

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

10921 HOUSE LABOR & COMMERCE

Subject: boating safety and GDL

Date: Wed, 26 Mar 2003 21:35:40 -0900

From: Perkins <perkins@ak.net>

To: Representative_Bruce_Weyhrauch@legis.state.ak.us

Dear Representative Weyhrauch,

I'm impressed with your involvement with several safety issues. I'm an Eagle River constituent and an injury epidemiologist (I study injury patterns in various communities and populations). I have lived in Alaska for 25 years, 8 of which were in Dillingham. My injury prevention work with the U.S. Public Health Service took me to communities throughout Alaska before my retirement in 1998. I'm writing to encourage you in your support of HB93, to keep the Boating Safety Law active and in place. As you know, this Law brings in about \$600,000 of federal funds each year and the hardship on individuals is a miniscual \$10 registration fee every 3 years. It helps pay for flotation devices which are used on Kids Don't Float loaner boards throughout Anchorage and Alaska. It is a good law with huge positive impacts on the safety of all Alaskans and a very small impact on individuals. I introduced and encouraged the use of Float Coats throughout rural Alaska in the mid-seventies, and now they are used as the rule rather than the exception.

The other very positive legislation you are developing is the strengthening of the Graduated Driver's Licensing requirement for new drivers. Teens are 4 times more likely to die in a motor vehicle crash than their adult counterparts. Much of this increased risk is due to inexperience, lower seat belt useage, and alcohol. Teens rarely get into crashes when they are learning to drive with an adult present. Their risks increase tremendously shortly after they go solo, drive with other teens in the car, and drive after midnight. The good GDL laws that have been inacted in other states and countries have cut the teen crashes in half. They demand that teens have 6 months behind the wheel under an adult's supervision, no other non-family passengers, and no driving after midnight. Motor vehicles related injuries are the leading cause of death for our teens and we must see that they recieve the proper experience before turning them loose on the roads. School based driver's education has been shown to be ineffective, FYI.

I'm currently the Exec. Director of a non-profit injury prevention center and my special interest is to reduce the needless deaths and trauma from preventable injuries. If I can be of technical assitance to you on any injury prevention issues, please call 907-929-3941.

Ron Perkins, MPH

CAPITAL CHEVROLET
ROB SKINNER

5245 GLACIER HWY
JUNEAU, AK 99801

April 28, 2003

Rep. Bruce Weyhrauch

Dear Rep. Weyhrauch:

I'm pleased to add my support to HB 213, "Provisional Driver's License for Teen Drivers". Being the father of six up and coming drivers and as the "Managing Partner" for Capital Chevrolet I feel the up side to this bill clearly outweighs the small inconveniences that would result from it.

While growing up in a small town in Oregon several of my classmates were in serious car accidents, resulting in two fatalities, two friends who are permanently paralyzed and several other injuries of varying degrees. Most likely had a bill like this been in place my friends would be alive today and those paralyzed would not be so.

In my business we see every day the young drivers and their behaviors. We experience losses from minor accidents as a course of business but almost never from an older more mature employee. It is almost without exception that young drivers feel a need to push the envelope when the rush of power and freedom is afforded them associated with driving. I myself experienced it and so has every one who has been behind the wheel of a car. My sales persons are continually reminding our younger potential car owners to watch the traffic laws while on test drives.

While I'm a huge fan of our youth and understand that HB 213 will disappoint a few, the facts are clear, accidents will decrease and lives will be saved. Nothing is more important to a father than that.

Sincerely,

Rob Skinner
Owner, Capital Chevrolet

Rep. Bruce Weyhrauch
Capitol Building
Juneau, Alaska 99801
January 25, 2004

Al Near
POB 80847
Fairbanks, AK 99708

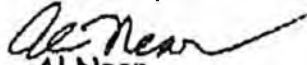
Dear Representative Weyrauch:

Thank you for introducing HB213.

Considering that motor vehicle crashes are the leading cause of death for 15-18 year olds, something must be done. I believe that young people should be introduced to the driving experience gradually by phasing in full driving privileges over time and in lower-risk settings. Your bill would help to achieve this... thereby saving the lives of our teenage drivers and their passengers.

You have my total support.

