beverages. However, we respectfully disagree that a move of the ABC Board to the Department of Commerce, Community and Economic Development is the best solution.

As you know, the misuse and abuse of alcoholic beverages are major contributors to crime, violence, and family dysfunction in Alaska. This, in turn, drives many of the costs suffered by the State and our communities – in public safety, corrections, schools, child protection, and other areas.

- Alaska's rate of alcohol-induced deaths is 3 times the national average at 22.5/100,000.
- Nationally, 1/3 of suicide victims test positive for alcohol. In Alaska, of suicide deaths tested for drugs and alcohol, 44% had alcohol in their system at the time of death.
- In 2009, 22% of high school students surveyed reported binge drinking in the previous month.
- The American Medical Association reports that underage drinking is a factor in nearly half of all teen car crashes, which are the leading cause of death among teenagers.
- Youth who begin drinking before the age of 14 are more likely to develop dependence.
- An estimated 1,000 adolescents are dependent on alcohol.
- An estimated 19,000 Alaskan adults are dependent on alcohol.

Unfortunately, alcohol is the drug of choice for youth and adults. Alaskans have expressed support for strong enforcement of alcoholic beverage laws, to our board as well as in other

venues. Therefore, we support effective regulation and control of alcoholic beverages as imperative to the State's efforts to address costly social problems.

The retailers of alcoholic beverages in Alaska invest time, energy, and money to ensure that only lawful sales are made – whether to youth or to adults. Many retailers have strong histories of responsible sales practices and community efforts to promote responsible consumption. Those efforts should not be minimized. In fact, we have been fortunate to partner with the Alaska Cabaret, Hotel, Restaurant and Retailer's Association in the area of FASD prevention and awareness.

We want to be careful not to characterize this as an issue of being for or against alcohol or the businesses that sell alcohol. The issue is how does Alaska best continue efforts to control the sale and possession of alcoholic beverages. We would respectfully submit that moving the ABC Board is not the most effective way, but instead focus on ways to promote better collaboration and shared responsibility between retailers and the ABC Board.

Thank you for your time and consideration. Please let me know if there are ways our board could work with you on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Kate Burkhart", with a long horizontal flourish extending to the right.

J. Kate Burkhart
Executive Director

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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August 14, 2009

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities and the attached report is submitted for your review.

DEPARTMENT OF PUBLIC SAFETY
ALCOHOLIC BEVERAGE CONTROL BOARD
SUNSET REVIEW
July 27, 2009

Audit Control Number
12-20063-09

This review examines the activities of the Alcoholic Beverage Control Board (ABC Board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner. Alaska Statute 44.66.010 specifies that the ABC Board will terminate on June 30, 2010, and will have one year from that date to conclude its administrative operations. We recommend that the legislature extend the ABC Board's termination date until June 30, 2014.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

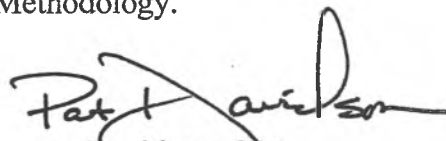

Pat Davidson, CFA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Alcoholic Beverage Control Board (ABC Board or the Board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the ABC Board should be re-established. Currently, under AS 44.66.010(a)(1), the Board will terminate on June 30, 2010 and will have one year from that date to conclude its administrative operations.

Objectives

The ABC Board was created to regulate the manufacture, sale, barter, and possession of alcoholic beverages in order to protect the public health, safety, and welfare of citizens in the State.

To this end, the primary objective of this audit was to determine whether there is public need for the Board and if its existence should be extended.

The secondary objective was to determine if the ABC Board is serving public interest in regards to licensing/permitting functions, administrative activities, board activities, and enforcement activities by reviewing these major functions for effectiveness and efficiency of operations.

Scope

Alaska Statute 44.66.050 outlines the factors to be considered in determining whether the Board has demonstrated public need for its continued existence. We reviewed the ABC Board's activities that occurred from FY 07 through FY 09. We also reviewed the board's proceedings to determine whether it complied with Alaska Statutes and regulations.

Methodology

In order to meet the various objectives of the audit, our fieldwork included:

- Review of Title IV; and Title 13, Chapter 104 of the Alaska Administrative Code to determine the ABC Board's compliance to its statutes and regulations.
- Attendance at the February and May 2009 ABC Board meetings. Examination of the ABC Board meeting records to identify board actions. We obtained notifications from the

Alaska Online Public Notice System, and used board meeting minutes to verify compliance with the public notice and board meeting requirements.

- Analysis of the ABC Board’s enforcement records and the DPS information system, APSIN, case data for enforcement activities.
- We performed a reconciliation between the ABC Board’s licensing database fees and the State Accounting System financial accounts. Using ALDER management reports and the ABC Board’s licensing database information, we prepared a schedule of revenues, expenditures, and a list of licensing fees for FY 07 through FY 09.
- On a sample basis we selected 86 license files for examination of compliance with the ABC Board statutes, regulations, and procedures.
- We reviewed newspaper articles pertaining to liquor licensing in Alaska.
- We surveyed local governing bodies, law enforcement agencies, community groups (community councils and Mother’s Against Drunk Driving) and active licensees for their opinions on the operations and decisions of the ABC Board.

The survey questionnaires were sent to all the police departments, using information from the Alaska Peace Officer Association and to Village Public Safety Officers. All local governing bodies and community and village councils were surveyed. For the approximately 1800 active licensees, we selected a random and judgmental sample totaling 385 licensees.

Survey Group	Response Rate
Local Government	45%
Law Enforcement	48%
Active Licensees (Sample Basis)	48%
Community Groups	19%

- We tallied and analyzed responses from the survey for use in the analysis of public need section of the report
- We examined miscellaneous documents related to the board’s operations as necessary for evaluating if the Board is operating in the public interest.
- We interviewed the ABC Board’s staff, the director, the current board chair, and various individuals from other state agencies. We also contacted the Alaska Ombudsman; the Office of Victim’s Rights Commission; Human Rights Commission; U.S. Equal Opportunity Office; Department of Administration, Division of Personnel; and Boards and Commissions regarding any complaints against the ABC Board.

ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (ABC Board or the Board) was established in 1959 by Title IV of the Alaska Statutes as a regulatory and quasi-judicial agency. For administrative purpose, the ABC Board is located within the Department of Public Safety (DPS). The Board controls the manufacture, barter, possession, and sale of alcoholic beverages in the State. The duties of the Board include overseeing the issuance, transfer, renewal, suspension, and revocation of licenses, and proposing and adopting regulations necessary to carry out the purposes of governing statutes in a manner that will protect the public health, safety, and welfare. In addition, the Board may grant peace officer powers to persons employed for the administration of Title IV. These powers are used as necessary for the enforcement of the criminally punishable provisions of the Title, regulations of the Board, and other criminally punishable laws and regulations including laws against prostitution and gambling. These powers are subject to the concurrence of the DPS commissioner.

The Board is composed of five members appointed by the governor and confirmed by the legislature. State law requires two board members be persons actively involved in the alcoholic beverage industry (excluding wholesale) and at least three members representing the general public. No three members of the Board may be engaged in the same business, occupation, or profession. Board members, including their immediate family, representing the general public, may not have any financial interest in the alcoholic beverage industry. Board members are appointed for overlapping three-year terms. A director, appointed by the governor, serves as the executive officer and is responsible for enforcing Title IV and the regulations adopted by the Board.

Title IV specifies the type of licenses, licensing fees and the activities allowed under each class of license issued by the Board. Title IV also establishes procedures for the issuance of new and renewal licenses.

ABC Board employees ensure that the approximately 1,800 licensees comply with Title IV. Employees provide three functions that involve licensing, enforcement, and administration activities. These services are briefly described as follows:

- Licensing

The three-member licensing staff is responsible for processing license and permit applications, maintaining licensing records and files, collecting licensing fees, and

Exhibit 1

Alcoholic Beverage Control Board Members as of July 15, 2009
--

Robert Klein, Chairman Anchorage, Industry Member Term expires March 1, 2011

Ethan Billings Juneau, Industry Member Term expires March 1, 2012
--

Belen Cook Cordova, Public Member Term expires March 1, 2010

Joseph DelDonno Anchorage, Public Member Term expires March 1, 2011
--

Ellen Ganley Fairbanks, Public Member Term expires March 1, 2012

answering licensing questions asked by the public and licensees. The licensing supervisor is also responsible for preparing board meeting packets and for recording and transcribing the board meeting minutes.

- Enforcement

The six-member enforcement staff currently consists of two Anchorage-based investigators, one Fairbanks-based investigator, one Juneau-based investigator, one Anchorage-based administrative clerk, and one Anchorage-based enforcement supervisor. Investigators perform various duties including inspecting licensed premises, investigating complaints of suspected licensing violations, conducting compliance checks, and responding to questions from licensees and the public. Investigators monitor server training courses and perform background checks on applicants. They also give lectures relating to alcoholic beverage control laws and regulations on behalf of the Board and provide Title IV training to law enforcement agencies on request. The administrative clerk maintains the statewide written order database which contains a monthly record of the alcohol purchased by, and shipped to a person who resides in a municipality or established village that has restricted the sale of alcohol beverages.

