

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9904 HOUSE LABOR & COMMERCE

Prior Year Recommendation No. 6

OL should, in conjunction with the Equal Employment Opportunity Office (EEO), review the Board of Pharmacy licensure application form to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

During the period of our review, applicants were still required to submit a photograph and answer several personal questions (height, weight, hair color, etc). The board believes there is reasonable cause to review personal information because such information is important when licensing individuals working with controlled substances. The board adopted a motion stating it will continue to review photographs of applicants as part of the licensing process. We recognize the importance of identifying applicants who wish to distribute/administer controlled substances. However, the board should take steps to ensure justification is compatible with equal employment law.

Prior Year Recommendation No. 7

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

OL provides administrative assistance to many boards and commissions, including the Board of Pharmacy. OL staff helps during the board meetings, including taking minutes. These minutes are submitted to the board for approval at the subsequent meeting. The board prepares the annual report.

Prior Year Recommendation No. 8

OL should develop and implement written policies and procedures for reporting potential violations of the Executive Branch Ethics Act to the Department of Law.

OL has implemented this recommendation by improving its procedures for submitting potential violations. According to the Department of Law staff member in charge of monitoring the reports, OL prepares a quarterly report covering all boards and commissions and submits it timely.

(Intentionally left blank)

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

P.O. BOX 110800
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October 27, 1998

RECEIVED
OCT 28 1998

LEGISLATIVE AUDIT

Ms. Pat Davidson
Legislative Audit
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3830

Dear Ms. Davidson:

Thank you for the opportunity to respond to the preliminary audit report on the Department of Commerce and Economic Development, Division of Occupational Licensing, Board of Pharmacy (audit control number 08-1457-98).

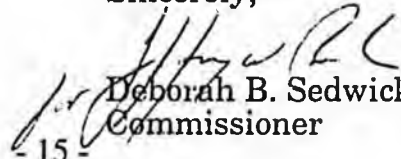
The department concurs with the report's conclusion that the Board of Pharmacy serves an important public purpose and should be extended. As the auditor's comments indicate, most of the issues raised by the prior audit have been resolved and regulation of pharmacy has been strengthened as a result of legislative and Board action.

The department does not concur with the auditor's comments relating to Prior Year Recommendation No. 5. The auditor states that, "We have found that OL tracks expenditures by occupation regulated by the Board of Pharmacy but does not account for revenue at the occupational level or set fees to ensure that each occupation is self-sufficient." The department addressed these issues in our response to the October 3, 1997, audit of occupation fee setting policies and regulatory costs.

The Division of Occupational Licensing credits revenue to each of the 35 licensing boards and programs as funds are received. Licensing statistics are then used to determine which occupations within a board or program generated the revenue. Licensing statistics are an acceptable means of tracking revenue at the occupation level.

Strict interpretation of AS 08.01.065(c) to require each occupation within a board to cover its own costs is impractical in a state with a small population of licensees and contrary to the public interest. This action would increase the volatility of license fees and make licenses prohibitively expensive for some occupations.

Sincerely,


Deborah B. Sedwick
Commissioner

DBS/CR/dgl/4022cr.doc
102798a

HB

69

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER
HESS BUDGET SUBCOMMITTEE, MEMBER



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STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 443-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

JUST THE FAX

Date: March 5, 1999

TO: Mike Ford, Leg. Counsel

FAX: 2029 Telephone: _____

FROM: Representative Norman Rokeberg

FAX: (907) 465-2040 Telephone: (907) 465-4968

Number of Pages: 14 (including this page)

Please prepare in final a CS for HB 69 working off the LS0354 G Version.

Comments: _____

The committee adopted five amendments to the G version.

The G version and the five amendments follow.

Thank you.

Janet

Have a Nice Day

*Adopted as working document
2/24/99*

1-LS0354G
Ford ✓
2/19/99

CS FOR HOUSE BILL NO. 69(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring certain reports or information from alcoholic beverage licensees
2 that are also limited liability organizations; relating to regulation of alcoholic
3 beverage licenses issued to limited liability organizations; relating to brewpub
4 licenses; relating to consumption of alcoholic beverages on licensed premises and
5 to the liability of a member of a limited liability organization who also holds an
6 alcoholic beverage license; extending the termination date of the Alcoholic Beverage
7 Control Board; and providing for an effective date."

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 * Section 1. AS 04.06.100(b) is amended to read:

10 (b) The subjects covered by regulations adopted under (a) of this section may
11 include [, BUT ARE NOT LIMITED TO,] the following matters:

12 (1) employment, conduct, and duties of the director and of regular and
13 contractual employees of the board;

- 1 (2) procedures for the issuance, denial, renewal, transfer, revocation,
2 and suspension of licenses and permits;
- 3 (3) terms and conditions of licenses and permits issued;
- 4 (4) fees for licenses and permits issued for which [NO] fees are not
5 prescribed by statute;
- 6 (5) conduct of regular and special meetings of the board;
- 7 (6) delegation to the director of routine administrative functions and
8 powers;
- 9 (7) the temporary granting or denial of issuance, transfer, and renewal
10 of licenses;
- 11 (8) manner of giving any notice required by law or regulation when not
12 provided for by statute;
- 13 (9) requirements relating to the qualifications of licensees, the
14 conditions upon which a license may be issued, the accommodations of licensed
15 premises, and board inspection of those premises;
- 16 (10) making of reports by wholesalers;
- 17 (11) purchase of fidelity bonds by the state for the director and the
18 employees of the board;
- 19 (12) prohibition of possession of alcoholic beverages by drunken
20 persons and by minors;
- 21 (13) required reports from corporations licensed under this title,
22 including reports of stock ownership and transfers and changes of officers and
23 directors;
- 24 (14) creation of classifications of licenses or permits not provided for
25 in this title;
- 26 (15) establishment and collection of fees to be paid on application for
27 a license or permit;
- 28 (16) required reports from partnerships and limited partnerships licensed
29 under this title, including reports of transferred interests of 10 percent or more;
- 30 (17) required reports from limited liability organizations licensed
31 under this title, including reports of the transfer of a member's interest if the

1 transfer equals 10 percent or more of the ownership of the limited liability
2 organization and any change of managers.

3 * Sec. 2. AS 04.11.040(c) is amended to read:

4 (c) A person may not receive or transfer controlling interest in a liquor license
5 issued to a partnership, including a limited partnership, a limited liability
6 organization, or a corporation under this title, except with the written consent of the
7 board.

8 * Sec. 3. AS 04.11 is amended by adding a new section to read:

9 **Sec. 04.11.045. Reports required of limited liability organizations.** (a) A
10 limited liability organization licensed under this title shall report to the board when a
11 member of the limited liability organization transfers 10 percent or more of the
12 ownership of the organization and shall report a change of managers.

13 (b) The report to the board shall be made in writing in duplicate and shall be
14 sent within 10 days after the change in member interest or manager.

15 * Sec. 4. AS 04.11.135(a) is amended to read:

16 (a) A brewpub license authorizes the holder of a beverage dispensary license
17 to

18 (1) manufacture on premises licensed under the beverage dispensary
19 license not more than 75,000 gallons of beer in a calendar year;

20 (2) sell beer manufactured on premises licensed under the beverage
21 dispensary license for consumption [ONLY] on the licensed premises or other
22 licensed premises of the beverage dispensary licensee;

23 (3) sell beer manufactured on the premises licensed under the beverage
24 dispensary license in quantities of not more than five gallons per day to an individual
25 who is present on the licensed premises; [AND]

26 (4) provide a small sample of the brewpub's beer manufactured on the
27 premises free of charge unless prohibited by AS 04.16.030; and

28 (5) sell beer manufactured on the premises licensed under the
29 beverage dispensary license to a person licensed as a wholesaler under
30 AS 04.11.160.

31 * Sec. 5. AS 04.11.260 is amended by adding a new subsection to read:

1 (e) A limited liability organization that applies for a license or permit shall
2 provide information required by the board, including the names and addresses of all
3 members with an ownership interest of 10 percent or more and the names and
4 addresses of all managers.

5 * Sec. 6. AS 04.11.390 is amended by adding a new subsection to read:

6 (c) A beverage dispensary license or package store license may not be issued
7 to a limited liability organization unless the limited liability organization has been
8 registered to conduct business in this state for at least one year before the date of the
9 application. However, a beverage dispensary or package store license may be issued
10 to a domestic limited liability company or a domestic limited liability partnership if
11 each of the members of the limited liability company or limited liability partnership
12 has resided in the state for at least one year immediately preceding the filing of the
13 application.

14 * Sec. 7. AS 04.11.430(a) is amended to read:

15 (a) Each license shall be issued to a specific individual or individuals, to a
16 partnership, including a limited partnership, to a limited liability organization, or to
17 a corporation. If the license is issued to a corporation or a limited liability
18 organization, the registered agent of the corporation or limited liability organization
19 must be an individual resident of the state.

20 * Sec. 8. AS 04.11.450(c) is amended to read:

21 (c) A license may not be leased by a licensee to another person, partnership,
22 limited liability organization, or corporation.

23 * Sec. 9. AS 04.16.120(b) is amended to read:

24 (b) Except as provided in this subsection, a [A] person may not bring an
25 alcoholic beverage into licensed premises for use or consumption by oneself or another
26 person on the premises unless that person is a licensee, an agent, employee, or
27 common carrier in the regular course of employment. A person may bring wine into
28 premises licensed as a beverage dispensary or a restaurant or eating place for
29 consumption by the person while eating food served at a table on the licensed
30 premises. A person may not bring more than one bottle of wine for every two
31 persons seated at the person's table on the licensed premises. The beverage

1 dispensary or restaurant or eating place may charge a corkage fee for serving
2 wine supplied by a customer.

3 * Sec. 10. AS 04.21 is amended by adding a new section to read:

4 **Sec. 04.21.035. Responsibility of limited liability organization members.**

5 Notwithstanding any other provision of AS 10.50 or AS 32.05, a member of a limited
6 liability organization holding a license under this title is not relieved of the obligation
7 or the liability otherwise imposed upon a holder of a liquor license under this title
8 solely because the license is held by a limited liability organization.

9 * Sec. 11. AS 04.21.080(b) is amended by adding new paragraphs to read:

10 (12) "foreign limited liability company" has the meaning given in
11 AS 10.50.990;

12 (13) "foreign limited liability partnership" has the meaning given in
13 AS 32.05.990;

14 (14) "limited liability company" means an organization under AS 10.50;

15 (15) "limited liability organization" means a limited liability company,
16 a foreign limited liability company, a limited liability partnership, or a foreign limited
17 liability partnership;

18 (16) "limited liability partnership" means an organization that is
19 registered under AS 32.05.415.

20 * Sec. 12. AS 44.66.010(a)(1) is amended to read:

21 (1) Alcoholic Beverage Control Board (AS 04.06.010) -- June 30, 2002
22 [1999];

23 * Sec. 13. Section 12 of this Act takes effect immediately under AS 01.10.070(c).

24 * Sec. 14. Except as provided in sec. 13 of this Act, this Act takes effect July 1, 1999.

*Adopted
Unan*

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 69(L&C), Draft Version "G"

1 Page 1, line 4, following "licenses;":

2 Insert "relating to package store licenses;"

3 Page 3, following line 30:

4 Insert new bill sections to read:

5 ** Sec. 5. AS 04.11.150(a) is amended to read:

6 (a) Except as provided under (g), (j), and (k) of this section, a package store
7 license authorizes the licensee to sell alcoholic beverages to a person present on the
8 licensed premises or to a person known to the licensee who makes a written
9 solicitation to that licensee for shipment. A licensee, agent, or employee may only
10 ship alcoholic beverages to the purchaser. Before commencing the practice of
11 shipping alcoholic beverages, and with each subsequent application to renew the
12 license, a licensee shall notify the board in writing of the licensee's intention to ship
13 alcoholic beverages in response to a written solicitation. The package store licensee,
14 agent, or employee shall include written information on fetal alcohol syndrome and
15 fetal alcohol effects resulting from a woman consuming alcohol during pregnancy in
16 a shipment of alcoholic beverages sold in response to a written solicitation.

17 * Sec. 6. AS 04.11.150 is amended by adding new subsections to read:

18 (j) A package store license authorizes the licensee to deliver not more than
19 two bottles of wine or champagne in a gift basket with a floral arrangement to a
20 cruise ship passenger or a hotel guest. The wine or champagne for delivery may be
21 purchased from a package store licensee by a florist or gift basket establishment with
22 a state business license that designates the business as a florist or gift basket
23 establishment. The package store licensee shall keep on file a copy of the Alaska
24 business license of a florist or gift basket establishment to which the licensee sells

1 wine or champagne for delivery to third persons by the package store. The package
2 store must keep a written record of each delivery made under this subsection for a
3 period of at least one year, including the name of the business purchasing the wine
4 or champagne and the name of the person to whom the delivery is made. A delivery
5 under this subsection must be made by the licensee or an employee or agent of the
6 licensee who has completed alcohol server training as required under AS 04.21.025.
7 The board shall issue a permit to each licensee authorized to deliver wine or
8 champagne under this subsection and may by regulation impose an administrative fee
9 for the cost of issuing the permit.