Sincerely,


Al Near

Subject: gdl

Date: Sun, 25 Jan 2004 18:42:24 -0900

From: "Rhammond" <chickencoop@starband.net>

To: <Linda_Sylvester@legis.state.ak.us>

Dear Representative Weyrauch,

please know that our entire family is very supportive of the GDL. We urge you to do all you can to help it pass. The lives saved will be worth it.

Thank you, Robin & Dick Hammond of Chicken, AK 99732

[Fwd: Bill to change drivers licenses]

Subject: [Fwd: Bill to change drivers licenses]

Date: Fri, 11 Apr 2003 21:05:33 -0800

From: Bruce Weyhrauch <Representative_Bruce_Weyhrauch@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Linda Sylvester <Linda_Sylvester@legis.state.ak.us>

bill file

Subject: Bill to change drivers licenses

Date: Fri, 11 Apr 2003 12:55:05 -0800

From: Craig <craig4@gci.net>

To: Representative_Bruce_Weyhrauch@legis.state.ak.us

Bruce – Just wanted to get a few comments in on the bill to change drivers' licenses. Hopefully it's not too late. I think the "stepped system" for drivers' licenses is a good idea but is too extreme. As a minimum, a newly licensed teen should be able to participate in family responsibilities and at least be able to transport their own siblings who have probably been riding with them throughout the permit period. I also don't see a problem with teens giving a ride to 1 or 2 friends while driving to and from school, or to after school activities such as to the track field. Since we live 20 miles from the high school and are constantly trying to carpool, it seems absurd that 3 kids from our area would all drive separately, or 1 drive and leave the others to catch the bus which leaves almost an hour and a half before school starts. I think the purpose of MADD should be to keep car-loads of teens off the road while "cruising" on a Saturday night, not to punish responsible teens who are driving to and from school and activities. Again, if the rule under the new bill is for teens to not drive with others under the age of 25, please at least have an exemption for family members riding in the car. Thank you for considering this.

JoAnne Craig

789-2955

Sent email



CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

OFFICE OF THE MAYOR

Telephone: (907) 586-5240; Facsimile: (907) 586-5385
Sally_Smith@ci.juneau.ak.us

April 23, 2003

The Honorable Bruce Weyhrauch
Alaska State Representative
State Capitol, Room 102
Juneau, Alaska 99801

Dear Representative Weyhrauch:

Juneau's assembly members have read an analysis of your House Bill 213, which would institute a graduated driver's license program. According to statistics provided by the Juneau Chapter of Mothers Against Drunk Driving (MADD), 3,889 of Alaska's youth between the ages of 16 and 20 were involved in traffic accidents during 2000. This is not acceptable, and begs the need for change.

We care about our youth and recognize that our current system of preparing them to drive is not working. House Bill 213 provides an opportunity to responsibly prepare our young Alaskan's for a lifetime of safe driving. You have the support of the City and Borough of Juneau on this important legislation. It can make the roads safer for all.

Sincerely,

Sally Smith
Mayor

cc: Cindy Cashen, MADD
The Honorable Kim Elton
The Honorable Beth Kerttula
CBJ Assembly
Clark Gruening
Jerry Mackie



JUNEAU SCHOOL DISTRICT
CITY AND BOROUGH OF JUNEAU
OFFICE OF THE SUPERINTENDENT

10014 CRAZY HORSE DRIVE • JUNEAU, ALASKA 99801-8529 • (907) 463-1700 • FACSIMILE (907) 463-1712

APR 29 2003

April 25, 2003

The Honorable Bruce Weyhrauch
Alaska State Legislature
State Capitol
Juneau, AK 99801

Dear Representative Weyhrauch:

Thank you for your sponsorship of House Bill 213 to establish a graduated driver's license program for Alaska. As I mentioned on Tuesday, the Juneau School Board unanimously supports this concept. I've written the members of the House Transportation Committee and hope they are responsive.

I'm glad to see that there are positive developments for Alyeska Correspondence School. Thank you for your continued support for education and for the Juneau Community in this matter.