- Administration

The ABC Board's director and an administrative assistant comprise the administrative staff. Administrative duties include preparation of budget documents, calculation and issuance of revenue sharing payments to local municipalities, issuing public notices, processing of vendor invoices, and the preparation of bank deposits. The director provides oversight, guidance and direction to staff, participates in public hearings and meetings, and addresses inquiries and requests from licensees, law enforcement agencies, and the general public.

The ABC Board's office is located in Anchorage. In FY 09, the Board has an operating budget of approximately \$1.3 million for its ten staff positions and activities (excluding revenue sharing).

REPORT CONCLUSIONS

In our opinion, the Alcoholic Beverage Control Board (ABC Board) should continue to regulate the manufacture, sale, barter, and possession of alcoholic beverages in Alaska in order to protect the public's health, safety, and welfare. The Board has demonstrated a need for its continued existence by providing protection to the general public through the issuance, renewal, revocation, and suspension of liquor licenses. Protection has also been provided through active investigation of suspected licensing violations and enforcement of the state's alcoholic beverage control laws and regulations.

With the exceptions noted in the Findings and Recommendations section of this report, the ABC Board is operating in the public interest. However, improvements are needed to improve the effectiveness and efficiencies of its operations.

This is the third audit performed in the last seven years in which we have recommended a stronger internal control environment be implemented to include written policies and operating procedures as well as a strategic plan governing enforcement activities. The current director assumed these responsibilities in January 2009, and has made significant improvements in a matter of a few months. The current director has been proactive in improving daily operational functions and addressing outstanding and current audit issues. Although the current director has taken immediate action to make improvements to the ABC Board, we are nonetheless concerned that certain issues in the last three audits have not yet been addressed. Therefore, we recommend that AS 44.66.010(a)(1) be amended to extend the termination date of the Alcoholic Beverage Control Board to June 30, 2014.

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FINDINGS AND RECOMMENDATIONS

A current status of the previous sunset audit¹ four recommendations are presented below.

Prior Audit Recommendation No. 1 – The Alaska Beverage Control Board’s (ABC Board or the Board) members and director should strengthen the control environment over alcohol regulatory functions.

This recommendation has been partially resolved. However, continued improvements are needed to improve the licensing database data, procedures, and retention of documents. These issues are further addressed in the current Recommendation No. 2 of this report.

Prior Audit Recommendation No. 2 – The ABC Board members and director should develop and implement an overall plan of enforcement activities to ensure the effective allocation of their resources.

This recommendation has not been resolved. An overall strategy has not been implemented to ensure enforcement goals are met in an efficient and effective manner. The Board continues to lack a strategy for selecting licensed premise inspections and compliance checks. Some data is entered inconsistently or inaccurately into the enforcement database system. Improvements for enforcement are discussed at Recommendations No. 1 and No. 2.

Prior Audit Recommendation No. 3 – The ABC Board’s director should ensure compliance with public notice requirements and establish procedures to ensure board meeting records are complete and accurate.

This recommendation has not been implemented. The ABC Board’s staff is still not providing adequate public notification of its board meetings, and meeting records are still incomplete. (See current Recommendation No. 2 for further details.)

Prior Audit Recommendation No. 4 – The legislature should consider amending Title IV to remove the voting ability of the board's director.

The ABC Board’s director periodically votes on issues decided in board meetings. AS 04.06.060 provides, “*If a majority of the board is present and voting, the director, with the consent of the members present, may cast a tie-breaking vote.*”

Allowing the director a vote removes an important check and balance of good government – a separation of the executive and quasi-judicial functions. To ensure an appropriate balance

¹Department of Public Safety, Alcoholic Beverage Control Board, August 31, 2006, (Audit Control No. 12-20047-06).

of government, we recommended that the legislature consider amending the statute to remove the director's voting ability.

The situation remains the same and there is no current legislation to address this issue. The board and the director have not reached a concurrence of opinion in developing a better methodology in solving this matter that occurs infrequently.

Current Recommendations

Recommendation No. 1

The ABC Board members and director should establish quantifiable and objective enforcement goals and develop a clear plan by which they will direct its enforcement resources to most efficiently and effectively accomplish those goals in a verifiable manner.

There is no enforcement strategy to prioritize and apply resources in a cohesive fashion to enforce the alcoholic beverage laws. The ABC Board's enforcement investigators² are charged with enforcing alcoholic beverage laws and are currently given wide individual latitude in selecting licensees to inspect or check for compliance. However, without quantifiable and objective goals and a review process, the agency does not know if inspecting and checking half the licenses is a good or bad outcome for their efforts, an effective or efficient use of their resources, or in the best interest of the public.

Review of the enforcement database indicates that of the approximately 1800 current active licenses, 47% had premise inspections³ and 50% had compliance checks⁴ during the three-year period of FY 07 through FY 09. The remainder of the licenses were not inspected or checked for compliance during this period. It also appears many licenses were inspected multiple times, while many were not inspected at all. The ABC Board continues to be without a systematic strategy to ensure resources are used effectively and efficiently to enforce the alcoholic beverage laws.

The ABC Board members and director should make it a priority to develop and implement goals for enforcement activities that have tangible metrics. This plan should maximize their resources and provide direction to investigators to ensure they are performing their duties effectively and efficiently, and according to the direction of the board and director.

²The ABC Board's enforcement staff consists of four investigators, with one based in Juneau, one based in Fairbanks, two based in Anchorage, as well as an enforcement supervisor in Anchorage. One Anchorage inspector is specifically assigned to conducting compliance checks. Premise inspections are conducted by the three remaining investigators.

³A premise inspection involves an enforcement investigator inspecting a licensed premise for compliance to the alcohol beverage laws.

⁴Compliance checks specifically involve determining whether licensees or agents of the licensee are furnishing alcohol to persons under the drinking age limit of 21 years and over-serving to patrons.

Recommendation No. 2

The ABC Board members and director should develop and enforce written policies and procedures to ensure their staff's compliance with state laws and decisions made by the board and director.

There are instances of non-compliance and non-enforcement with state laws, overpayments to municipalities, possible nonpayment of fees by license holders, and incomplete and inaccurate tracking of data. The ABC Board's staff lacks oversight and accountability over their activities to ensure compliance with state laws and decisions made by the board and director. Specific issues include:

1. Records Retention. The ABC Board's staff is not consistently retaining documents in accordance with the State records retention laws and the ABC Board's statutes with respect to premise inspection reports, notice of violations, criminal history records, permit applications, and notification letters.

Premise inspection reports document an investigator's inspection of a licensed premise. Notices of violations communicate to a licensee and to the ABC Board alcoholic beverage violations by the license holder or agents of the licensee. The Board uses the criminal history records for evaluating an applicant's qualification for issuance, transfer, or renewal of an alcohol license.⁵ The data from these documents should be recorded in the enforcement database; however, not all documents are retained to confirm the completeness and accuracy of the data.

Applications received for issuance of caterers, special events, and other permits are also not retained. These applications provide important information regarding the event and conditions of approvals (e.g. police department authorizations and the ABC Board's approval).

Notification letters to local governing bodies and expired license notifications were missing from the license files. A written notice to the local governing body is to be given within ten days after receipt of an application so that the local governing body may protest the issuance, renewal, relocation, or transfer of a license.⁶ Additionally, the director is to mail a notice of expiration to each licensee who has not renewed.⁷

All these documents serve to provide important evidence of, and support for, the board and director's actions. The staff's failure to retain these documents as records supporting the ABC Board's activities may impede the organization's ability to operate effectively, efficiently, and serve the public interest.

⁵Alaska Statute 04.11.295. Criminal justice information and records.

⁶Alaska Statute 04.11.520. Notice to local governing body.

⁷Alaska Statute 04.11.550. Notice of expiration.

2. Licensing Revenues. Licensing fee revenues recorded in the ABC Board's database does not agree with nor is reconciled to the same revenue as it is recorded in the State accounting system. The failure to reconcile has resulted in overpayments to municipalities and missed payments by licensees. Timely, complete, and accurate reconciliation between the two systems would likely resolve these problems and provide information for the board and director to take immediate action regarding noncompliant licensees.
3. Licensing and Administrative Procedures. The ABC Board members and director are not providing appropriate guidance and oversight to staff to ensure compliance with state laws, and with its decisions.

The ABC Board does not consistently adhere to the statutory requirement of notifying the local governing body within ten days of receipt of an application per AS 04.11.520. This important requirement allows time for the local government to review and possibly protest the issuance, renewal, relocation or transfer of a license.