10 (k) A package store license authorizes the licensee to deliver alcoholic
11 beverages between the hours of 8:00 a.m. and 5:00 p.m. to a responsible adult at the
12 location of a wedding or wedding reception or other social event as defined by
13 regulation of the board. A delivery under this subsection may be made only after a
14 sale by written order received from a person present on the licensed premises who
15 makes payment in full at least 48 hours before the delivery. The written order must
16 include the name and address of the purchaser and the date, time, and address of the
17 delivery, as well as the name and address of the responsible adult who will receive
18 the delivery of alcoholic beverages. A delivery authorized under this subsection must
19 be made by the licensee or an employee or agent of the licensee who has completed
20 alcohol server training as required under AS 04.21.025. Delivery may only be made
21 to a responsible adult at the delivery address on the written order. The responsible
22 adult must provide identification and proof of age as defined in AS 04.21.050, and
23 must acknowledge receipt of the alcoholic beverages in writing. The package store
24 licensee shall retain the written order and the responsible adult's written
25 acknowledgment for at least one year after delivery. The board shall issue a permit
26 to each licensee authorized to deliver alcoholic beverages under this subsection and
27 may by regulation impose an administrative fee for the cost of issuing the permit."

28 Renumber the following bill sections accordingly.

29 Page 5, line 23:

30 Delete "Section 12"

1 Insert "Section 14"

2 Page 5, line 24:

3 Delete "sec. 13"

4 Insert "sec. 15"

*Murkowski moved 3/5/99
HNC object for discussion
remove*

adopted

I-LS0354\G.2
Ford
2/24/99

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 69(L&C), Draft Version G

- 1 Page 4, line 27:
- 2 Delete "A"
- 3 Insert "With the permission of the licensee, a"

Murkowski moved 2/15/99

1-LS03541G.3
Ford ✓
2/25/99

no object. adopted

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 69(L&C), Draft Version "G"

1 Page 3, following line 30:

2 Insert a new bill section to read:

3 **** Sec. 5.** AS 04.11.135 is amended by adding a new subsection to read:

4 (d) Notwithstanding (a) of this section, the holder of a brewpub license who
5 under the provisions of AS 04.11.450(b) formerly held a brewery license and a
6 restaurant or eating place license and who, under the former brewery license,
7 manufactured beer at a location other than the premises licensed under the former
8 restaurant or eating place license may

9 (1) manufacture not more than 75,000 gallons of beer in a calendar
10 year on premises other than the premises licensed under the beverage dispensary
11 license;

12 (2) provide a small sample of the manufactured beer free of charge at
13 the location the beer is manufactured unless prohibited by AS 04.16.030; and

14 (3) sell the beer authorized to be manufactured under this subsection

15 (A) on the premises licensed under the beverage dispensary
16 license or other licensed premises of the beverage dispensary licensee;

17 (B) to a wholesaler licensed under AS 04.11.160; or

18 (C) to an individual who is present on the premises where the
19 beer is manufactured in quantities of not more than five gallons per day."

20 Renumber the following bill sections accordingly.

21 Page 5, line 23:

22 Delete "Section 12"

23 Insert "Section 13"

- 1 Page 5, line 24:
- 2 Delete "sec. 13"
- 3 Insert "sec. 14"

Murkowski moved 3/5/99.
HJR object for discussion
Removed objection

Adopted

AMENDMENT # 4

Offered in the House

By: Rep. Rokeberg

CSHB 69 (L&C) LS0354\G

Page 1, line 4:

After "licensed premises"

Insert ";"

After ";"

Delete: "and"

Insert: "relating"

After "licensed premises" the sentence now reads "; relating"

Page 4, lines 30-31

Delete: "A person may not bring more than one bottle of wine for every two persons seated at the person's table on the licensed premises."

Муромский муром 31/1/44

Adopted

By Rokelberg

AMEND MSW | #5

TO: CSHB 69 (LFC) version "6"

page 5 Line 21

delete "2002"

add "2003"

page 1 Line 7

After "Board"

add "to JUNE 30, 2003"

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



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MEMORANDUM

TO: House Labor & Commerce Committee Members

FROM: Rep. Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: February 23, 1999

RE: Draft CS for HB 69
LS0354\G, Ford, 2/19/99

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

The draft CS accomplishes the following:

1. At the request of the Board adds language in Sections 1-3, 5-8, 10 and 11 that cover limited liability organizations (i.e., limited liability company, limited liability partnership).
2. Section 4 amends 04.11.135(a) concerning brewpub licensees to allow them to (a) sell their manufactured beer not only on the licensed premises where the beer is made but at other licensed premises of the licensee; and (b) sell their product to a person licensed as a wholesaler.
2. Section 9 - adds a "corkage" clause to our statutes.
3. Section 12 - extends the ABC termination date of June 30, 2002.
4. Section 12 is effective immediately
5. All other sections are effective July 1, 1999.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 69

Revision Date/Time (Note if correction) _____ Dept. Affected Revenue
 Title An act relating to the Alcoholic Beverage BRU ABC Board
Control Board Component ABC Board
 Sponsor Rep. Rokeberg
 Requester House Labor & Commerce Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact directly from extension of ABC Board for three years. ABC Board is funded entirely from program receipts.

Prepared by Dorg Griffin, Director
 Division ABC Board
 Approved by Wilson L. Condon
 Commissioner Department of Revenue
 Agency

Phone 465-2301
 Date/Time February 22, 1999 10:15 AM
 Date 2/22/99

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REPRESENTATIVE NORMAN ROKEBERG

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

SPONSOR STATEMENT AND SECTIONAL ANALYSIS HOUSE BILL 69

AN ACT RELATING TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

SPONSOR STATEMENT:

HB 69 would extend the termination date of the Alcoholic Beverage Control Board (ABC) until June 30, 2002. During the last Legislature, the termination date was extended to June 30, 1999, and if legislation does not pass extending the termination date this year, the board will be in its wind down year.

The Board consists of five members and is responsible for control, manufacture, barter, possession, and sale of alcoholic beverages in the state. The Legislative Audit, dated September 8, 1997, indicated that the Board was fulfilling its responsibility by licensing establishments to manufacture, distribute or sell alcoholic beverages to the public and enforcing the alcohol control laws in Title 4. At the time the Audit was issued, the Auditor recommended extending the Board to June 30, 2002.

While there were some recommendations in the Auditor's report, the Board does serve public safety, health and welfare purposes. I would appreciate your support of this legislation.

SECTIONAL ANALYSIS:

Section 1: Extends the termination date of the ABC board from June 30, 1999 to June 30, 2002.

Section 2: Effective date: Immediate

ED1:02/20/99

STATE OF ALASKA
Boards and Commissions

ALCOHOLIC BEVERAGE CONTROL

BOARD: Alcoholic Beverage Control Board

BOARD IDENTIFICATION NUMBER: 003

DEPARTMENT: DEPARTMENT OF REVENUE

AUTHORITY: AS 04.06.010

STATUS: Active

SUNSET DATE: June 30, 1998

REQUIREMENTS: Legislative Confirmation, Financial Disclosure

PROHIBITIONS: No member may hold any other state or federal office, either elective or appointive. No 3 members may be engaged in the same business, occupation, or profession.

TERM: 3 years

DESCRIPTION: 5 members appointed by Governor: 2 from alcoholic beverage industry, but not wholesalers; no three members may be engaged in the same business, occupation or profession; board selects chair; serve at pleasure of Governor; vacancies to be filled within 30 days; Governor also appoints Director.

FUNCTION: Controls manufacture, barter, possession, and sale of alcoholic beverages in the state.

CHAIR: Board selects chair.

SPECIAL FACTS: Quorum - 3 members (majority of whole membership must approve applications, renewals, transfers, etc.); Regulatory/quasi-judicial agency. Serve at the pleasure of the Governor.

COMPENSATION: Standard Travel and Per Diem. No additional compensation.

MEETINGS: 6-10 meetings/year-11-14 days maximum; at least once/year in each judicial district. Call of chair.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas B. Griffin, Director, Alcoholic Beverage Control Board, DOR, 550 West Seventh Avenue, Suite 350 M/S 0400, Anchorage, AK, 99501, Phone: 907-269-0350, Fax: 907-272-9412.

STATE OF ALASKA
Boards and Commissions

Membership Roster
ALCOHOLIC BEVERAGE CONTROL (003)

Member	Appointed	Reappointed	Term Exp.
Ellen L. Ganley Public 4454 Chena Hot Springs Road Fairbanks, AK 99712	06/29/95	01/31/96	01/31/99
Toni Le Jackson Public P.O. Box 165 Copper Center, AK 99573	08/27/97		01/31/00
Robert J. Klein Industry 10381 Treetop Lane Anchorage, AK 99516	05/31/95	01/02/97	01/31/00
Joseph J. Thomas, Jr. Industry P.O. Box 20977 Juneau, AK 99802	02/14/96		01/31/99
Thomas C. Walker Public Chief of Police City of Seward P.O. Box 167 Seward, AK 99664	06/02/98		01/31/01

- (3) restaurant or eating place license;
- (4) club license;
- (5) bottling works license;
- (6) brewery license;
- (7) package store license;
- (8) general wholesale license;
- (9) wholesale malt beverage and wine license;
- (10) distillery license;
- (11) common carrier dispensary license;
- (12) retail stock sale license;
- (13) recreational site license;
- (14) pub license;
- (15) winery license;
- (16) caterer's permit;
- (17) special events permit;
- (18) conditional contractor's permit;
- (19) brewpub license;
- (20) golf course license. (§ 2 ch 131 SLA 1980; am § 1 ch 111 SLA 1988; am § 4 ch 101 SLA 1995; am § 1 ch 125 SLA 1998)

Cross references. — For statute providing that a license is a personal privilege, see AS 04.11.660.

For continuation of community liquor licenses, which were deleted from this section in 1995, see § 72, ch. 101, SLA 1995 in the Temporary and Special Acts.

Effect of amendments. — The 1995 amendment,

effective July 1, 1995, deleted paragraph (14), which read "community liquor license;" and redesignated former paragraphs (15)-(20) as present paragraphs (14)-(19).

The 1998 amendment, effective July 1, 1998, added paragraph (20) and made a related stylistic change.

NOTES TO DECISIONS

Cited in *Cleland v. State*, 759 P.2d 553 (Alaska Ct. App. 1988).

Collateral references. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 124-133.

48 C.J.S., Intoxicating Liquors, §§ 99-101.

Sec. 04.11.090. Beverage dispensary license. (a) A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

(b) The biennial beverage dispensary license fee is \$2,500.

(c) *[Repealed, § 69 ch 101 SLA 1995.]*

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

(e) A holder of a beverage dispensary license may not maintain upon the licensed premises more than one room in which there is regularly maintained a fixed counter or service bar at which alcoholic beverages are sold or served to members of the public for consumption unless the licensee is issued by the board, after investigation, a duplicate of the original license for each of the rooms. The holder of the beverage dispensary license shall pay to the board with each application for a duplicate license an amount equal to the fee payable for the original beverage dispensary license under (b) of this section. If the licensed premises are located within a municipality, a duplicate beverage dispensary license may not be issued unless approved by the council or assembly, as appropriate.

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The area designated as the licensed premises under a beverage dispensary license to a bowling alley may include the concourse or lane areas of the bowling alley. Notwithstanding AS 04.16.049, the board may, upon application, authorize access by persons under 21 years of age to the concourse or lane areas designated part of the bowling alley's licensed premises during hours when no alcoholic beverages are being served, or consumed.

A holder of a beverage dispensary license issued to a hotel, motel, resort, or similar business that caters to the traveling public may stock alcoholic beverages in guest rooms, for sale and consumption in the guest room only, if authorized by the board. Alcoholic beverages stocked under this subsection shall be stocked by an employee who is 21 years of age or older, may not be supplied or resupplied during hours that the sale of alcoholic beverages is prohibited as provided under AS 04.16.010(a) and (d), and shall be stored in a refrigerated unit using a key or combination lock system within the guest room. A key system shall be designed to prevent the removal of the key unless the refrigerated unit is locked. Except for the licensee, or an agent or employee of the licensee, a key or combination enabling a person to obtain alcoholic beverages stocked in a guest room may not be provided to a guest who occupies the room and who is 21 years of age or older. The board shall issue a permit to each licensee authorized to stock alcoholic beverages under this subsection and may by regulation impose an administrative fee for the cost of issuing a permit. (§ 2 ch 131 SLA 1980; am § 1 ch 109 SLA 1983; am § 1 ch 63 SLA 1993; am § 1 ch 3 SLA 1995; am § 69 ch 101 SLA 1995)

am § 4 ch 101

graph (14), which and redesignated present paragraphs

July 1, 1998, added stylistic change.

cross references. — For additional requirements, see AS 04.11.390.

