

LEG. FINANCE - BILLS 1979 - 1980 1317
CSSSB 239am cont., thru CSSB 241

1 (18) special events permit;

2 (19) conditional contractor's permit.

3 Sec. 04.11.090. BEVERAGE DISPENSARY LICENSE. (a) A beverage
4 dispensary license authorizes the holder to sell or serve on the li-
5 censed premises alcoholic beverages for consumption on the licensed
6 premises only.

7 (b) The annual beverage dispensary license fee is \$1,250.

8 (c) An applicant for a beverage dispensary license must file with
9 the application a cash bond or a surety bond executed by a surety com-
10 pany approved by the board. The bond shall be in the sum of \$2,500.
11 Upon revocation of the license under AS 04.11.370(4), the bond shall be
12 forfeited and the amount deposited in the general fund of the state.

13 (d) The area designated as the licensed premises under a beverage
14 dispensary license issued to a hotel, motel, resort or similar business
15 which caters to the traveling public as a substantial part of its busi-
16 ness may include the dining room, banquet room, guests' rooms, and other
17 public areas approved by the board.

18 (e) A holder of a beverage dispensary license may not maintain
19 upon the licensed premises more than one room in which there is regu-
20 larly maintained a fixed counter or service bar at which alcoholic
21 beverages are sold or served to members of the public for consumption
22 unless he is issued by the board, after investigation, a duplicate of
23 the original license for each of the rooms. The holder of the beverage
24 dispensary license shall pay to the board with each application for a
25 duplicate license an amount equal to the fee payable for the original
26 beverage dispensary license under (b) of this section. If the licensed
27 premises are located within a municipality, a duplicate beverage dis-
28 pensary license may not be issued unless approved by the council or
29 assembly, as appropriate.

1 (f) The area designated as the licensed premises under a beverage
2 dispensary license issued to a bowling alley may include the concourse
3 or lane areas of the bowling alley. Notwithstanding AS 04.16.049, the
4 board may, upon application, authorize access by persons under 19 years
5 of age to the concourse or lane areas designated part of the bowling
6 alley's licensed premises during hours when no alcoholic beverages are
7 being sold, served, or consumed.

8 Sec. 04.11.100. RESTAURANT OR EATING PLACE LICENSE. (a) A res-
9 taurant or eating place license authorizes a restaurant or eating place
10 to sell beer and wine for consumption only on the licensed premises.

11 (b) A license may be issued under this section only if the board
12 determines that the premises to be licensed is a bona fide restaurant or
13 eating place.

14 (c) A license may be issued under this section only if the sale
15 and service of food and alcoholic beverages and any other business
16 conducted on the licensed premises of the restaurant or eating place is
17 under the sole control of the licensee.

18 (d) The annual fee for a restaurant or eating place license is
19 \$300.

20 Sec. 04.11.110. CLUB LICENSE. (a) A club license authorizes a
21 club or organization to sell alcoholic beverages for consumption only on
22 the licensed premises.

23 (b) A club license may only be issued to a club, fraternal organi-
24 zation, patriotic organization, or social organization chartered by a
25 state or national organization for a period of two consecutive years
26 before application for a license under this section. The organization
27 licensed under this section must be operated for social, recreational,
28 political, benevolent or athletic purposes and not for profit. A club
29 license may only be issued to an organization if none of the income

1 from the sale of alcoholic beverages is distributed to its members,
2 directors, or officers. Soliciting of public patronage of the club
3 premises except as approved by the board is a violation of this section.

4 (c) The annual club license fee is \$400.

5 (d) Alcoholic beverages sold under a club license may be purchased
6 only by (1) members of the club and their families, (2) widows or
7 widowers of deceased members who have been accorded club privileges, and
8 (3) military personnel in uniform on active duty who are extended the
9 privilege by patriotic organizations upon special occasions. Alcoholic
10 beverages may be purchased only in the portion of the club rooms which
11 are part of the licensed premises.

12 (e) Guests who enter the club premises on the invitation of a
13 member and in the company of the member may be served but not sold
14 alcoholic beverages. A guest must leave the premises immediately upon
15 the departure of the member who extended the invitation to enter.

16 (f) Alcoholic beverages purchased by a club or organization li-
17 censed under this section may not be used or consumed off the licensed
18 premises of the club or organization by any person, including club
19 members and employees.

20 (g) Notwithstanding AS 04.16.049, the board may authorize access
21 by persons under 19 years of age to a club's licensed premises during
22 hours when no alcoholic beverages are sold, served or consumed.

23 (h) In this section, "member" means a holder of paid-up membership
24 entitling the holder to all voting rights and privileges of membership
25 under the constitution or bylaws of the club or organization.

26 Sec. 04.11.120. BOTTLING WORKS LICENSE. (a) A bottling works
27 license authorizes the holder to operate a bottling works where beer and
28 wine may be bottled and sold.

29 (b) A sale under a bottling works license may be made only to a

1 person licensed under this title and only in quantities of more than
2 five wine gallons.

3 (c) The annual bottling works license fee is \$250.

4 Sec. 04.11.130. BREWERY LICENSE. (a) A brewery license autho-
5 rizes the holder to operate a brewery where beer is manufactured and
6 bottled or barreled for sale.

7 (b) A brewery license authorizes the holder to sell beer to per-
8 sons licensed to sell beer under this title in quantities of more than
9 five wine gallons.

10 (c) The holder of a brewery license may permit a person to sample
11 small portions of the brewery's product free of charge unless prohibited
12 by AS 04.16.030.

13 (d) The annual brewery license fee is \$500.

14 Sec. 04.11.140. WINERY LICENSE. (a) A winery license authorizes
15 the holder to operate a winery where wine is manufactured and bottled or
16 barreled for sale.

17 (b) A winery license authorizes the holder to sell wine to persons
18 licensed under this title in quantities of more than five wine gallons.

19 (c) The holder of a winery license may permit a person to sample
20 small portions of the wine on the premises free of charge unless pro-
21 hibited by AS 04.16.030.

22 (d) The annual winery license fee is \$250.

23 Sec. 04.11.150. PACKAGE STORE LICENSE. (a) A package store
24 license authorizes the holder to sell alcoholic beverages to a person in
25 response to a verbal or written solicitation for purchase received on
26 the licensed premises.

27 (b) The annual package store license fee is \$750.

28 (c) The holder of a package store license may not sell alcoholic
29 beverages requiring Internal Revenue strip stamps unless the stamps are

1 intact on the packages.

2 (d) The consumption of alcoholic beverages on premises licensed
3 under this section is prohibited.

4 (e) The business premises occupied by a holder of a package store
5 license may not be connected by a door, opening, or other means of
6 passage intended for the access of the general public to an adjacent
7 retail business not licensed under this title.

8 (f) When the holder of a package store license is also a holder of
9 a beverage dispensary license and the package store premises are con-
10 tained within or are adjacent to the premises of the beverage dispensary
11 and the only public entrance to the package store is by a door or other
12 means within the premises of the beverage dispensary, the board shall
13 determine if additional entrances to the package store are necessary for
14 enforcement purposes, to meet health and fire safety standards, or for
15 the convenience of the public.

16 (g) "Business premises" means that part of the licensed premises
17 to which the public has access.

18 Sec. 04.11.160. WHOLESALE LICENSES. (a) A general wholesale
19 license authorizes the holder to sell alcoholic beverages in the origi-
20 nal package, and wine in bulk, in quantities of not less than five
21 gallons. A holder of a general wholesale license may not sell to a
22 person not licensed under this title, except as provided in AS 04.21.-
23 040. A holder of a general wholesale license may not sell alcoholic
24 beverages requiring Internal Revenue strip stamps unless the alcoholic
25 beverages have the stamps intact on the package. A wholesaler must
26 obtain a general wholesale license for each distributing point. The
27 annual general wholesale license fee is \$1,000 for the first \$100,000 of
28 business transacted, payable at the time of making an original applica-
29 tion or an application for renewal. In addition, the following annual

1 fees shall be paid by a holder of a general wholesale license:

2 Business Transacted During Year	Fee
3 over \$100,000 and not over \$150,000	\$ 500
4 over \$150,000 and not over \$200,000	\$ 1,000
5 over \$200,000 and not over \$250,000	\$ 1,500
6 over \$250,000 and not over \$300,000	\$ 2,000
7 over \$300,000 and not over \$350,000	\$ 2,500
8 over \$350,000 and not over \$400,000	\$ 3,000
9 over \$400,000 and not over \$500,000	\$ 4,000
10 over \$500,000 and not over \$600,000	\$ 5,000
11 over \$600,000 and not over \$700,000	\$ 6,000
12 over \$700,000 and not over \$800,000	\$ 7,000
13 over \$800,000 and not over \$1,000,000	\$ 9,000
14 over \$1,000,000	\$10,000

15 (b) A wholesale malt beverage and wine license authorizes the
16 holder to sell malt beverages and wine in the original packages in
17 quantities of not less than five wine gallons. The holder of a whole-
18 sale malt beverage and wine license may not sell to a person not
19 licensed under this title except as provided in AS 04.21.040. The
20 annual wholesale malt beverage and wine license fee is \$200 for the
21 first \$20,000 of business transacted during a year, payable at the time
22 of making an original application or application for renewal. In addi-
23 tion, the following annual fees shall be paid by a holder of a wholesale
24 malt beverage and wine license:

25 Business Transacted During Year	Fee
26 over \$20,000 and not over \$50,000	\$ 300
27 over \$50,000 and not over \$100,000	\$ 1,000
28 over \$100,000 and not over \$150,000	\$ 1,500
29 over \$150,000 and not over \$200,000	\$ 2,000

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over \$200,000 and not over \$400,000\$ 4,000
over \$400,000 and not over \$600,000\$ 6,000
over \$600,000 and not over \$800,000\$ 8,000
over \$800,000\$10,000

(c) In this section, the "total business transacted" means the total value of business transacted by the wholesale business, including the excise tax imposed by AS 43.60.010.

(d) No later than February 28 of each year following that for which a license has been issued under this section, the licensee shall file with the board an affidavit showing the total amount of business transacted during the preceding year under his license and the location of the licensed premises at which the business was transacted. At the time of filing the affidavit, the licensee shall pay the license fees accrued under (a) and (b) of this section during the preceding year.

(e) Failure to file an affidavit under (d) of this section or the expiration of a license under AS 04.11.540 does not relieve a licensee from paying the prescribed fees.

(f) For the purposes of this section, "distributing point" means a location where alcohol is distributed from a warehouse.

Sec. 04.11.170. DISTILLERY LICENSE. (a) A distillery license authorizes the holder to operate a distillery where alcoholic beverages are distilled and bottled or barreled for sale.

(b) A distillery license authorizes the holder to sell alcoholic beverages to persons licensed under this chapter in quantities of more than five gallons.

(c) The annual distillery license fee is \$500.

Sec. 04.11.180. COMMON CARRIER DISPENSARY LICENSE. (a) A common carrier dispensary license authorizes the holder to sell alcoholic beverages for consumption aboard a vehicle, boat, aircraft, or railroad

1 buffet car licensed by a state or federal agency for passenger travel.

2 (b) The annual fee for a common carrier dispensary license is \$350
3 for each vehicle, boat, aircraft, or railroad buffet car in which al-
4 coholic beverages are served.

5 Sec. 04.11.190. COMMUNITY LIQUOR LICENSE. (a) A community liquor
6 license authorizes a city to sell alcoholic beverages to the same extent
7 authorized under a beverage dispensary or package store license, or
8 both, subject to the same requirements regarding conditions and payment
9 of fees applying to those licenses.

10 (b) A city that has within its boundaries privately owned premises
11 licensed as a beverage dispensary or a package store before June 1,
12 1970, and operated continuously since the date of licensure is not eli-
13 gible for a community liquor license.

14 (c) A city which has within its boundaries privately owned
15 premises licensed as a beverage dispensary or package store after
16 June 1, 1970, and operated continuously since the date of licensure is
17 eligible for a community liquor license which does not duplicate the
18 privately owned beverage dispensary or package store license.

19 (d) A city council shall apply for a community liquor license
20 whenever the majority of the voters at a local option election favors
21 the issuance of a community liquor license. Unless prohibited by the
22 results of an earlier local option election, a city council may also
23 apply on its own motion for a community liquor license.

24 Sec. 04.11.200. RETAIL STOCK SALE LICENSE. (a) A retail stock
25 sale license authorizes the holder to sell the remaining stock of a
26 package liquor store when the owner wishes to close out or terminate the
27 business of the store.

28 (b) A sale by a holder of a retail stock sale license may only be
29 in quantities of five wine gallons or more per sale and may only be to

1 persons licensed under this chapter.

2 (c) The retail stock sale license shall be issued for a period of
3 90 days from the expiration or forfeiture of the package store license
4 and is not renewable.

5 (d) The retail stock sale license shall be issued only if the
6 owner of the package store business does not have a current package
7 store license. However, if the owner had a package store license which
8 was suspended or revoked because of a violation of a law, regulation, or
9 ordinance of the state, the retail stock sale license may not be issued.

10 (e) The retail stock sale license fee is \$100.

11 Sec. 04.11.210. RECREATIONAL SITE LICENSE. (a) The holder of a
12 recreational site license may sell beer and wine at a recreational site
13 during and one hour before and after a recreational event which is not a
14 school event, for consumption on designated areas at the site.

15 (b) The annual fee for a recreational site license is \$400.

16 (c) In this section, "recreational site" means, but is not limited
17 to, a location where baseball games, car races, hockey games, dog sled
18 racing events, or curling matches are regularly held during a season.

19 Sec. 04.11.220. PUB LICENSE. (a) A pub license authorizes the
20 holder to sell beer and wine for consumption only at a designated pre-
21 mises located on the campus of an accredited college or university.

22 (b) Only one pub license may be issued or renewed for each college
23 or university campus in the state.

24 (c) A pub license may not be issued or renewed without the written
25 approval of the governing body of the college or university.

26 (d) The annual fee for a pub license is \$400.

27 (e) In this section, an "accredited college or university" means a
28 college or university accredited by the Northwest Association of Sec-
29 ndary and Higher Schools.

1 Sec. 04.11.230. CATERER'S PERMIT. (a) A caterer's permit autho-
2 rizes the holder of a beverage dispensary license to sell or dispense
3 alcoholic beverages at conventions, picnics, social gatherings, sporting
4 events, or similar affairs held off the holder's licensed premises. The
5 permit may only be issued for designated premises for a specific occa-
6 sion and for a limited period of time.

7 (b) The written approval of the law enforcement agency having
8 jurisdiction over the site of the occasion for which the permit is
9 sought must be obtained and accompany the application.

10 (c) A caterer's permit may not be transferred or renewed.

11 (d) A caterer's permit must be surrendered to the board, its
12 agent, or the law enforcement agency approving the permit within 48
13 hours of its expiration time. Failure to surrender the permit is cause,
14 in the discretion of the board, for denial of applications for permits
15 made in the future by the permittee.

16 (e) The fee for a caterer's permit is \$50 and shall accompany the
17 application for a permit.

18 Sec. 04.11.240. SPECIAL EVENTS PERMIT. (a) A special events
19 permit authorizes the holder to sell or dispense beer or wine for con-
20 sumption at designated premises for a specific occasion and limited
21 period of time. Only nonprofit fraternal, civic, or patriotic organiza-
22 tions active for a period of at least two years before application and
23 incorporated under AS 10.20 are eligible for a special events permit,
24 and only if all profits derived from the sale of beer or wine are paid
25 to the organization and not to an individual.

26 (b) An application for a special events permit must be received in
27 the main office of the board at least 10 days before the date for which
28 the permit is requested. The application must be signed by both the
29 president and secretary of the organization applying for the permit. A

1 sworn affidavit showing the length of time the organization has been in
2 existence must accompany the application, together with a certified copy
3 of the resolution of the board of directors authorizing the application.
4 The written approval of the law enforcement agency having jurisdiction
5 over the designated premises of the occasion for which the permit is
6 sought must also be obtained and accompany the application.

7 (c) The special events permit must be surrendered to the board,
8 its agent, or the law enforcement agency approving the permit, within 48
9 hours of its expiration time. Failure to surrender the permit is cause,
10 in the discretion of the board, for denial of applications for permits
11 made in the future by the organization. No more than five special
12 events permits may be granted to an organization, including its auxili-
13 ary, in any one calendar year.

14 (d) A special events permit may not be transferred or renewed.

15 (e) The fee for a special events permit is \$50 a day.

16 Sec. 04.11.250. CONDITIONAL CONTRACTOR'S PERMIT. (a) A condi-
17 tional contractor's permit authorizes the holder to sell beer or wine
18 for consumption and sale only on designated premises for one year from
19 the date of issuance of the permit at construction sites which are
20 located outside a city and inside the boundaries of a military or naval
21 reservation.

22 (b) An applicant for a conditional contractor's permit must obtain
23 and file with the board written permission from the commanding officer
24 of the military or naval reservation and the prime contractor of the
25 remotely situated project for the conduct of the activities authorized
26 by the permit. A conditional contractor's permit may be renewed annu-
27 ally upon reapplication for a permit and may be revoked or suspended at
28 the discretion of the commanding officer or the prime contractor.

29 (c) A conditional contractor's permit may not be transferred and

1 is not valid after the completion of the holder's contract or the clos-
2 ing of the military or naval reservation.

3 (d) The annual conditional contractor's permit fee is \$600.