The ABC Board is also not enforcing the law requiring the return of caterers and special event permits within 48 hours. Other deficiencies in the ABC Board's licensing files, recordkeeping, database, and administrative processes include:

- No current written policy and procedures to give guidance in situations where licensees are involved in bankruptcy proceedings.
- Staff routinely failed to properly use existing checklists for verifying the completeness of licensing applications.
- Instances where staff had not submitted local government protests in a timely manner to the board for review and action.
- Significant occurrences of expired and/or unpaid licenses being incorrectly listed as active license holders.
- Failure to detect instances where required wholesale affidavits had not been filed by wholesale licensees.
- Municipalities being over or under paid for municipal license fee refunds.
- The ABC Board's staff is not confirming and enforcing reports that should be filed by municipal law enforcement agencies prior to refunding municipal license fees.
- The concerns of local governments that the ABC Board's policy and procedures do not include written notification to local governments regarding expired licenses.

The above activities show that the ABC Board may not be operating effectively and efficiently and is not achieving its potential in furthering the public interest.

4. Enforcement Data Procedures. The ABC Board's investigators inconsistently or inaccurately entered case record information into the Alaska Public Safety Information

Network (APSIN) database. Enforcement staff is not adequately trained, and there are no written procedures to ensure the proper recording of enforcement activities into the database. The quality and completeness of information about enforcement activities entered into APSIN database is critical for analyzing, planning, and managing enforcement activities. Therefore, the lack of procedures governing quality and accuracy of data reported diminishes the ABC Board's ability to evaluate the performance of enforcement staff and the effectiveness of enforcement activities.

5. Statewide Database. The ABC Board's staff is not recording and verifying on a regular basis that all restricted alcohol purchasers⁸ are included in the Statewide Database. The Statewide Database⁹ is used to track written orders placed with alcohol package stores for shipment to communities with alcohol restrictions. One hundred thirty-four restricted purchasers were not included in the Statewide Database. Six restricted purchasers were listed as authorized purchasers in the database and three of these individuals purchased alcohol through the Statewide Database system since it went online in July 2008.

Package (retail) stores are required to consult the Statewide Database first before shipping alcoholic beverages to municipalities or established villages that have restrictions on the sale of alcohol beverages. The Statewide Database tracks orders of alcohol purchased by, and shipped to, a person who resides in a municipality or established village throughout Alaska that has restricted the sale (volume) of alcoholic beverages in its community.

Periodically verifying all restricted purchasers information in the database would help with the compliance and enforcement of the law by reducing the possibilities of package stores unknowingly selling alcohol to restricted purchasers.

6. Public Notice Requirements and Meeting Records. From FY 07 through FY 09, 11 of 16 board meetings were not adequately publicly notified per statute or board policy requirement. Four meetings were not advertised on the State's Online Public Notice system; seven meetings were not advertised in the local newspaper of the board meeting venue, and seven meetings were not advertised timely.

A review of board meeting minutes showed over 50% of official board meeting records were incomplete and not adequately maintained. The board's agendas and meeting minutes did not adequately document public comment periods. The records also showed the board failed to document its purpose for executive sessions in almost all of their motions which is required under AS 44.62.310(b).

⁸A restricted alcohol purchaser is a person who has been convicted of alcohol violation(s) under Alaska Statute 04.11.010. The ABC Board maintains a list of restricted alcohol purchasers to provide to package stores who are then prohibited from selling alcoholic beverages through written orders to these restricted purchasers under 13 AAC 104.645(1).

⁹Alaska Statute 04.06.095. Statewide Database.

In summary, the ABC Board members and director should ensure written policies and procedures are developed, and followed by staff to ensure compliance with state laws and directives from the board and director. Specific guidance should provide for: (1) conformance with state and agency records retention laws, policies, and procedures; (2) timely reconciliation of licensing revenues and licenses; (3) proper execution and documentation of licensing, permitting, and administrative activities; (4) accurate and complete data entry about enforcement activities into ASPIN; (5) confirmation that all restricted purchases are included in the Statewide Database; and, (6) adequate and timely public notification of board meetings, and accurate recording and record retention regarding board actions.

A NALYSIS OF PUBLIC NEE D

The following analyses of the Alcoholic Beverage Control Board's (ABC Board or the Board) activities address both positive and negative conditions related to the public need factors established in AS 44.66.050. These analyses are not intended to be all-inclusive, but rather address those areas we were able to examine within the scope of our review.

To help assess the impact of the Board's programs and procedures, we sent questionnaires to local governing bodies, law enforcement agencies, community councils/groups, and active licensees. The surveys covered a number of issues. Pertinent results are incorporated into applicable areas of this analysis.

Determine the extent to which the board, commission, or program has operated in the public interest.

The ABC Board is operating in the public's interest and protects the public's health, safety, and welfare. The ABC Board has made an effort to allow only qualified applicants to own and operate licensed premises. It conducts background checks to ensure that licenses are not initially granted to individuals with significant criminal records. On an ongoing basis, the Board receives, reviews, and takes action on notification of any reported criminal activity of licensees.

The ABC Board also controls the manufacture and sale of alcohol in designated areas by ensuring compliance and enforcing alcoholic beverage laws. The ABC Board's staff notifies the local governing body of new applications, renewals, transfers, denials, suspensions, and revocations. The board takes into consideration the local government's response or protest in the application review process. The board restricts the number of licenses within population sizes and around churches and schools according to state law. It also provides license regulation and enforcement, investigates complaints, and when warranted, revokes or suspends a license.

From FY 07 through FY 09, the board took individual actions approving 163 new license applications, 303 transfer requests, 101 license waivers, and 25 license resurrections. The board imposes fines and may suspend or revoke licenses or permits previously authorized if it is in the best interest of the public. The disciplinary actions taken by the board are summarized in Exhibit 2.

Exhibit 2

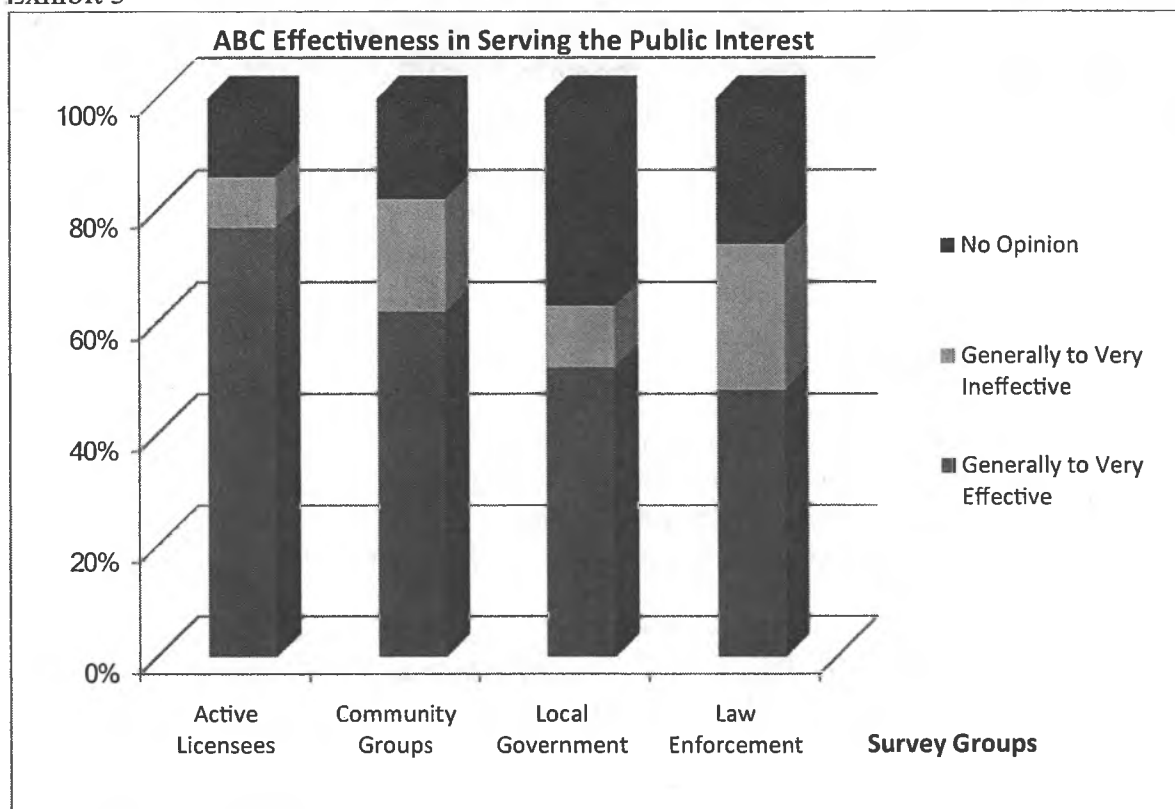
ABC Board Disciplinary Actions				
FY 07 to FY 09				
Actions	FY07	FY08	FY09	Total
Fines	12	5	8	25
Suspensions	17	7	12	36
License Denials	0	0	1	1
Renewals Denied	0	0	2	2
Transfers Denied	0	1	1	2
Waivers Denied	0	2	1	3
Revocations	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	29	15	25	69

The lack of revocations is due to the board avoiding the process when possible. The board essentially revokes a license by either denying the renewal or allowing a licensee a set time period to transfer or sell the license. If the license is not transferred within the allotted time period, the license holder must “voluntarily” relinquish it. This is done through an informal settlement process. In the period reviewed, nine licenses were voluntarily relinquished to the board at a meeting.