For legislative findings and purpose in connection with the 1995 enactment of subsection (g), see § 1, ch. 101 SLA 1995 in the Temporary and Special Acts.

Effect of amendments. — The 1993 amendment, effective December 31, 1993, in subsection (b), substituted "biennial" for "annual" and increased the license fee to \$600.

The first 1995 amendment, effective July 9, 1995, amended subsection (g).

The second 1995 amendment, effective July 1, 1995, repealed subsection (c), relating to filing of a \$2,500 cash bond or surety bond with the application.

Opinions of attorney general. — The board may not require a restaurant licensee to forfeit his restaurant license upon obtaining a beverage dispensary license for the same premises, but the board may properly demand that the restaurant license be surrendered to the board temporarily, pending its transfer to another purchaser or location. September 27, 1985, Op. Att'y Gen.

NOTES TO DECISIONS

§ 99-101.

Former law construed. — See *In re Liquor License of Larry's, Inc.*, 12 Alaska 503 (1949).

dispensary license for alcoholic beverages for

Sec. 04.11.100. Restaurant or eating place license. (a) A restaurant or eating place license authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises.

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

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

(d) The biennial fee for a restaurant or eating place license is \$600.

(e) A license may be renewed under this section only if the licensee provides evidence to the board's satisfaction that gross receipts from the sale of food upon the licensed premises constitute no less than 50 percent of the gross receipts of the licensed premises for each of the two preceding calendar years.

(f) Notwithstanding the provisions of (b) of this section, upon written application and approval of the local governing body, the board may renew a restaurant or eating place license and exempt the licensee from the requirements of (b) of this section if the license was issued under the provisions of this subsection before October 1, 1996. The board may not

not

dispensary license serving public as room, guests'

the licensed counter or the public for a duplicate of dispensary license it equal to the section. If the dispensary appropriate.

(1) renew a license as provided under this subsection if

(A) the renewal would result in more than one exempt restaurant or eating place license for every 10 restaurant or eating place licenses allowed under the provisions of AS 04.11.400(a)(2) or (3);

(B) the premises would be located in a building having a public entrance within 200 feet of the boundary line of a school or a church building in which religious services are being regularly conducted; for purposes of this subparagraph, the 200-foot prohibition is measured from the outer boundary line of the school or the public entrance of the church building by the shortest pedestrian route to the nearest public entrance of the restaurant or eating place; or

(2) transfer an exempt license issued under this subsection to another person.

(g) A restaurant or eating place licensee

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

(2) may only provide entertainment on the licensed premises between the hours of 3:00 p.m. and 11:00 p.m. unless approved by the director after written request by the licensee for a specific occasion; in this paragraph, "entertainment" includes dancing, karaoke, live performances, or similar activities, but does not include recorded or broadcast performances without live participation. (§ 2 ch 131 SLA 1980; am § 4 ch 93 SLA 1985; am §§ 2, 3 ch 63 SLA 1993; am § 5 ch 101 SLA 1995; am §§ 1, 2 ch 136 SLA 1996)

Effect of amendments. — The 1993 amendment, effective December 31, 1993, in subsection (d), substituted "biennial" for "annual" and increased the license fee; and, in subsection (e), substituted "for each of the two preceding calendar years" for "for the preceding license year."

The 1995 amendment, effective July 1, 1995, added subsection (f).

The 1996 amendment, effective October 1, 1996,

rewrote subsection (f) and added subsection (g).

Opinions of attorney general. — The board may not require a restaurant licensee to forfeit his restaurant license upon obtaining a beverage dispensary license for the same premises, but the board may properly demand that the restaurant license be surrendered to the board temporarily, pending its transfer to another purchaser or location. September 27, 1985, Op. Att'y Gen.

Sec. 04.11.110. Club license. (a) A club license authorizes a club or organization to sell alcoholic beverages for consumption only on the licensed premises.

(b) A club license may only be issued to a club, fraternal organization, patriotic organization, or social organization that has been (1) chartered by a state or national organization for a period of two consecutive years before application for a license under this section; or (2) chartered by a national organization and the national organization has maintained a chartered club or organization within the state for a period of at least 20 years. The organization licensed under this section must be operated for social, recreational, political, benevolent, or athletic purposes and not for profit. A club license may only be issued to an organization if none of the income from the sale of alcoholic beverages is distributed to its members, directors, or officers. Soliciting of public patronage of the club premises except as approved by the board is a violation of this section.

(c) The biennial club license fee is \$1,200.

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

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

dispensary license or a restaurant or eating place license if the license was acquired by transfer from a licensee under AS 04.11.280.

(c) The biennial license fee is \$400. The license fee and application fee must accompany the application for the license. An application must include a drawing of the golf course. A sample minimum food menu must accompany the application.

(d) Food similar to that listed in the sample menu must be available during times when beer and wine are sold, served, and consumed on the licensed premises.

(e) A golf course license may not be transferred or relocated.

(f) In this section,

(1) "golf course" means a course, having at least nine holes and covering at least 2,950 yards, that is open to the public; and

(2) "licensed premises" includes buildings located on the golf course or a vending cart designed to carry beverages or food located on the golf course. (§ 2 ch 125 SLA 1998)

Effective dates. — Section 7, ch. 125, SLA 1998 makes this section effective July 1, 1998.

Sec. 04.11.120. Bottling works license. (a) A bottling works license authorizes the holder to operate a bottling works where beer and wine may be bottled and sold.

(b) A sale under a bottling works license may be made only to a person licensed under this title and only in quantities of more than five gallons.

(c) The biennial bottling works license fee is \$500. (§ 2 ch 131 SLA 1980; am § 1 ch 85 SLA 1988; am § 5 ch 63 SLA 1993)

Effect of amendments. — The 1993 amendment, effective December 31, 1993, in subsection (c), substituted "biennial" for "annual" and increased the license fee.

Sec. 04.11.130. Brewery license. (a) A brewery license authorizes the holder to operate a brewery where beer is manufactured and bottled or barreled for sale.

(b) The holder of a brewery license may sell beer in quantities of

(1) less than five gallons to an individual who is present on the licensed premises;

(2) more than five gallons to a person who is licensed under this title, or in another state or country.

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

(d) The biennial brewery license fee is \$1,000. (§ 2 ch 131 SLA 1980; am § 2 ch 85 SLA 1988; am § 2 ch 111 SLA 1988; am § 1 ch 157 SLA 1988; am § 6 ch 63 SLA 1993)

Effect of amendments. — The 1993 amendment, effective December 31, 1993, in subsection (d), substituted "biennial" for "annual" and increased the license fee. the amendment to (b) of this section by sec. 2, ch. 85, SLA 1988 (HCS CSSB 413 (Jud)), see 1988 House & Senate Joint Journal Supplement No. 18, May 10, 1988 p. 2.

Legislative history reports. — For an analysis of

Sec. 04.11.135. Brewpub license. (a) A brewpub license authorizes the holder of a beverage dispensary license to

(1) manufacture on premises licensed under the beverage dispensary license not more than 75,000 gallons of beer in a calendar year;

(2) sell beer manufactured on premises licensed under the beverage dispensary license for consumption only on the licensed premises;

(3) sell beer manufactured on the premises licensed under the beverage dispensary license in quantities of not more than five gallons per day to an individual who is present on the licensed premises; and

(4) provide a small sample of the brewpub's beer manufactured on the premises free of charge unless prohibited by AS 04.16.030.

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(b) Except as provided under AS 04.11.360(10), the brewpub license is not transferable, and shall remain the property of the state, and is not subject to any form of alienation.

(c) The biennial brewpub license fee is \$500. (§ 3 ch 111 SLA 1988; am § 7 ch 63 SLA 1993; am §§ 6, 7 ch 101 SLA 1995; am § 3 ch 136 SLA 1996)

Effect of amendments. — The 1993 amendment, effective December 31, 1993, in subsection (c), substituted "biennial" for "annual" and increased the license

graph (a)(1) and made a section reference substitution in subsection (b).

The 1996 amendment, effective October 1, 1996, in subsection (a), added paragraphs (3) and (4) and made related changes.

The 1995 amendment, effective July 1, 1995, substituted "75,000 gallons" for "16,000 gallons" in para-

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

(b) The holder of a winery license may sell wine in quantities of

(1) less than five gallons to an individual who is present on the licensed premises;

(2) more than five gallons to a person who is licensed under this title, or in another state or country.

(c) The holder of a winery license may permit a person to sample small portions of the wine free of charge unless prohibited by AS 04.16.030.

(d) The biennial winery license fee is \$500. (§ 2 ch 131 SLA 1980; am § 3 ch 85 SLA 1988; am §§ 2, 3 ch 157 SLA 1988; am § 8 ch 63 SLA 1993)

Effect of amendments. — The 1993 amendment, effective December 31, 1993, in subsection (d), substi-

tuted "biennial" for "annual" and increased the license fee.

Sec. 04.11.150. Package store license. (a) Except as provided under (g) of this section, a package store license authorizes the licensee to sell alcoholic beverages to a person present on the licensed premises or to a person known to the licensee who makes a written solicitation to that licensee for shipment. A licensee, agent, or employce may only ship alcoholic beverages to the purchaser. Before commencing the practice of shipping alcoholic beverages, and with each subsequent application to renew the license, a licensee shall notify the board in writing of the licensee's intention to ship alcoholic beverages in response to a written solicitation. The package store licensee, agent, or employee shall include written information on fetal alcohol syndrome and fetal alcohol effects resulting from a woman consuming alcohol during pregnancy in a shipment of alcoholic beverages sold in response to a written solicitation.

(b) The biennial package store license fee is \$1,500.

(c) The holder of a package store license may not sell alcoholic beverages unless any stamps required to be affixed to the package by state or federal law are intact on the packages.

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

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

(f) When the holder of a package store license is also a holder of a beverage dispensary license and the package store premises are contained within or are adjacent to the premises of the beverage dispensary and the only public entrance to the package store is by a door or other means within the premises of the beverage dispensary, the board shall determine if additional entrances to the package store are necessary for enforcement purposes, to meet health and fire safety standards, or for the convenience of the public.

(g) If a shipment is to an area that has restricted the sale of alcoholic beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store licensee, agent, or employee

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Collateral references. — 48 C.J.S., Intoxicating
Liquors, § 96.

Zoning regulation in respect of intoxicating liquors.
9 ALR2d 877; 65 ALR4th 555.

Sec. 04.11.430. Person and location. (a) Each license shall be issued to a specific individual or individuals, to a partnership, including a limited partnership, or to a corporation. If the license is issued to a corporation, the registered agent of the corporation must be an individual resident of the state.

(b) Except for a license authorizing the sale of alcoholic beverages on a common carrier, a specific location shall be indicated on the license or permit as the licensed premises, the principal address of which shall be indicated on the license or permit. The mailing address of a licensee or, if the licensee is a corporation, the address of the registered office of the corporation must be kept current and on file in the main office of the board. (§ 2 ch 131 SLA 1980; am § 17 ch 93 SLA 1985)

Collateral references. — Transfer of retail liquor license or permit from one location to another. 98 ALR2d 1123.

Sec. 04.11.450. Prohibited financial interest. (a) A person other than a licensee may not have a direct or indirect financial interest in the business for which a license is issued.

(b) A person who is a representative or owner of a wholesale business, brewery, winery, bottling works, or distillery may not be issued, solely or together with others, a beverage dispensary license, a restaurant or eating place license, or package store license. A holder of a beverage dispensary license may be issued a brewpub license, subject to the provisions of AS 04.11.135. The prohibition against issuance of a restaurant or eating place license imposed under this subsection does not apply to a restaurant or eating place license issued on or before October 1, 1996 or a restaurant or eating place license issued under an application for a restaurant or eating place license approved on or before October 1, 1996.

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

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

(e) A holder of either a general wholesale license or a wholesale malt beverage and wine license may not be employed by or act as the agent or employee of the holder of a beverage dispensary or package store license.

(f) In this section, "direct or indirect financial interest" means holding a legal or equitable interest in the operation of a business licensed under this title. However, credit extended by a distiller, a brewery, or a winery to a wholesaler, or credit extended by a wholesaler to persons licensed under this title, or a consulting fee received from a person licensed under this title, is not considered a financial interest in a business licensed under this title. (§ 2 ch 131 SLA 1980; am §§ 5, 6 ch 111 SLA 1988; am § 4 ch 136 SLA 1996)

Revisor's notes. — Subsection (f) was formerly (c) and subsections (c)-(e) were formerly (d)-(f). Relettered in 1994.