4 ARTICLE 3. APPLICATION FOR LICENSE OR PERMIT.

5 Sec. 04.11.260. APPLICATION FOR NEW LICENSE OR PERMIT. (a) An
6 applicant for a new license or permit shall file with the director a
7 written application, signed and sworn to by the applicant, giving his
8 name and address. If the applicant is a corporation, the application
9 shall be executed by the authorized officers of the corporation. The
10 application shall include:

11 (1) the type of license or permit desired;

12 (2) a description of the premises for which the license or
13 permit is desired, giving the address by street and number, or other
14 information, so that the location of the premises can be definitely
15 determined;

16 (3) a statement of the residency of the applicant;

17 (4) the license fee;

18 (5) any other information required by the board.

19 (b) A corporation applying for a license or permit shall provide
20 the names and addresses of the president, vice-president, secretary,
21 managing officer, and all stockholders who own 10 per cent or more of
22 the stock in the corporation, together with any other information re-
23 quired by the board.

24 (c) An applicant for a new license or permit must include with his
25 application

26 (1) proof that notice required by AS 04.11.310 has been
27 given;

28 (2) any petitions required to be secured under AS 04.11.460
29 before a license may be issued;

1 (3) evidence of any approval by public authorities required
2 to be obtained under AS 04.11.090(e), 04.11.220(c), 04.11.230(b), 04.-
3 11.240(b), or 04.11.250(b), before a license may be issued.

4 Sec. 04.11.270. APPLICATION FOR RENEWAL OF LICENSE OR PERMIT. (a)
5 Each application for renewal of a license or renewal of a conditional
6 contractor's permit shall include:

7 (1) the information required for a new license under AS 04.-
8 11.260 except that proof of notice under AS 04.11.310 is not required;
9 and

10 (2) a list of all convictions of the applicant of violations
11 of this title, a regulation adopted under this title, or an ordinance
12 adopted under AS 04.21.010.

13 (b) A license shall be renewed as follows:

14 (1) On or before November 1 of each year, the director shall
15 mail an application to renew the license to each licensee at his li-
16 censed premises or at a mailing address furnished by the licensee.

17 (2) An application to renew a license may be filed on or
18 before December 31 and shall be accompanied by the annual fee required
19 for the license. An application to renew the license may be filed after
20 December 31 and on or before February 28 if accompanied by the annual
21 fee for the license, plus a penalty equal to the annual fee or \$100,
22 whichever is less.

23 Sec. 04.11.280. APPLICATION FOR TRANSFER OF A LICENSE TO ANOTHER
24 PERSON. (a) An application for transfer of a license to another person
25 shall contain the same information about the transferee as is required
26 of an applicant for a new license under AS 04.11.260 and may include
27 other information required by the board.

28 (b) An application for the transfer of a license to another person
29 shall be accompanied by a statement, under oath, executed by the trans-

1 feror, listing all debts of the business and all taxes due by the busi-
2 ness. The board shall promptly inform each listed creditor of the
3 application and the amount shown as owed to that creditor.

4 Sec. 04.11.290. APPLICATION FOR TRANSFER OF LICENSE LOCATION. An
5 application for a transfer of a license to a new location shall contain
6 the information required by the board and shall be accompanied by proof
7 that the notice required in AS 04.11.310 has been given and by any peti-
8 tions required to be secured under AS 04.11.460 before a license may be
9 transferred.

10 Sec. 04.11.300. STATE POLICE INVESTIGATION. The state police
11 shall assist the director in the investigation of applicants for new
12 licenses and applicants for the transfer of existing licenses before the
13 applications are considered by the board.

14 Sec. 04.11.310. NOTICE OF APPLICATION. Before a new license is
15 issued, or transfer of location or transfer of a license to another
16 person is approved, the applicant must post a copy of the application
17 for 10 days at the location of the proposed licensed premises and at any
18 additional locations designated by the board. The board may require the
19 applicant (1) to provide a copy of the application to newspapers, radio
20 and television stations for public service announcement or (2) to pro-
21 vide paid notice of the application for not exceeding 30 days in a news-
22 paper, or by radio or television. The notice required in this subsec-
23 tion shall be in more than one language when the board decides it is
24 necessary.

25 ARTICLE 4. DENIAL, SUSPENSION, OR REVOCATION
26 OF LICENSES AND PERMITS.

27 Sec. 04.11.320. DENIAL OF NEW LICENSES AND PERMITS. (a) An
28 application requesting issuance of a new license shall be denied if

29 (1) the board finds, after review of all relevant informa-

1 tion, that issuance of the license would not be in the best interests of
2 the public;

3 (2) issuance of the license is prohibited by AS 04.11.390,
4 relating to residency, or AS 04.11.410, relating to location of premises
5 near churches and schools;

6 (3) the application has not been completed in accordance with
7 AS 04.11.260;

8 (4) issuing the license would violate the restrictions per-
9 taining to the particular license imposed under this title;

10 (5) issuance of the license is prohibited under this title as
11 a result of an election conducted in accordance with AS 04.11.490 or
12 04.11.500;

13 (6) the requirements of AS 04.11.420 - 04.11.450 relating to
14 zoning, ownership and location of the license, and the identity and
15 financing of a licensee have not been met;

16 (7) the authority sought under the license would duplicate
17 authority already granted under a community liquor license unless the
18 new license is to become effective after the termination of the com-
19 munity liquor license;

20 (8) issuance of the license is prohibited under AS 04.11.-
21 400(a) or prohibition of issuance is found necessary under AS 04.11.-
22 400(f);

23 (9) the application contains false statements of material
24 fact;

25 (10) the license is sought for the sale of alcoholic beverages
26 in an incorporated city in which, on June 19, 1976, there was no li-
27 censed premises, unless a local option election on the sale of alcoholic
28 beverages in the city is conducted as provided in AS 04.11.490(a).

29 (b) An application requesting issuance of a new permit shall be

1 denied if

2 (1) the board finds, after review of all relevant informa-
3 tion, that issuance of the permit would not be in the best interests of
4 the public;

5 (2) the board finds that any of the statements made in the
6 application are untrue;

7 (3) the application has not been completed in accordance with
8 AS 04.11.250;

9 (4) the permit is sought for the sale of alcoholic beverages
10 in an incorporated city in which, on June 19, 1976, there was no
11 licensed premises, unless a local option election on the sale of alco-
12 holic beverages in the city is conducted as provided in AS 04.11.490(a).

13 Sec. 04.11.330. DENIAL OF LICENSE OR PERMIT RENEWAL. (a) An
14 application requesting renewal of a license shall be denied if

15 (1) the board finds, after review of all relevant informa-
16 tion, that renewal of the license would not be in the best interests of
17 the public;

18 (2) the license has been revoked for any cause;

19 (3) a judicial determination on the legality of the license
20 is pending;

21 (4) the applicant has not operated the licensed premises for
22 at least 30 eight-hour days during the immediately preceding calendar
23 year, unless the board determines that the licensed premises are under
24 construction or cannot be operated through no fault of the applicant;

25 (5) the applicant does not file with the board a petition
26 containing the requisite number of signatures if required by the board
27 under AS 04.11.460 or the application has otherwise not been completed
28 in accordance with AS 04.11.270;

29 (6) the board finds that issuance of an existing license

1 issued under AS 04.11.400(g) has not encouraged tourist trade;

2 (7) the requirements of AS 04.11.420 - 04.11.450 relating to
3 zoning, ownership of the license, and financing of the licensee have not
4 been met;

5 (8) renewal of the license would violate the restrictions
6 pertaining to the particular license under this title;

7 (9) renewal of the license is prohibited under this title as
8 a result of an election conducted in accordance with AS 04.11.490 or
9 04.11.500;

10 (10) the application has not been completed in accordance with
11 AS 04.11.270.

12 (b) An application for renewal of a license may be denied if the
13 applicant is delinquent in the payment of taxes if the tax liability
14 arises in whole or in part out of the licensed business.

15 (c) An application requesting renewal of a conditional contrac-
16 tor's permit shall be denied if

17 (1) the board finds, after review of all relevant informa-
18 tion, that issuance of the permit would not be in the best interests of
19 the public;

20 (2) the application has not been completed in accordance with
21 AS 04.11.270.

22 Sec. 04.11.340. DENIAL OF TRANSFER OF LOCATION. An application
23 requesting approval of a transfer of location of licensed premises shall
24 be denied if

25 (1) the board finds, after review of all relevant informa-
26 tion, that transfer of location of the license would not be in the best
27 interests of the public;

28 (2) the transfer of location of the license is prohibited
29 under AS 04.11.400(a) or prohibition of transfer is found necessary

under AS 04.11.400(f);

(3) the license would be transferred out of the election district within which it was originally issued, unless the election district into which the license would be transferred is within the incorporated city, organized borough or unified municipality within which the license was originally issued;

(4) transfer of ownership is to be made concurrently with the transfer of the location of the licensed premises and a ground for denial of the transfer of ownership under AS 04.11.360 is presented;

(5) the application has not been completed in accordance with AS 04.11.290;

(6) transfer of location of the license would result in violation of a local zoning law;

(7) transfer of location of the license would violate the restrictions pertaining to the particular license imposed by this title;

(8) transfer of location of the license is prohibited under this title as a result of an election conducted in accordance with AS 04.11.490 or 04.11.500.

Sec. 04.11.360. DENIAL OF TRANSFER OF A LICENSE TO ANOTHER PERSON. An application requesting approval of a transfer of a license to another person under this title shall be denied if

(1) the board finds, after review of all relevant information, that transfer of a license to another person would not be in the best interests of the public;

(2) the application has not been completed in accordance with AS 04.11.280;

(3) the application contains false statements of material fact;

(4) the transferor has not paid all debts or taxes arising

1 from the conduct of the business licensed under this title unless

2 (A) he gives security for the payment of the debts or
3 taxes satisfactory to the creditor or taxing authority; or

4 (B) the transfer is pursuant to a promise given as
5 collateral by the transferor to the transferee in the course of an
6 earlier transfer of the license under which promise the transferor
7 is obliged to transfer the license back to the transferee in the
8 event of default in payment for property conveyed as part of the
9 earlier transfer of the license;

10 (5) transfer of the license to another person would result in
11 violation of the provisions of this title relating to identity of li-
12 censees and financing of licensees;

13 (6) transfer of the license to another person would violate
14 the restrictions pertaining to the particular license under this title;

15 (7) transfer of the license to another person is prohibited
16 under the provisions of this title as a result of an election conducted
17 in accordance with AS 04.11.490 or 04.11.500;

18 (8) the prospective transferee does not have the qualifica-
19 tions required under this title of an original applicant.

20 Sec. 04.11.370. SUSPENSION AND REVOCATION OF LICENSES AND PERMITS.

21 A license or permit shall be suspended or revoked if the board finds
22 that one or more of the following grounds exists:

23 (1) misrepresentation of a material fact on an application
24 for a license or permit;

25 (2) continuation of activities authorized under a license or
26 permit would be contrary to the best interests of the public;

27 (3) failure on the part of the licensee to correct objection-
28 able conditions within a prescribed time after receipt of notice issued
29 by the board or its agent;

1 (4) conviction of a licensee of a violation of a provision of
2 this title, a regulation adopted under this title, or an ordinance
3 adopted under AS 04.21.010;

4 (5) conviction of the agent or employee of a licensee of a
5 violation of this title, a regulation adopted under this title, or an
6 ordinance adopted under AS 04.21.010, if the licensee is found by the
7 board to have either knowingly allowed the violation or to have reck-
8 lessly or with criminal negligence failed to act in accordance with the
9 duty prescribed under AS 04.21.030 with the result that an agent or
10 employee violates a law, regulation, or ordinance;

11 (6) failure of the licensee to comply with the laws and
12 regulations pertaining to public health in the state;

13 (7) use of the licensed premises as a resort for illegal
14 possessors or users of narcotics, prostitutes, pimps, or panderers; in
15 addition to any other legally competent evidence, the character of the
16 premises may be proved by the general reputation of the premises in the
17 community as a resort for illegal possessors or users of narcotics,
18 prostitutes, pimps, or panderers;

19 (8) occurrence of illegal gambling within the limits of the
20 licensed premises;

21 (9) disciplinary action has been taken against a licensed
22 premises by military or naval authorities;

23 (10) occurrence of any public offense involving moral turpi-
24 tude on the licensed premises;

25 (11) violation by a licensee of this title, a regulation
26 adopted under this title, or an ordinance adopted under AS 04.21.010;

27 (12) violation by an agent or employee of a licensee of a
28 provision of this title, a regulation adopted under this title, or an
29 ordinance adopted under AS 04.21.010, if the licensee is found by the

1 board to have either knowingly allowed the violation or to have reck-
2 lessly or with criminal negligence failed to act in accordance with the
3 duty prescribed under AS 04.21.030 with the result that the agent or
4 employee violates the law, regulation, or ordinance.

5 ARTICLE 5. RESTRICTIONS ON ISSUANCE AND TRANSFER OF LICENSES.

6 Sec. 04.11.390. RESIDENCE. A beverage dispensary license or
7 package store license may not be issued to a person or association of
8 persons who have not resided in the state for at least one year before
9 the date of application. A beverage dispensary license or package store
10 license may not be issued to either a domestic corporation which has not
11 been issued a certificate of incorporation or a foreign corporation
12 which has not been issued a certificate of authority to transact busi-
13 ness in the state at least one year before the date of the application.

14 Sec. 04.11.400. POPULATION LIMITATIONS. (a) Except as provided
15 in (g) and (h) of this section, a new license may not be issued or an
16 existing license transferred to a new location

17 (1) outside an incorporated city, a unified municipality, or
18 an established village if after the issuance or transfer there would be
19 more than one license of each type for each 1,500 population or fraction
20 of 1,500 population, including licenses which have been issued under (g)
21 or (h) of this section, in a radius of five miles of the licensed prem-
22 ises or location of premises sought to be licensed;

23 (2) inside an established village, an incorporated city, or a
24 unified municipality if after the issuance or transfer there would be
25 more than one license of each type for each 1,500 population or fraction
26 of 1,500 population, including licenses which have been issued under (g)
27 or (h) of this section, inside the boundaries of the village, city or
28 unified municipality.

29 (b) If the application is for a license outside of an established

1 village, incorporated city, or unified municipality and the radius
2 encompasses all of the established village, incorporated city, or
3 unified municipality and the population resident inside and outside the
4 village, city, or municipality but inside the radius is less than 1,500,
5 the board may deny the issuance or transfer of the license.

6 (c) In this section "unified municipality" means a unified muni-
7 cipality established under AS 29.68.

8 (d) In this section "radius" means a straight line originating at
9 the proposed licensed premises and extending outward.

10 (e) In (a)(1) of this section, "population" includes only those
11 persons residing inside the radius but outside of an established
12 village, an incorporated city, or a unified municipality as of
13 December 31 of the year preceding the date of application.

14 (f) In (a)(2) of this section, "population" includes only those
15 persons residing inside an established village, an incorporated city, or
16 a unified municipality as of December 31 of the year preceding the date
17 of application.

18 (g) The board may, in its discretion, approve the issuance or
19 transfer of location of a beverage dispensary or restaurant or eating
20 place license without regard to (a) of this section if it appears that
21 the issuance or transfer will encourage the tourist trade by encouraging
22 the construction or improvement of

23 (1) a hotel, motel, resort, or similar business relating to
24 the tourist trade having

25 (A) a minimum of 10 rental rooms, and

26 (B) a dining facility, which requirement may be waived
27 if most of the rental rooms have kitchen facilities; or

28 (2) an airport terminal.

29 (h) A restaurant or eating place license may be issued or trans-

1 ferred notwithstanding (a) of this section if

2 (1) the premises of the restaurant or eating place are more
3 than 18 miles from the corporate limits of a city or unified municipali-
4 ty;

5 (2) the premises will serve food to the traveling public; and

6 (3) the board finds that the public convenience will be
7 served by the issuance or transfer.

8 (i) An application requesting a transfer of location of licensed
9 premises shall be granted notwithstanding (a) of this section if the new
10 location is less than one mile from the original location and

11 (1) no ground for denial exists under AS 04.11.340(1) or (3);
12 and

13 (2) relocation of the licensed premises is necessary due to

14 (A) termination of a lease or rental agreement;

15 (B) condemnation of the premises;

16 (C) the substantial destruction of the premises by any
17 cause.

18 Sec. 04.11.410. RESTRICTION OF LOCATION NEAR CHURCHES AND SCHOOLS.

19 (a) A beverage dispensary or package store license may not be issued
20 or renewed nor may the location of an existing license be transferred if
21 the licensed premises would be located in a building the public entrance
22 of which is within 200 feet of a school ground or church building,
23 measured by the shortest pedestrian route from the outer boundaries of
24 the school ground or the public entrance of a church building in which
25 religious services are regularly conducted. However, a license issued
26 before April 25, 1960 may be renewed or transferred to a person notwith-
27 standing this subsection.

28 (b) If a beverage dispensary or retail license for premises
29 located within 200 feet of a school ground or church building in which

1 religious services are regularly conducted is revoked, expires or is
2 transferred to another location, a beverage dispensary or retail license
3 may not be issued or transferred to the formerly licensed premises.

4 Sec. 04.11.420. ZONING LIMITATIONS. (a) A person may not be
5 issued a license or permit in a municipality if a zoning regulation or
6 ordinance prohibits the sale or consumption of alcoholic beverages
7 unless a variance of the regulation or ordinance has been approved.

8 (b) The municipality shall inform the board of zoning regulations
9 or ordinances which prohibit the sale or consumption of alcoholic beverages.
10

11 Sec. 04.11.430. PERSON AND LOCATION. Each license shall be issued
12 to a specific person or persons or to a corporation. If the license is
13 issued to a corporation, the registered agent of the corporation must be
14 an individual resident of the state. Except for a license authorizing
15 the sale of alcoholic beverages on a common carrier, a specific location
16 shall be indicated on the license or permit as the licensed premises,
17 the principal address of which shall be indicated on the license or
18 permit. The mailing address of a licensee or, if the licensee is a
19 corporation, the address of the registered office of the corporation
20 must be kept current and on file in the main office of the board.