The ABC Board’s enforcement staff conducts premise inspections and compliance checks to ensure license holders are following the alcoholic beverage laws. However, we found the enforcement program lacked overarching goals and a plan to maximize their resources. (See Recommendation No.1)

In addition, the ABC Board’s staff monitors the alcohol server training courses and answers questions from members of the public, licensees, law enforcement agencies, and local governments regarding alcoholic beverage controls statutes and regulations. We surveyed four groups (active licensees, law enforcement, local government, and community groups) to ask their overall opinion as to how effective or ineffective the ABC Board is in serving the public interest. The opinions were mixed as is shown in Exhibit 3.

Exhibit 3



Active licensees and community groups provided the most favorable rating. Alternatively, local government (at 11%) and law enforcement (at 26%) gave the least favorable rating regarding the ABC Board's effectiveness in serving the public interest.

A few community group statements indicated unfamiliarity with the ABC Board. Active licensees reported having more interaction with the Board's staff than the other groups surveyed; mostly about license status, renewals, and clarification of laws. In general, active licensees indicated they found the ABC Board's staff knowledgeable, friendly, and helpful. The ABC Board provides trainings to local law enforcement regarding the enforcement of alcoholic beverage laws. Trainings may consist of conducting formal trainings at police academies, or inquires and requests from local enforcement agencies, licensees, and district attorneys. Forty-two percent of law enforcement respondents indicated they have no contact with the Board. Overall, it appears the ABC Board could do a better job working with and reaching out to educate and raise awareness of their efforts to the various groups through better communications, networking, and trainings.

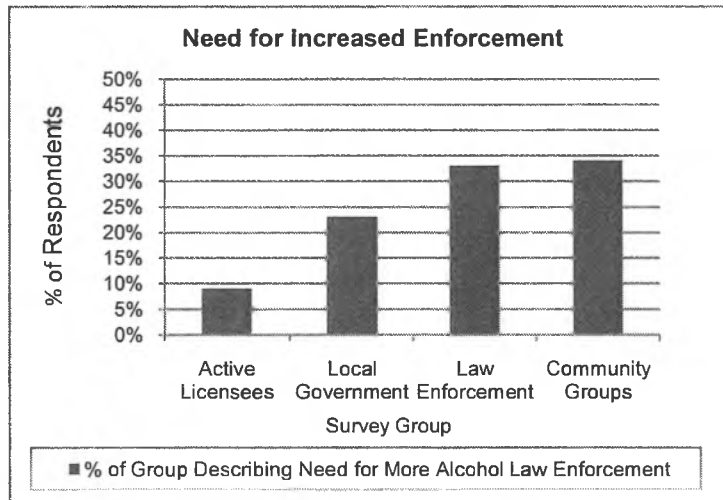
Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The ABC Board's mission is to protect the public from alcoholic beverage abuse by enforcing state laws regulating alcoholic beverage commerce. Community and licensee respondents indicated that enforcement regarding the following activities are moderately adequate to very adequate:

- Sale of alcohol sale to minors.
- Sale of alcohol to inebriates.
- Sale of alcohol outside regulated hours of operation.
- Sale of alcohol without an alcohol servers training card.
- Gambling or prostitution on a licensed premise.
- Alcohol purchase limits in communities with alcohol restrictions.

It is noteworthy that more than half of the local law enforcement respondents were unaware of the ABC Board's enforcement staff's efforts to prevent and regulate the above activities. Respondents identified their concerns and need for improved or increased enforcement as indicated in Exhibit 4.

Exhibit 4



The community and law enforcement groups identified drunk driving and bootlegging as their primary concern. It appears that the ABC Board's only established preventative program for combating bootlegging in communities with alcohol restrictions is the Statewide Database.

One-third of local law enforcement respondents in communities with established alcohol restrictions were unaware of the Statewide Database. Of those who were aware of the purpose of the database, only 40% felt it was effective in helping maintain purchasing limits in their jurisdiction. Some of the local governing body respondents were not aware of the purpose of the Statewide Database. We asked active licensee respondents their opinion regarding the effectiveness of the Statewide Database for limiting alcohol purchases in communities. Two-thirds of the respondents who used the database to process orders to

restricted communities thought that the database was effective in managing alcohol purchasing limits.

Approximately 45% of the licensee respondents reported that they had not been subjected to any inspections or compliance checks and 24% believe the ABC Board's enforcement is not active in their area. The majority of law enforcement respondents also believe the ABC Board's enforcement is not active in their jurisdiction. Some smaller enforcement communities reported their belief that due to their size the ABC Board does not appear to be interested in working with them. A significant number of licensee respondents believe the ABC Board does not enforce the laws equally due to difficulty in traveling to remote locations and to the Board prioritization of addressing public concerns or complaints.

Exhibit 5

Inspections and Compliance Checks Performed on Active Licenses FY 07-FY 09					
Region	Active Licenses Per Region	Number of Licenses Inspected	Total Inspections Performed	Number of Licenses Checked	Total Compliance Checks Performed
Southcentral					
Anchorage	458	224 49%	974	341 74%	1,086
Other Areas	447	165 37%	229	219 49%	473
Interior					
Fairbanks	93	71 76%	374	59 63%	147
Other Areas	155	106 68%	373	67 43%	159
Far North					
Nome	17	1 6%	1	16 94%	56
Other Areas	2	0	0	0	0
Southeast					
Juneau	80	55 69%	146	59 74%	153
Other Areas	185	123 66%	266	66 36%	127
Southwest					
Kodiak	22	18 82%	35	19 86%	49
Other Areas	72	17 24%	27	17 24%	25
Note: Table does not include licenses listed as Alaska Waters, Alaska Railroad, Alaskan Skies, and other licenses not identified in a Region.					
Source: Enforcement Database					

Exhibit 5 identifies the number and frequency of license inspections and compliance checks conducted by the ABC Board's enforcement officers on active licenses from FY 07 through FY 09. The information is presented by region with a breakdown by the primary urban area and other areas in that region. In total 50% of active license holders were inspected or checked for compliance. However, as seen in the exhibit, the highest rates for compliance checks and inspections are in the Interior and Southeast Region, with the Southwest Region having the lowest. Additionally, some licenses were inspected multiple times, while many were not inspected at all. While Exhibit 5 illustrates the enforcement activities, we found the ABC Board continues to be without a systematic strategy to ensure their enforcement resources are used effectively and efficiently. (See Recommendation No. 1.)

The ABC Board's total budget has remained relatively stable from FY 07 through FY 09. (See Appendixes A-C for revenue and expenditure information and for the current fee structure.)

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

The board did not recommend any statutory changes during FY 07 through FY 09. While numerous statutory changes were made, the ABC Board only supported language modifications to the winery license type.

In June 2007, a new statute, AS 04.06.095, went into effect that involved the ABC Board creating and maintaining a Statewide Database containing a monthly record of alcohol purchased by, and shipped to, a person who resides in a municipality or established village that has restricted the sale of alcohol beverages. In addition, various restrictions were added to the local option laws. Legislative language was added to AS 04.11.499(b) to restrict the purchase from another person who has sent, transported, or brought alcohol into a municipality or established village that restricted the sale of alcohol. The package store license statute (AS 04.11.150) was also amended to address its responsibilities regarding shipments to restricted alcohol communities and for their use of the Statewide Database.

A destination resort license¹⁰ was added to the licensing statues along with changes and clarifications to other license types. The possession of homebrew ingredients in restricted alcohol areas, AS 04.16.035, was added to prohibited acts. There were also modifications to other prohibited acts, penalties, and forfeitures (AS 04.16) during FY 07 through FY 09.

¹⁰Alaska Statute 04.11.255. Destination Resort License.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

The board is required by statute to hold an annual meeting in each of the four judicial districts of the State in order to consider issues from both statewide and various local perspectives. It is also required to provide adequate public notice of these meetings. During FY 07 through FY 09, the board met in Anchorage, Fairbanks, Juneau, and Nome at least once per year; however, the ABC Board continues to have difficulty in providing adequate public notice for every meeting. (See Recommendation No. 2.)