Effect of amendments. — The 1996 amendment,

effective October 1, 1996, in subsection (b), inserted ", a restaurant or eating place license," in the first sentence and added the last sentence.

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 04.10.180 and earlier statutes.

The purpose of financial interest statute was to prevent evasion of the liquor control statutes and

regulations through the creation of hidden financial interests in liquor businesses unknown to the regulatory authorities or to the public. It helped insure that all persons with any financial interest in such businesses were answerable to the ABC Board. Barton v.

Lund, 563 P.2d 875 (Alaska 1977).

Interest, "direct or indirect," in a thing is held to embrace a legal or equitable interest. In re Martin's Retail Liquor License No. 1517, 15 Alaska 225 (1954).

Application to clubs. — The provisions of former section applied to clubs as well as to all other persons who might have or apply for any of the numerous types of licenses authorized to be issued by law. In re Alaska Labor Trades Ass'n, 10 Alaska 472 (1945).

Interest of manager in business prohibited. — Where the business affairs of the club, including the purchase and keeping and sale to members of liquor, are so inextricably intermingled with those of the manager of the club, the manager has an interest in the business and a license may not be lawfully issued. In re Alaska Labor Trades Ass'n, 10 Alaska 472 (1945).

This section was not controlling where the

party had a security interest, as opposed to a financial interest, in the license. Gibson v. Alaska ABC Bd., 377 F. Supp. 151 (D. Alaska 1974).

Statement of financial interest required. — A statement regarding financial interest of any other person in the business was required to be made by former AS 04.10.190, concerning the filing, form, and contents of an application, under the doctrine of "contemporaneous construction of the law." In re Martin's Retail Liquor License No. 1517, 15 Alaska 171 (1954).

Revocation of license for false statement. — A false statement in an application for a liquor license that the applicant was the only person interested was held so material to its issuance as to warrant revocation. In re Martin's Retail Liquor License No. 1517, 15 Alaska 171 (1954).

Collateral references. — 45 Am. Jur. 2d, Intoxicating Liquors, § 123.

Sec. 04.11.460. Prior public approval. (a) A new license or the transfer of location of an existing license may not be approved by the board in an area outside but within 50 miles of the boundaries of a municipality unless a petition asking that the license be issued or transferred within the area containing signatures of a majority of the permanent residents residing within one mile of the proposed premises is filed with the board.

(b) A license may not be issued in an area that is 50 miles or more from the boundaries of a municipality unless a petition asking that the license be issued within the area containing the signatures of two-thirds of the permanent residents residing within a radius of five miles of the United States post office station nearest to the proposed licensed premises, is filed with the board. If there are two or more United States post office stations in the vicinity of the proposed licensed premises, the nearest to the premises constitutes the point of beginning under this subsection. If there is no United States post office station within a radius of five miles of the proposed licensed premises, the applicant must obtain the signatures of two-thirds of the permanent residents residing within a five mile radius of the proposed licensed premises. A petition is not required for the renewal of a license issued in accordance with this subsection unless specifically required by the board.

(c) In this section, "permanent resident" means a person 21 years of age or older who has established a permanent place of abode. (§ 2 ch 131 SLA 1980; am § 3 ch 109 SLA 1983)

Revisor's notes. — In 1980, (b) of this section was rearranged for clarity.

Collateral references. — 45 Am. Jur. 2d, Intoxicating Liquors, § 155.

Article 6. Procedures for Public Influence.

Section

- 470. Objection
- 480. Protest
- 491. Local options
- 493. Change of local option
- 495. Removal of local option
- 497. Effect on licenses of prohibition of sale
- 499. Prohibition of importation after election
- 501. Prohibition of possession after election

Section

- 503. Effect on licenses of restriction on sale
- 505. Licensing after prohibition on sale except in premises operated by municipality
- 507. Procedure for local option elections
- 508. Establishment of perimeter of established village
- 509. Notice of the results of a local option election

7329 Arctic Boulevard • Anchorage, Alaska
Office (907) 344-1179 • Fax (907) 344-6656
Web Site: wildales.com • Email: beer@wildales.com

MAR 05 1999



Alaska State Legislature
Representative Norman Rokeberg
State Capital
Juneau, AK 99801-1182

March 4, 1999

Dear Representative Rokeberg,

Please do not pass House Bill 69. This bill does not address the problem of restaurant/brewery licenses only further complicates it. This bill only helps a small group of licensees while damaging the brewing industry as a whole. Forcing restaurant/breweries to buy a beverage dispensary license does not make sense. Economically it will not be feasible for most small would be restaurant/brewery to purchase dispensary license and in many cases a beverage dispensary license is not even available.

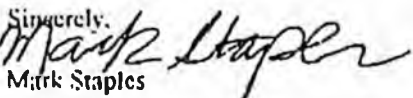
Furthermore forcing a business to sell spirits when they only want to serve beer and wine is ludicrous. Currently my direct competitors have "Grandfathered" Restaurant/ Brewery licenses, this license gives these breweries a huge advantage over my wholesale only brewery. As we are a small brewery and can't afford a dispensary license this bill as written will give my direct competitors Glacier Brew House an unfair advantage over my operation. This bill will allow them to sell beer at retail prices and also compete with me in liquors stores and in the on-premise draft business.

The brewing industry brings jobs and revenue to the State of Alaska, just a few years ago these jobs and revenues were leaving the State. As shown by two breweries going out of business in recent months, the brewing business is extremely difficult. This industry is still in its infancy with great potential for growth. Any legislation should encourage the growth of the brewing industry not make owning and operating breweries more difficult. I encourage you to change the law back to the way it was by allowing brewery licensees to also own a restaurant license (beer & wine).

I am adamantly opposed to any legislation which requires a brewery to go through a distributor. Currently distributors are controlled by the big three breweries (Bud, Miller, Coors). These breweries are increasing their effort to get "100 % piece of mind". They offer distributors incentive packages that local breweries could never compete with. The only thing we have going for us is that if the distributors don't do a good job representing our product, we can self distribute. If we are forced to use a distributor they will have no motivation to carry our products or do a good job of distributing them.

Thank you.

Sincerely,


Mark Staples
President

PUBLIC OPINION MESSAGE

Mr. Mark Staples
Midnight Sun Brewing Company
7329 Arctic Blvd.
Anchorage, AK 99518

907-261-6419

FEB 24 1989

TO: House committee of Commerce
Norm Rokeberg


REGARDING: House Bill 69

I am opposed to bill 69 for the following reasons:

1. This bill does not address the problem Restaurant/ Brewery licenses only further complicates it. This bill only helps a small group of special interest. Forcing restaurant/ breweries to buy a beverage dispenser license makes no sense. Economically it will be unfeasible for most small brewer/restaurants to purchase dispensary license. Forcing a business to sell spirits when they only want to server beer and wine is ludicrous. Also this requirement is out of line with most other states in union. This bill will give my direct competitors Glacier Brew House and Moses Tooth an unfair advantage over my operation as it allows them to sell beer at retail prices and also compete with me in liquors stores and the on premises draft business which I am not allowed to do.
2. Distributing- Requiring a brewery go through a distributor acts a bad precedent. Currently distributors are controlled by the big three breweries (Bud, Miller, Coors). These breweries are increasing there effort to get "100 % piece of mind". They offer distributors incentive packages that local breweries could never compete with. The only thing we have going for us is that if the distributors don't do a good job we can self distribute. If we are forced to use a distributor they will have no motivation to either carry are products or distribute them well.

Thank you.

Sincerely,


Mark Staples.

Audit Report

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

September 8, 1997



Audit Control Number:

04-1452-97

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830

September 8, 1997

FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF REVENUE ALCOHOLIC BEVERAGE CONTROL BOARD

September 8, 1997

Audit Control Number

04-1452-97

This review examines the activities of the Alcoholic Beverage Control Board (ABC Board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner. Alaska Statute 44.66.010 specifies that the ABC Board will terminate on June 30, 1998 and provides it with one year to conclude its affairs. We recommend that the legislature extend the ABC Board's termination date until June 30, 2002.

The audit was conducted in accordance with generally accepted government auditing standards. Field work procedures utilized in the course of developing the findings and discussion presented in this report are outlined in the Objectives, Scope, and Methodology section. Audit results may be found in the Report Conclusions, Findings and Recommendations, and Analysis of Public Need sections of the report.

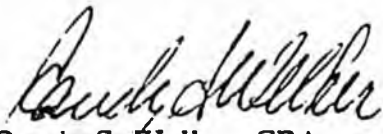

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

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

As required by legislative intent, this report shall be considered during the legislative oversight process in determining whether the ABC Board should be reestablished. The law currently specifies that the board will terminate on June 30, 1998. At that time, it will be given one year to conclude its affairs unless its termination date is extended.

Objectives

The ABC Board was created to regulate the manufacture, sale, barter, and possession of alcoholic beverages in order to protect the public health, safety, and welfare of citizens in the State. To this end, our primary objective in this audit was to determine whether there is a public need for the board and if it should continue to exist.

The secondary objective was to review the board's major functions of licensing, inspections, and investigations for effectiveness in meeting public need and for efficiency of operation.

Our report conclusions, findings and recommendations, and analysis of public need have been summarized in the appropriate sections of this report.

Scope

We reviewed ABC Board activity that occurred subsequent to the last sunset audit which was performed in 1993. The activity was evaluated to determine whether or not it has been in the public interest. We also reviewed the proceedings of the board to ensure that it complies with Alaska Statutes and regulations.

Methodology

We reviewed and evaluated the following during the course of our examination:

- Title 4 and other applicable Alaska Statutes.
- Title 15, Chapter 104 of the Alaska Administrative Code.
- ABC Board licensing files.

- ABC Board reading files.
- ABC Board operating budgets.
- Questionnaires sent out by us to municipalities, law enforcement agencies, and licensees.

In addition, we attended a board meeting via teleconference and listened to tapes of board meetings. We interviewed ABC Board staff and the executive director of the Cabaret, Hotel, Restaurant, and Retailers Association. We also contacted the state ombudsman, the Attorney General's office, the Division of Equal Employment Opportunity, and the Human Rights Commission.

ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (ABC Board or the board) was established in 1959 by Title 4 of the Alaska Statutes as a quasi-judicial agency. For administrative purposes the ABC Board is assigned to the Department of Revenue. The purpose of the board is to regulate the manufacture, barter, possession, and sale of alcoholic beverages in the State. Control is exercised through board review and consideration of liquor license applications for original issuance, renewal, and transfer, and also through revocation and suspension of licenses. The board's investigators also issue citations for Title 4 violations. In addition, the board has the power to propose and adopt regulations and to hear appeals concerning actions of ABC Board personnel.

The board is composed of five members appointed by the governor and confirmed by the legislature. Traditionally, appointed members represent all geographic areas of the State. Two of the members are required by statute to be representatives of the alcoholic beverage industry while the other three are public members. Board members are appointed for overlapping three-year terms. A director, appointed by the governor, serves as the executive officer and is responsible for enforcing Title 4 and regulations adopted by the board.

Title 4 specifies the type of licenses, licensing fees, and the activities allowed under each class of license issued by the board. Title 4 also establishes procedures for the issuance of new and renewal licenses.

ABC Board employees are charged with ensuring compliance with alcoholic beverage statutes by over 1,800 licensees. Employees provide three functions that include administration, licensing, and enforcement. These services are briefly described below.

Administration: The ABC Board director has a wide variety of administrative duties which provide support for the board. Responsibilities include oversight of staff, preparation of budget documents, and direction of special enforcement investigations and public hearings. The director and a secretary comprise the administrative staff.

Licensing: The three-member licensing staff is responsible for processing license applications, maintaining licensing records and files, collecting licensing fees, and answering licensing questions asked by the public.

Enforcement: The ABC Board currently has four investigators. Three are based in Anchorage, and one in Fairbanks. Investigators perform various duties that include

Alcoholic Beverage Control Board Members

Bob Klien, Chairman
Anchorage, Industry Member
Term expires January 31, 2000

Joe Thomas
Juneau, Industry Member
Term expires January 31, 1999

Bert Cottle
Valdez, Public Member
Term expires January 31, 1998

Ellen Ganley
Fairbanks, Public Member
Term expires January 31, 1999

Vacant since January 31, 1997
Public Member Seat

inspecting licensed premises, investigating complaints of suspected licensing violations, and responding to questions from licensees and the public. Investigators also monitor server training courses, and perform background checks on applicants. On occasion, they also give lectures relating to alcoholic beverage control laws and regulations on behalf of the board.

The ABC Board office is located in Anchorage. In FY 97, the board had an operating budget of \$642,500 for its activities and the nine staff positions.