21 Sec. 04.11.450. PROHIBITED FINANCIAL INTEREST. (a) No person
22 other than a licensee may have a direct or indirect financial interest
23 in the business for which the license is issued.

24 (b) A person who is a representative or owner of a wholesale
25 business, brewery, winery, bottling works, or distillery may not be
26 issued, solely or together with others, a beverage dispensary license or
27 package store license.

28 (c) In this section, "direct or indirect financial interest" means
29 holding a legal or equitable interest in the operation of a business

1 licensed under this title. However, credit extended by a distiller, a
2 brewery or a winery to a wholesaler, or credit extended by a wholesaler
3 to persons licensed under this title, is not considered a financial
4 interest in a business licensed under this title.

5 (d) A license may not be leased by a licensee to another person or
6 corporation.

7 (e) For the purposes of this section, a lessor under a graduated
8 or percentage lease-rent agreement involving premises licensed under
9 this title does not hold a financial interest in the business.

10 Sec. 04.11.460. PRIOR PUBLIC APPROVAL. (a) A new license or the
11 transfer of location of an existing license may not be approved by the
12 board in an area outside but within 50 miles of the boundaries of a
13 municipality unless a petition asking that the license be issued or
14 transferred within the area containing signatures of a majority of the
15 permanent residents residing within one mile of the proposed premises is
16 filed with the board. A petition is not required for the renewal of a
17 license issued or transferred in accordance with this subsection unless
18 specifically required by the board.

19 (b) A license may not be issued in an area which is 50 miles or
20 more from the boundaries of a municipality unless a petition asking that
21 the license be issued within the area containing the signatures of
22 two-thirds of the permanent residents residing within a radius of five
23 miles of the United States post office station nearest to the proposed
24 licensed premises, is filed with the board. A petition is not required
25 for the renewal of a license issued in accordance with this subsection
26 unless specifically required by the board. If

27 (1) there are two or more United States post office stations
28 in the vicinity of the proposed licensed premises, the nearest station
29 to the premises constitutes the point of beginning under this subsec-

1 tion;

2 (2) there is no United States post office station within a
3 radius of five miles of the proposed licensed premises, the applicant
4 must obtain the signatures of two-thirds of the permanent residents
5 residing within a five mile radius of the proposed licensed premises.

6 (c) For the purposes of this section, "permanent resident" means a
7 person 19 years of age or older who has established a permanent place of
8 abode.

9 ARTICLE 6. PROCEDURES FOR PUBLIC INFLUENCE.

10 Sec. 04.11.470. OBJECTION. A person may object to an application
11 for issuance, renewal, transfer of location, or transfer to another
12 person of a license, or for issuance of a permit by serving upon the
13 applicant and the board the reasons for the objection. The board shall
14 consider the objections and testimony received at a hearing conducted
15 under AS 04.11.510(b)(2) when it considers the application, and the
16 objection and the record of the hearing conducted under AS 04.11.510-
17 (b)(2) shall be retained as part of the board's permanent record of its
18 review of the application.

19 Sec. 04.11.480. PROTEST. (a) If a local governing body wishes to
20 protest the issuance, renewal, transfer of location or transfer to
21 another person of a license, it shall furnish the board and the appli-
22 cant with a protest within 30 days of receipt from the board of notice
23 of filing of the application. The board shall consider a protest and
24 testimony received at a hearing conducted under AS 04.11.510(b)(2) or
25 (4) when it considers the application, and the protest and the record of
26 the hearing conducted under AS 04.11.510(b)(2) or (4) shall be retained
27 as part of the board's permanent record of its review of the applica-
28 tion.

29 (b) If the permanent residents residing outside of but within two

1 miles of an incorporated city or an established village wish to protest
2 the issuance, renewal, or transfer of a license within the city or
3 village, they shall file with the board a petition meeting the require-
4 ments of AS 04.11.510(b)(3) requesting a public hearing within 30 days
5 of the posting of notice required under AS 04.11.310, or by December 31
6 of the year application is made for renewal of a license. The board
7 shall consider testimony received at a hearing conducted under AS 04.-
8 11.510(b)(3) when it considers the application, and the record of a
9 hearing conducted under AS 04.11.510(b)(3) shall be retained as part of
10 the board's permanent record of its review of the application.

11 Sec. 04.11.490. LOCAL OPTION ELECTION. (a) A local governing
12 body shall, whenever 35 percent of the total number of voters at the
13 last general municipal election held in a municipality petition the
14 local governing body to do so, place upon a separate ballot at the next
15 municipal election whichever of the following questions is the subject
16 of the petition:

17 (1) "Should the sale of alcoholic beverages in (name
18 of municipality) be prohibited?" (yes or no);

19 (2) "Should the sale of alcoholic beverages be prohibited in
20 (name of city) unless sold by a (either a beverage dispen-
21 sary or a package store operated under a community liquor license)?"
22 (yes or no);

23 (3) "Should the sale of alcoholic beverages be allowed in
24(name of city) if sold by (either a beverage
25 dispensary or a package store operated under a community liquor
26 license)?" (yes or no);

27 (4) "Should the sale of alcoholic beverages be prohibited by
28 (either a beverage dispensary or a package store, or both)
29 in(name of city) unless under a community liquor license?"

1 (yes or no);

2 (5) "Should the sale of alcoholic beverages be prohibited in
3 (name of municipality) except if sold under a restaurant or
4 eating place license?" (yes or no).

5 (b) The lieutenant governor shall conduct the election, canvass
6 the ballots, and publish the results.

7 (c) When the lieutenant governor certifies that a majority of
8 those voting are in favor of (a)(1), (2), (3), (4) or (5) of this
9 section, the lieutenant governor shall immediately notify the board and
10 the local governing body.

11 (d) When the lieutenant governor certifies to the board that a
12 majority of those voting are in favor of the question in (a)(1) of this
13 section, the board may not issue, renew, or transfer the location of any
14 license or permit provided for under this title within the municipality.

15 (e) When the lieutenant governor certifies to the board that a
16 majority of those voting are in favor of the question in (a)(2) of this
17 section, the board may not issue, renew, or transfer the location of a
18 license other than a community liquor license, or issue a permit within
19 the city. However, the board may consider the city's application for a
20 community liquor license and, if statutory requirements are met, may
21 issue the license.

22 (f) When the lieutenant governor certifies to the board that a
23 majority of those voting are in favor of the question in (a)(3) of this
24 section, the board may issue a community liquor license to a city which
25 previously prohibited the sale of alcoholic beverages if all statutory
26 requirements are met.

27 (g) When the lieutenant governor certifies to the board that a
28 majority of those voting are in favor of the question in (a)(4) of this
29 section, the board may not renew, transfer the location of, or issue in

1 the city the type of license prohibited by the results of the election.
2 However, the board may consider an application for a community liquor
3 license authorizing a city to sell alcoholic beverages as specified in
4 the question placed on the ballot under (a)(4) of this section. If
5 statutory requirements are met, the board may issue the community liquor
6 license.

7 (h) If the lieutenant governor certifies to the board that a
8 majority of those voting are in favor of the question in (a)(5) of this
9 section, the board may not issue, renew, or transfer the location of a
10 license or a permit other than a restaurant or eating place license in
11 the city.

12 (i) If the lieutenant governor certifies that a majority of those
13 voting are in favor of a question in (a)(1), (2), (3), (4) or (5) of
14 this section, licenses and permits which may not be renewed are void as
15 of midnight December 31 of the year the election occurred. The results
16 of an election held under this section may not result in the suspension
17 of a license during the year for which it was issued.

18 (j) After receipt of notification under (d), (e), (f), (g) or (h)
19 of this section, the board may not issue a new beverage dispensary or
20 package store license in an unincorporated area outside but within five
21 miles of the recognized boundaries of the area in which the election was
22 held, and the board may not renew or transfer the location of an exist-
23 ing beverage dispensary or package store license within that radius if
24 the board considers such action would not be in the best interests of
25 the public.

26 (k) If, after an election under this section prohibiting the sale
27 of alcoholic beverages, a majority of the voters in a subsequent elec-
28 tion conducted in accordance with (a) of this section favors the sale of
29 alcoholic beverages by private persons under one or more of the type of

1 license terminated as a result of the previous election, the board shall
2 consider all applications for licenses and may issue the number of
3 licenses of each type favored by the voters in the subsequent election
4 and which were terminated by the voters in the previous election.
5 Licenses may be issued for premises previously licensed or for other
6 premises. However, if fewer licenses would be issued if the provisions
7 prescribing the ratio of population to licensed premises in AS 04.11.-
8 400(a) are applied and the local governing body requests that AS 04.11.-
9 400(a) apply, only the number of licenses authorized under AS 04.11.-
10 400(a) may be issued. Priority shall be given applicants who were
11 formerly licensees and whose licenses were not renewed because of the
12 results of the previous election. However, these applicants have no
13 legal right to a license and the board is not required to approve the
14 application.

15 Sec. 04.11.500. LOCAL OPTION ELECTION IN UNINCORPORATED AREAS.

16 When 35 percent or more of the adult residents (1) having a permanent
17 place of abode within an established village where a licensed premises
18 is situated or is to be situated and (2) having a permanent place of
19 abode within two miles of any point on the circumference of the circle
20 comprising the boundaries of that village petition the board to do so,
21 the board shall provide for a special election conducted by the lieuten-
22 ant governor. All persons eligible to sign the petition may vote in the
23 election. If at the election the majority of the adult residents eli-
24 gible to vote in the election under both (1) and (2) of this section
25 object to the sale of alcoholic beverages, the board may not issue,
26 renew or transfer the location of a license in, into, or within the area
27 determined under this section.

28 ARTICLE 7. BOARD PROCEDURES.

29 Sec. 04.11.510. PROCEDURE FOR ACTION ON LICENSE APPLICATIONS,

1 SUSPENSIONS, AND REVOCATIONS. (a) Unless a legal action relating to
2 the license, applicant or premises to be licensed is pending, the board
3 shall decide whether to grant or deny an application within 90 days of
4 receipt of the application at the main office of the board. However,
5 the decision may not be made before the 30 days allowed for protest
6 under AS 04.11.480 have elapsed unless received by the municipality.

7 (b) The board may review an application for the issuance, renewal,
8 transfer of location, or transfer to another person, of a license with-
9 out affording the applicant notice or hearing, except

10 (1) if an application is denied, the notice of denial shall
11 be furnished the applicant immediately in writing stating the reason for
12 the denial in clear and concise language; the notice of denial shall
13 inform the applicant that he is entitled to an informal conference with
14 either the director or the board, and that, if not satisfied by the
15 informal conference, he is then entitled to a formal hearing before the
16 board; if the applicant requests a formal hearing, the board shall
17 adhere to AS 44.62.330 - 44.62.630; all interested persons may be heard
18 at the hearing and unless waived by the applicant and the board, the
19 formal hearing shall be held in the area for which the application is
20 requested;

21 (2) the board may, on its own initiative or in response to an
22 objection or protest, hold a hearing to ascertain the reaction of the
23 public or a local governing body to an application of a hearing is not
24 required under (1), (3), or (4) or this subsection;

25 (3) if a petition containing the signatures of 35 percent of
26 the adult residents having a permanent place of abode outside of but
27 within two miles of an incorporated city or an established village is
28 filed with the board, the board shall hold a public hearing on the
29 question of whether the issuance, renewal, or transfer of the license in

1 the city or village would be in the public interest;

2 (4) if a protest to the issuance, renewal, transfer of loca-
3 tion or transfer to another person of a license made by a local govern-
4 ing body is based on a question of law, the board shall hold a public
5 hearing.

6 (c) Unless the grounds for the suspension or revocation are under
7 AS 04.11.370(4), board proceedings to suspend or revoke a license shall
8 be conducted in accordance with AS 44.62.330 - 44.62.630 (Administrative
9 Procedure Act), except that the licensee is entitled to an opportunity
10 to informally confer with the director or the board within 10 days after
11 the accusation is served upon him. Notice of the opportunity for an
12 informal conference shall be served upon the licensee along with the
13 accusation. If an informal conference is requested, the running of the
14 period of time specified in AS 44.62.380 for filing a notice of defense
15 is tolled from the date of receipt of the request for the conference
16 until the day following the date of the conference unless extended by
17 the board. After the conference, the licensee, if not satisfied by the
18 results of the conference, may obtain a hearing by filing a notice of
19 defense as provided in AS 44.62.390. If the grounds for suspension or
20 revocation are under AS 04.11.370(4), the licensee is not entitled to
21 notice and hearing under AS 44.62.330 - 44.62.630 on the merits of the
22 suspension or revocation. However, the board shall afford the licensee
23 notice and hearing on the issue of what administrative sanction to
24 impose under AS 04.16.180.

25 Sec. 04.11.520. NOTICE. After receipt of an application from
26 within (1) an established village, (2) an incorporated city, (3) an
27 organized borough, or (4) a unified municipality, the board shall trans-
28 mit written notice to the local governing body so that the local govern-
29 ing body may protest under AS 04.11.480.

1 Sec. 04.11.530. CONSIDERATION OF REPORTS. A license may not be
2 suspended or revoked under AS 04.11.370(4) or (5) unless the board takes
3 into consideration the reports prepared by arresting and investigating
4 officers and the sentencing report sent to the board under AS 12.55.-
5 025(b).

6 Sec. 04.11.535. SUSPENSION AND REVOCATION BASED ON ACTS OF EM-
7 PLOYEES. (a) If, in a proceeding to suspend or revoke a license under
8 AS 04.11.370(5), the board finds that a sentencing report sent to the
9 board under AS 12.55.025(b), or reports prepared by the investigating or
10 arresting officers in connection with the violation, contain information
11 which if uncontradicted or unexplained would provide a basis for sus-
12 pension or revocation under AS 04.11.370(5), the licensee has the burden
13 of proof to establish that he neither knowingly allowed the violation
14 nor recklessly or with criminal negligence failed to act in accordance
15 with the duty prescribed under AS 04.21.030 thereby resulting in the
16 unlawful action.

17 (b) If the board suspends or revokes a license on grounds that a
18 licensee knowingly allowed or recklessly or with criminal negligence
19 failed to act in accordance with the duty prescribed under AS 04.21.030
20 resulting in unlawful action of an agent or employee, the board shall
21 file a criminal complaint charging the licensee with violation of AS
22 04.16.150.

23 Sec. 04.11.537. APPLICATION OF PRECEDENT. In determining whether
24 issuance, renewal, transfer, suspension, or revocation of a license is
25 in the best interests of the public, the board need not conform to or
26 distinguish its decision from any action it has taken in the past on
27 applications presenting similar facts, but may instead base its decision
28 only on the particular facts before it.

29 ARTICLE 8. EXPIRATION OF LICENSES.

1 Sec. 04.11.540. LICENSE RENEWAL AND EXPIRATION. Notwithstanding
2 AS 04.11.680, an application for renewal of a license which is in effect
3 on December 31 may be submitted up until the next February 28 but the
4 authority granted under the license may not be exercised until the
5 license is renewed. If the application for renewal and applicable
6 affidavits have not been filed by February 28 or the required fees and
7 the penalty fees have not been paid by that date, the license expires at
8 12:00 midnight February 28. A new license may not be issued to the
9 holder of an expired license for the same premises except on proof
10 satisfactory to the board of good cause for the failure to file and pay.

11 Sec. 04.11.550. NOTICE OF EXPIRATION. On or before February 15,
12 the director shall mail a notice of expiration to each licensee who has
13 not either (1) filed an application to renew his license, along with any
14 applicable affidavits and all fees due, or (2) notified the director of
15 his intent not to do so. Failure of the director to mail this notice of
16 expiration does not waive the requirement that the application for
17 renewal be filed by February 28.

18 ARTICLE 9. MISCELLANEOUS PROVISIONS.

19 Sec. 04.11.560. APPEALS. (a) An action of an officer, employee
20 or agent of the board relating to the administration or enforcement of
21 this title may be appealed to the board by the aggrieved party.

22 (b) A decision by the board relating to the issuance, renewal,
23 transfer, suspension, or revocation of a license under this title may be
24 appealed to the superior court under AS 44.62.560.

25 Sec. 04.11.570. REFUND AND FORFEITURE OF FEES. (a) If an appli-
26 cation for a license is denied, the board shall refund the license fee
27 less the application fee.

28 (b) A license fee may not be refunded after the license has been
29 issued unless the board determines it has erred in the issuance through

1 no fault of the applicant.

2 (c) If a license is revoked on grounds that statements made in the
3 application are untrue, the license fee paid by the applicant is for-
4 feited to the state.

5 Sec. 04.11.580. SURRENDER OR DESTRUCTION OF LICENSE. (a) A
6 license issued under this title shall, if the board so directs, be sur-
7 rendered on demand to a peace officer, agent, or officer of the board.

8 (b) The licensee shall surrender his current license to the board
9 within 10 days after the loss or vacation of his licensed premises.

10 (c) If the license is destroyed, the licensee shall so notify the
11 board.

12 Sec. 04.11.590. DISPOSITION OF FUNDS. (a) Money collected from
13 licenses under this title shall be transferred by the board to the
14 Department of Revenue and deposited in the general fund.

15 (b) A fee prescribed by the board in addition to fees authorized
16 under this title shall be transferred to the Department of Revenue and
17 deposited in the general fund.

18 Sec. 04.11.610. REFUND TO MUNICIPALITIES. (a) Annual license
19 fees, excluding annual wholesale license fees, collected within a mu-
20 nicipality shall be refunded semi-annually to the municipality.

21 (b) If the officers of a municipality fail to actively enforce
22 local ordinances, laws of the United States and the state, and the
23 regulations relating to the manufacture and sale of alcoholic beverages
24 in the state, the commissioner of revenue may deny the refund provided
25 for under (a) of this section until the board finds the enforcement of
26 the ordinances, laws and regulations is resumed.