A significant number of active licensee and community survey respondents are not aware they can participate in board meetings in person or by teleconference. This raises concern regarding the adequacy of the ABC Board's public notification and networking to encourage participation in its decision making process.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

Survey responses and the lack of adequate public notices indicate that the ABC Board may not always encourage public participation in its decision making process.

As discussed in Recommendation No. 2, the ABC Board does not consistently provide adequate public notice of its meetings. Additionally, approximately 55% of licensee survey respondents reported sporadic or no receipt of timely notification of proposed regulations which would allow them to participate in board meetings. Those same respondents indicated they had not participated in the ABC Board's meetings in the past three years, and a majority did not know they could participate or attend by teleconference.

The majority of local government respondents did not know they could provide public comment on proposed changes to the ABC Board's regulations. These respondents also indicated they did not know they could recommend conditions be placed on specific alcohol licenses according to law. The ABC Board does not consistently adhere to the statutory requirement of notifying the local governing body within ten days of receipt of a license application per AS 04.11.520. This important requirement allows time for the local governing body to review and possibly protest the issuance, renewal, relocation or transfer of a license. Over half of the local government respondents indicated they have never, or only sometimes, received adequate notice of application for new licenses, transfers, relocations, or renewals of existing licenses. Twenty-one percent of these respondents reported they protested a new license or the renewal, relocation or transfer of an existing license. The majority of the protests were related to delinquent taxes and most of those protest respondents indicated they were not notified of when the board would consider their protest.

Additionally, 47% of the local government respondents were not aware they could recommend conditions be placed on license holders. (See Recommendation No. 2.)

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

For the period of FY 07 through April 2009, no complaints were filed with the Office of Victim Rights, Office of the Ombudsman, Boards and Commission, and Department of Public Safety. The current ABC Board director routinely responds to inquires, objections, and complaints about license and enforcement issues.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Overall, the board does an adequate job of regulating entry into the alcohol industry. The board acts on all new, renewal, and transfer applications through approval or denial. The board determines if applicants meet all required statutory qualifications. Some of the requirements include: proving the applicant advertised the location and type of license in a local newspaper; demonstrating the applicant posted the license application on the proposed licensed premises; proving right, title, or interest in the premises; and approval from the local governing body.

Our review of license files indicated appropriate action had been taken on applications made. However, we noted untimely reviews of local governing body protests and found several documentation and policies and procedures issues during this review. (See Recommendation No. 2.)

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We found no evidence that hiring practices or board appointments were contrary to state personnel practices. No complaints were filed with the Human Rights Commission, U.S. Equal Opportunity Office, or Boards and Commission about the ABC Board. The Department of Administration, Division of Personnel and the Department of Public Safety received no formal complaints; however, the agencies responded to informal complaints or accusations appropriately.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Recommendations for operational changes enabling the board to better serve the public interest are described in Recommendations Nos. 1 and 2.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

The ABC Board is generally effective in its objective of regulating the manufacture, sale, barter, and possession of alcoholic beverages in Alaska. The board has protected the general public through the licensing process and administrative actions. It has proposed or supported statute changes to benefit the public, actively inspected licensees to ensure compliance with the alcoholic beverage laws, conduct underage checks, and provides other enforcement activities.

Improvements are still necessary to improve the ABC Board's operations to help provide for better effectiveness and efficiencies as described in Recommendation Nos. 1 and 2. Additionally, the active licensees, law enforcement, local government, and community groups surveyed indicate that the ABC Board is generally effective in serving the public interest. However, the ABC Board could do a better job communicating and networking with these survey groups about its mission and involving them in their decision making process.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

The ABC Board is the only entity in the State that issues licenses for selling alcohol. In this regard, there is no duplication of this activity by another governmental agency or the private sector.

The ABC Board's enforcement efforts include investigation of gambling and prostitution activity, which duplicates state trooper and local law enforcement efforts throughout Alaska; however, our review of the ABC Board's participation in these efforts was minimal. All law enforcement agencies in the State also contribute to the enforcement of alcohol laws; consequently, there is an overlap in jurisdiction. This duplication was the intent of the legislature in creating the ABC Board as a regulatory and quasi-judicial agency.

The perception among the active licensee and local enforcement survey respondents is that the ABC Board's enforcement staff's efforts complement, rather than duplicate their efforts. However, the majority of law enforcement respondents also indicated that the ABC Board's enforcement staff was not active in their jurisdiction.

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APPENDIX A
 Department of Public Safety
 Alcohol Beverage Control Board
 Schedule of Revenues
 FY 07 through FY 09
 (unaudited)

<u>Revenue</u> (rounded to nearest hundred)	<u>FY 07</u>	<u>FY 08</u>	<u>FY 09</u>
License Application Fees	\$ 171,900	\$ 184,600	\$ 179,500
Beverage Dispensary Licenses	750,400	808,500	755,200
Restaurant Licenses	93,900	107,100	98,700
Club Licenses	48,600	52,800	46,800
Brewery Licenses	5,000	3,500	7,000
Package Store Licenses (retail)	288,800	285,800	294,800
Wholesale Licenses	20,000	16,000	30,000
Malt Beverage and Wine Wholesale Licenses	2,400	400	2,800
Common Carrier Licenses	27,000	68,000	35,500
Winery License	2,000	3,000	1,500
Miscellaneous ¹			
Wholesale Annual Fees	150,500	157,800	154,500
Other License Types	14,100	24,900	20,300
Permits	72,000	61,700	55,400
Other	189,300	167,000	150,000
Federal Grant Funds (DHSS)	<u>100,000</u>	<u>99,600</u>	<u>100,000</u>
 <u>Total Revenues</u>	 <u>\$ 1,935,900</u>	 <u>\$ 2,040,700</u>	 <u>\$ 1,932,000</u>

Source: Alaska State Accounting System, ABC Board

¹Miscellaneous includes annual wholesale fees; low volume licenses such as Pub, Golf, and Lodge Licenses; fingerprint fees; waiver fees; as well as fines and penalties and other miscellaneous receipts.

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APPENDIX B
 Department of Public Safety
 Alcoholic Beverage Control Board
 Schedule of Expenditures
 FY 07 through FY 09
 (unaudited)

<u>Expenditures</u> <i>(rounded to nearest hundred)</i>	<u>FY07</u>	<u>FY08</u>	<u>FY09</u>
Personal Services	\$ 782,500	\$ 817,800	\$ 924,000
Travel	44,000	80,900	85,400
Services	275,500	375,300	213,100
Commodities	9,500	39,500	41,700
Capital Outlay	-	-	26,400
Transfers to Municipalities ¹¹	<u>785,600</u>	<u>889,600</u>	<u>813,400</u>
 <u>Total Expenditures</u>	 <u>\$ 1,897,100</u>	 <u>\$ 2,203,100</u>	 <u>\$ 2,104,000</u>

Source: Alaska State Accounting System

¹¹In accordance with Alaska Statute 04.11.610, refunds of annual license fees, excluding annual wholesale license fees, collected within a municipality are to be given to the municipality semiannually. The total of these refunds is the "Transfers to Municipalities" amount. This activity is budgeted under the Department of Revenue as shared taxes.

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APPENDIX C
 Department of Public Safety
 Alcoholic Beverage Control Board
 Licenses, Permits, and Fees
 FY 07 through FY 09

Type	Amount
Application Filing Fees – new, transfer, or relocation of premises	\$100
Application Filing Fees – renewal	200
Beverage Dispensary License	2,500
Beverage Dispensary License – Duplicate	2,500
Beverage Dispensary License – Seasonal	1,250
Beverage Dispensary License – Tourism	2,500
Beverage Dispensary License – Tourism Seasonal	1,250
Beverage Dispensary License – Public Convenience	2,500
Brewery License	1,000
Brewery License – Seasonal	500
Brewpub License	500
Brewpub License – Seasonal	250
Club License	1,200
Club License – Seasonal	600
Common Carrier License	1,000
Common Carrier License – Seasonal	500
Common Carrier License – Multiple Destination	2,000
Common Carrier License – Multiple Destination Seasonal	1,000
Destination Resort License	1,250
Destination Resort License – Seasonal	625
Distillery License	1,000
Golf Course License	400
Lodge License	1,250
Lodge License – Seasonal	625
Package Store License	1,500
Package Store License – Community License	1,500
Package Store License – Seasonal	750
Pub License	800
Permit, Caterers	50
Permit, Club	100
Permit, Conditional Contractor's – Provisional	1,200
Permit, Special Events (per day)	50
Recreational Site License	800
Recreational Site License - Seasonal	400
Restaurant/Eating Place License	600
Restaurant/Eating Place License – Seasonal	300
Restaurant/Eating Place License – Tourism	600
Restaurant/Eating Place License – Exempt	600
Restaurant/Eating Place License – Public Convenience	600
Restaurant/Eating Place License – Public Convenience Seasonal	300
Theatre License	600
Wholesale License -- General	2,000
Wholesale License – Malt Beverage and Wine	400
Winery License	500
Winery License – Seasonal	250

Source of Information: Alcohol Beverage Control Board

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State of Alaska
Department of Public Safety
Alcoholic Beverage Control Board

Sean Parnell, Governor
Joseph A. Masters, Commissioner

August 21, 2009

RECEIVED

AUG 27 2009

LEGISLATIVE AUDIT

Pat Davidson
Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
PO Box 113300
Juneau, Alaska 99811-3300

RE: Response to Preliminary Report Department of Public Safety, Alcoholic Beverage Control Board, Sunset Audit

To the Committee:

I have reviewed your preliminary report regarding the sunset audit conducted over the past several months of the Alcoholic Beverage Control Board. I appreciate you and your staff taking the time to conduct such a thorough audit. The Board of Directors will use your findings as an excellent tool to refine our processes. I have met with ABC Board Director Shirley Gifford and she has shared with me the numbers of issues that were "fixed" during the time your auditors were gathering their findings. I feel assured that all other areas brought forward will be taken care of in the same manner, and with the same level of diligence and dedication.