REPORT CONCLUSIONS

In our opinion, the Alcoholic Beverage Control Board (ABC Board or the board) is operating in an efficient and effective manner and should continue to regulate the manufacture, sale, barter, and possession of alcoholic beverages in Alaska in order to protect the public's health, safety, and welfare. The board has provided protection through the issuance, renewal, revocation, and suspension of licenses. Protection has also been provided through active investigation of suspected licensing violations and enforcement of the State's alcoholic beverage control laws and regulations.

As indicated in the Analysis of Public Need section of this report, in our opinion the ABC Board has met the various statutory sunset criteria. With the exceptions noted in the Findings and Recommendations section of this report, we believe that the board is effectively meeting its statutory responsibilities.

We have reviewed the activities of the ABC Board since the last sunset review and, in our view, it is operating in the public interest. We recommend that Alaska Statute 44.66.010(a)(1) be amended to extend the life of the ABC Board to June 30, 2002.

Status of Prior Audit Recommendations

The previous sunset audit, dated December 3, 1993, made two recommendations to the Department of Revenue and the ABC Board. Only one of these recommendations is of continuing significance. In response to that recommendation, the board has implemented additional controls to ensure that the liquor license fee sharing program complies with AS 04.11.610. Current Recommendation No. 2 addresses the remaining problems in this area.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Alcoholic Beverage Control Board (ABC Board or the board) should take steps to ensure that objections from affected neighborhoods are considered prior to the issuance, transfer, or renewal of a license.

The board considers two types of protests when determining whether to issue, renew, or allow the transfer of a license, those from individual citizens and those from local governing bodies. The first type of protest is allowed under AS 04.11.470, as follows:

A person may object to an application for issuance, renewal, transfer of location, or transfer to another person of a license, or for issuance of a permit, by serving upon the applicant and the board the reason for the objection.

The board may decide to hold a public meeting to hear testimony on the license in question based upon the objection, but regardless of whether a public hearing is held, the board is required to consider the objections it has received when deciding whether to grant licensure.

The second type of protest is allowed under AS 04.11.480, as follows:

A local governing body may protest the issuance, renewal, relocation, or transfer to another person of a license by sending the board and the applicant a protest and the reasons for the protest within 60 days of receipt from the board of notice of the application. . . . If an application or continued operation is protested, the board shall deny the application or continued operation unless the board finds that the protest is arbitrary, capricious, and unreasonable.[Emphasis added]

If there is a license available, and the premise being considered meets licensing requirements, the board generally only denies licensure on the basis of a criminal background of the applicant, or a protest from the local governing body. During our review we noted several instances when licenses were issued or transferred despite ardent objections from concerned citizens or residents of the affected neighborhood. In only rare instances did the board deny licensure based on citizen objections.

There appears to be a lack of communication between the board and most municipalities. The board expects local governing bodies to consider neighborhood objections regarding the issuance, transfer, or renewal of a license when deciding whether to file a protest of licensure. We understand that the board considers denial of a license based solely on neighborhood objections to be tantamount to overriding the local governing body's wishes. However, only one of the thirty municipalities responding to our survey indicated

that neighborhood objections were considered when deciding whether to file a protest. Most indicated that protests were usually based on unpaid taxes. (See the Summary of Questionnaires Sent to Municipalities at Appendix D, No. 2.)

If neighborhood objections are of primary concern to neither the board nor the local governing body, then the board may be issuing some licenses without proper consideration of those objections. There should be a clear understanding between the board and local governing bodies regarding who is responsible for considering objections from concerned citizens regarding licensure. That understanding should also be made known to members of the public who may wish to express concerns regarding the issuance, renewal, or transfer of a license.

Recommendation No. 2

The board should review the liquor license fee sharing program to ensure these funds are properly used.

Alaska Statute 04.11.610. *Refund to municipalities.* states:

(a) Biennial license fees, excluding annual wholesale license fees, collected within a municipality shall be refunded semi-annually to the municipality.

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

(c) The Department of Revenue shall recover any amounts erroneously refunded under (a) of this section.

Senate Journal Supplement No. 23, dated April 1, 1980, accompanied the bill under which this statute was adopted. It contained a section analysis of the proposed rewritten statute. It stated that the purpose of the refunds was

. . . to provide an incentive to municipalities to actively enforce liquor laws, and the authority to grant, deny and recover refunds of license fees is intended to further that purpose.

No standards established for the use of the liquor license fee refunds

The purpose of liquor license fee refunds to municipalities is to provide an incentive for them to actively enforce ordinances, laws, and regulations relating to the manufacture and sale of alcoholic beverages. However, the board has no mechanism in place to determine if the refunds are used for such enforcement.

The results of our surveys during this review, and those in our 1993 sunset review, showed that most of the refunds are deposited into general fund accounts and used as a source of funding for all municipal operations. Only three of the 30 municipal respondents to our current survey indicated that the refunds were used to fund law enforcement activities. (See the Summary of Questionnaires Sent to Municipalities at Appendix D, No. 7.) The board does not currently require any documentation indicating how the refunds are used by the recipients.

We believe municipalities should be required to show that they are funding enforcement activities at greater than or equal to the refund amount. The current board director has indicated that he intends to introduce regulations at the next board meeting that would require such evidence.

During our prior audit, we took exception to the board's practice of refunding license fees to municipalities whose only local enforcement of liquor laws was provided by Village Public Safety Officers (VPSO) and/or State Troopers. It was, and still is, our contention that because these enforcement agencies are state funded,¹ their presence in the community does not constitute local enforcement of liquor laws.

As a result of our prior audit, the board's staff inquired as to how fee sharing funds were being spent by communities. Subsequently, four communities were dropped from the program. However, the board still holds that in some instances the presence of a VPSO in a community is sufficient to qualify a community for fee sharing. It is still refunding license fees to four communities that have only VPSO enforcement. As stated above, we disagree with this assessment. However, the issue will be a moot point if the board implements regulatory changes requiring municipalities to provide evidence that they are funding enforcement activities at a level at least as great as that of the refunds they receive.

¹ In the case of VPSOs, nonprofit Regional Corporations may contribute to the program as well. Further, per 13 AAC 96.040, the village where the VPSO serves is only required to provide office space, a telephone with long distance service, and a place to temporarily hold individuals under arrest, therefore, these contributions may not constitute an adequate contribution to the program.

Recommendation No. 3

The Alcoholic Beverage Control Board should take measures to ensure that license fees refunded to municipalities as part of the revenue share program are correct.

The liquor license fee sharing program lacks sufficient controls to ensure that the correct amounts of liquor license fees are refunded to eligible municipalities. ABC Board personnel maintain the data base used to determine the amount of license fees to be refunded. Twice a year a license fee revenue report is sent to the Department of Revenue's Income and Excise (I&E) Audit division. I&E issues refunds based on this report.

ABC Board employees reconcile payments made by I&E to the amount that the board requested them to make. Board employees also review the license fee revenue reports to ensure that refunds are requested for only eligible municipalities. However, no review is conducted to ensure that the amount of refund requested for each municipality is accurate. When errors are made in the amount or destination of the refunds, they may not be identified in a timely manner, if ever.

For example, during our review, we discovered errors in license fee revenue reports submitted to I&E in both FY 96 and FY 97. None of the errors we found had been detected by the board's control systems. In FY 96, we found two errors. In one instance, \$1,500 that should have been sent to Seldovia was sent to Seward. In the second instance, license fees collected for the city of Soldotna were not totaled correctly, resulting in an underpayment of \$11,680.

In FY 97, municipalities were overpaid a total of \$107,700. This occurred because both the license fee revenue reports for the year included license fees collected in December. Therefore, municipalities were paid twice for December collections.

Controls should be put in place to ensure the accuracy of the license fee revenue refund reports.

Increasing the level of ABC enforcement is a policy issue. Central to that issue is the degree to which various law enforcement costs should be paid by the State and which costs should be paid by local law enforcement agencies. If the State is to take the enforcement lead, it must then determine how much police power to give to the board. This issue is discussed in the Auditor's Comments section.

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

Several statutory changes pertaining to the liquor industry have been implemented or proposed during our audit period. We find these changes, which were either proposed or supported by the board, to generally be of benefit to the public. The most significant statutory changes that have been implemented or are currently being considered can be categorized into four groups: brewpubs, expansion of what constitutes a Title 4 violation, inclusion of limited liability companies, and increased enforcement issues.

The increased popularity of "brewpub" establishments across the country and within the State has led to statutory changes. A brewpub is an establishment where beer is manufactured and served on the same premises. Prior to 1988, Alaska statutes prevented the establishment of a brewpub type business because brewery licensees could not hold a beverage dispensary license. The 1988 legislation created the brewpub license classification, but limited the amount of malt beverage that could be produced in a brewpub. Only beverage dispensary licensees were allowed to obtain a brewpub license.

During the early 1990's several distillery or brewery licensees obtained restaurant/eating place licenses in order to serve the beer they brewed in their restaurants. Thus, they circumvented the limitations imposed on brewpubs. Recent statutory changes, as well as some additional proposed changes put the various licenses on more equal footing.

Some statutory changes have been implemented to increase the level of accountability for persons other than just the licensees under Title 4. Alaska Statute 04.16.025 and AS 04.16.050 were amended to make being present in a bar after hours and underage possession of alcoholic beverages Title 4 violations.

Alaska Statute 04.16.051 was passed to establish a penalty for criminally negligent serving of alcoholic beverages. Repeat offenders are guilty of a class C felony. This means that a person who repeatedly serves alcohol to underaged persons may be sentenced to up to five years in prison.

Statutory changes in the area of limited liability companies were directed at ensuring that these companies are held to the same standards as other entities which hold liquor licenses. Modifications to statutes added limited liability companies to the list of those entities that require written ABC Board consent to receive controlling interest in a liquor license. A new section of statute has been proposed by the board to require a limited liability company to

conform to the requirements placed on corporations and partnerships for reporting substantial changes in ownership to the board.

Proposed changes being considered in the areas of enforcement authority are discussed in the Auditor's Comments section of this report.

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

As noted in Recommendation No. 1, we have some concerns regarding the level of consideration the board gives to objections from concerned citizens on the issuance, renewal, or transfer of a license.

However, public participation is encouraged at each board meeting. Title 4 requires that the board meet in each of the four judicial districts of the State at least once each year. These meetings are advertised in local newspapers and are open to the public. Time for public comment on each board meeting agenda item is allowed.

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

As required by statute, when new regulations are being adopted notices are mailed to all known interested parties. Public hearings are held in a further effort to receive public input. As noted above, all board meetings are noticed and open to the public. Our reservations regarding the level of consideration given to objections to the issuance, renewal, or transfer of a license are discussed in Recommendation No. 1.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

The Office of the Ombudsman received ten complaints about the board during the period from July 1, 1993 through June 30, 1997. The Ombudsman declined to pursue three of the cases: one because the complainant refused to allow his identity to be disclosed to the agency, one because the action in question took place over a year prior to the complaint, and one because of a lack of evidence. Two complaints were attributable to a misperception about the board's function. Three cases involved unresponsive or rude agency personnel, and two complaints involved the board issuing licenses despite public objection. None of the complaints appear serious enough to raise doubts about the ability of the board to function in the best interest of the public. However, complaints about the board issuing licenses despite

public objection lend credence to concerns about the consideration of local objections to the issuance of licenses. See Recommendation No. 1.

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

The board reviews liquor license applications to determine if the applicants meet certain statutory qualifications. If a license is available and if the applicant meets the requirements, the board issues the license. Our review of applicants' files disclosed no violations of those requirements. The board may also impose fines or may suspend or revoke licenses or permits previously authorized, if it finds that it would be in the best interest of the public. The actions taken by the board are summarized below:

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98*	Total
Fines	1			3	5	2	11
Suspensions		3	5	3	3	1	15
Renewal Denial	3	1		1	1		6
Revocation	3		1		1		5
Actions Pending						5	5
Total	7	4	6	7	10	8	42

*FY 98 information covers July 1, 1997 through the end of our fieldwork on Sept. 8, 1997.

These statistics indicate that the board is somewhat active in imposing disciplinary actions against licensees. However, the industry representation on the board may lend itself to bias, particularly given the subjective nature of many of the decisions to impose license sanctions. We understand that the board's industry members often cast votes favorable to the licensee, whereas public members are more likely to vote for stronger licensing action, or to deny licensure. One of the board's three public member seats has been vacant since January 31, 1997, leaving a two to two split between public members and industry members. Perhaps the interests of the public would be better served by amending AS 04.06.020 to increase the number of public members or to decrease the industry representation on the board.