Sincerely,


Peggy Cowan
Superintendent



National Transportation Safety Board

Washington, D.C. 20594

Office of the Chairman

JAN 27 2004

Honorable Bruce Weyhrauch
Representative
Alaska House of Representatives
State Capitol, Room 102
Juneau, Alaska 99801-1182

Dear Representative Weyhrauch:

I understand that you have introduced House Bill 213, legislation to implement a comprehensive graduated driver licensing system for young novice drivers in Alaska. This measure provides the opportunity for Alaska to prevent the needless loss of many of its young citizens.

Motor vehicle crashes, which account for 40 percent of all teenage deaths, are the leading cause of death for our teenagers. Novice teenage drivers have a very high crash risk. Young drivers, ages 15 to 20, constitute less than 7 percent of all drivers nationwide, yet they are involved in more than 22 percent of all highway fatalities. In Alaska, young drivers constitute a little more than 7 percent of Alaska's licensed drivers, but they are involved in more than 23 percent of the fatalities that occur on Alaska's roads.

There are several similarities in fatal crashes involving young novice drivers. The drivers and passengers frequently are not belted, the cars are loaded with the drivers' peers, and often there is a deadly combination of inexperience and immaturity. When night driving is added to the equation, crash risk increases dramatically.

Young drivers do only 20 percent of their driving at night, but over 50 percent of their crash fatalities occur during nighttime hours. Among young novice drivers, 41 percent of motor vehicle deaths occur between 9:00 p.m. and 6:00 a.m. Nighttime outings tend to be recreational, and even teens who usually follow all the rules can be easily distracted.

Research indicates that nighttime restrictions can reduce young novice driver crashes during restricted hours by up to 70 percent. New York achieved a 69 percent reduction in crashes involving teenage drivers during the hours that the nighttime driving restriction was in effect. Other States have also seen reductions in young novice driver crashes during restricted hours.


Young drivers also pose a greater risk when carrying passengers, especially teen passengers. A study of Kentucky drivers found that young drivers have an increased propensity for causing single-vehicle crashes when traveling with peers and that the propensity for single-vehicle crashes

increases with the number of people in the vehicle. A separate study estimated that a nationwide adoption of passenger restrictions for all 16- and one-third of 17-year-old drivers would result in 60 to 350 fewer deaths per year.

These crashes are preventable, and legislative measures have been successful in other States to reduce both crashes and fatalities. The Safety Board recommended in 1993 that Alaska and other States implement a comprehensive graduated driver licensing system, including a nighttime driving restriction during the driver's first year. In 2002, the Board added a recommendation that young passengers be prohibited from carrying more than one passenger under age 20 unless accompanied by a supervising driver who is at least 21 years old. For additional information about the Board's position on graduated driver licensing and the evidence that supports our recommendations, please see the enclosed fact sheet.

The Safety Board believes an effective combination of tough, fair laws, vigorous enforcement, and intensive, targeted educational campaigns is needed. We are so convinced of the lifesaving benefit of these actions that we have included graduated licensing recommendations on our list of "Most Wanted" safety improvements. Graduated licensing, including a nighttime driving restriction, is one of the most effective actions that the Alaska Legislature can take to save both young lives and the lives of others involved in crashes with young drivers.

I hope that the Alaska legislature will act promptly on House Bill 213 to provide the best possible protection for people when they are riding in a motor vehicle. The Safety Board is available to support your efforts on this and other highway safety initiatives by testifying on legislation or meeting with legislators or advocacy groups. Please contact Mr. Kevin Quinlan, Safety Advocacy Division Chief, at (202) 314-6175, if we can be of assistance to you. For your information, Mr. Quinlan will be in Juneau on February 12, 2004, and would be available to meet with you about your legislation.

Sincerely,

Ellen Engleman Connors
Chairman

Enclosure

cc: Ms. Cindy Cashen, Executive Director
MADD Juneau Chapter



National Transportation Safety Board

Safety Information

Washington, D.C. 20594

GRADUATED DRIVERS LICENSE *FACT SHEET*

The Recommendation

- The National Transportation Safety Board recommends enacting laws to provide for a three-stage graduated licensing system for young novice drivers, and restrict young novice drivers with provisional or intermediate licenses (second stage), unless accompanied by a supervising adult driver who is at least 21 years old, from carrying more than one passenger under the age of 20 until they receive an unrestricted license or for at least 6 months (whichever is longer).
- The National Transportation Safety Board recommends enacting laws that prohibit driving by young novice drivers between certain times, especially midnight to 5 a.m.
- The National Transportation Safety Board recommends enacting legislation to prohibit holders of learner's permits and intermediate licenses from using interactive wireless communication devices while driving.