27 (c) The Department of Revenue shall recover any amounts errone-
28 ously refunded under (a) of this section. The Department of Revenue
29 shall schedule repayments of erroneously refunded amounts over a suffi-

1 cient period of time to minimize financial hardship to the municipality
2 involved.

3 Sec. 04.11.630. ACCESSIBILITY OF LICENSE AND LICENSED PREMISES TO
4 INSPECTION. (a) A licensee shall, upon request, make his licensed pre-
5 mises and places authorized for storage under AS 04.21.060 available for
6 inspection by officers charged with the enforcement of this title,
7 including members of the board and the director or his employee, during
8 all regular business hours.

9 (b) A license issued under this title shall be posted within the
10 licensed premises so as to be easily available for inspection upon
11 request by a peace officer or other person during regular business
12 hours.

13 Sec. 04.11.660. LICENSE A PRIVILEGE. (a) A license issued under
14 this title is a personal privilege, not a property right.

15 (b) The privilege conferred upon the licensee is personal in
16 nature and affords protection to the licensee only.

17 Sec. 04.11.670. FORECLOSURE. A license issued under this title is
18 not subject to foreclosure, and may not be used as collateral to secure
19 a debt. However, if a license is transferred to another person, the
20 transferor may secure payment for real and personal property conveyed to
21 the transferee upon the promise of the transferee to transfer the
22 license back to the transferor upon default in payment.

23 Sec. 04.11.680. DURATION OF LICENSES AND PERMITS. (a) A license
24 issued under this title shall be issued for the calendar year ending
25 midnight December 31 unless a shorter period is prescribed by the board.

26 (b) A permit issued under this title shall be for the period
27 prescribed by the board, which period shall be clearly designated on the
28 permit.

29 Sec. 04.11.690. DISCOURAGEMENT OF MONOPOLIES. (a) In a general

1 sense, it is against the public interest that the issuance, renewal or
2 transfer of licenses issued under this title will create, or assist in
3 the creation of, a monopoly.

4 (b) The board may submit proposals to the governor and the legis-
5 lature addressed to the discouragement of the creation of monopolies.

6 (c) The board may not by regulation adopt a definition of a mono-
7 poly.

8 * Sec. 3. AS 04 is amended by adding a new chapter to read:

9 CHAPTER 16. REGULATION OF SALES AND DISTRIBUTION.

10 ARTICLE 1. PROHIBITED ACTS.

11 Sec. 04.16.010. HOURS OF SALE AND PRESENCE ON LICENSED PREMISES
12 (STANDARD CLOSING HOURS). (a) A person may not sell, offer for sale,
13 give, furnish, deliver or consume an alcoholic beverage on premises
14 licensed under this title between the hours of 5:00 a.m. and 8:00 a.m.
15 each day.

16 (b) A licensee, his agent, or employee may not permit a person to
17 consume alcoholic beverages on the licensed premises, or on premises
18 where the licensee, his agent or employee is employed, between the hours
19 of 5:00 a.m. and 8:00 a.m. each day.

20 (c) A licensee, his agent, or employee may not permit a person to
21 and a person may not enter premises licensed under this title between
22 the hours of 5:00 a.m. and 8:00 a.m. each day. This subsection does not
23 apply to common carriers, as defined in AS 42.10.420(2), or to an em-
24 ployee of the licensee who is on the premises to prepare for the next
25 day's business or to persons remaining on the premises of a restaurant
26 or eating place licensed under this title to consume food or nonalco-
27 holic beverages.

28 (d) A municipality may provide for additional hours of closure
29 under AS 04.21.010.

1 Sec. 04.16.020. SOLICITATION OF ALCOHOLIC BEVERAGES. (a) A
2 person may not pay or receive from another a salary, percentage or
3 commission to solicit or encourage a patron of licensed premises to
4 purchase alcoholic or other beverages.

5 (b) A licensee, his agent, or employee may not knowingly permit a
6 person to loiter within or about premises licensed under this title for
7 the purpose of begging or soliciting a patron or visitor to purchase
8 alcoholic or other beverages for the person who is begging or solicit-
9 ing.

10 Sec. 04.16.030. SALE OR DISPOSITION OF ALCOHOLIC BEVERAGES TO
11 DRUNKEN PERSONS. A licensee, his agent, or employee may not knowingly
12 or with criminal negligence

13 (1) sell, give, or barter alcoholic beverages to a drunken
14 person;

15 (2) allow another person to sell, give, or barter an alco-
16 holic beverage to a drunken person within his licensed premises or
17 within premises in which employed;

18 (3) allow a drunken person to enter and remain within li-
19 censed premises or to consume an alcoholic beverage within his licensed
20 premises or within premises in which employed;

21 (4) permit a drunken person to sell or serve alcoholic bever-
22 ages.

23 Sec. 04.16.040. ACCESS OF DRUNKEN PERSONS TO LICENSED PREMISES. A
24 drunken person may not knowingly enter or remain on premises licensed
25 under this title.

26 Sec. 04.16.041. OBLIGATION TO ENFORCE RESTRICTIONS IN LICENSED
27 PREMISES. A licensee, his agent or employee may not permit the consump-
28 tion of alcoholic beverages by any person within licensed premises
29 unless it is permitted by the license.

1 Sec. 04.16.049. ACCESS OF PERSONS UNDER THE AGE OF 19 TO LICENSED
2 PREMISES. (a) A person under the age of 19 years may not knowingly
3 enter or remain in premises licensed under this title unless

4 (1) accompanied by a parent, guardian or spouse who has at-
5 tained the age of 19 years;

6 (2) accompanied by a person over the age of 19 years and with
7 the consent of the person's parent or guardian if the premises are
8 licensed as a restaurant or eating place and the persons enter and
9 remain only for dining and dancing.

10 (b) Notwithstanding (a) of this section, a licensee, his agent, or
11 employee may refuse entry to a person under the age of 19 years to that
12 part of licensed premises in which alcoholic beverages are sold, served
13 or consumed, may refuse service to a person under the age of 19 years,
14 or may require a person under the age of 19 years to leave the portion
15 of the licensed premises in which alcoholic beverages are sold, served,
16 or consumed.

17 (c) Notwithstanding this section, a person between 16 and 18 years
18 of age may enter and remain within the licensed premises of a hotel,
19 restaurant, or eating place in the course of his employment if (1) the
20 employment does not involve the serving, mixing, delivering, or dis-
21 pensing of alcoholic beverages; (2) the person has the written consent
22 of a parent or guardian; and (3) an exemption from the prohibition of
23 AS 23.10.355 is granted by the Department of Labor. The board, with the
24 approval of the governing body having jurisdiction and at the licensee's
25 request, shall designate which premises are hotels, restaurants or
26 eating places for the purposes of this subsection.

27 Sec. 04.16.050. POSSESSION OR CONSUMPTION BY PERSONS UNDER THE AGE
28 OF 19. A person under the age of 19 years may not knowingly consume,
29 possess, or control alcoholic beverages except those furnished persons

1 under AS 04.16.051(b).

2 Sec. 04.16.051. FURNISHING OF ALCOHOLIC BEVERAGES TO PERSONS UNDER
3 THE AGE OF 19. (a) No person may furnish an alcoholic beverage to a
4 person under the age of 19 years.

5 (b) This section does not prohibit the furnishing of an alcoholic
6 beverage

7 (1) by a parent to his child, by a guardian to his ward, or
8 by a spouse to his or her legal spouse if the furnishing occurs off
9 licensed premises; or

10 (2) by a licensed physician or nurse to a patient in the
11 course of administering medical treatment.

12 (c) Acts unlawful under AS 11.51.130 are not made legal by (b) of
13 this section.

14 Sec. 04.16.052. DISPOSITION OF ALCOHOLIC BEVERAGES TO PERSONS
15 UNDER THE AGE OF 19 BY LICENSEES. A licensee, his agent, or employee
16 may not

17 (1) allow another person to sell, barter, or give an alco-
18 holic beverage to a person under the age of 19 years within the licensed
19 premises or within premises in which employed;

20 (2) allow a person under the age of 19 years to enter and
21 remain within licensed premises except as provided in AS 04.16.049(c);

22 (3) allow a person under the age of 19 years to consume an
23 alcoholic beverage within his licensed premises or within premises in
24 which employed;

25 (4) permit a person under the age of 19 years to sell or
26 serve alcoholic beverages.

27 Sec. 04.16.060. PURCHASE BY PERSONS UNDER THE AGE OF 19. (a) A
28 person under the age of 19 years may not purchase alcoholic beverages or
29 solicit another to purchase alcoholic beverages on his behalf.

1 (b) A person may not influence the sale, gift, or service of an
2 alcoholic beverage to a person under the age of 19 years, by misrepres-
3 senting the age of that person.

4 (c) A person may not order or receive an alcoholic beverage from a
5 licensee, his agent, employee, or another person, for the purpose of
6 selling, giving, or serving it to a person under the age of 19 years.

7 (d) A person under the age of 19 years may not enter licensed
8 premises where alcoholic beverages are sold and offer or present to a
9 licensee, his agent, or employee a birth certificate or other written
10 evidence of age, which is fraudulent or false or which is not actually
11 his own, or otherwise misrepresent his age, for the purpose of inducing
12 the licensee, his agent, or employee to sell, give, serve, or furnish
13 alcoholic beverages contrary to law.

14 (e) A person who has attained the age of 19 years accompanying a
15 person under the age of 19 who is seeking to enter and remain in a
16 licensed premises under AS 04.16.049(a)(2) may not misrepresent having
17 obtained the consent of the parent or guardian of the person under the
18 age of 19 years.

19 Sec. 04.16.070. SALES ON ELECTION DAY. (a) It is unlawful to
20 sell, barter, give, consume, or dispose of alcoholic beverages within
21 licensed premises

22 (1) in the state on a day on which a statewide special,
23 primary, or general election is held for the purpose of voting for a
24 candidate for public office, until the polls have closed;

25 (2) in a municipality on a day on which a local option elec-
26 tion or an election is held for the purpose of voting for a candidate
27 for public office, until the polls are closed.

28 (b) The governing body of a municipality may provide by ordinance
29 that the provisions of this section do not apply in a municipality.

1 Sec. 04.16.080. SALES OR CONSUMPTION AT SCHOOL EVENTS. It is
2 unlawful to sell or consume alcoholic beverages during a school event at
3 the site of the event.

4 Sec. 04.16.090. PROHIBITION OF BOTTLE CLUBS. (a) A person may
5 not maintain a place in which alcoholic beverages are received or kept,
6 or to which alcoholic beverages are brought, for consumption by members
7 of the public or by members of a club, corporation, or association,
8 unless the person is authorized to do so under this title.

9 (b) A person may not maintain, operate, or lease premises for the
10 purpose of providing, for a consideration, a place for drinking alco-
11 holic beverages by members of the public or other persons, unless the
12 person is authorized to do so under this title.

13 (c) For the purposes of this section, "consideration" includes but
14 is not limited to cover charge, the sale of food, ice, mixers, or other
15 liquids used with alcoholic beverage drinks, or the furnishing of glass-
16 ware or other containers for use in the consumption of alcoholic bever-
17 ages.

18 Sec. 04.16.100. RESTRICTION ON SIZE OF CONTAINERS. A person may
19 not sell alcoholic beverages in 1/6 gallon or 1/10 gallon containers,
20 nor may a person sell alcoholic beverages in a container deceptively
21 similar in appearance to a container of a different volume. This
22 section does not apply to 1/10 gallon or 1/6 gallon containers sold in
23 the state before August 15, 1962.

24 Sec. 04.16.110. SALE OF POWDERED ALCOHOL PROHIBITED. No substance
25 having alcoholic content and intended for human consumption may be sold
26 in the state unless in liquid form.

27 Sec. 04.16.120. REMOVAL OR INTRODUCTION OF ALCOHOLIC BEVERAGES.
28 (a) A person may not remove from a licensed premises alcoholic bever-
29 ages which have been sold or furnished for consumption only on the

1 premises.

2 (b) A person may not bring an alcoholic beverage into licensed
3 premises for use or consumption by himself or another person on the
4 premises unless that person is a licensee, his agent, employee, or
5 common carrier in the regular course of employment.

6 Sec. 04.16.130. STOCK CONFINED TO LICENSED PREMISES. (a) Unless
7 authorized under AS 04.21.060, a licensee may not store before sale any
8 alcoholic beverages elsewhere than on the premises indicated on his
9 license.

10 (b) This section does not apply to stocks of beer carried on a
11 delivery truck by a licensed wholesaler if carried for the purpose of
12 sale and delivery to persons licensed under this title in quantities of
13 not less than 10 wine gallons for each sale.

14 Sec. 04.16.140. SALE OR CONSUMPTION OF ALCOHOLIC BEVERAGES IN A
15 WAREHOUSE. Alcoholic beverages may not be sold or consumed on premises
16 approved for storage under AS 04.21.060.

17 Sec. 04.16.150. LICENSEE RESPONSIBLE FOR VIOLATIONS. A licensee
18 may neither knowingly allow his agents or employees to violate this
19 title or regulations adopted under this title nor recklessly or with
20 criminal negligence fail to act in accordance with the duty prescribed
21 under AS 04.21.030 with the result that an agent or employee of the
22 licensee violates a law or regulation.

23 Sec. 04.16.170. SOURCE OF ALCOHOLIC BEVERAGES. (a) Alcoholic
24 beverages for consumption by the purchaser may not be sold unless ob-
25 tained from a person licensed under this title.

26 (b) A person transporting alcoholic beverages into the state from
27 outside the state may not sell those alcoholic beverages to a person not
28 licensed under this title, unless the alcoholic beverages are used for
29 religious, industrial, pharmaceutical, or medical purposes.

1 public.

2 Sec. 04.16.200. UNLICENSED PERSONS. A person who violates AS 04.-
3 11.010 is, upon conviction, guilty of

4 (1) a misdemeanor and punishable by imprisonment for not more
5 than one year, or by a fine of not more than \$5,000, or by both;

6 (2) a felony and punishable by imprisonment for not more than
7 six years, or by a fine of not more than \$30,000, or by both, if, in
8 addition to the manufacture, sale, offer for sale, possession for sale,
9 trafficking in, barter, or exchange for goods

10 (A) the prohibited conduct involved a sale, barter, or
11 exchange to a person under the age of 19 years; or

12 (B) the person had previously been convicted under this
13 section.

14 Sec. 04.16.210. PENALTY FOR MAKING FALSE STATEMENT. If a false
15 statement is made in an application under AS 04.11.260, the applicant is
16 guilty of perjury and, upon conviction, is subject to the penalty pro-
17 vided by law for the crime of perjury under AS 11.56.200.

18 Sec. 04.16.220. FORFEITURES. (a) The following are subject to
19 forfeiture:

20 (1) alcoholic beverages manufactured, sold, offered for sale
21 or possessed for sale, bartered or exchanged for goods and services in
22 this state in violation of AS 04.11.010; alcoholic beverages stocked,
23 warehoused, or otherwise stored in violation of AS 04.21.060; alcoholic
24 beverages sold or offered for sale in an area where a local option
25 election has made the sale illegal; alcoholic beverages transported into
26 the state and sold to persons not licensed under this chapter in viola-
27 tion of AS 04.16.170(b);

28 (2) materials and equipment used in the manufacture, sale,
29 possession for sale, barter or exchange of alcoholic beverages for goods

1 and services in this state in violation of AS 04.11.010; materials and
2 equipment used in the stocking, warehousing, or storage of alcoholic
3 beverages in violation of AS 04.21.060; materials and equipment used in
4 the sale or offering for sale of an alcoholic beverage in an area where
5 a local option election has made the sale illegal;

6 (3) aircraft, vehicles, or vessels used to transport, or
7 facilitate the transportation of

8 (A) alcoholic beverages manufactured, sold, offered for
9 sale or possessed for sale, bartered or exchanged for goods and
10 services in this state in violation of AS 04.11.010;

11 (B) property stocked, warehoused, or otherwise stored in
12 violation of AS 04.21.060;

13 (C) alcoholic beverages sold or offered for sale in an
14 area where a local option election has made these sales illegal;

15 (4) alcoholic beverages found on licensed premises which do
16 not bear federal excise stamps.

17 (b) Property subject to forfeiture under this section may be
18 actually or constructively seized under an order issued by the superior
19 court upon a showing of probable cause that the property is subject to
20 forfeiture under this section. Constructive seizure is effected upon
21 posting a signed notice of seizure on the item to be forfeited, stating
22 the violation and the date and place of seizure. Seizure without a
23 court order may be made if

24 (1) the seizure is incident to a valid arrest or search;

25 (2) the property subject to seizure is the subject of a prior
26 judgment in favor of the state; or

27 (3) there is probable cause to believe that the property is
28 subject to forfeiture under (a) of this section; property seized under
29 this paragraph may not be held over 48 hours or until an order of for-

1 feiture is issued by the court, whichever is earlier.

2 (c) Within 30 days of a seizure under this section the Department
3 of Law shall make reasonable efforts to ascertain the identity and
4 whereabouts of any person holding an interest or an assignee of a person
5 holding an interest in the property seized, including a right to posses-
6 sion, a lien, mortgage, or conditional sales contract. The Department
7 of Law shall notify any person ascertained to have an interest in prop-
8 erty seized of the impending forfeiture, and before forfeiture the
9 Department of Law shall publish, once a week for four consecutive calen-
10 dar weeks, a notice of the impending forfeiture in a newspaper of
11 general circulation in the judicial district in which the seizure was
12 made, or if no newspaper is published in that judicial district, in a
13 newspaper published in the state and distributed in that judicial dis-
14 trict.