The board is required to take licensing action when it finds certain violations have occurred on licensed premises, such as gambling or prostitution. As part of our review in this area, we asked law enforcement agencies if they notify the board's enforcement staff when arrests are made on licensed premises. Fourteen of the 31 respondents indicated that they rarely or never shared this information with the enforcement staff. This raises concerns regarding the ability of the board to make informed decisions when considering whether license actions are necessary. We discuss this issue further in the Auditor's Comments section of this report.

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

We found no evidence of hiring practices or board appointments that were contrary to state personnel practices. No complaints have been filed with either the Division of Equal Employment Opportunity or the Human Rights Commission.

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

Please refer to the Findings and Recommendations and Auditor's Comments sections of this report.

AUDITOR'S COMMENTS

Through the audit process we became familiar with the various aspects of the Alcoholic Beverage Control Board's (ABC Board or the board) operations. The Auditor's Comments section of this report is based on our general observations. The purpose of this section is to bring certain policy matters to the attention of the legislature and to encourage public debate.

The board's purpose is described in AS 04.06.090, as follows: "*The board shall control the manufacture, barter, possession, and sale of alcoholic beverages in the state.*" The board fulfills its responsibility by licensing establishments to manufacture, distribute, or sell alcoholic beverages to the public and by enforcing the alcohol control laws contained in Title 4 and in the underlying regulations.

ABC investigates illegal gambling and prostitution

The ABC Board staff have conducted gambling investigations, in cooperation with the Alaska State Troopers (AST), Division of Charitable Gaming personnel, local police, and district attorneys. The board believes that there is a strong connection between gambling, prostitution, and alcohol sales, that local police often do not investigate these crimes, and that the current ABC investigators are some of the most knowledgeable enforcement personnel in the State on these issues. For these reasons, the board has allowed its staff to investigate these crimes on licensed premises.

Under AS 04.06.110, the exercise of peace officer powers, such as investigating gambling and prostitution, must be approved by the commissioner of the Department of Public Safety (DPS). The commissioner has granted these powers to ABC investigators.

We acknowledge the board's concern in this area and suspect that it may be justified. We also understand that the current ABC investigators are all ex-police officers and would very much like to address other crimes they see. However, we must point out that such investigations are contrary to current law. The very statute that allows this delegation of peace officer powers also stipulates that

[p]owers granted by the board under this section may be exercised only when necessary for the enforcement of criminally punishable provisions of this title, regulations of the board, or other criminally punishable laws and regulations governing the manufacture, barter, sale, consumption, and possession of alcoholic beverages in the state. [Emphasis added]

Gambling and prostitution are not regulated under Title 4; the board cannot conduct these criminal investigations.

The board's responsibility in this area strictly relates to the licensing aspects. Alaska Statute 04.11.370(a)(8) requires that a license or permit be suspended or revoked if the

board finds that illegal gambling has occurred on the premises. In addition, subsection (a)(7) of this statute requires suspension or revocation if the board finds

. . . use of a licensed premise as a resort for illegal possessors or users of narcotics, prostitution, or promoters of prostitution; in addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort of illegal possessors or users of narcotics, prostitution, or promoters of prostitution.

While we understand that the board may be hesitant to revoke a license because of the difficulty of proving the "general reputation" of the premises, we must point out that an ABC criminal investigation of specific individuals is not required nor even allowed.

Given the board's responsibility to take a licensing action in these situations, we find it disturbing that only 14 of the 31 law enforcement agencies responding to our survey indicated that they always notify the ABC Board's enforcement staff of arrests made on licensed premises. (See Appendix E, No. 3.) Perhaps the board should periodically survey law enforcement agencies and consult the available databases to determine if licensing actions are required.

Board is considering allowing investigators to carry firearms

As discussed above, ABC investigators have been given peace officer powers to conduct criminal investigations into gambling and prostitution. In addition, ABC board has been given the authority to issue citations for Title 4 infractions that involve parties other than licensees. For example, investigators may use this authority to cite underage individuals using forged identification to enter bars and possess alcohol, or to cite package store clerks who have sold alcohol to underage customers.

While the risks in a gambling or prostitution investigation may be more apparent, there is also a risk to ABC Board investigators in the citation process. Even though the citation authority does not grant investigators the right to make physical arrests, a person may refuse to accept the citation. We understand that the investigator can then either make a citizen's arrest or call a Trooper or a police officer to make the arrest. The board believes that neither of these options is satisfactory and may expand the investigator's authority to allow them to make physical arrests. If this is authorized, firearms would be needed. Firearms would also be appropriate in police actions involving after-hours clubs.

Regulation 15 AAC 104.505 specifically prohibits the board's investigators from carrying firearms in the performance of their duties. Yet, the board's investigators believe that due to the increasing presence of firearms in our society and the nature of their jobs, they need to carry firearms to protect themselves and to properly execute their duties. The board's director is researching the implications of repealing this regulation and allowing investigators to carry firearms.

We are skeptical of this course of action. Although the current investigators are all ex-police officers and would like to carry weapons, the primary issues here are employee safety, training and ongoing currency requirements for firearms, liability concerns, and of course the need for such a weapon. In the direction the board is going with the peace officer powers, firearms would be appropriate. However, the question as to whether this agency should be a police force or a licensing board should be addressed first.

Police functions could be retained by the Department of Public Safety

As discussed above, through DPS delegation and board action, ABC is trending toward and may very well become a police force, albeit limited in scope. We observe that DPS is the state's police force and is "geared up"³ to perform this type of function. To splinter off police functions may not be effective nor efficient.

Criminal investigations into gambling and prostitution as well as arrests or citations for Title 4 crimes, such as underage drinking or over serving, could be handled by DPS or local police departments. It is primarily a question of where the funds for these investigations are to be appropriated. Of course, how much emphasis the State should place on these investigations is a valid question that must be answered, but the answer is the same regardless of which department handles the enforcement. Although these are perhaps less serious crimes than many investigated by DPS, enforcement actions need not be slighted. DPS could set up a dedicated gambling, prostitution, and alcohol team if the legislature believed it to be necessary. Through the budget request and hearing process, the legislature could ensure that the appropriate emphasis continues.

We believe that retaining the police functions in DPS would not adversely impact the board's licensing function. This licensing function should be retained in the Department of Revenue. The board's mandated role of taking licensing actions when certain crimes are committed requires communication with police, but not a police force of its own. The board should focus its efforts on licensing issues.

³ DPS has already addressed the administrative and operational problems inherent in building a police force while the ABC Board has not. For example, AS 39.25.110 requires that ABC Board employees who have been given peace officer powers to be exempt employees. As noted above, these powers have been delegated, yet, all board employees are still members of either the general government or supervisory bargaining units.

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APPENDICES

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APPENDIX A
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
Summary of Revenues and Expenditures
Fiscal Years 1994 through 1997

	<u>FY 94</u>	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>
<u>Revenue</u> (From Schedule 1 below)	\$2,471,235	\$1,789,865	\$1,938,944	\$1,701,383
Less: Transfers to Municipalities (Note 1)	<u>1,340,900</u>	<u>900,225</u>	<u>886,170</u>	<u>873,750</u>
<u>Net Revenue</u>	1,130,335	889,640	1,052,774	827,633
Less: Expenditures (Note 2)	<u>574,900</u>	<u>675,941</u>	<u>641,643</u>	<u>642,579</u>
<u>Excess of Revenue Over Expenditures</u>	<u>\$ 555,435</u>	<u>\$ 213,699</u>	<u>\$ 411,131</u>	<u>\$ 185,054</u>

Schedule 1 - Revenue

Liquor License Application Fees	\$ 298,250	\$ 255,450	\$ 283,713	\$ 264,282
Pub Licenses	400	800	-0-	800
Brewery Licenses	2,000	6,000	6,000	8,000
Distillery Licenses	1,000	-0-	1,000	-0-
Beverage Dispensary Licenses	1,202,050	816,100	857,800	783,750
Club Licenses	78,400	47,450	56,400	48,700
Common Carrier Licenses	86,775	43,750	88,025	32,200
Restaurant Licenses	139,950	103,200	112,050	103,350
Theater Liquor License	-0-	-0-	-0-	600
Retail Store Licenses	471,375	326,625	310,200	316,250
Wholesale Licenses	139,000	128,500	138,500	96,900
Malt Beverage & Wine Wholesale License	3,500	6,100	3,000	1,800
Miscellaneous (Note 3)	<u>48,535</u>	<u>55,890</u>	<u>82,256</u>	<u>44,751</u>
<u>Total Revenues</u>	<u>\$2,471,235</u>	<u>\$1,789,865</u>	<u>\$1,938,944</u>	<u>\$1,701,383</u>

(Note 1) In accordance with AS 04.11.610, refunds of annual license fees, excluding annual wholesale license fees, collected within a municipality are to be given to the municipality semiannually. The total of these refunds is the "Transfers to Municipalities" amount. The FY 97 amount was adjusted for errors we found in the license fee revenue reports. See Recommendation No. 3.

(Note 2) Expenditures do not include encumbrances.

(Note 3) The miscellaneous revenue account includes fees from various low-volume licenses (theater, recreational sites, and municipal golf courses) and permits (caterer, special events, restaurant caterer, club license caterer, and restaurant designation).

Source: Alcoholic Beverage Control Board and the Alaska State Accounting System.

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APPENDIX B
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
Number of Licenses by Category
Calendar Years 1993 through 1997 (Note 1)

<u>License Categories</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Pub	1	1	1	1	1
Brewery	3	5	8	14	15
Distillery	1	1	1	1	1
Brewpub	0	2	3	2	2
Beverage Dispensary	690	689	685	680	673
Club	86	86	85	86	84
Common Carrier	212	202	209	218	206
Restaurant	324	337	348	359	345
Theater	1	1	1	1	1
Retail Store	446	440	439	437	429
Wholesale	22	22	21	21	20
Recreational Site	23	24	23	23	23
Municipal Golf Course	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
<u>Total Licenses</u>	<u>1,810</u>	<u>1,811</u>	<u>1,825</u>	<u>1,844</u>	<u>1,801</u>

(Note 1) Calendar year-end data is shown for 1993 through 1996. The 1997 data is as of September 1, 1997.

Source of Information: Alcoholic Beverage Control Board

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APPENDIX C
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
Licenses, Permits, and Fees
FY 94 through FY 97

TYPES OF LICENSES	BIENNIAL FEE
Application Filing Fee	\$ 200.00
Beverage Dispensary License - Half Year	1,250.00
Beverage Dispensary License - Tourism - Half Year	1,250.00
Beverage Dispensary License	2,500.00
Beverage Dispensary License - Duplicate	2,500.00
Beverage Dispensary License - Tourism	2,500.00
Beverage Dispensary License - Tourism - Duplicate	2,500.00
Beverage Dispensary License - Public Convenience	2,500.00
Beverage Dispensary License - Community License	2,500.00
Bottling Works License	500.00
Brewery License	1,000.00
Brewpub License	500.00
Club License	1,200.00
Club License - Half Year	600.00
Club License - Public Convenience	1,200.00
Common Carrier License	700.00
Common Carrier License - Half Year	350.00
Distillery License	1,000.00
Package Store License	1,500.00
Package Store License - Half Year	750.00
Package Store License - Tourism	1,500.00
Package Store License - Public Convenience	1,500.00
Package Store License - Community License	1,500.00
Pub License (University)	800.00
Recreational Site License	800.00
Recreational Site License - Half Year	400.00
Restaurant/Eating Place (Beer & Wine only)	600.00
Restaurant/Eating Place (Beer & Wine only) - Half Year	300.00
Restaurant/Eating Place (Beer & Wine only) - Tourism	600.00
Restaurant/Eating Place (Beer & Wine only) - Public Convenience	600.00
Retail Stock Sale License	100.00
Theater License	600.00
Wholesale License - General (Basic Fee)	2,000.00
Wholesale License - Malt Beverage & Wine	400.00
Winery	500.00

Source of Information: Alcoholic Beverage Control Board.

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APPENDIX D
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
Summary of Questionnaires Sent to Municipalities

Questionnaires sent: 50

Responses received: 30 (60%)

1. Is your city or borough given adequate notice by the Alcoholic Beverage Control (ABC) Board of proposed issuance of new licenses and/or transfers of existing licenses?

Number of Responses:

24 Yes
3 No
1 No response
2 NA to our city

2. Since 1994, has your city or borough protested the issuance of a new license, renewal of a license, or the transfer of a license?

Number of Responses:

7 Yes
20 No
3 No response

If yes, what criteria has the city or borough used to protest a license?

Comments:

Almost all respondents indicated that failure to pay taxes would cause the municipality to protest the licensure. One respondent listed neighborhood protest as a reason for protest. Two listed excessive disturbances or police reports.

3. Have protests lodged by the city or borough resulted in a hearing by the ABC Board or by a hearing officer appointed by the Governor?