Many of the issues raised are critically important to running the agency effectively and proficiently. Fortunately, most corrections can be made with a dedicated effort of the current staffing level. Others may only be corrected with an increase in staff. In any event capturing proper statistics and developing a strategic plan will help to utilize staff in the best way possible. The written order database was a monumental project implemented during this period of review and it appears as though some errors have occurred that will be minimized in the future with a system of verification as you have recommended.

Since Director Gifford was appointed January 5, 2009 she has made progress in some areas that had been neglected in the past. She has implemented a method for capturing the activities of licensing and enforcement staff and in addition to sharing the figures with the Board of Directors she will use the figures in developing the strategic plan. Other areas where she has brought improvement include the purchase and upgrade of equipment necessary for staff to adequately perform their duties; training and education from and for staff; many policies and procedures written for the enforcement unit, licensing, and ABC Board administration; and refinement in processes that include an inspection tracking form and the consolidation of three permit

applications into one. Director Gifford started the strategic plan a couple of months ago and now with the audit complete will focus on the plan. She has already identified the goals and objectives and will ensure the issues raised in past audits will be addressed. Prior audit recommendations 1, 2, and 3 are included within your current recommendations and will be addressed under those headings. Prior audit recommendation no. 4 was not included in the current recommendation; however, steps have been taken to rectify this recommendation entitled, "The legislature should consider amending Title IV to remove the voting ability of the board's director." Director Gifford and I have met and whereas a solution had not been found I believe the solution comes with a tie vote resulting in a vote taken later if a voting member is absent, or in the event a member is recused the issue under consideration may be taken to an administrative hearing officer and superior court. This allows for the process to remain in the quasi-judicial and judicial process with no overlap with the executive branch of government. Director Gifford has met with Commissioner Masters regarding this proposal.

I will respond to the specific issues under Recommendations No. 1 and No. 2 in your letter:

Recommendation No. 1

The members of the ABCB and executive director should establish quantifiable and objective enforcement goals and develop a clear plan by which they will direct its enforcement resources to most efficiently and effectively accomplish those goals in a verifiable manner.

I agree with this recommendation. A strategic plan is being developed to capture specific, measurable, attainable, realistic, and timely (S.M.A.R.T.) goals. An inspection form has already been created and distributed to the investigators to ensure the best and most fair coverage for inspections. When a licensee fails an inspection we expect a follow-up inspection is conducted to ensure compliance; therefore, I expect more than one inspection of some premises within the year. When inspections over two in a single year occurred we found investigators were capturing "walk-throughs" in the database as inspections. As many walk-throughs that can be conducted are encouraged by the board of directors. Many areas are not easily accessible; however, the travel budget has been increased and many of these areas are now being inspected.

I appreciate your recognition that a plan will maximize the enforcement resources and expect direction will be given to the investigators "...to ensure they are performing their duties effectively and efficiently and according to the direction of the board and director."

Recommendation No. 2

The members of ABCB and executive director should develop and enforce written policies and procedures to ensure staff's compliance with state laws and decisions made by the board and director.

I agree with this recommendation. I fully expect the director will provide oversight and hold staff accountable for "their activities to ensure compliance with state laws and decisions made by the board and director." I appreciate you providing specific issues with which to address:

1. Records Retention. Records retention laws will be reviewed and written into the ABC Board Standard Operating Procedure (SOP)

- a. Inspection reports and notices of violation will become part of the licensing file as opposed to keeping the documents in separate enforcement files. Criminal history records will be kept in a secure confidential file after the director has summarized the contents when necessary for the board to make decisions regarding the issuance, transfer, or renewal of a license.
 - b. The permit applications are now being copied onto the back of the permit with a copy kept in the permit file before presenting the permit to the licensee.
 - c. Notification letters will be sent to local governing bodies within 10 days after receipt of an application. This procedure will be written into the current procedures regarding notification. The director will also mail a notice of expiration to each licensee who has not renewed.
2. Licensing Revenues. Timely, complete, and accurate reconciliation between the two systems will be written into procedure and followed in an effort toward immediate action regarding noncompliant licensees.
3. Licensing and Administrative Procedures. The director takes full responsibility for not following this statutory requirement. The director believes taking care of this issue will assist local governing bodies to make timely decisions regarding licensees in their communities as well as improve the image of the ABC Board. Representatives of the local governing bodies generally take licensing seriously and count on the ABC Board staff to provide them with the information necessary to properly govern their areas. This procedure will be written and enforced. The licensing supervisor is responsible for this action and may have to delegate some of her other duties to ensure this is followed.

A new procedure is being developed to deal with the return of caterers and special events permits. A spreadsheet will be created showing returns and notices. The director will be seeking direction from the board for a procedure as statute reads, "Failure to surrender the permit is cause, in the discretion of the board for denial of future permits."

- a. Other deficiencies to be addressed and resolved by staff:
 - i. Bankruptcy proceedings
 - ii. Licensing checklist applications
 - iii. Local government protests to the board
 - iv. Accuracy of active license holders
 - v. Wholesale affidavits
 - vi. Municipal revenue sharing
 - vii. Notification to local governing bodies of expired licenses
4. Enforcement Data Procedures. I agree with the importance of these procedures and believe not only the incorporation of procedures to govern quality and accuracy but training to ensure all investigators understand the procedures and are uniformly entering data. Once the procedures and the training are complete the ability to evaluate performance will be enhanced.

The APSIN database logs case numbers with their associated activity code. When investigators performed "walk throughs" of premises, they were obtaining case numbers

and activity codes for inspections, which would indicate some establishments had been inspected numerous times.

The only way to differentiate between an actual inspection and a walk through would be to hand count the APSIN activity entries and look for which inspections were checked IR (report generated) or IL (log only). If the activity was an IR, it meant an actual inspection was conducted and an inspection report generated. An IL would indicate a walk through; log only.

Procedures have been put in place and are being adhered to requiring inspection reports and NOV's be placed in the licensee file, along with an electronic inspection tracking form on our internal K drive to log inspections. An activity code for walk throughs in APSIN will be pursued. Procedures governing quality and accuracy of data will enhance the ability of the director to evaluate the performance of enforcement staff and the effectiveness of enforcement activities.

5. Statewide Database. Last year the enforcement staff hand entered all the names and information from the restricted purchaser list into the database software. Apparently, one entire section of the list did not get entered. Nevertheless, package stores were provided with an updated restricted purchaser list. The licensees who sold to restricted purchasers were in violation of Title IV. Since this has been revealed through the audit an investigation of the licensees is being conducted as licensees should have been in possession of the list of restricted purchasers. A periodic verification will be conducted to ensure the list is accurate.
6. Public Notice Requirements and Meeting Records. Policies and procedures were written by the previous director dated October 31, 2006 and were found included in the board of directors' packet for the meeting of November 29, 2006, along with the 2006 audit report. Unfortunately, these were not compiled in a book specifically labeled policies and procedures with no availability to staff as a quick reference. The policies and procedures dictate, "The date, time, location, and contact information will be noticed in at least one newspaper of general circulation within the municipality where the meeting is to be held at least 5 and no more than 14 days prior to the meeting." Director Gifford is developing with staff a "check list" of actions necessary before each board meeting. This item is on the check list and the director will go over the list with the employees responsible for specific parts of the organization of the meeting.

Two meetings in 2006 and two meetings in 2007 were not advertised on the state's Online Public Notice system; however, the noticing on this system has been consistent since 2007. The current procedure dictates that, "At least 30 days prior to the next ABC Board meeting, the Administrative Assistant will forward to the appropriate person identified in the Commissioner's Office of the Department of Public Safety the meeting notice for publication on the Alaska Online Public Notice System. If this notice is transmitted by email, the Director is to be copied so that he may verify the timely forwarding of the notice." This procedure has recently been followed and will continue to be followed. The administrative assistant is now using Microsoft Outlook Calendar to set reminders for advertising requirements.