15 (d) Property subject to forfeiture under (a) of this section may
16 be forfeited

17 (1) upon conviction of a person under AS 04.11.010, AS 04.-
18 16.190 or AS 04.21.060;

19 (2) upon judgment by the superior court in a proceeding in
20 rem that the property was used in a manner subjecting it to forfeiture
21 under (a) of this section.

22 (e) The owner of property subject to forfeiture under (a) of this
23 section is entitled to relief from the forfeiture in the nature of
24 remission of the forfeiture if in an action under (d) of this section
25 the owner shows that he was not a party to the violation and had no
26 actual knowledge that the property was used or was to be used in viola-
27 tion of the law.

28 (f) A person, other than the owner, holding or the assignee of a
29 lien, mortgage, conditional sales contract on, or the right to posses-

1 sion to property subject to forfeiture under (a) of this section is
2 entitled to relief from the forfeiture in the nature of remission of the
3 forfeiture if in an action under (d) of this section the person shows
4 that he was not a party to the violation subjecting the property to
5 forfeiture and had no actual knowledge that the property was used or was
6 to be used in violation of the law.

7 (g) It is no defense in an in rem forfeiture action brought by the
8 Department of Law under (d)(2) of this section that a criminal proceed-
9 ing is pending or has resulted in conviction or acquittal of a person
10 charged with violating AS 04.11.010, AS 04.16.190, or AS 04.21.060.

11 (h) A bona fide wholesaler's bill of lading describing the pro-
12 perty may be asserted in defense to forfeiture of property subject to
13 forfeiture under (a)(4) of this section.

14 (i) Property forfeited under this section shall be placed in the
15 custody of the commissioner of public safety for disposition according
16 to an order entered by the court. The court shall order destroyed any
17 property forfeited under this section which is harmful to the public.
18 Other property shall be ordered sold and the proceeds used for payment
19 of expenses of the proceedings for forfeiture and sale, including
20 expenses of seizure, custody and court costs. The remainder of the
21 proceeds shall be deposited in the general fund.

22 * Sec. 4. AS 04 is amended by adding a new chapter to read:

23 CHAPTER 21. GENERAL PROVISIONS.

24 Sec. 04.21.010. MUNICIPAL REGULATION. (a) A municipality may
25 adopt those ordinances governing the sale, barter, consumption, and
26 possession of alcoholic beverages within its boundaries which are neces-
27 sary to the orderly conduct of the business of selling alcoholic bever-
28 ages. The ordinance must be consistent with this title and the regu-
29 lations adopted under this title.

1 (b) A municipality may impose no taxes on alcoholic beverages
2 except (1) property taxes on alcoholic beverage inventories and (2)
3 sales taxes on alcoholic beverage sales if levied on other property or
4 sales within the municipality.

5 Sec. 04.21.020. LIMITATION ON CIVIL LIABILITY. A licensee, or the
6 employee or agent of a licensee, who furnishes an alcoholic beverage to
7 an individual on premises licensed under this title may not be held
8 civilly liable for injuries resulting from the intoxication of that
9 individual unless the furnishing of alcoholic beverages occurred in
10 violation of AS 04.16.030, 04.16.051, or 04.16.052.

11 Sec. 04.21.030. RESPONSIBILITY OF LICENSEES, AGENTS AND EMPLOYEES.
12 The licensee has a duty to exercise that degree of care which a reason-
13 able person would observe to insure that a business under his control is
14 lawfully conducted. This duty of the licensee includes, but is not
15 limited to,

16 (1) insuring the compliance by agents or employees with this
17 title and regulations adopted under this title, including acting with
18 reasonable diligence to determine that his agents or employees are
19 advised of the provisions of this title and the regulations adopted
20 under this title, either by securing the agent's or employee's written
21 acknowledgement of posted instructions or otherwise; and

22 (2) insuring the compliance of the premises with public
23 health, fire, and safety codes and ordinances of the state or munici-
24 pality having jurisdiction.

25 Sec. 04.21.040. SALES ON FEDERAL RESERVATIONS. (a) A wholesaler
26 of alcoholic beverages may sell alcoholic beverages to a person who does
27 not have a license under this title who has a fixed place of business on
28 land in the state maintained by the United States government as a mili-
29 tary or naval reservation, a national park, or other federal reserva-

1 tion. A sale may be made under this section only if the purchaser is a
2 ship's service store, officers club, officers mess, post exchange, or
3 similar organization. The wholesaler may deliver alcoholic beverages
4 only to persons specified and at places designated in a written order
5 issued by the federal organization for which the purchase is made. A
6 licensee making sales and deliveries under this section shall keep the
7 original order attached to the copy of the invoice on file at his prem-
8 ises.

9 (b) Alcoholic beverages received on federal reservations under
10 this section may not be removed for use outside the federal reservation.

11 (c) A wholesaler who sells alcoholic beverages on a federal reser-
12 vation under this section shall pay the state excise tax imposed by AS
13 43.60.010 on the alcoholic beverages sold and may subsequently claim
14 credit for the excise taxes paid if the sale is made to an organization
15 which is an instrumentality of the federal government.

16 Sec. 04.21.050. PROOF OF AGE. (a) If a licensee, or an agent or
17 employee of the licensee questions or has reason to question whether a
18 person entering a licensed premises, or ordering, purchasing, attempting
19 to purchase, or otherwise procuring or attempting to procure alcoholic
20 beverages has attained the age of 19 years, that licensee, agent, or
21 employee shall require the person to furnish proof of age acceptable
22 under (b) of this section. If the person questioned does not furnish
23 proof of age acceptable under (b) of this section, or if a licensee,
24 agent, or employee questions or has reason to question the validity of
25 the proof of age furnished, the licensee, employee or agent shall re-
26 quire the person to sign a statement that he is over the age of 19
27 years. This statement shall be made upon a form prepared by and furn-
28 ished to the licensee by the board.

29 (b) A valid driver's license or a valid identification card is

1 acceptable as proof of age when used for identification in the purchase
2 of alcoholic beverages and for securing entry to and remaining on pre-
3 mises where alcoholic beverages are sold if the license or identifica-
4 tion card is made of or encased in plastic and contains a photograph of
5 the license or card holder and a statement of his age or date of birth.

6 (c) A licensee, or an agent or employee of the licensee, may not
7 be charged for a violation of AS 04.16.051 - 04.16.052 if a signed
8 statement as provided in (b) of this section is secured in good faith,
9 or a valid driver's license or identification card is presented indi-
10 cating that the owner and possessor of the presented driver's license or
11 identification card is 19 years of age or over.

12 Sec. 04.21.060. WAREHOUSING OF ALCOHOLIC BEVERAGES. A licensee
13 may stock, warehouse, or otherwise store alcoholic beverages in a place
14 elsewhere than premises indicated on his license if

15 (1) the premises to be used for storage are inspected and
16 approved by the board before their use;

17 (2) the use of the premises for storage is authorized by
18 local zoning ordinances; and

19 (3) the premises are accessible for inspection as provided in
20 AS 04.11.630.

21 Sec. 04.21.070. ENFORCEMENT. Peace officers shall investigate and
22 report to the board violations of this title.

23 Sec. 04.21.080. DEFINITIONS. (a) In this title

24 (1) a person acts with "criminal negligence" with respect to
25 a result or to a circumstance described by a provision of law defining
26 an offense when he fails to perceive a substantial and unjustifiable
27 risk that the result will occur or that the circumstance exists; the
28 risk must be of such a nature and degree that the failure to perceive it
29 constitutes a gross deviation from the standard of care that a reason-

1 able person would observe in the situation;

2 (2) a person acts "knowingly" with respect to conduct or to a
3 circumstance described by a provision of law defining an offense when he
4 is aware that his conduct is of that nature or that the circumstance
5 exists; when knowledge of the existence of a particular fact is an
6 element of an offense, that knowledge is established if a person is
7 aware of a substantial probability of its existence, unless he actually
8 believes it does not exist; a person who is unaware of conduct or a
9 circumstance of which he would have been aware had he not been intoxi-
10 cated acts knowingly with respect to that conduct or circumstance;

11 (3) a person acts "recklessly" with respect to a result or to
12 a circumstance described by a provision of law defining an offense when
13 he is aware of and consciously disregards a substantial and unjusti-
14 fiable risk that the result will occur or that the circumstance exists;
15 the risk must be of such a nature and degree that disregard of it con-
16 stitutes a gross deviation from the standard of conduct that a reason-
17 able person would observe in the situation; a person who is unaware of a
18 risk of which he would have been aware had he not been intoxicated acts
19 recklessly with respect to that risk.

20 (b) In this title

21 (1) "alcoholic beverage" includes, but is not limited to,
22 whiskey, brandy, rum, gin, wine, ale, porter, beer, and all other spiri-
23 tous, vinous, malt and other fermented or distilled liquors intended for
24 human consumption and containing more than one per cent alcohol by
25 volume;

26 (2) "board" means the Alcoholic Beverage Control Board;

27 (3) "designated premises" means any or all designated por-
28 tions of a building or structure, rooms or enclosures in the building or
29 structure, or real estate leased, used, controlled, or operated by a

1 licensee for the purpose for which the permit is issued by the board at
2 the location of the site for which the permit is issued;

3 (4) "director" means the director of the Alcoholic Beverage
4 Control Board;

5 (5) "drunken person" means a person exhibiting those plain
6 and easily observed or discovered outward manifestations of behavior
7 commonly known to be produced by the use of intoxicating liquor;

8 (6) "established village" means an unincorporated area that

9 (A) is within the circumference of a circle described by
10 drawing a one-mile radius around the licensed premises or premises
11 sought to be licensed under this title; and

12 (B) has 25 or more permanent residents;

13 (7) "licensed premises" means any or all designated portions
14 of a building or structure, rooms or enclosures in the building or
15 structure, or real estate leased, used, controlled, or operated by a
16 licensee in the conduct of business for which he is licensed by the
17 board at the specific address for which the license is issued;

18 (8) "local governing body" means, as appropriate, a city
19 council, a borough assembly, or a traditional village council, but does
20 not include a corporation established under the Alaska Native Claims
21 Settlement Act;

22 (9) "municipality" means an incorporated city, an organized
23 borough, or a unified municipality established under AS 29.68.

24 * Sec. 5. AS 09.35.087 is amended to read:

25 Sec. 09.35.087. EXEMPTION FOR LIQUOR LICENSES. In addition to the
26 exemptions set out in AS 09.35.080 and 09.35.085, the liquor license of
27 a judgment debtor is exempt from attachment, garnishment, and execution.

28 * Sec. 6. AS 12.55.025(a) is amended to read:

29 (a) When imposing a sentence of imprisonment exceeding 180 days

1 or upon a conviction of a violation of AS 04, a regulation adopted
2 under AS 04, or an ordinance adopted in conformity with AS 04.21.010,
3 the court, shall prepare, as a part of the record, a sentencing report
4 which includes the following:

5 (1) a verbatim record of the sentencing hearing and any other
6 in-court sentencing procedures;

7 (2) findings on material issues of fact and on factual ques-
8 tions required to be determined as a prerequisite to the selection of
9 the sentence imposed;

10 (3) a clear statement of the terms of the sentence imposed;
11 and

12 (4) recommendations as to the place of confinement or the
13 manner of treatment.

14 * Sec. 7. AS 12.55.025(b) is repealed and re-enacted to read:

15 (b) The sentencing report required under (a) of this section shall
16 be furnished within 30 days after imposition of sentence to the Depart-
17 ment of Law, the defendant, the division of corrections, the state Board
18 of Parole if the defendant will be eligible for parole, and to the Alco-
19 holic Beverage Control Board if the defendant is to be sentenced for a
20 conviction of a violation of AS 04, a regulation adopted under AS 04, or
21 an ordinance adopted under AS 04.21.010.

22 * Sec. 8. AS 29.33.090 is amended by adding a new subsection to read:

23 (e) A zoning ordinance adopted or amended under (a) of this sec-
24 tion may not preclude an activity authorized under a license or permit
25 issued under AS 04 if the activity was licensed or permitted by the
26 Alcoholic Beverage Control Board before the adoption of the zoning
27 ordinance or zoning ordinance amendment.

28 * Sec. 9. AS 39.25.110 is amended by adding a new paragraph to read:

29 (22) officers, agents, and employees of the Alcoholic Beverage

1 Control Board granted limited peace officer powers by the Alcoholic
2 Beverage Control Board under AS 04.06.110.

3 * Sec. 10. AS 04.05, AS 04.10, AS 04.15, AS 04.20, and AS 44.62.330(17)
4 are repealed.

5 * Sec. 11. Notwithstanding AS 04.06, members of the Alcoholic Beverage
6 Control Board on the effective date of this Act continue in office until the
7 expiration of their terms.

8 * Sec. 12. Sections 6 and 7 of this Act take effect January 1, 1981.

9 * Sec. 13. Sections 1 - 5 and secs. 8 - 11 of this Act take effect
10 July 1, 1980.

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Signature of Camera Operator

3/23/90
Date

055B 241



Alaska State Legislature

House of Representatives

Committee on Finance

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MEMORANDUM

TO: The Honorable Russ Meekins, Jr.

FROM: Bryan McGinnis

SUBJECT: Sunset Review

INTRODUCTION

In this, the first year of Sunset Review for government agencies, three such agencies, all distinctive for their quasi-regulatory function toward the private sector, were reviewed: the Alaska Transportation Commission, the Alcoholic Beverage Control Board and the eleven Health Boards which are served by the Division of Occupational Licensing. Although the Division was not slated for Sunset Review, its integral importance to the functioning of the eleven Health Boards led to scrutiny of this agency as it related to these boards.

The review began with an audit performed by the Division of Legislative Audit for each of these Boards, including each individual Health Board, and for the Division of Occupational Licensing. Each of these agencies was invited to comment on audit recommendations, as were the Commissioners of the Departments of Revenue and Commerce, who have responsibility for these functions. In addition, the health boards provided their own replies to the general sunset criteria. Finally, the House Commerce Committee held extensive hearings on each of these agencies, the degree to which they achieved or complied with their statutory responsibilities and also the degree to which these responsibilities were, in and of themselves, a necessary or desirable function for State Government.

The findings of the Commerce Committee were conveyed to the Speaker of the House in a series of letters appearing in the Journal Supplement #29 of March 15, 1979, thus complying with the schedule laid out in the original sunset legislation. Legislation to accomplish these recommendations will shortly be before the Finance Committee as Commerce Committee bills. In view of the substantial program evaluation effort put forth by the Commerce Committee it is recommended that the Finance Committee concentrate its efforts on fiscal aspects of the proposed changes as well as budget reviews of the agencies involved.

This paper will discuss some of the reasons for Commerce Committee actions and suggest budgetary considerations of interest to the Finance Committee on an agency by agency basis, concluding with a discussion of underlying structural considerations pertinent to all three situations stemming from the relationship to the private sector.

It is left for this introductory summary to set out the major changes recommended for the ATC, ABC and Health Boards by the Commerce Committee. Most controversial among these proposals is the recommendation to deregulate many forms of transportation in the State, namely helicopters, small aircraft and air taxis, buses, towing and wrecking, ferries and possibly home movers, while maintaining the other regulatory functions of the ATC, including trucking and intrastate commercial aviation, until the results of the first wave of deregulation can be assessed. The Commerce Committee also recommends abolition of the Alcoholic Beverage Control Board although the functions of this agency, slightly altered, are to be maintained within State Government. Finally, seven of the eleven Health Boards are to be abolished, namely the Boards of Physical Therapy, Optometry, Chiropractic, Veterinarians, Nursing Home Administrators, Psychologists and Dispensing Opticians with the licensing functions of these Boards reverting to the Division of Occupational Licensing. The four remaining Boards are recommended for continuation under varying circumstances. The Board of Pharmacy and the Board of Nursing are recommended to continue for the full four year period until another review takes place. The Board of Dental Examiners is recommended for extension for two years before a review of its response to audit criticisms while the Medical Board is extended for one year under the same condition. Of particular interest is the Commerce Committee recommendation that the Medical Board retain a staff member as does the Board of Nursing, under the Division of Occupational Licensing but responsible to the Board alone.

In general, the Commerce Committee came to two sorts of conclusions. In the case of the ATC, the conclusion was reached that the function of the Commission was not necessary, leading to deregulation. In most other cases, it was concluded that while the function served was legitimate, the means employed were not working to the end desired. In the case of the ABC and several of the Health Boards the remedy was elimination of the board and reliance on State staff to continue these functions. Each of these courses should have fiscal consequences for consideration of the Finance Committee.

PART I THE STATE BOARDS OF HEALTH AND DIVISION OF OCCUPATIONAL LICENSING

The eleven Boards of Examiners in the health fields, enumerated in the introduction, serve three basic functions in regulating their respective professions. Most importantly, they examine the qualifications of prospective licensees in the field and grant or renew licenses to practice in Alaska. This is generally accomplished by checking the applicant's educational background and also through the administration of standard national professional examinations and interviews with the applicant conducted by Board members. The Boards also determine what the minimum qualifications for entry into the field should be and suggest regulations to maintain standards of training and conduct for all members. Thirdly the Board hears appeals for licenses, disciplinary actions against professionals, violations of regulations or standards, and actions for licensing revocations. In all these pursuits, the Boards are assisted by the Division of Occupational Licensing, which has investigative authority for all complaints against these professions and provides administrative support for the examination and hearing process.