Number of Responses:

4 Yes
12 No
7 No response
7 Not applicable

4. Does the current system of notification/protest/hearing enable local government's opinions to be heard during the licensing process?

Number of Responses:

17 Yes
5 No
7 No response
1 NA to our city

If no, should local governing bodies be:

8 More involved in the licensing process?
0 Less involved in the licensing process?

One respondent commented that no matter what the city's opinion, licenses would be approved anyway.

5. Are there existing alcoholic beverage control laws or regulations that are obsolete, vague, unduly restrictive and/or inadequate?

Number of Responses:

1 Yes
20 No
10 No response

If yes, please cite the law or regulation and why you believe it is obsolete, vague, unduly restrictive and/or inadequate.

There were no comments.

6. What changes in the ABC Board's policies or alcoholic beverage control laws and regulations could be made that would enable your local governing body to better serve the public?

Typical Comments:

The board should extend more support to local government for enforcement of "overservice" laws and for controlling the hours of operation.

Have an office here in Fairbanks that has a clerk/receptionist or a secretarial position in order to make contact with the locally based inspector/agent a little easier. Another inspector would be nice also.

7. If alcoholic beverage license fees are refunded to your city or borough by the ABC Board, what are funds used for?

Comments:

Eight responses stated that license fee refunds go to the general fund or for municipal operations.

Three responses reported that they are used for police or public safety.

The remainder were nonresponsive.

8. Do you have any other comments you would like to make?

Comments:

ABC is responsive & responsible - we feel overall it's a good agency.

I believe individual members of the board are unduly influenced by individuals applying political and personal pressure.

I have enjoyed working with the staff of the ABC Board. They have made my job much easier.

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APPENDIX E
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
Summary of Questionnaires Sent to Law Enforcement Agencies

Questionnaires sent: 44

Responses received: 31 (70%)

1. Are you aware of the existence of the Alcoholic Beverage Control (ABC) Board, its operation, and its role in the enforcement of ABC laws and regulations?

Number of Responses:

29 Yes
0 Enforcement role is not well known
1 Aware of board but have never seen any enforcement
1 Not aware of its role in enforcement

2. Do you feel the enforcement staff of the ABC Board complements, duplicates, or conflicts with the efforts of your law enforcement personnel?

Number of Responses:

24 Complements
2 Duplicates
1 Conflicts
5 None of the above

* One respondent marked two choices

Comments:

They provide assistance & information we often do not have resources to access.

Law enforcement by the ABC Board is nonexistent for all practical purposes.

As a police department it is very difficult to enforce and be up to date on all liquor requirements.

3. Do you share investigative information with the ABC Board's enforcement staff and notify them of arrests made on licensed premises?

Number of Responses:

14 Yes, always share information
4 No, never share information
10 Occasionally ABC is sent copies of liquor related arrests and reports
3 No response provided

4. Are there any existing alcoholic beverage control laws or regulations that you feel are obsolete, vague, unduly restrictive and/or inadequate?

Number of Responses:

8 Yes
22 No
1 No response provided

If yes, please cite the law or regulation and why you believe it is obsolete, vague, unduly restrictive and/or inadequate.

Typical Comments:

AS 04.16.049 - parents should not be allowed by statute to take children into bars.

Let them have statutory authority to investigate gambling and prostitution on licensed premises.

AS 04.16.030 - The elements of intent need to be changed from criminal negligence to recklessly when applied to the server's responsibility for over pouring.

5. Have the ABC investigators provided training sessions to your local police officers?

Number of Responses:

6 Yes
25 No

If yes, were the sessions informative and worthwhile?

All six respondents indicated that the training was worthwhile, but one stated that "with staff reductions training has been nonexistent. ABC training is vital to our mission."

If no, have you requested training?

Fifteen of the respondents stated that they have not requested training.

Comments included the following:

There is not enough enforcement personnel to provide it.

We did not know that training was available.

We have not received training from the ABC Board, but they always answer our questions on the phone.

6. If alcoholic beverage license fees are refunded to your city or borough by the ABC Board, what are funds used for?

Comments:

Five of the respondents stated that refunded license fees are put into the general fund for city use, and two indicated that fees were not refunded to the city or borough.

Two of the questionnaires stated that the refunds were used for some type of law enforcement activity.

All the remaining questionnaires were either left blank for this question or were answered by a "don't know" type of response.

7. Are there any additional comments you would like to make?

Typical Comments:

ABC investigations should be turned over to AST & the District Attorney or AG.

The ABC Board has always been a valuable resource for us and have always assisted when requests have been made.

I would like to see more support for rural police to combat crime.

The ABC Board's excellent work is only limited by current funding that I believe should be vastly increased. I have never made an arrest where alcohol was not a factor. Any action that would further limit the ability to regulate or control its abuse or distribution would be a grave error.

It would be helpful to know what types of complaints investigators respond to and investigate in our community.

I have worked in other states and found out of state ABC staff to have solid budgets, strong powerful state laws and enough field staff to keep a handle on the liquor business. Alaska has none of these tools.

I hope the state of Alaska would stop its soft stance on alcohol issues and give the Alaska ABC staff the tools they need, i.e.: 1) Full law enforcement authority, 2) More field and license investigators, 3) Authority to seize or suspend a liquor license immediately pending full board review, 4) Laws that are clear to enforce without built in defenses, 5) Require local law enforcement to report all criminal acts on license premises (Title 4), 6) Travel & training budget, and 7) Funding for undercover operations.

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APPENDIX F
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
Summary of Questionnaires Sent to Licensees

Questionnaires sent: 109

Responses received: 38 (35%)

1. When you deal with the Alcoholic Beverage Control (ABC) Board staff, do you find them to be:

	<u>Yes</u>	<u>No</u>	<u>No Response</u>
Pleasant	35	3	0
Knowledgeable	35	3	0
Responsive	34	4	0

2. Has your facility received an inspection by an ABC Board investigator?

Number of Responses:

27 Yes

10 No

1 Respondent Unsure

Approximate number of inspections by year:

<u>Year</u>	<u>Inspections performed</u>	<u>Inspection not performed</u>	<u>No response</u>
1994	11	21	6
1995	14	17	6
1996	13	19	6
1997	16	17	6

3. Do you feel ABC enforcement procedures are effective and are applied equitably to all licensees?

Number of Responses:

29 Yes

5 No

4 No response

4. Have you ever attended a Board meeting or otherwise offered public comment to the Board?

Number of Responses:

15 Yes

23 No

If yes, were your comments well received and acknowledged by the Board?

Ten respondents stated "yes," one stated "acknowledged," and four did not respond.

5. Do you receive notice and information about proposed regulation changes in a timely manner so that you are able to participate in the hearings?

Number of Responses:

32 Yes

3 No

3 No response

6. Are there any existing alcoholic beverage control laws or regulations that you feel are obsolete, vague, unduly restrictive and/or inadequate?

Number of Responses:

13 Yes

19 No

6 No response

If yes, please cite the specific law or regulation and why you believe it is obsolete, vague, unduly restrictive and/or inadequate.

Typical Comments:

Statutes regarding minors on premises are confusing.

AS 04.16.15 - happy-hour discounts should be allowed.

7. Are there any additional comments you would like to make?

Typical Comments:

I think the board does a good job and in no way should be eliminated.

We don't need more government. Have the ABC board go the way the parking authority did.

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

November 21, 1997

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

Pat Davidson
Acting Legislative Auditor
P.O. Box 113300
Juneau, AK 99811-3300

RECEIVED
NOV 24 1997
LEGISLATIVE AUDIT.

Ms. Davidson,

You have asked that I review and respond to the portion of your audit dealing with the criminal investigation powers that are currently being exercised by the investigators at Alcoholic Beverage Control Board.

The issue of what police powers, if any, should be exercised by this group is a very important one, and one that we are giving and have given close attention. The current delegation is very narrow. It came about only after the situation was reviewed by this office (Deputy Commissioner Deborah Vogt); the Department of Public Safety (Deputy Commissioner Del Smith); the Department of Law (Chief Prosecutor Cindy Cooper) and Assistant Attorney General Linda O'Bannon; and the Director of the ABC Board, Doug Griffin. The ABC Board also reviewed the issue.

I agree with you that the ABC Board does not have the power to confer police powers on its staff relating to crimes not covered in Title 4 (AS 04.06.010 - AS 04.16.172). Nothing in Title 4 gives the Board that power. As you point out, the Board is restricted to authorizing staff to exercise police powers with respect to violations of Title 4.

However, we are charged with the duty to police the bars and taverns and other establishments selling alcoholic beverages in the state. We have perceived that there is a real need to address certain types of criminal activity taking place in those establishments. We have approached the issue from the perspective of the public, and have looked for a cost-effective way to provide that service to the public. Like many other agencies in the state, we are looking for ways to accomplish tasks, and cooperate on the provision of services, whether or not those services cross strict agency lines. Obviously, it is within the purview of Title 4 to discover whether gambling and prostitution are taking place on licensed premises, since licenses can be revoked if the Board finds these activities are taking place. AS 04.11.370(a)(7). This statute puts our investigators in a position to discover and observe criminal activity by third parties who are not licensed under Title 4. It is, as you acknowledge unlikely that local or state police will investigate these crimes.

As a result, we were persuaded that it would be cost effective and efficient if our investigators were authorized to investigate illegal gambling and prostitution on licensed premises. Commissioner Otte named certain individuals on the ABC Board staff to exercise these powers. He did so not under AS 04.06.110, but rather under AS 18.65.010. This statute authorizes the commissioner of public safety to:

appoint as special officers qualified police officers of the federal, state or local government units or other persons with adequate police training over the age of 19 years, as the commissioner considers necessary to aid and assist the division of state troopers in the enforcement of the criminal laws of the state. Each special officer appointed serves without compensation and at the pleasure of the commissioner of public safety and appointments shall be of limited duration.

The commissions that Commissioner Otte has made are to specific individuals who have the police training that Commissioner Otte finds sufficient. They are for a limited duration. I have attached a copy of one such Certificate of Commission as Special Officer.


I want to assure you that we have no intention of permitting the ABC investigators to spend a disproportionate amount of time on these activities. We do not intend to create a vice squad at the ABC Board. Their mission continues to be to investigate and enforce the provisions of Title 4. But it seems efficient and cost effective to follow through with the peripheral, third party aspects of violations of AS 04.11.370(a)(7).

We intend to move very slowly and carefully in this area. I share your concerns that it may not be appropriate for ABC Board investigators to carry firearms. As you note, the Director has initiated an inquiry into the ramifications of such a decision. You raise a number of the concerns he is looking at: employee safety, training and ongoing currency requirements, and liability concerns. To the extent that such a decision would necessitate additional funding (as the training and currency requirements well might), it is unlikely that the funding would be made available.

You recommend that police functions remain in Public Safety, and that the ABC Board limit itself to the parameters of Title 4. Commissioner Otte and I do not agree. We believe that the proximity of ABC investigators to the subjects of these investigations, together with their similar Title 4 statutory duties, makes it efficient for ABC investigators to exercise limited police powers with respect to certain crimes on licensed premises. The simple fact is that if they don't do it, no one will. While gambling and prostitution on licensed premises may not rise to a sufficient level

of importance within the troopers to warrant investigation, the balance looks quite different when the ABC investigators are considered. Given the small amount of additional effort, beyond what they would otherwise be expending, it becomes possible to carry out some law enforcement activities that would otherwise not occur.

Thank you for the opportunity to comment on your draft audit.



Wilson L. Condon
Commissioner

CERTIFICATE OF COMMISSION
AS
SPECIAL OFFICER

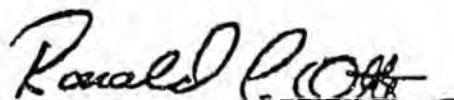
Pursuant to the authority vested in me under AS 18.65.010, I, Ronald L. Otte, Commissioner of Public Safety of the State of Alaska, do appoint William R. Roche as a Limited Special Officer.

Said William R. Roche, an Investigator of the Alcoholic Beverage Control Board, is duly appointed by the State to assist the Alaska State Troopers, and is authorized to act as an Officer, to investigate allegations of illegal gambling (AS 11.66.200 - AS 11.66.280) and prostitution (AS 11.66.100 - AS 11.66.150) only on premises licensed by the Alcoholic Beverage Control Board. This Special Commission does not include arrest authority.

Said William R. Roche Is Not authorized to carry a concealed weapon while on duty.

THIS COMMISSION WILL EXPIRE ON September 01, 1999
UNLESS SOONER RENEWED OR RESCINDED.


In witness hereto, I have set my hand this 9th day of September, nineteen-hundred and ninety-seven.