A frame has been installed in the lobby of the ABC Board office which will hold an inserted page showing the upcoming location, date, and time of the meeting as the meetings are set by the board of directors. The director has sent and will continue to send notice to staff of the next meetings in order that all employees are aware and can inform the public.

All of the board meeting minutes are now as complete as possible with an effort to create the files from existing files in offices other than the administrative assistant's, and will be adequately maintained. The files should include the sign-in sheet (the sheet was not signed in Juneau at the February 24, 2009 meeting), the minutes, a copy of the board packet, and the recording of the meeting.

Public testimony is allowed and encouraged in every board of directors meeting. Documentation of this will be provided in addition to what the recordings have provided. Public testimony was not specifically listed on the agenda but was listed for the July 14, 2009 meeting in Juneau and will continue to be listed for future meetings.

ANALYSIS OF PUBLIC NEED

Several issues identified through questionnaires provided to local governing bodies, law enforcement agencies, community councils/groups, and active licensees were addressed in the recommendations; therefore, I will address the findings that were not previously addressed. I am pleased that this audit shows that the ABC Board is operating in the public's interest and protects the public's health, safety, and welfare; that the ABC Board is controlling the manufacture and sale of alcohol in designated areas by ensuring compliance and enforcing alcoholic beverage laws; and that individual disciplinary actions are acceptable for licensees. Some issues that come before the board are complex and staff has provided the board with the information necessary to make good decisions on behalf of licensees, potential licensees, local governing bodies, and the communities affected. The statutes are difficult to reference and translate at times. Debate, conflict, and confrontation, although not every day occurrences are handled professionally and timely.

The ABC Board director and staff are making concerted efforts to provide education and training. Within the past six months the following presentations have been provided:

- o Fire and Life Safety Building Inspectors Forum
- o Anchorage International Airport Police
- o Hoonah Police Department
- o Tanana Valley Campus Police Academy
- o Alaska Peace Officers Association Anchorage Chapter
- o Alaska Association of Chiefs of Police semi-annual meeting
- o Alaska Peace Officers Association Newsletter

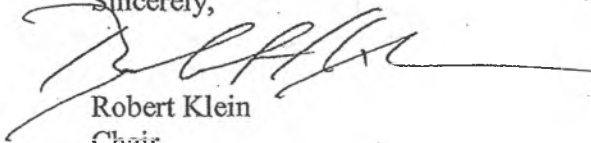
The director is scheduled as a keynote speaker at the Alaska CHARR Convention in September as well as patrol briefings for the Anchorage Police Department. The effort to educate, improve communications, and network will continue throughout the state.

The mission of the ABC Board is to protect the public from alcoholic beverage abuse by enforcing state laws regulating alcoholic beverage commerce. Although pleased that the

ABC Board is seen to be "generally" effective in its objective of regulating the manufacture, sale, barter, and possession of alcoholic beverage in Alaska and "generally" effective in serving the public interest with the adoption of the recommendations I look forward to increasing the level of effectiveness.

Director Gifford has shared with me your positive approach to a critical process and that she and the staff enjoyed working with you and your group of professionals. I also appreciated you taking the time to talk with me about the performance of the ABC Board. I appreciate you making allowances for the many issues that were resolved during the audit. Certainly, that was your prerogative and to focus on those issues left outstanding is appreciated by all involved.

Sincerely,



Robert Klein
Chair
Alcoholic Beverage Control Board

cc: Joseph A. Masters, Commissioner, DPS
Shirley A. Gifford, Director, ABC Board



State of Alaska Department of Public Safety

Sean Parnell, Governor
Joseph A. Masters, Commissioner

September 4, 2009

Pat Davidson
Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

RECEIVED
SEP 10 2009
LEGISLATIVE AUDIT

RE: Response to Preliminary Report on a Sunset Review on the Department of Public Safety,
Alcoholic Beverage Control Board, August 14, 2009

Dear Ms. Davidson:

I have reviewed your preliminary report on the Alcoholic Beverage Control Board (ABCB),
Sunset Audit and concur with the report's conclusion that the ABCB should continue.

Your audit made two recommendations and I agree with both.

Recommendation No. 1

The members of the ABCB and executive director should establish quantifiable and objective enforcement goals and develop a clear plan by which they will direct its enforcement resources to most efficiently and effectively accomplish those goals in a verifiable manner.

Recommendation No. 2

The members of ABCB and executive director should develop and enforce written policies and procedures to ensure staff's compliance with state laws and decisions made by the board and director.

Your audit notes that both recommendations contain unresolved elements of prior audit recommendations. As you know, since your last audit the department has been actively involved with the ABCB and its staff in an attempt to improve business practices of the board. Those efforts met with limited success until recently.

The development and implementation of appropriate solutions are under the direct and immediate control of the Alcoholic Beverage Control Board and the Executive Director. As your audit notes, significant improvements have been made since the current executive director assumed her duties. I have every reason to believe this improvement will continue.

Office of the Commissioner
5700 E. Tudor Road – Anchorage, AK 99507 – Voice (907) 269-5086 – Fax (907) 269-4543
Juneau Office – Voice (907) 465-4322 – Fax (907) 465-4362

Ms. Pat Davidson
Page 2
September 4, 2009

I have reviewed the response to each of your recommendations by the ABCB Chair, Bob Klein. I agree that these responses are appropriate for the recommendations. The department will work with the ABCB and its staff to assist them in implementing corrective action.

Sincerely,



Joseph A. Masters
Commissioner

Cc: Bob Klein, Chair, Alcoholic Beverage Control Board
Shirley A. Gifford, Director, ABC Board



March 30, 2011

Representative Craig Johnson
Alaska State Legislature
State Capitol, Room 216
Juneau, AK 99801-1182

Representative Bill Stoltze
Alaska State Legislature
State Capitol, Room 515
Juneau, AK 99801-1182

Re: Alaska House Bill 125 ("Alcoholic Beverage Control Board")

Representatives Johnson and Stoltze:

In response to the introduction of Alaska House Bill 125, the Fraternal Order of Eagles ("F.O.E." or "Eagles") submits the following statement for the hearing record.

F.O.E. is an international non-profit organization uniting fraternally in the spirit of liberty, truth, justice, and equality, and to make human life more desirable by lessening its ills and promoting peace, prosperity, gladness and hope. The F.O.E. has approximately 850,000 members in the United States and Canada. With more than 1,400 local Aeries (private club locations) – as well as over 1,300 Women's Auxiliaries – in the U.S. and Canada, the F.O.E. is opposed to any state Alcoholic Beverage Control Board's attempts to use metal keys, magnetic card keys, or identification cards to gain unauthorized access to private club premises. To be clear, as discussed further *infra*, the ABC Board already has ample opportunity for such access either during all hours of operation as well as by establishing the requisite level of circumstances to satisfy the law in order to obtain a search warrant. No compelling governmental interest, nor public policy, is satisfied by expanding these already universally recognized means of access. Thus, the F.O.E. stands in support of the Saddler/Thompson amendment to H.B. 125.

As it has been relayed, the Alaska ABC Board's November 2010 attempts to collect magnetic card keys and/or identification cards from private clubs represented an alarming overextension of peace officer powers granted in the ABC Board's statute. Had private clubs complied with the ABC Board's request, the ABC Board would ostensibly have the unfettered ability to enter and/or search a private club; without any suspicion, without any evidence, without any proof,

or without having to establish to the satisfaction of a court of law that probable cause exists (whereby obtaining a search warrant). The foregoing "authority" is contrary to the U.S. Constitution which grants United States citizens (along with their businesses) freedom from unlawful search and seizure. It should be noted that while the ABC Board's position may be that the "request" was voluntary, businesses may have felt to do otherwise would have subjected them to other forms of increased scrutiny; thus, the use of the term "authority".

The Fourth Amendment to the Constitution of the United States of America prohibits unreasonable searches and seizures by federal law enforcement agents. The Fourteenth Amendment to the Constitution of the United States of America imposes the Fourth Amendment upon the states and to law enforcement agents within the states.

More specifically, the Fourth Amendment protects personal privacy, and every citizen's right to be free from unreasonable government intrusion into their persons, homes, businesses, and property – whether through police stops of citizens on the street, arrests, or searches of homes and businesses.

Lawmakers and the courts have put in place legal safeguards to ensure that law enforcement officers interfere with individuals' Fourth Amendment rights only under limited circumstances, and through specific methods (informally identified above).

Any ability for the ABC Board to enter a premise when closed, without the permission of the proprietor, raises the issue of illegal or unreasonable searches and seizures.

Furthermore, invoking other elements of the U.S. Constitution, in the case of the F.O.E., its members have a reasonable expectation of privacy, without any type of warrant or probable cause finding, in their membership club premises. The F.O.E. club locations are much more than establishments serving alcohol. They are a place where F.O.E. business is transacted, rituals carried out, charitable fundraising conducted. Unauthorized ABC Board access could violate any desired privacy in such endeavors.