The level of performance of each of these duties by the individual Boards was highly varied. In some cases the Boards were found to be arbitrary or protective in their granting of licenses to new applicants. Renewal of licenses was often pro forma and in some cases the initial application was handled in the same fashion. A serious problem for most Boards was the updating and revision of regulations. In some cases, suggestions for regulatory changes were made to the Commissioner of Commerce through the Division but these changes were not communicated to the Legislature. Most often proposed regulations were in an indeterminate state of drafting, discussed at board meetings or forwarded to legal or regulations staff of the State for comment over a period of several years. One Board decided the regulatory aspect was simply none of its business. Most serious of the deficiencies, however, was found to be the investigative function and its related hearing procedure for disciplinary action. Most of the complaints against professionals went without any attention by the Boards or the Division. Files on disposition of the complaints were chaotic and very few of them reached the hearing stage, much less any action for discipline or revocation of license. Typically, a case took over a year to be completed if completed at all. A considerable backlog of complaints now exists.

Most of the Boards had an incomplete idea of their responsibilities, poor record keeping, little knowledge of administrative procedures or conduct of Board meetings and hearings, and poor communication with the Division. In fact, the Commerce Committee soon came to the conclusion that most of the deficiencies of the Boards were the result of poor performance the Division of Occupational Licensing. Further inquiry revealed a record of rapid

turnover and high vacancy within the Division, especially until the last two years when a new Director and a Chief Investigator began to remedy the situation insofar as possible.

Two conclusions seemed evident from this situation. First, the fact that these Boards could exist in such a state of neglect without any adverse affect in the market place leads to a dim view of their very necessity. Secondly, the underlying difficulty was one of divided authority and responsibility on the part of the Boards and the Divisions. Although the Division exists to a certain extent to serve the Boards, the Division Director works for the Commissioner of Commerce, and, by extension, so does the staff. Secondly, though the Boards do have specific responsibilities and powers, they must rely on the investigative and administrative support of the Division, over whom they have no authority. This second difficulty is underscored by the fact that the best-run and most effective Board, the Board of Nursing, is the only Board to have an Executive Director attached to it though under the direction of the Division Director.

To remedy this state of affairs, the Commerce Committee sought to eliminate excess requirements on the Division in its administrative and investigative duties by eliminating those Boards which do not treat life or death health professions, namely those recommended for abolition in Supplement #29. The licensing functions of the Boards will revert to the Division, which did much of the process work, and the administrative burdens and travel budgets for these Boards are no longer necessary. It should be pointed out, however, that these Boards comprise the fewest number of licensees, require the least amount of investigative work and have fewer hearings for disciplinary action or revocation so the savings acheived are largely to be found in the travel categories rather than in reduced burden on the Division of Occupational Licensing. An underlying rationale is that it is better not to claim there is a Board responsible and active when the case is otherwise, though the attendant cost savings are negligible.

At this point it is appropriate to cite the fear of the minority members of the Commerce Committee as expressed in their report, that this abolition and reversion of responsibility to the very bureaucracy which has so far shown such little efficiency or competence is not necessarily a step forward. Against the reality of an ineffective Board system they fear its replacement by an unresponsive Division, and with some justice. Yet, on balance, it seems that the action of the Commerce Committee at least does not perpetuate a system designed to fail, regardless of its successor's poor performance up to the present. In either case, a long term solution to this problem does not appear to be in sight.

Should the Finance Committee choose to accept the recommended abolition of the seven Health Boards, its primary task is to assure that the revised budget for the Division of Occupational Licensing reflect the change in circumstances. In order to this it should first be noted that the Health Boards are more than self-supporting by virtue of the \$1,100,000 collected in licensing fees, even in consideration of the overhead of the Division of Occupational Licensing attributed to activities of these Boards. Typically the ratio of Board per diem and travel, the greater part of expenses directly attributable to the individual Board, to expenses of the division is on the order of one to nine though expenses of the various Boards and the degree to which they are "self-supporting" as individual Boards varies substantially. Generally speaking, however, the four Boards to be continued generate the largest share of revenue and also occasion the greatest demands on the Division, by virtue of their greater number of professionals in practice and the greater numbers of complaints and licenses to be considered.

It was not surprising, then, to hear testimony of Division Director Hostak that the savings to be realized by elimination amount to \$40,000 only in the travel and per diem for Boards to be terminated. He suggested that new employees necessary to handle that work traditionally done by Boards but not to be handled by the Division, chiefly licensing, would require at least two extra license examiners and a support person for them (two range 10's and an eight) whose salaries would largely take up any of these savings. To follow through on the Commerce Committee's recommendation that the Medical Board be staffed with an Executive Director similar to the position already serving the Nursing Board would cost an additional \$25,000 (range 18). Finally, it might be added that the Division requested for FY 80 the addition of five new employees, two support persons in Juneau at range eight and two investigators for the Anchorage office along with one support person (ranges 17 and 8). Of these, the Governor recommended that one Juneau support person be approved. This latter addition amounts to another \$14,000 in salary alone though it should be pointed out that all the positions requested by the Division could be accommodated within the revenues generated by license fees at present.

Thus, well within the bounds of "fiscal responsibility" the Finance Committee could decide to make significant increases in the Division with the hope that this added manpower could resolve the difficulties which a current staff of twenty has not been able to manage successfully up to this point. It is the belief of this observer, however, that the difficulties encountered by the Division result more from diffused responsibility and insufficient management direction rather than understaffing. Secondly, it is believed that to further burden the management component with more line supervisory responsibility would more than likely decrease efficiency of the Division and possibly increase the need for more top level staff. Therefore it is recommended that the Committee make careful consideration

before granting additional positions to the Division until the true impact of eliminating the seven Boards is evident.

Since the happy example of the Board of Nursing, judged by Commerce to be the "best-run", indicated the employment of an Executive Director for the Medical Board might bring the same beneficial results, it is recommended that this position be approved. Next in priority, subject to justification by the Division, might be the support position approved by the Governor. If, after scrutiny by the Finance Committee, an adequate case has been made that reversion of licensing from the Boards to the Division must necessarily increase workload on the license examiners without a compensating reduction of workload on personnel assigned to administrative matters of the Boards to be terminated, the Committee might consider increasing the licensing staff without a corresponding reduction of those whose task was to serve the administrative needs of the Boards.

Much of the Commerce Committee's intent was to help the Division establish its priorities, particularly in the most backlogged area, investigations, by eliminating the Boards (with their disciplinary and hearing functions) which represented professions whose transgressions were less than lethal when they occurred. Accordingly, the emphasis of the investigative arm should now be more narrow in scope and more efficient. It is therefore recommended that the new investigative positions requested but denied by the Governor not be approved until the result of this re-prioritization can be assessed.

To summarize, as the Commerce Committee has performed a sunset examination of program efficiency and necessity for these Boards, eliminating some, suspending others in conditional approvals and reaffirming others, it is suggested that the Finance Committee take a parallel view of the budget implied for the Division of Licensing, approving what can be readily justified, giving conditional approval when a need can be demonstrated in view of program changes, and withholding some positions until it is clear that organizational responsibility exists within the Division in terms of priorities and management procedures. Throughout the testimony of Division officials it was clear that firm management procedures had yet to penetrate all facets of the Division's efforts. The Division felt that reducing the workload on present employees would ameliorate the situation. In principle it is poor management to reward a poorly managed organization with more employees to manage until those currently employed are well utilized. When this is accomplished, a review of the new demands of reorganization can be addressed.

Having discussed the impact of the Commerce Committee recommendations on the various Boards and the Division of Occupational Licensing, it seems appropriate to add some observations on the Boards and the Division which are provided by the review process but not encompassed by the Commerce Committee recommendations. Since consideration of the most efficient Board organization inevitably leads to questions about the Division, it is largely the Division which will be addressed here. Firstly,

since re-issuance of licenses is largely a formal process with in little attention given to review of the re-applicant's conduct (aside from continuing education requirements) and no mandate to do so, it might relieve the licensing staff of unnecessary paperwork(not to mention the professionals involved) if the term of license renewals were to be extended from two years to four, thus halving the amount of processing without materially affecting the service render by licensing. The way to control licensees is through the investigative disciplinary function, not the permit renewal as such.

Secondly, since the great majority of professionals, thus, licensees and subjects of investigation, are in Northern Alaska, particularly Anchorage it would be more efficient if the Division were to be located there. The Division does not have the integral importance to State government functioning, being a "consumer oriented" agency with little responsibility to other government agencies, save a limited degree of coordination with the Departments of Law and Public Safety, which would compel other Divisions to remain in Juneau. Not only would travel savings and improved consumer convenience be realized but, it is suggested, many of the management problems cited above might also be remedied. Thirdly, it might be noted that the Division of Occupational Licensing is charged with responsibilities for ten Boards far outside the realm of these Health Boards, for instance architects, real estate brokers and electricians, which will be reviewed in next year's sunset series. Especially if the recommendations of the Commerce Committee are accepted, but valid nevertheless, is the idea that the Health Boards should be the subject of expert understanding and treatment very different from that required for other aspects of the occupational licensing field. This might entail creation of a separate Division or special units within the Division to treat the matters of professionalism in health more thoroughly than, say, complaints about real estate practice, which now run ten times those about the medical profession. It is currently the practice to assign one license examiner to several unrelated fields, and to some extent, this is true of investigations as well. The result is necessarily a divided effort, one less knowledgeable than another arrangement might provide with no additional cost to the State.

Finally, let us return to the unresolved matter of debate in the minority report, whether the true purpose of licensing the health professions is best served by giving this responsibility to State government at all. The impetus for Boards, found valid to the extent the Boards are retained, is that public and professional input are desirable in the regulation of the health field. Arguments for State responsibility are twofold, to guarantee due-process and equal entry into these professions, and to prevent an in-grown, self protective dereliction of responsibility on the part of the professions. The great drawback of the Commerce Committee recommendation is that the public input, professional expertise and agency accountability problems are not solved. Seeing this over-regulation and bureaucratization as a likely consequence of failure

by the professions to police themselves adequately may lead to a new commitment to find a non-bureaucratic solution to this problem from the professional community. Since these functions are an externality of professional practice and standards in the first place, it would be ideal if the solution could be found within the private sector. The collection of license fees can provide the revenue necessary for private or public agency use. Therefore it seems reasonable to propose the creation of a non-profit corporation charged with the license and investigation responsibilities now vested in the Division. Public input and the public interest can be guaranteed by a majority of non-professional board members. This Board could hold revocation and disciplinary hearings (though due process would be an important consideration) possibly subject to court review or suit. In the health field, it might be necessary to create four separate corporations, or possibly a master health review corporation with individual professional units represented on the Board of Directors would be a better solution. In any event, the great advantage of this approach would be to vest responsibility where it belongs, with the professions, while still guaranteeing impartiality through the directorate and relieving the government of a burden it is ill suited by nature to accept.

HOUSE
JOURNAL SUPPLEMENT

March 15, 1979

Thursday

No. 29

March 14, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Your House Commerce Committee has had under consideration for "Sunset" review the Board of Nursing pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, at which written testimony of the Commissioner of the Department of Commerce and Economic Development was received and representatives of the Division of Occupational Licensing of that Department were available for questioning by the committee. Members of the board testified in person or by teleconference. The committee considered the proposed budget of the board for FY 1980, and particularly examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

Guided in part by the report prepared by the Legislative Audit Division, the committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings:

The Commerce Committee concurs in the nine findings made by the Division of Legislative Audit in considering the factors required for consideration under AS 44.66.050 (c), as they appear on pages 13-15 of the Performance Review of the Board of Nursing prepared by the Division of Legislative Audit, dated October 6, 1978, which is hereby incorporated by reference as though fully set out herein.

In brief, the committee concurred with most of the Legislative Audit findings, which generally found the Board of Nursing to be the best-performing of all of the health regulatory boards reviewed this year, and the most responsive to and perceptive of the public need. However, some criticisms were offered by Legislative Audit. The bulk of these related more to past poor performance by the Division of Occupational Licensing in supporting the board than to the board's activities. However, Legislative Audit did criticize the board for not yet adopting regulations requiring continuing education for the nursing profession in the Division's response to factor (7) found under 44.66.050(c).

Also, the Audit Division criticized the Board of Nursing under the consideration in 44.66.050(c)(8) regarding the extent to which State Personnel practices including affirmative action requirements have been complied with. The Audit Division found that nursing applications require unnecessary information such as an applicant's photograph, marital status and spouse's name, and that this is in violation of equal employment opportunity requirements.

Most of the other criticisms of the Audit Division were minor, and are being addressed by the Board of Nursing in a manner satisfactory to the committee if the demonstrated concern continues.

Therefore, pursuant to 44.66.050(d) the Committee on Commerce of the Alaska State House of Representatives offers the following summary and recommendations:

The Board of Nursing addresses a very real need with regard to maintaining and assuring the provision of adequate nursing health skills in Alaska. Their conduct has been of such a nature to insure entrance into the field of qualified professionals. The nature of the healing art involved is highly advanced and complex, to such a degree that it is not appropriate to eliminate this board and have the licensing function carried out by the Division of Occupational Licensing using objective criteria and nationally available materials, as seems appropriate for some of the other boards.

The board is expected under the law to assure that the highest level of health care service in the nursing field can be provided to the residents of the state of Alaska. This objective is being observed, and, unlike some other boards, there does not seem to be an overt or extensive amount of "turf-protection" in the activities of the board when reviewing applicants. There are no other programs that really have conflicting or duplicative objectives with regard to this profession, and alternative methods involving elimination of the board do not seem appropriate to the committee in light of the advanced nature of the healing art involved.

It would not be appropriate, in the view of the committee, to eliminate the board or to consolidate its activities with any other program except to the extent that it already works with the Division of Occupational Licensing and other State agencies. Its closest companion is the Board of Medical Examiners, and substantial difficulties have occurred in the relationship between the two boards, not the result of any fault on the part of the Board of Nursing. Therefore, the committee feels that it has adequately addressed the recommendations and categories required under 44.66.050(d), and offers several further recommendations.

If the board finds that it is absolutely necessary to obtain information about an applicant that goes beyond professional qualifications, including a photograph, for identification purposes (that is, to assure that one person is not using another's credentials and identification in order to be admitted to practice), then the review of the identification should be done in a ministerial fashion entirely separate from consideration of the application on its merits and consideration of performance on any examination. The board should also follow up the recommended statutory changes which it expects to offer in fall of 1979. Otherwise, they may be lost in the bureaucratic maze and never brought to the attention of the Legislature. This has happened before with regard to other boards and commissions.

Generally, the Committee on Commerce of the Alaska State House of Representatives has found that as to the four healing arts whose boards are recommended for retention, the Board of Nursing, the Alaska State Medical Board, the Alaska State Board of Dental Examiners, and the Board of Pharmacy, certain public policy considerations apply to all four. These can be addressed by the statutory changes which will be indicated in the bills to be introduced by the Commerce Committee to continue these boards.

With regard to all four boards, terms should be adjusted to four-year terms, staggered, and no member should serve more than two consecutive four-year terms.

The makeup of the boards should be adjusted to provide for more lay participation. Each of the four boards is presently constituted with five admitted professionals and two lay-persons. The law should be changed to provide for a ratio of four professionals to three lay members.

Lengthy tenure on a regulatory board results in a proprietary attitude, just considering human nature. Very often, the board member who has served for ten or fifteen years (or more, in the case of the Board of Pharmacy) often may "second-guess" the regulatory scheme and decide that his view is the law rather than the provisions of Title 8 established by the Legislature. Also, although no actual abuse was found in current situations, the prospect for abuse by a long-tenured professional on the board to "protect his turf" is very real.

Staggered terms, with adequate and timely attention to appointment needs by the executive, assures a continuity in the activities of the boards.

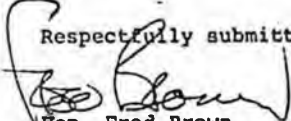
Expanding the number of lay persons on the boards tends to reduce the likelihood of turf protection or exclusionary activities relating to admission into the profession, and tends to assure that the board is protecting the public and not protecting the already-admitted members of the profession.

The Commerce Committee recommends that, with the changes stated in this report, the Board of Nursing continue for another four years, that is, that the repealer with regard to the activities of that board be amended to read June 30, 1983. Also, the Board of Nursing should be given exclusive jurisdiction as to the regulation of advanced nurse practitioners.

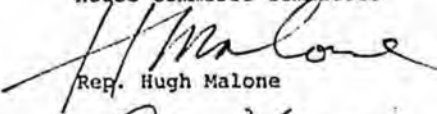
A bill will be introduced by the Commerce Committee facilitating the changes and recommendations in this report.

Mr. Randolph does not join in the majority of the committee on our reports on the eleven health boards, and has filed a minority report herewith.

Respectfully submitted,



Rep. Fred Brown
Chairman
House Commerce Committee



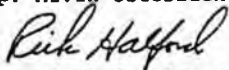
Rep. Hugh Malone



Rep. Joyce Munson



Rep. Alvin Osterback



Rep. Richard Halford



Rep. Robert H. Bettisworth

March 14, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Your House Commerce Committee has had under consideration for "Sunset" review the Board of Dental Examiners pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, at which written testimony of the Commissioner of the Department of Commerce and Economic Development was received and representatives of the Division of Occupational Licensing of that Department were available for questioning by the committee. Members of the board testified in person or by teleconference. The committee considered the proposed budget of the board for FY 1980, and particularly examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

Guided in part by the report prepared by the Legislative Audit Division, the committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings:

The Commerce Committee generally concurs in the nine findings made by the Division of Legislative Audit in considering the factors required for consideration under AS 44.66.050(c), as they appear on pages 17-19 of the Performance Review of the Board of Dental Examiners prepared by the Division of Legislative Audit, dated August 9, 1978, which is hereby incorporated by reference as though fully set out herein.