The Problem

- Traffic crashes are the leading cause of death among teenagers today.
- While teen drivers comprise about 6.6% of the driving population, they comprise more than 14% of the drivers involved in fatal crashes. And more than 22% of all highway fatalities occur in crashes involving teen drivers.
- In the past 5 years, more than 16,000 (16,656) people died in crashes involving 14-to -17-year-old drivers.
- 16-year-old drivers driving alone are more than twice as likely to be involved in a fatal crash as older drivers.
- 16-year-old drivers are almost 5 times as likely to be in a crash when traveling with peer passengers.
- Passengers riding with young teen drivers are especially at risk; two-thirds of the fatally injured passengers in these teen driver crashes were teenagers themselves (between ages 15-19).
- The risk of a crash increases greatly with each additional teen passenger riding with a young teen driver.
- Studies from nearly a dozen States show that deaths and serious injuries from traffic crashes involving young drivers declined by as much as 58 percent following enactment of graduated licensing provisions (depending upon the provisions of the law).

Effective Actions

- **Learner's Permit**
 - 6 month minimum holding period (without an at-fault crash or traffic violation)
 - Supervised driving requirement with supervising driver age 21 or older
 - Require seat belt use by all passengers in all seating positions
 - Prohibit driving with any measurable blood alcohol level
 - Prohibit cell phone use by drivers with a learner's permit

- **Intermediate (provisional) Permit**
 - 6 month minimum holding period (without an at-fault crash or traffic violation)
 - Nighttime driving restriction (especially between midnight and 5 a.m.)
 - Teen Passenger restriction (none or 1)
 - Require seat belt use by all passengers in all seating positions
 - Prohibit driving with any measurable blood alcohol level
 - Prohibit cell phone use by drivers with a provisional permit

- **Full licensure**
 - Require seat belt use by all passengers in all seating positions
 - Prohibit driving with any measurable blood alcohol level by all drivers under age 21.



Mayor Mark Begich

Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • 825 "L" Street • <http://www.muni.org>



Department of Health and Human Services

February 6, 2004

Representative Anderson, Chair of the House Labor and Commerce Committee
Capitol Building
Juneau, Alaska 99801

Dear Representative Anderson,

The Department of Health and Human Services supports the Graduated Driver's License (GDL), HB 213 which will require all Alaskan young people to gain driving privileges in stages. The GDL is about helping parents prepare their children for driving because we know that a teenager is more likely to die in a car crash than any other cause. A new sixteen year old driver with quick and easy driving privileges has the highest risk of crashing their first month; almost 3 times higher than the risk of older teenagers. Under supervision, teens have very few crashes or citations. Studies show that a staged licensing system buys time for teens to practice driving with limitations and within six months their crash rate drops by 40%. The findings suggest that novices can improve their driving in a relatively short period of time in a phased in driving system.

Concern has been expressed among legislators about the rural restrictions in the rural areas; that restrictions on graduated licensing may prove burdensome. However, a study in North Carolina, where the graduated system was passed in 1997, reported that parents in rural counties indicated that they didn't find the additional time required of them to be a particularly large problem. About 96% of parents in both rural and urban counties said that they approved of the system.

Sincerely,

A handwritten signature in cursive script that reads "Joan Diamond".