Ronald L. Otte
Commissioner
Department of Public Safety
State of Alaska

SPC # 44380

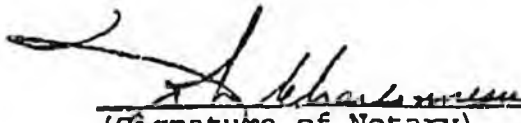
CONSTITUTIONAL OATH OF OFFICE

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as Special Officer of the Alaska Department of Public Safety to the best of my ability."

Date: 9/15/97 
(Signature)

William R. Roche
(Typed Signature)

WITNESSED BEFORE ME THIS 15 DAY OF September
1997.


(Signature of Notary)

My Commission expires: 2-7-98

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STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF REVENUE ALCOHOLIC BEVERAGE CONTROL BOARD

550 W. 7TH AVENUE, STE. 350
Anchorage, Alaska 99501-6698
Phone 907-277-8638
FAX: 907-272-9412

RECEIVED
NOV 24 1997
LEGISLATIVE AUDIT
November 20, 1997

Mr. Randy S. Welker, Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

RE: ABC Board Response to Preliminary Audit Report, ACN 04-1452-97

Dear Mr. Welker:

I have reviewed the Preliminary Audit Report for the Alcoholic Beverage Control Board and wish to offer the following response:

REPORT CONCLUSIONS

The Alcoholic Beverage Control (ABC) Board agrees with your finding that it has protected the public's health, safety, and welfare during the audit period through administration of its licensing function and through active investigation of suspected licensing violations and enforcement of the State's alcoholic beverage control laws and regulations.

Alcohol abuse is the number one cause of social dysfunction in Alaska. Most alcohol abuse is not linked to illegal sales by liquor licensees, but when the problem is this big and insidious the regulation of beverage alcohol should be a high priority. The laws governing trade in this legal drug should be aggressively and prescriptively enforced.

RECOMMENDATION No. 1

This recommendation is ambiguous. If the recommendation is based on the conclusion that the ABC Board does not give considerable weight to objections from affected neighborhoods prior to the issuance, transfer, or renewal of a liquor license, the Board very strongly disagrees.

If, on the other hand, the recommendation is based on the conclusion that, from time to time, the affected public believes the Board ought to weigh objections from affected neighborhoods more carefully, then the Board understands the concern and may partly agree. However, the Board believes that the perception that prompted this recommendation cannot be supported when one considers the total record of the ABC Board over the last three years. The ABC Board has demanded that neighborhood residents be encouraged to address the ABC Board with concerns regarding liquor licenses. ABC employees have informed residents opposing liquor licenses to address concerns in writing or through

oral testimony and have worked on logistics to help the public in participating in ABC Board meetings.

The audit offers no examples to clarify or support this recommendation. I would like to offer just a few cases in rebuttal to show where Board decisions to deny licenses were based on neighborhood objections:

1) In 1995, the ABC Board denied a beverage dispensary transfer in the Matanuska-Susitna Borough due primarily to neighborhood protests although the governing body did not object. 2) In 1996, the ABC Board did not approve a relocation of a beverage dispensary transfer in Fairbanks (the Board toured the site of the proposed bar/restaurant) based solely on neighborhood protest after the Fairbanks City Council narrowly voted not to protest the move of the license. 3) This year the Board denied a beverage dispensary license to a new \$2 million dollar lodge in Gustavus based on neighborhood/community objection.

The ABC Board does expect local governing bodies to consider neighborhood objections. The ABC Board gives great weight to local government objections (i.e., Anchorage Assembly putting conditions on 4th Avenue bars, Ketchikan City Council objection to renewal of the Marine Bar license, Bristol Bay Borough protest of Rapids Camp Lodge). The licensing decisions in the Mat-Su Borough and Fairbanks show that the ABC Board does not consider, as you assert, "denial of a license based solely on neighborhood objections to be tantamount to overriding the local governing body's wishes." This ABC Board has denied licenses based on neighborhood objections even when there was no governing body protest. 15 AAC 104.145(e) states that "The board will not substitute its judgement for that of the local governing body on matters of public policy that have reasonable factual support."

In closing, Recommendation #1 is vague, unmeasurable, and unfair to the ABC Board. The recommendation offers no facts or cases but relies, as presented, on bias and speculation. The examples I offer show that not only does the Board consider neighborhood concerns, but demonstrably takes action in accordance with neighborhood wishes.

RECOMMENDATION No. 2

I concur with the minimum standard of requiring local governments to prove that they are funding law enforcement activities at a level at least as great as that of the liquor license fee refunds they receive. I will recommend this be placed in the ABC Board regulation package for 1998.

I will also begin sending out a cover letter with shared license payments to local governments citing AS 04.11.610 and requesting that information regarding liquor law violations be sent to our office.

RECOMMENDATION No. 3

The ABC Board will carefully review disbursements to improve the accuracy of shared liquor license receipts.

ANALYSIS OF PUBLIC NEED

The ABC Board is doing more with less. Your graph on page 12 clearly displays this. However, a very restrictive travel budget, no funding for overtime or shift differential, inadequate funding for

administrative hearings, and anemic funding for communications and outreach to licensees and the public hampers the ABC Board's ability to perform at a level that meets needs in this vast State that suffers from so many alcohol related problems. The ABC Board is doing a good job in Southcentral Alaska and in the Fairbanks area because that is where the enforcement staff is located. However, as you point out on page 12, the investment to cover Southeast Alaska and rural Alaska at levels comparable to Anchorage and Fairbanks merits consideration. Responses from law enforcement agencies support the need for increased funding. If the ABC Board could merely retain all of the funding generated from license fees, permits, fines, and administrative fees, it could significantly affect the enforcement of alcohol laws in this State and reduce crime. The statewide organization representing the hospitality industry endorses the use of these fees, paid by its membership, for increased enforcement.

Your statement on page 15 that "industry representation on the board may lend itself to bias" is provocative. Clearly, having industry represented on the ABC Board was intended by the State's lawmakers because these persons understand the industry and can act as a bridge between the ABC Board and the alcohol industry. The State takes this same approach on other licensing boards. The bias (a poor word choice in my opinion) is intended and is offset by three public members who are also biased (former police chief, public health/mental health consultant, and non-profit health executive). Again, no evidence is included to support your "understanding" that the board's industry members often cast votes favorable to the licensee, whereas public members are more likely to vote for stronger licensing action. In my experience, industry members often ask for harsher sanctions against licensees because those board members have a personal stake in the image of the alcoholic beverage industry. Usually the board is unanimous in its votes, particularly when it comes to issues related to sanctions against licensees. Your chart on page 15 shows that total sanctions coming from this ABC Board are generally higher over the last couple of years. This board has also wholeheartedly supported the increased enforcement presence that you praise in the audit. These are not actions of a board that is out to protect the alcoholic beverage industry. You may believe that the ABC Board should be "tougher" on the alcohol industry, but you also seem to concede that the board is moving in the right direction. The vacancy in a public seat was unfortunate, but you failed to mention that AS 04.06.060 provides that with the consent of the ABC Board members present I may cast a tie-breaking vote. The members have always consented to give me the honor of breaking ties.

The lack of information sharing from local police departments mentioned in the last paragraph of page 15 is troubling. Perhaps this cooperation should be mandatory and be made a condition of receiving shared license receipts. It bolsters my argument that more enforcement staff is warranted and undercuts the argument that local police are uniformly helping the ABC Board in its enforcement mandate.

AUDITOR'S COMMENTS

The Auditor's Comments are welcome so that the issue of enforcement powers of the Alcoholic Beverage Control Board can be debated. Statutes may conflict and I understand your comments, but I think your conclusions are wrong and in conflict with other portions of your audit.

AS 04.06.075. **Authority of director.** The director shall enforce this title and regulations adopted by the board. [Emphasis added]

AS 04.11.010, 04.16.051, 04.16.050, 04.16.052, 04.16.070, 04.16.090 and 04.16.180 all reflect criminal provisions of Title 4. Clearly, the law anticipates and provides for a means to address criminal offenses by the director of the ABC Board and his enforcement employees. Since it is my stated duty to enforce the law, believing that ABC staff should not exercise police powers and that the board "should focus its efforts on licensing issues" is illogical.

You are correct that illegal gambling and prostitution are not regulated by Title 4. However, it is our office that receives complaints regarding these illegal activities when they occur on liquor licensed premises. AS 04.11.370(b) requires liquor license suspension for at least six months for a criminal gambling conviction. The conduct of illegal activities of this kind on licensed premises certainly reflect the fitness of a licensee to operate in the "the public interest" (15 AAC 104.180(a)(4)). Many complaints of illegal gambling and prostitution come from affected neighborhoods and the ABC Board is always interested in ensuring "that objections from affected neighborhoods are considered prior to the issuance, transfer, or renewal of a license" (see Recommendation No.1).

The Department of Public Safety or local police are always consulted regarding these investigations. However, as you note, it is our investigators who are considered experts in these areas. Monitoring bars and liquor stores are low priorities for the Alaska State Troopers (Deputy Commissioner Del Smith at a June 12, 1997 meeting) and many police departments. This is due to lack of resources and the perception that the ABC Board exists under State law to handle this responsibility. If we do not carry out this police function, it does not get done. In recognition of the fact that the Troopers are not able to address gambling and prostitution on licensed premises, Commissioner Otte has granted these narrow powers to ABC investigators to assist the AST under AS 18.65.010(a) which states in relevant part that:

The commissioner of public safety may appoint as special officers qualified police officers of the federal, state or local government units or **other persons with adequate police training over the age of 19 years**, as the commissioner considers necessary to aid and assist the division of state troopers in the enforcement of the criminal laws of the state. [Emphasis added]

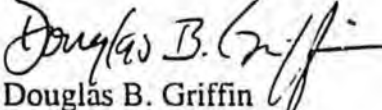
The ABC Board is requiring its investigators to do more. There is too much to do and too few resources. Your audit acknowledges this situation. The ABC Board is attempting to do more with less to address the pressing needs of the public. The board is unwillingly to pass the buck or lamely explain to a complainant that "it's not my job" to address certain illegal activities taking place on liquor license premises.

The question of investigators carrying firearms is controversial and is tied to the emphasis on the exercise of limited police powers. I have studied this issue for eighteen months, gone out in the evenings with ABC Investigators, and talked to other State agencies and local police departments about the issue. I would encourage anyone that is considering his or her opinion on this question to go out with the ABC Investigators and see first hand the circumstances they confront. The law enforcement community, which has a relevant perspective on the question, is very supportive of the initiative to allow investigators to carry firearms for personal protection. I concluded that my employees deserve the ability to protect themselves given the enforcement role the ABC Board wants them to play.

The increased enforcement visibility that you praise "as a positive step on the part of the board" is showing results where we have enforcement staff. In a recent work session, the Anchorage Assembly (October 7, 1997 work session with ABC staff) also praised and thanked the ABC Board for its enforcement efforts. ABC Board investigators are "out there" in the bars, clubs, and liquor stores. State Troopers are usually not. It makes perfect sense to me to request that the ABC Board confers to its investigators, with Commissioner Otte's concurrence, the ability to write citations for Title 4 violations. Law enforcement agencies recognize that an enforcement vacuum exists. The granting of additional powers to well trained and experienced ABC investigators strike me as an effective and efficient way to fill this vacuum. Range 18 ABC Investigators who do limited "police" work only part time are a lot less expensive than State Troopers. I believe that there is something to be said for specialization and the leverage gained when enforcement is conducted by the agency that oversees alcoholic beverage licensing. Leverage and effectiveness are advantages that must be exercised in the era of smaller public safety budgets.

This concludes my comments. Thank you for the opportunity to respond and discuss these important issues.

Sincerely,


Douglas B. Griffin
Director

cc: ABC Board Members
Wilson Condon, Commissioner, Department of Revenue
Cindy Smith, Special Assistant, Office of the Governor

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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December 2, 1997

Members of the Legislative Budget
and Audit Committee:

We have reviewed the responses to our preliminary audit report from the Alcoholic Beverage Control Board (ABC Board or the board) and from the Department of Revenue (DOR). Nothing contained in these responses gives us cause to reconsider our findings. However, we offer the following clarifying comments.

Recommendation No. 1

The Alcoholic Beverage Control Board should take steps to ensure that objections from affected neighborhoods are considered prior to the issuance, transfer, or renewal of a license.

The board states that this recommendation is vague, unmeasurable, and unfair. Nevertheless, it concedes that

[i]f . . . the recommendation is based on the conclusion that, from time to time, the affected public believes the Board ought to weigh objections from affected neighborhoods more carefully, then the Board understands the concern and may partly agree. [Emphasis Added.]

We acknowledge that when a government agency is not perceived as being responsive to those that it serves, it is faced with a very difficult task. We very much agree with the board that this problem is somewhat vague and difficult to measure. However, as the board's makeup and its approach to the licensing process may lend itself to a perception problem, we hardly consider it to be unfair. These are factors the board should be aware of and address.