In brief, the committee concurred with most of the Legislative Audit findings. Those findings are extremely critical of the board, and raised serious questions about its functioning. Since the report was issued and before the committee meeting, the board has attempted to address these problems. However, clearly many of the criticisms are still justifiable and should become a major concern for the board and for the Legislature. This, in part, is one of the reasons why the Commerce Committee is recommending only a two-year extension of the life of the board under the "Sunset" law, rather than the four-year extension which would be appropriate if there were no serious problems.

Our major concern is the allowance of entry into the profession of qualified practitioners, particularly practitioners who have already been licensed in other states. There should be statutory and regulatory changes to make sure that competent dentists would be licensed in Alaska, including particularly those who may already have been licensed and had some experience in another state. These changes would require a provision for licensing by "endorsement."

The above findings, including adoption of the findings of the Legislative Audit Division report, constitute compliance with AS 44.66.050(c) by this committee in the course of its review.

Many of the other criticisms of the board arise from problems caused by action or inaction of the Division of Occupational Licensing and its employees. The Division is presently attempting to address these problems, and has made some progress. Apparently the Board of Dental Examiners is taking a rather assertive stand with regard to the needed cooperation by the Division.

Pursuant to AS 44.66.050(d) the Committee on Commerce of the Alaska State House of Representatives offers the following summary and recommendations:

The Board of Dental Examiners is intended to address a real need with regard to the maintenance and assurance of adequate dental health skills in Alaska. However, the conduct of the board has not always been such as to assure entrance in the field of enough qualified professionals. The nature of the healing art involved is highly advanced and complex, to such a degree that it is not appropriate to eliminate this board and transfer the licensing function to the Division of Occupational Licensing totally. We have recommended this for some of the other health boards that do not so directly involve life and death situations for humans. This procedure does not seem appropriate for the Board of Dental Examiners.

The board is expected under the law to assure that the highest level of health care service in the dental field can be provided to the residents of the state of Alaska, and that sufficient practitioners are available for these needs. While the professional standards do not seem inadequate (although some question has been raised about the procedures used from time to time) there seems to be something of a "turf-protection" effect, whether intended by the members of the board or not. This is particularly true with regard to admission of already licensed dentists from other jurisdictions.

There are no other programs that really have conflicting or duplicative objectives with regard to this profession, and alternative methods involving elimination of the board do not seem appropriate to the committee in light of the advanced nature of the healing art involved.

It would not be appropriate, in the view of the committee, to eliminate the board or to consolidate its activities with any other program except to the extent that it already works with the Division of Occupational Licensing and other State agencies.

The above summary and recommendations adequately addresses the requirements of AS 44.66.050(d). We now offer several further recommendations.

Like some of the other health boards, the Board of Dental Examiners requires certain apparently unnecessary information in apparent violation of the factor listed in AS 44.66.050(c)(8). The requirement of a photograph and certain other information, if genuinely necessary to avoid fraudulent misrepresentation of the identity of an applicant and the credentials of an applicant, should be treated in a manner similar to that which we have recommended to the Board of Nursing in our report in this Journal.

It is important that the board understand the probationary nature of the extension offered by the Commerce Committee under "Sunset" review. We anticipate that the Legislature then sitting will carefully examine this report, the current audit report, and practices occurring between now and then to determine whether the Board of Dental Examiners has remedied the matters raised in the report of the Legislative Audit Division and in our committee hearings.

Generally, the Committee on Commerce of the Alaska State House of Representatives has found that as to the four healing arts whose boards are recommended for retention, the Board of Nursing, the Alaska State Medical Board, the Alaska State Board of Dental Examiners, and the Board of Pharmacy, certain public policy considerations apply to all four. These can be addressed by the statutory changes which will be indicated in the bills to be introduced by the Commerce Committee to continue these boards.

With regard to all four boards, terms should be adjusted to four-year terms, staggered, and no member should serve more than two consecutive four-year terms.

The makeup of the boards should be adjusted to provide for more lay participation. Each of the four boards is presently constituted with five admitted professionals and two lay-persons. The law should be changed to provide for a ratio of four professionals to three lay members.

Lengthy tenure on a regulatory board results in a proprietary attitude, just considering human nature. Very often, the board member who has served for ten or fifteen years (or more, in the case of the Board of Pharmacy) often may "second-guess" the regulatory scheme and decide that his view is the law rather than

the provisions of Title 8 established by the Legislature. Also, although no actual abuse was found in current situations, the prospect for abuse by a long-tenured professional on the board to "protect his turf" is very real.

Staggered terms, with adequate and timely attention to appointment needs by the executive, assures a continuity in the activities of the boards.

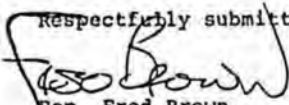
Expanding the number of lay persons on the boards tends to reduce the likelihood of turf protection or exclusionary activities relating to admission into the profession, and tends to assure that the board is protecting the public and not protecting the already-admitted members of the profession.

The Commerce Committee recommends that, with the changes stated in this report, the Board of Dental Examiners continue for another two years, that is, that the repealer with regard to the activities of that board be amended to read June 30, 1981.

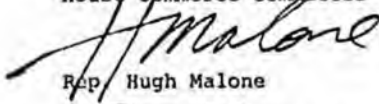
A bill will be introduced by the Commerce Committee facilitating the changes and recommendations in this report.

Mr. Randolph does not join the majority of the committee on our reports on the eleven health boards, and has filed a minority report herewith.

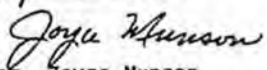
Respectfully submitted,



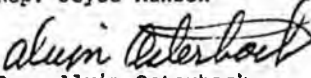
Rep. Fred Brown
Chairman
House Commerce Committee



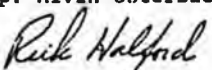
Rep. Hugh Malone



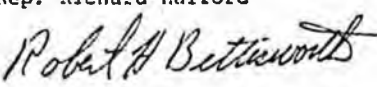
Rep. Joyce Munson



Rep. Alvin Osterback



Rep. Richard Halford



Rep. Robert Bettisworth

SUPPLEMENT

March 14, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Your House Commerce Committee has had under consideration for "Sunset" review the Board of Pharmacy, pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, at which written testimony of the Commissioner of the Department of Commerce and Economic Development was received and representatives of the Division of Occupational Licensing of that Department were available for questioning by the committee. Three members of the board testified in person. The committee considered the proposed budget of the board for FY 1980, and particularly examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

Guided in part by the report prepared by the Legislative Audit Division, the committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings:

The Commerce Committee generally concurs in the nine findings made by the Division of Legislative Audit in considering the factors required for consideration under AS 44.66.050(c), as they appear on pages 18-21 of the Performance Review of the Board of Pharmacy, prepared by the Division of Legislative Audit, dated August 9, 1978, which is hereby incorporated by reference as though fully set out herein.

In brief, the committee concurred with most of the Legislative Audit findings. Those findings are somewhat critical of the board. Since the report was issued and before the committee meeting, the board has attempted to address these problems.

SUPPLEMENT

The Board of Pharmacy is a very activist board, when compared with others. The findings clearly point that out. However, it appears clear from the recommendations included in the audit review and the matters that were discussed in the committee hearing that the board tends to drift from the letter of the law and its own regulations on too many occasions. This may result from the extended tenure of service of some of the members of the board, discussed later in this report. The board has been active in making recommendations for statutory changes, too many of which have been ignored by the Legislature or not even forwarded by the Administration to the attention of the Legislature. This board and other boards should understand that they act in certain parts of their responsibilities not as representatives of the Administration and not subservient to the Administration. The committee found several examples of statutory changes urged by a board and hidden, lost, misplaced or disapproved by the Administration and never forwarded to the Legislature. Each board should bring these concerns directly to the Legislature. It is inconceivable that any sanction would be taken against a member of the board for this direct communication. Also, considering the workload and management problems of the Division of Occupational Licensing, it appears quite easy for such paperwork to be lost in the process.

Your committee appreciates the activist role of the Board of Pharmacy and urges that board to continue that activism. Also, the committee will suggest some statutory changes along the lines recommended by the board over the years in our legislation.

The board is requested to pay serious attention to the matters raised during the Legislative Audit review and to adhere closely to the requirements of current law and regulations. It is possible to have a very strong opinion that laws or regulations should be changed: But until they are, they must be complied with, particularly by those charged with enforcing the law.

The committee was particularly concerned about the matters raised under recommendation number three at pages 11-12 of the audit report. It may be that in prior years the board has found it necessary to perform even administrative or ministerial actions as a result of frustrations in dealing with the Division of Occupational Licensing. However the matters raised in subsection C of recommendation three are serious problems. All applications should be received by the Division of Occupational

Licensing and the board should use procedures to assure that not even the appearance of improper conduct can be claimed in the procedures for temporary licensure. It appeared clear during our committee hearings that there had been no improper action: However, this procedure could unnecessarily subject the board and the Division to claims of impropriety and even litigation.

The committee urges the board to suggest legislation that would adequately address recommendation number five regarding the requirements of annual inspections. Current law seems to be impractical, and yet the inspection function is needed. In fact, board members have taken their own time in traveling to and from board meetings to make inspections along the way. This certainly is not adequate under the law.

The above findings, including adoption of the findings of the Legislative Audit Division report, constitute compliance with AS 44.66.050(c) by this committee in the course of its review.

Many of the other criticisms of the board arise from problems caused by action or inaction of the Division of Occupational Licensing and its employees. The Division is presently attempting to address these problems, and has made some progress.

Pursuant to AS 44.66.050(d) the Committee on Commerce of the Alaska State House of Representatives offers the following summary and recommendations:

The Board of Pharmacy is intended to address a real need with regard to the maintenance of adequate pharmaceutical skills and services in Alaska. The nature of the art involved is highly advanced and complex, to such a degree that it is not appropriate to eliminate this board and transfer the licensing function to the Division of Occupational Licensing totally. We have recommended this for some of the other health boards that do not so directly involve life-and-death situations for humans. This procedure does not seem appropriate for the Board of Pharmacy.

The board is expected under the law to assure that the highest level of pharmaceutical skills and services can be provided to the residents of the state of Alaska, and that sufficient practitioners are available for these needs.

There are no other programs that really have conflicting or duplicative objectives with regard to this profession, and alternative methods involving elimination of the board do not seem appropriate to the committee in light of the advanced nature of the healing art involved.

SUPPLEMENT

It would not be appropriate, in the view of the committee, to eliminate the board or to consolidate its activities with any other program except to the extent that it already works with the Division of Occupational Licensing and other State agencies.

The above summary and recommendations adequately addresses the requirements of AS 44.66.050(d). We now offer several further recommendations.

Like some of the other health boards, the Board of Pharmacy requires certain apparently unnecessary information in apparent violation of the factor listed in AS 44.66.050(c)(8). The requirement of a photograph and certain other information, if genuinely necessary to avoid fraudulent misrepresentation of the identity of an applicant and the credentials of an applicant, should be treated in a manner similar to that which we have recommended to the Board of Nursing in our report in this Journal.

Generally, the Committee on Commerce of the Alaska State House of Representatives has found that as to the four healing arts whose boards are recommended for retention, the Board of Nursing, the Alaska State Medical Board, the Alaska State Board of Dental Examiners, and the Board of Pharmacy, certain public policy considerations apply to all four. These can be addressed by the statutory changes which will be indicated in the bills to be introduced by the Commerce Committee to continue these boards.

With regard to all four boards, terms should be adjusted to four-year terms, staggered, and no member should serve more than two consecutive four-year terms.

The makeup of the boards should be adjusted to provide for more lay participation. Each of the four boards is presently constituted with five admitted professionals and two lay-persons. The law should be changed to provide for a ratio of four professionals to three lay members.

Lengthy tenure on a regulatory board results in a proprietary attitude, just considering human nature. Very often, the board member who has served for ten or fifteen years (or more, in the case of the Board of Pharmacy) often may "second-guess" the regulatory scheme and decide that his view is the law rather than the provisions of Title 8 established by the Legislature. Also, although no actual abuse was found in current situations, the prospect for abuse by a long-tenured professional on the board to "protect his turf" is very real.

Staggered terms, with adequate and timely attention to appointment needs by the executive, assures a continuity in the activities of the boards.

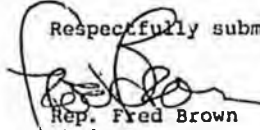
Expanding the number of lay persons on the boards tends to reduce the likelihood of turf protection or exclusionary activities relating to admission into the profession, and tends to assure that the board is protecting the public and not protecting the already-admitted members of the profession.

The Commerce Committee recommends that, with the changes stated in this report, the Board of Pharmacy continue for another four years, that is, that the repealer with regard to the activities of that board be amended to read June 30, 1983.

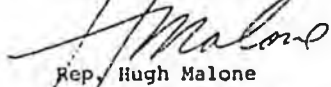
A bill will be introduced by the Commerce Committee facilitating the changes and recommendations in this report.

Mr. Randolph does not join the majority of the committee on our reports on the eleven health boards, and has filed a minority report herewith.

Respectfully submitted,



Rep. Fred Brown
Chairman
House Commerce Committee



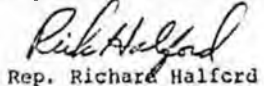
Rep. Hugh Malone



Rep. Joyce Munson



Rep. Alvin Osterback



Rep. Richard Halford



Rep. Robert Bettisworth

March 14, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Your House Commerce Committee has had under consideration for "Sunset" review the Alaska State Medical Board pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, at which written testimony of the Commissioner of the Department of Commerce and Economic Development was received and representatives of the Division of Occupational Licensing of that Department were available for questioning by the committee. Members of the board testified by teleconference. The committee considered the proposed budget of the board for FY 1980, and particularly examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

Guided in part by the report prepared by the Legislative Audit Division, the committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings:

The Commerce Committee generally concurs in the nine findings made by the Division of Legislative Audit in considering the factors required for consideration under AS 44.66.050(c), as they appear on pages 16-21 of the Performance Review of the Alaska State Medical Board prepared by the Division of Legislative Audit, dated October 30, 1978, which is hereby incorporated by reference as though fully set out herein.

In brief, the committee concurred with most of the Legislative Audit findings. Those findings are extremely critical of the board, and raised serious questions about its functioning. Since the report was issued and before the committee meeting, the board has attempted to address these problems. However, clearly many of the criticisms are still justifiable and should become a major concern for the board and for the Legislature. This, in part, is one of the reasons why the Commerce Committee is recommending only a one-year extension of the life of the board under the "Sunset" law, rather than the four-year extension which would be appropriate if there were no serious problems.

The findings of the Legislative Audit Division are justified, and constitute a serious criticism of the activities of the board. Also, unlike many of the other boards subject to "Sunset", the Board of Medical Examiners has spent its time in responding to the audit criticisms by attempting to refute them or by attempting to critique the Division of Legislative Audit. This is not appropriate in "Sunset" review. There is no burden upon the Division of Legislative Audit nor upon a legislative committee. The burden, under the provisions of AS 44.66.050, is upon the board to establish that it has been acting in the public interest and in compliance with law. This seems to have been seriously misunderstood by the membership of the Board of Medical Examiners until after the committee review process started in the Legislature.

While other boards (including ones that we are terminating) sought to clean up their regulations, correct perceived errors in their procedures, and otherwise positively respond to the criticisms of the audits, the only positive responses received regarding the Board of Medical Examiners were from one member and some members of the profession not on the board. The responsible committees of both houses of the Legislature were informed by the board that it would finally get around to a formal response to the Legislative Audit document and to "Sunset" review by the ninth of March, 1979. The March 9 communication was received by your committee, but after the hearings already held with regard to this board.

Just as the legislature is responsible to the public and to the courts, the various administrative agencies and boards established by the legislature within the executive branch are responsible to the executive, the legislature, and the courts. Throughout most of the "Sunset" process until late February 1979, this does not seem to have been the perception of at least some members of the Alaska State Medical Board.

Admittedly, some of the problems of the Medical Board relate to its extensive responsibilities and the limitations on time commitments that come naturally with a board made up of practicing professionals. Also, many of the criticisms relate to the practices of the Division of Occupational Licensing and not the board. Still, it appears necessary that this board, be continued for only one year, so that the Legislature, the Division of Legislative Audit, and the Alaska State Medical Board can more thoroughly address the serious problems which came to light in the course of the "Sunset" audit.

The above findings, including adoption of the findings of the Legislative Audit Division report, constitute compliance with AS 44.66.050(c) by this committee in the course of its review.

Many of the other criticisms of the board arise from problems caused by action or inaction of the Division of Occupational Licensing and its employees. The Division is presently attempting to address these problems, and has made some progress.

Pursuant to AS 44.66.050(d) the Committee on Commerce of the Alaska State House of Representatives offers the following summary and recommendations:

The Alaska State Medical Board is intended to address a real need with regard to the maintenance of adequate medical and surgical health skills in Alaska. The nature of the healing art involved is highly advanced and complex, to such a degree that it is not appropriate to eliminate this board and transfer the licensing function to the Division of Occupational Licensing totally. We have recommended this for some of the other health boards that do not so directly involve life and death situations for humans. This procedure does not seem appropriate for the Alaska State Medical Board.

The board is expected under the law to assure that the highest level of health care service in the medical and surgical fields can be provided to the residents of the state of Alaska, and that sufficient practitioners are available for these needs.

There are no other programs that really have conflicting or duplicative objectives with regard to this profession, and alternative methods involving elimination of the board do not seem appropriate to the committee in light of the advanced nature of the healing art involved.

It would not be appropriate, in the view of the committee, to eliminate the board or to consolidate its activities with any other program except to the extent that it already works with the Division of Occupational Licensing and other State agencies.

The above summary and recommendations adequately addresses the requirements of AS 44.66.050(d). We now offer several further recommendations.