Joan Diamond, BSN CHES (parent)
Department of Health and Human Services
Injury Prevention

Community, Security, Prosperity

HB

224

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 224
 (H) Publish Date: 3/28/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title: "An Act relating to a tobacco product manufacturer's compliance with certain statutory requirements . . ." BRU: Civil
 Sponsor: Rules Committee Component: Commercial
 Requester: Governor Component No. 2211

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill, based on a model developed by the National Association of Attorneys General in cooperation with a working group of participating states, is designed to aid state enforcement of the tobacco product Master Settlement Agreement (MSA) and AS 45.53, and thus preserve, to the fullest extent possible, the revenue stream under the MSA. One of the provisions of the MSA required states to enact legislation that would "level the playing field" for non-participating tobacco manufacturers, by requiring them to deposit money into escrow for every cigarette they sell in the state. Since 1999, participating states have detected concerted efforts to evade the legislative escrow requirement. This bill is intended to end those efforts.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 1/28/03 11:30 AM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/28/2003
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 224
(H) Publish Date: 3/28/03

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Hearing Process: BRU Revenue Operations
Master Settlement Agreement Component Tax Division
Sponsor Rules Committee
Requester Governor Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would have no significant fiscal impact on the Department of Revenue. The intent is to aid the state in the enforcement of the nationwide tobacco products Master Settlement Agreement, therefore preserving, to the fullest extent possible, the revenue stream from that agreement.

The legislation would aid the state in its enforcement efforts against non-participating tobacco manufacturers that may try to circumvent the terms of the agreement.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469
Division Department of Revenue Date/Time 1/29/03 11:23 AM
Approved by: Larry Persily, Deputy Commissioner Date 1/29/2003
Agency Department of Revenue

HB 224

Background and Sectional Analysis

I. BACKGROUND

On November 23, 1998, Alaska and 45 other states (plus the District of Columbia and 5 territories) entered into the Tobacco Master Settlement Agreement ("MSA") with certain Tobacco Product Manufacturers (known as "Participating Manufacturers" or "PMs"). The MSA provides that in exchange for the PMs' agreement to make specified payments to the Settling States -- estimated to exceed \$200 billion through 2025 -- and their agreement to abide by extensive public health restrictions on the advertising, promotion and marketing of cigarettes, the Settling States agreed to release the PMs from claims by the States.¹

Those non-participating Tobacco Product Manufacturers that did not sign the MSA ("Non-Participating Manufacturers" or "NPMs") were not released from potential State claims and did not undertake any of the payment obligations or agree to abide by the public health restrictions. In order to ensure that Settling States that successfully sue NPMs in the future will have a fund against which they can recover any judgment or settlement moneys, the MSA includes a proposed "Model Statute" that, if enacted by a Settling State, requires NPMs to make annual payments into a qualified escrow fund based on the number of that NPM's cigarettes sold in the State.² The Model Statute is also intended to prevent NPMs from reaping a windfall benefit by selling cigarettes in a Settling State without bearing the costs that cigarette smoking imposes on the State.

The Model Statute declares:

It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably; it is thus in the interests of the state to require that such manufacturers establish an escrow fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

§ 1, ch. 46, SLA 1999.

¹ The released claims generally include claims arising out of or in any way related to (a) the use, sale, distribution, manufacture, development, advertising, marketing or health effects of, (b) the exposure to, or (c) research, statements, or warnings regarding, tobacco products. MSA §II(nn).

² Alaska's "model statute" was enacted in 1999 (ch. 46, SLA 1999) and is found at AS 45.53.

The MSA encouraged States to enact the Model Statute by creating a significant financial incentive: Settling States that enact and 'diligently enforce' a Model Statute are not subject to certain potential downward adjustments in receiving their annual MSA payments. All Settling States have enacted Model Statutes.

A Settling State through its attorney general or other official may bring a civil action on behalf of the State against any Tobacco Product Manufacturer that fails to place into escrow the funds required by the Model Statute. While the Settling States have been aggressively enforcing the provisions of the Model Statutes, enforcement has proved costly and cumbersome. Among other things, the Model Statute enables NPMs to sell cigarettes for up to 16 months in a State before the State can bring an action to enforce the Model Statute. In addition, many NPMs are located in foreign countries and it has proved difficult and expensive to obtain service of process or to effect judgments. And, as the Settling States have moved forward with numerous actions against non-compliant NPMs, many NPMs have devised ingenious schemes to evade compliance. The purpose of this "complementary legislation" is to make State enforcement of Model Statutes more effective and thereby promote the purposes for which the Model Statutes were enacted.