If passed, the Saddler/Johnson amendment will act as a safeguard to ensure that ABC Board investigators interfere with individuals' Constitutional rights only under legally recognized circumstances, and through specific methods.

The Alaska ABC Board was established as a regulatory and quasi-judicial agency for control of the manufacture, barter, possession, and sale of alcoholic beverages in the state. That same ABC Board grants private clubs, such as F.O.E. Aerie locations, "Club Licenses," allowing private social, fraternal or patriotic organizations to sell alcoholic beverages to members for consumption on the licensed premises only. While F.O.E. Aeries are indeed permitted to sell alcohol for member consumption on premises, F.O.E. Aeries are not saloons – they function primarily as premises within which members are able to assemble and conduct Eagles business. If a private club is suspected of abusing or misusing a Club License, a search warrant should be obtained based on the evidence collected. Otherwise, the ABC Board should not presume that every purveyor of alcohol in the state of Alaska is part of a criminal conspiracy and should thus relinquish reasonable expectations of due process and privacy.

To be clear, the Eagles do not support the abuse or misuse of alcohol, nor do they seek to lessen the impact of effective law enforcement. The F.O.E. is simply committed to responsible alcohol beverage service at private Aeries, and to keeping communities safe, while defending the privacy and due process expectations of its membership.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 3
 Bill Version CSHB 125(L&C)
 (H) Publish Date 2/28/11

Identifier (file name) HB125-DPS-ABC-02-15-2011 Dept. Affected Public Safety
 Title "An Act moving the Alcoholic Beverage Control Board to the Appropriation Statewide Support
Department of Commerce, Community, and Economic Development . . ." Allocation Alcoholic Beverage Control Board
 Sponsor House Rules Committee by request of LB&A
 Requester House Labor and Commerce OMB Component Number 2690

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services		(1,125.0)	(1,125.0)	(1,125.0)	(1,125.0)	(1,125.0)	(1,125.0)	(1,125.0)
Travel		(85.9)	(85.9)	(85.9)	(85.9)	(85.9)	(85.9)	(85.9)
Services		(285.1)	(285.1)	(285.1)	(285.1)	(285.1)	(285.1)	(285.1)
Commodities		(9.6)	(9.6)	(9.6)	(9.6)	(9.6)	(9.6)	(9.6)
Capital Outlay		(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	(1,505.7)	(1,505.7)	(1,505.7)	(1,505.7)	(1,505.7)	(1,505.7)

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts		(1,384.6)	(1,384.6)	(1,384.6)	(1,384.6)	(1,384.6)	(1,384.6)	(1,384.6)
1037 GF/Mental Health								
1007 Interagency receipts		(121.1)	(121.1)	(121.1)	(121.1)	(121.1)	(121.1)	(121.1)
TOTAL		0.0	(1,505.7)	(1,505.7)	(1,505.7)	(1,505.7)	(1,505.7)	(1,505.7)

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time		-11	-11	-11	-11	-11	-11
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable; initial version.

Prepared by Shirley A. Gifford, Director
 Division Alcoholic Beverage Control Board
 Approved by Dan Spencer, Director
Administrative Services

Phone 907-269-0351
 Date/Time 2/15/11 12:00 PM
 Date 2/15/2011

FISCAL NOTE #3

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. CSHB 125(L&C)

Analysis

This bill transfers the Alcoholic Beverage Control (ABC) Board from the Department of Public Safety to the Department of Commerce, Community, and Economic Development (DCCED) effective July 1, 2011.

This fiscal note shows the transfer out of Public Safety's budget of the amounts included in the Governor's FY2012 Alcoholic Beverage Control Board budget request.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 2
Bill Version CSHB 125(L&C)
(H) Publish Date 2/28/11

Identifier (file name) HB125-CCED-ABC-02-18-11 Dept. Affected DCCED

Title An Act moving the Alcoholic Beverage Control Board to the
Department of Commerce, Community & Economic Development Appropriation Alcoholic Beverage Control Board
Sponsor Legislative Budget and Audit Allocation Alcoholic Beverage Control Board
Requester House Labor & Commerce OMB Component Number 2690

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services		1,125.0	1,125.0	1,125.0	1,125.0	1,125.0	1,125.0	1,125.0
Travel		85.9	85.9	85.9	85.9	85.9	85.9	85.9
Services	228.5	285.1	324.9	324.9	324.9	324.9	324.9	324.9
Commodities		9.6	9.6	9.6	9.6	9.6	9.6	9.6
Capital Outlay	19.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Grants								
Miscellaneous								
TOTAL OPERATING	247.5	1,505.7	1,545.5	1,545.5	1,545.5	1,545.5	1,545.5	1,545.5

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts	247.5	1,384.6	1,424.4	1,424.4	1,424.4	1,424.4	1,424.4	1,424.4
1037 GF/Mental Health								
1007 Interagency Receipts		121.1	121.1	121.1	121.1	121.1	121.1	121.1
TOTAL	247.5	1,505.7	1,545.5	1,545.5	1,545.5	1,545.5	1,545.5	1,545.5

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time		11	11	11	11	11	11	11
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

After re-examination of the ABC Board management structure, this fiscal note aligns the appropriation/allocation to the ABC Board rather than to DCCED Administrative Services. The additional evaluation also resulted in reduced overall costs. This reduction is based on the net change of providing in-house versus task order project management for database migration and security model design; removing costs associated with the ABC Board user participation; and an increase to align the ABC Board with DCCED's cost allocation plan for Commissioner Office and Administrative Services support.

Prepared by JoEllen Hanrahan, Director
Division Administrative Services
Approved by Susan K. Bell, Commissioner
Commerce, Community and Economic Development

Phone 465-2506
Date/Time 2/24/11 3:30 PM
Date 2/24/2011

FISCAL NOTE #2

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. CSHB 125(L&C)

Analysis

HB125 moves the Alcoholic Beverage Control Board to the Department of Commerce, Community and Economic Development (DCCED) from the Department of Public Safety (DPS). This move will require onetime costs for resources to migrate the existing Written Orders and Licensing Application from the Department of Public Safety to the DCCED environment. In addition, additional resources will be necessary to align the ABC Board with the DCCED cost allocation plan for Commissioner's Office and Administrative Services support.

Ongoing support covered under the Administrative Services cost allocation plan includes costs for fiscal, information technology, budget, procurement and human resource assistance. Amongst other items, the allocation will pay for Administrative Services efforts on accounting for deposits, refunds, credit card and revenue reconciliations, and certification of auto-pays and bill payments, and travel processing.

Services include an increase of \$39.8 to cover the cost for administrative support in DCCED. This amount is net of the amount that DPS currently allocates to the ABC Board budget component of \$23.0 for Commissioner Office and Administrative support. In DPS, these components are primarily general funds which allow DPS to allocate out less of the comment costs. In contrast, in DCCED these components are primarily inter-agency funded which requires allocating the majority of the costs to the department agencies based on an approved cost allocation plan. This approved plan is based on both weighted positions and various levels of effort calculations for the services provided. Under DCCED, the total allocated costs to the ABC Board for Commissioner and Administrative Services is \$62.8; netting this amount against the current DPS budget allocation of \$23.0 results in an overall \$39.8 increase in allocated costs to the ABC Board within DCCED.

Services also include the onetime cost of \$188.7 for migrating two database applications to the DCCED environment. These costs are based on task order rates applied to projected hours. To function, database applications are wholly dependent upon the underlying support structure below it, including: the network as a whole, the individual hardware and software components, and memory chips. Database applications are hardware and software sensitive and are configured to work with the components that exist within the underlying support structure that exists in their environment. Preliminary discussions between DCCED and DPS technical and security staff have identified differences in security and the Active Directory environment these systems currently exist in.

DPS has a firewall that essentially walls off the department, and its systems, from the rest of the state. DPS has its own Active Directory (AD) system that is not integrated into the state system. The ABC Board applications are dependent upon the DPS AD system and an interface with Novell Access Manager System; neither of these exists within or is configured to work in DCCED's environment. The ABC applications allow liquor establishment clerks across the state to access the Written Order application through the AD; DCCED security environment does not parallel this model.

For security purposes and to meet industry best standards, DCCED's AD environment does not allow co-mingling of internal users with outside customer users. New underlying support models will need to be designed, developed and configured for integration into the DCCED environment. The ABC Board database applications "AD hooks" will need to be re-coded and re-pointed to the new models. To migrate to DCCED, the architecture must meet industry best practices and the state security standards under the Department of Administration Enterprise Technology. The migration to the DCCED environment will require analysis, planning, testing, remediation and implementation. In addition, existing deferred maintenance will need to be addressed as part of the migration to the new environment.

Capital Outlay includes a one-time increase of \$19.0 to replace equipment that is currently integrated into the DPS network.