Like some of the other health boards, the Alaska State Medical Board requires certain apparently unnecessary information in apparent violation of the factor listed in AS 44.66.050(c)(8). The requirement of a photograph and certain other information, if genuinely necessary to avoid fraudulent misrepresentation of the identity of an applicant and the credentials of an applicant, should be treated in a manner similar to that which we have recommended to the Board of Nursing in our report in this Journal.

SUPPLEMENT

The committee is of the view that the Medical Board should have one staff person attached to the board working within the offices of the Division of Occupational Licensing in the same fashion as is now provided for the Board of Nursing. This would probably help to alleviate some of the pressures on the board and assure that complaints are followed up and paper work is processed efficiently. Also, the board must establish procedures for checking the credentials of applicants. As it is now, this check is often an oral examination given by one of the members of the board (apparently to test the credibility of the applicant), and no check is run of the medical schools and clinics in other jurisdictions from which the applicant has supposedly gained his education and experience. Eventually this check may be run, but many weeks after the applicant has already been admitted and practicing in life-and-death situations upon Alaskan patients. This is thoroughly unsatisfactory and must be changed through actions of the board and the Division of Occupational Licensing. If possible, the committee will seek statutory requirements on this matter.

It is important that the board understand the probationary nature of the extension offered by the Commerce Committee under "Sunset" review. We anticipate that the Legislature will carefully examine this report, the current audit report, and practices occurring between now and then to determine whether the Alaska State Medical Board has remedied the matters raised in the report of the Legislative Audit Division and in our committee hearings.

Generally, the Committee on Commerce of the Alaska State House of Representatives has found that as to the four healing arts whose boards are recommended for retention, the Board of Nursing, the Alaska State Medical Board, the Alaska State Board of Dental Examiners, and the Board of Pharmacy, certain public policy considerations apply to all four. These can be addressed by the statutory changes which will be indicated in the bills to be introduced by the Commerce Committee to continue these boards.

With regard to all four boards, terms should be adjusted to four-year terms, staggered, and no member should serve more than two consecutive four-year terms.

The makeup of the boards should be adjusted to provide for more lay participation. Each of the four boards is presently constituted with five admitted professionals and two lay-persons. The law should be changed to provide for a ratio of four professionals to three lay members.

Lengthy tenure on a regulatory board results in a proprietary attitude, just considering human nature. Very often, the board member who has served for ten or fifteen years (or more, in the case of the Board of Pharmacy) often may "second-guess" the regulatory provisions of Title 8 established by the Legislature. Also, although no actual abuse was found in current situations, the prospect for abuse by a long-tenured professional on the board to "protect his turf" is very real.

Staggered terms, with adequate and timely attention to appointment needs by the executive, assures a continuity in the activities of the boards.

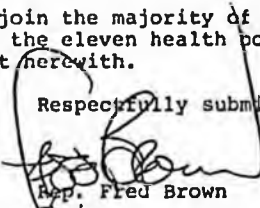
Expanding the number of lay persons on the boards tends to reduce the likelihood of turf protection or exclusionary activities relating to admission into the profession, and tends to assure that the board is protecting the public and not protecting the already-admitted members of the profession.

The Commerce Committee recommends that, with the changes stated in this report, the Alaska State Medical Board continue in a probationary status for one year, that is, that the repealer with regard to the activities of that board be amended to read June 30, 1980.


A bill will be introduced by the Commerce Committee facilitating the changes and recommendations in this report.

Mr. Randolph does not join the majority of the committee on our reports on the eleven health boards, and has filed a minority report herewith.

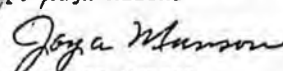
Respectfully submitted,




Rep. Fred Brown
Chairman
House Commerce Committee



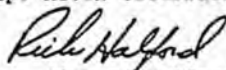
Rep. Hugh Malone



Rep. Joyce Munson



Rep. Alvin Osterback



Rep. Richard Halford



Rep. Robert Bettisworth

March 14, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Your House Commerce Committee has had under consideration for "Sunset" review the State Physical Therapy Board, pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, at which written testimony of the Commissioner of the Department of Commerce and Economic Development was received and representatives of the Division of Occupational Licensing of that Department were available for questioning by the committee. A member of the board testified in person or by teleconference. The committee considered the proposed budget of the board for FY 1980, and particularly examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

Guided in part by the report prepared by the Legislative Audit Division, the committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings:

The board has not operated in the public interest, to the extent that it can justify its continued existence: However, this is not the fault of any present or prior board or board member, but is inherent in the regulatory scheme.

The Commerce Committee generally concurs in the nine findings made by the Division of Legislative Audit in considering the factors required for consideration under AS 44.66.050(c), as they appear on pages 12-14 of the Performance Review of the State Physical Therapy Board prepared by the Division of Legislative Audit, dated October 20, 1978, which is hereby incorporated by reference as though fully set out herein. We do note, however, that the board has recently taken action to remedy some of the matters raised as criticisms in these findings.

Particularly, it is necessary to change the statutes to allow the State to license foreign-trained physical therapists in a manner similar to the Audit Division's recommendation number four. Although the Division did recommend the continued existence of the board itself, we are recommending its termination, but with continuation of the licensing function by the State. Additionally, the licensing process for physical therapists should be subject to the Administrative Procedures Act, and appropriate statutory changes are in order to accomplish this. Also, under our proposal, the outgoing board and the Division of Occupational Licensing should work toward a program of continuing education. During the hearings, we had some indication that the board was interested in this but had suffered certain difficulties in accomplishing it.

The above findings, including adoption of the findings of the Legislative Audit Division report, constitute compliance with AS 44.66.050(c) by this committee in the course of its review.

Many of the other criticisms of the board arise from problems caused by action or inaction by the Division of Occupational Licensing and its employees. The Division is presently attempting to address these problems, and has made some progress. However, further legislative scrutiny of the Division is vital to assure that the licensing process with regard to many professions is adequately carried out, and that investigations of unlicensed practitioners and of improper conduct by practitioners in all professions are effective to serve the public. This is not within the scope of this review, but it should be considered during the "Sunset" review of the public protection portion of the budget during the 1980 legislative session.

The board and the licensing scheme are intended to address the need to assure that competent practitioners are available in sufficient numbers to address the health needs of the residents of the state of Alaska. There are several other boards which have similar objectives with regard to other professions which, like this one, do not usually deal with life-and-death situations in the practice of a highly advanced healing art, as do the boards which regulate the professions of nursing, medicine and surgery, dentistry, and pharmacy. For this reason, the committee is of the view that those boards can be eliminated while still assuring that the licensing scheme functions and that proper discipline is maintained within the profession.


The committee is of the opinion that public policy considerations cannot justify the continued existence of this board. Inherent in a licensing and regulatory scheme for a profession regulated by a board of its peers is a very real human problem. It is very difficult for a person in a profession to be totally objective in regulating entry into that profession which then causes further competition. The board member who is of the highest level of integrity is still subject to these very real human pressures. This is not the fault of any of these seven boards, nor the fault of any one board member of this board: It is inherent in the regulatory scheme. It appears to the committee that admission into the profession can be handled by the Division of Occupational Licensing using available examination materials from national sources and by, when necessary, seeking professional guidance from admitted professionals in Alaska. The proliferation of professional boards under Title 8 has been extensive. Currently, there are twenty-one boards each of which regulates a profession or trade and each of which deals with the Division of Occupational Licensing. Currently, there are pressures to create even more boards. Yet in each situation matters involving professional standards and entrance into an identifiable market for services would be determined largely by participants in that market. This should occur only when there are other public policy considerations which require it, as in the case of the four boards already listed who deal with the most advanced of the healing arts.

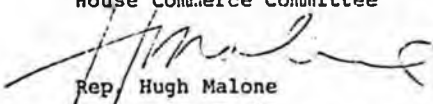
Therefore, the House Commerce Committee does not recommend the retention or continuation of the State Physical Therapy Board but it should also terminate in a manner different from that anticipated by the present language of Alaska's "Sunset" law found in AS 44.66. The Commerce Committee will introduce legislation to provide for termination of the board on January 1, 1981, but still allowing the board to fully function up to that time, allowing admission to the profession, while also cooperating with the Division of Occupational Licensing of the Department of Commerce and Economic Development to facilitate the transfer of the licensing function of this profession to that Division. This will give the board and the Division one entire budget cycle with which to deal with the transfer and will avoid what the Commerce Committee sees as an unfortunate ambiguity in the "Sunset" law about the role of the board during its final year of operation if terminated.

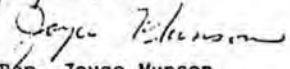
The Commerce Committee anticipates that the Division of Occupational Licensing will regulate admission into the profession using examinations from nationally recognized sources in the profession to the extent possible, and, if necessary, will establish a scheme for utilizing the talents of individual members of the profession in examination and licensing when necessary.

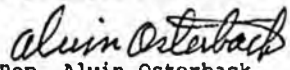
Mr. Bettisworth and Mr. Randolph do not join in the majority of the committee on our report, and have filed a minority report herewith.

Respectfully submitted,

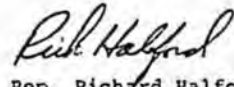

Rep. Fred Brown
Chairman
House Commerce Committee


Rep. Hugh Malone


Rep. Joyce Munson


Rep. Alvin Osterback

I concur in general with the committee report. However, I am concerned that the "Sunset" of this board must not result in simply the transfer from board to bureaucrats, but rather in the elimination of unnecessary regulation and the simplification of remaining regulations. It is imperative that the Division of Occupational Licensing operate with this concern in mind while implementing the "Sunset" recommendations.


Rep. Richard Halford

MINORITY MEMBERS REPORT CONCERNING SUNSET REVIEW OF
ELEVEN HEALTH BOARDS

We the signators of this minority report to the Alaska House Commerce Committee, after hearing the Sunset review of the 11 health regulatory boards offer the following report:

The majority report concerning the disposition of the various health boards, proposes a course of action which in our opinion, substantially violates the intent of the Sunset legislation. The Legislature and the majority of Alaskans embraced the concept of Sunset Legislation as a vehicle to reduce governmental interference in our lives, not to further concentrate and accentuate it. Unfortunately, the latter would be the result of the implementation of the proposal put forth in the majority report of the House Commerce Committee.

That recommendation does little to reduce governmental control and involvement in our lives. In fact, in most cases, and most specifically concerning the seven boards being discontinued, the implementation of the majority report would simply concentrate totally within the bureaucracy the existing system of regulation control and enforcement. If this system is going to be maintained, it is absolutely essential that professional and public input be allowed to continue. The adoption of the majority proposal would eliminate any formal structure for input from the affected profession, or public with reference to the seven professions whose Boards are being discontinued. This denial by eliminating the Boards but keeping all the power concentrated in the hands of the governmental system, substantially perverts the intent of the Sunset program.

A far more proper course of action would be the transfer of as many of these duties and responsibilities as possible to the affected profession, and the public, and away from the bureaucracy. This could be accomplished by establishing a peer review process similar to that presently used by the legal profession and to a lesser degree, by some medical disciplines. The authority of this peer consumer review committee should include whatever minimal licensing requirements are deemed absolutely necessary, a system for processing complaints in a timely and efficient manner, and a system of periodic peer and consumer review with publications and dissemination of those findings. There should be no restraints against any qualified practitioner entering practice in Alaska and any violation of this public trust should carry substantial penalties. In addition, the total cost of this process should be borne by the affected profession. Those serving would require protection against potential charges brought against them by those members of the profession which felt they had been libeled or slandered or in some other way, unfairly treated.

In summary, it is our intent to develop a system of maximum public protection through minimal government involvement.


Representative Richard Randolph


Representative Robert Bettisworth

March 14, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Your House Commerce Committee has had under consideration for "Sunset" review the Board of Examiners in Optometry, pursuant to your referral under AS 44.66.050 and AS 06.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, at which written testimony of the Commissioner of the Department of Commerce and Economic Development was received and representatives of the Division of Occupational Licensing of that Department were available for questioning by the committee. Members of the board testified in person or by teleconference. The committee considered the proposed budget of the board for FY 1980, and particularly examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

Guided in part by the report prepared by the Legislative Audit Division, the committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings:

The board has not operated in the public interest, to the extent that it can justify its continued existence: However, this is not the fault of any present or prior board or board member, but is inherent in the regulatory scheme.

The Commerce Committee generally concurs in the nine findings made by the Division of Legislative Audit in considering the factors required for consideration under AS 44.66.050(c), as they appear on pages 13-15 of the Performance Review of the Board of Examiners in Optometry prepared by the Division of Legislative Audit, dated November 1, 1978, which is hereby incorporated by reference as though fully set out herein. We do note, however, that the board has recently taken action to remedy some of the matters raised as criticisms in these findings.

Generally, we find that the board has adopted regulations on office licensing, employment by a corporation and leasing of commercial properties which are unduly restrictive to the practice of optometry by licensed, qualified optometrists. We recommend that the licensing process for optometrists should be subject to the Administrative Procedures Act, and appropriate statutory changes are in order to accomplish this.

The above findings, including adoption of the findings of the Legislative Audit Division report, constitute compliance with AS 44.66.050(c) by this committee in the course of its review.

Many of the other criticisms of the board arise from problems caused by action or inaction by the Division of Occupational Licensing and its employees. The Division is presently attempting to address these problems, and has made some progress. However, further legislative scrutiny of the Division is vital to assure that the licensing process with regard to many professions is adequately carried out, and that investigations of unlicensed practitioners and of improper conduct by practitioners in all professions are effective to serve the public. This is not within the scope of this review, but it should be considered during the "Sunset" review of the public protection portion of the budget during the 1980 legislative session.

The board and the licensing scheme are intended to address the need to assure that competent practitioners are available in sufficient numbers to address the health needs of the residents of the state of Alaska. There are several other boards which have similar objectives with regard to other professions which, like this one, do not usually deal with life-and-death situations in the practice of a highly advanced healing art, as do the boards which regulate the professions of nursing, medicine and surgery, dentistry, and pharmacy. For this reason, the committee is of the view that those boards can be eliminated while still assuring that the licensing scheme functions and that proper discipline is maintained within the profession.

The committee is of the opinion that public policy considerations cannot justify the continued existence of this board. Inherent in a licensing and regulatory scheme for a profession regulated by a board of its peers is a very real human problem. It is very difficult for a person in a profession to be totally objective in regulating entry into that profession which then causes further competition. The board member who is of the highest level of integrity is still subject to these very real human pressures. This is not the fault of any of these seven boards, nor the fault of any one board member of this board: It is inherent in the regulatory scheme. It appears to the committee that admission into the profession can be handled by the Division of Occupational Licensing using available examination materials from national sources and by, when necessary, seeking professional guidance from admitted professionals in Alaska. The proliferation of professional boards under Title 8 has been extensive. Currently, there are twenty-one boards each of which regulates a profession or trade and each of which deals with the Division of Occupational Licensing. Currently, there are pressures to create even more boards. Yet in each situation matters involving professional standards and entrance into an identifiable market for services would be determined largely by participants in that market. This should occur only when there are other public policy considerations which require it, as in the case of the four boards already listed who deal with the most advanced of the healing arts.

Therefore, the House Commerce Committee does not recommend the retention or continuation of the Board of Examiners in Optometry but it should also terminate in a manner different from that anticipated by the present language of Alaska's "Sunset" law found in AS 44.66. The Commerce Committee will introduce legislation to provide for termination of the board on January 1, 1981, but still allowing the board to fully function up to that time, allowing admission to the profession, while also cooperating with the Division of Occupational Licensing of the Department of Commerce and Economic Development to facilitate the transfer of the licensing function of this profession to that Division. This will give the board and the Division one entire budget cycle with which to deal with the transfer and will avoid what the Commerce Committee sees as an unfortunate ambiguity in the "Sunset" law about the role of the board during its final year of operation if terminated.

The Commerce Committee anticipates that the Division of Occupational Licensing will regulate admission into the profession using examinations from nationally recognized sources in the profession to the extent possible, and, if necessary, will establish a scheme for utilizing the talents of individual members of the profession in examination and licensing when necessary.

Mr. Bettisworth and Mr. Randolph do not join in the majority of the committee on our report, and have filed a minority report herewith.

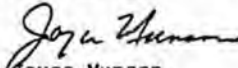
Respectfully submitted,



Rep. Fred Brown
Chairman
House Commerce Committee



Rep. Hugh Malone

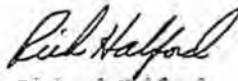


Rep. Joyce Munson



Rep. Alvin Osterback

I concur in general with the committee report. However, I am concerned that the "Sunset" of this board must not result in simply the transfer from board to bureaucrats, but rather in the elimination of unnecessary regulation and the simplification of remaining regulations. It is imperative that the Division of Occupational Licensing operate with this concern in mind while implementing the "Sunset" recommendations.



Rep. Richard Halford

March 14, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Your House Commerce Committee has had under consideration for "Sunset" review the Board of Chiropractic Examiners, pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, at which written testimony of the Commissioner of the Department of Commerce and Economic Development was received and representatives of the Division of Occupational Licensing of that Department were available for questioning by the committee. Members of the board testified in person or by teleconference. The committee considered the proposed budget of the board for FY 1980, and particularly examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

Guided in part by the report prepared by the Legislative Audit Division, the committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings:

The board has not operated in the public interest, to the extent that it can justify its continued existence: However, this is not the fault of any present or prior board or board member, but is inherent in the regulatory scheme.

The Commerce Committee generally concurs in the nine findings made by the Division of Legislative Audit in considering the factors required for consideration under AS 44.66.050(c), as they appear on pages 17-20 of the Performance Review of the Board of Chiropractic Examiners prepared by the Division of Legislative Audit, dated October 16, 1978, which is hereby incorporated by reference as though fully set out herein. We do note, however, that the board has recently taken action to remedy some of the matters raised as criticisms in these findings.