Approximately fifteen states, including Alaska, have enacted complementary legislation. Alaska's existing complimentary legislation is AS 43.50.145, which simply provides that NPM cigarettes for which escrow payments have not been made are contraband and subject to confiscation. Other states' complimentary legislation have taken different forms but is largely similar from state to state. Generally, these statutes: prohibit tax-stamping of tobacco products that are not in compliance with a Settling State's Model Statute; require certification that a Tobacco Product Manufacturer is either a Participating Manufacturer under the MSA or, if an NPM, is in full compliance with a State's Model Statute; require an attorney general or revenue department to maintain a list of Tobacco Product Manufacturers that are in compliance with a Settling State's laws; and subject violators to civil and criminal penalties and license revocation/suspension.

Complementary legislation has been effective in promoting compliance with the Model Statutes. This positive experience led the Tobacco Committee to create a Complementary Legislation Working Group, a multi-State staff-level group coordinated by the NAAG Tobacco Project. The Working Group was charged with developing draft complementary legislation that could be recommended as a model to all of the Settling States. After extensive deliberations, the Working Group has now recommended model legislation to the Tobacco Committee, and the Committee has recommended that the Attorneys General of the Settling States give serious consideration to the legislation and designate its enactment a priority. The Committee believes that enactment of such legislation by all Settling States will promote the purposes the Model Statutes were designed to serve and safeguard payments to the Settling States that might otherwise be imperiled.

II. COMPLEMENTARY LEGISLATION SUMMARY

The proposed model complementary legislation would require a state to maintain a directory of cigarette products that are permitted to be sold instate. The proposed legislation would prohibit the sale of products that are not listed in the directory. While all Tobacco Product Manufacturers would be required to make specific certifications *before* a brand could be listed in the directory, a Non-Participating Manufacturer would be further required to certify that: a) it is registered to do business in the state or has appointed an agent for service of process; b) it maintains a Qualified Escrow Fund with an executed qualified escrow agreement that has been reviewed and approved by the State; c) it is in full compliance with the escrow statute; and d) it identifies the financial institution where it has established such Qualified Escrow Fund and identifies all deposits and withdrawals to/from said fund. In addition, neither an NPM nor its brands will be listed in the directory unless all escrow payments for any period have been fully paid and all outstanding final judgments for violations of the Model Statutes fully satisfied.

The proposed model complementary legislation will also allow the Settling State through its attorney general or other official to request information to verify the accuracy of reported information and will further permit disclosure of information to other state agencies to facilitate investigation. Civil penalties, including injunctive relief and designation of product as contraband subject to seizure, forfeiture and destruction are among the penalties imposed.

The proposed requirements will ensure that a Tobacco Product Manufacturer has met certain obligations before being permitted to sell its products instate. This will help prevent significant periods of non-compliance and will reduce the expense and difficulty of enforcement actions against NPMs.

The proposed model complementary legislation is intended to complement Alaska's Model Statute (AS 45.53), but it does not replace or amend Alaska's Model Statute.

III. SECTION REVIEW

Section 1. Findings and Purpose

Several Settling States emphasized that in order to assist with passage of a proposed model bill, it would be helpful, and in some cases, necessary to have a legislative declaration regarding the relationship between complementary legislation, fiscal soundness of the State and advancement of public health issues.

Section 2.

AS 43.50.500

- (a) Requires PMs to annually certify that they are a participating manufacturer. Requires NPMs to annually certify that they are in compliance with the model statute, AS 45.43.
- (b) Requires PMs to attach a list of its brands to its certification.
- (c) Requires NPMs to attach a list of its brands to its certification and provide information about its instate sales.

- (d) Requires NPMs to register to do business instate or appoint an instate agent for service of process. Requires NPMs to set up a "qualified escrow fund."
- (e) Requires NPMs to provide information about its qualified escrow fund.
- (f) Requires tobacco product manufacturers to affirm the identity of the brands it manufactures. This provision is intended to prevent a manufacturer from identifying a particular brand and then attempting to assert that another party, such as an importer or distributor, is responsible for escrow, other payment or certification obligations.
- (g) Requires tobacco product manufacturers to maintain sales records for five years.

AS 43.50.510

This section establishes the requirements for the directory to be maintained by the Department of Revenue for brands of tobacco products that may be sold in the state. The provisions of this section provide a means by which a cigarette seller will be able to ascertain if a particular brand of tobacco product may be permissibly sold in the State. In addition, this section requires that the Department of Revenue shall update the directory as necessary to keep it current. Notices provided by this section may be provided by electronic mail in order to reduce the cost and expense for disseminating any notices.

AS 43.50.520

- (a) This subsection establishes that it is unlawful to sell a product that is not included in the directory.
- (b) This subsection provides for a cigarette tax credit for licensees that permissibly import directory-listed cigarettes that are later de-listed prior to retail sale.

AS 43.50.530

This section requires any non-resident or foreign NPM to establish an agent for service of process before its brands may be included on the directory established in AS 43.50.510. The appointment of such an agent would be limited to actions arising out of the enforcement of the complementary legislation or the Model Statute, AS 45.53. Subsection (c) provides for service on the commissioner of the Department of Commerce and Economic Development for failure to appoint an agent.

AS 43.50.540

This section establishes the reporting requirements for licensees. This provision will allow monitoring of the sales activity of NPM product and provides an ongoing method to evaluate compliance. This section also provides the authority to share information obtained pursuant to the complementary legislation or Model Statute with the attorney general or other state agencies. The section also grants authority to request additional information as may be necessary to verify the accuracy of information reported and to provide actual product or label samples as may be necessary to effect the purpose of the statute. Finally, subsection (e) permits the adoption of regulations to require escrow deposits on a quarterly basis.

AS 43.50.550

This section provides for penalties for noncompliance. Penalties include:

- Revocation or suspension of a licensee's license and civil penalty.
- Designation of non-compliant NPM tobacco products as contraband, seizure and forfeiture of unlawful product.
- Injunctive relief against a licensee

AS 43.50.560

Subsection (a) establishes review procedures in accordance with a AS 44.62 (Administrative Procedure Act) for determinations regarding removal or non-listing of a tobacco product brand. Subsection (b) requires licensees to certify compliance with this law. Subsection (c) provides authority to promulgate regulations. Subsection (d) provides for disgorgement of any profits upon a finding of a violation by a court.

AS 43.50.590

Most of the definitions mirror those from the MSA or the Model Statute, AS 45.53.

Brand Family is intended to cover all variations of a brand of tobacco products that are sold instate. It is further intended to include the brand names of tobacco products that undergo slight modification as a means of evading liability under a Settling State's Model Statute. For example, in order to avoid an ongoing violation or potential injunction against a particular brand, some manufacturers have attempted to modify the name of a brand while maintaining the product the same, i.e., changing the brand name from Distinction to Distinctive or from Bloomberg to Blumburg.

Section 3. Conforming amendment to Administrative Procedures Act, AS 44.62.

Section 4. Repeal of existing complimentary legislation.

Section 5. Transition—initial compliance deadlines.

Section 6. Effective date.

IV. ASSURANCES BY PARTICIPATING MANUFACTURERS

After constructive deliberation with several Participating Manufacturers, Settling States and the PMs agreed upon certain assurances that the PMs would provide to the States. The assurances are intended to facilitate introduction and passage of Complementary Legislation in those States where there may be concerns that the proposed.

Complementary Legislation may be construed as amending the Model Statute or MSA. The language agreed upon States in relevant part that:

the Settling States shall have no duty or obligation to enact the proposed Complementary Legislation or any similar bill, and failure to enact such legislation shall not be used against any State in any proceeding to determine whether that State has diligently enforced its escrow statute.... Additionally, enactment of the proposed Model Complementary Legislation (or similar bill containing no deviation of substance from the Model Complementary Legislation) shall not be construed as an amendment to the Model Statute or to the MSA and shall not constitute any breach of the MSA....

The NAAG Tobacco Project has secured assurances from the following Participating Manufacturers: Philip Morris, RJ Reynolds, Brown & Williamson, Lorillard, Caribbean-America Tobacco, Dharanj Imports, Japan Tobacco Int'l, King Maker, Konci G&D, Liggett, Lignum-2, Nat Sherman, Planta, PT Djarum, Santa Fe Natural Tobacco, Top Tobacco, Vector Tobacco, Virginia Carolina, and Wind River.

V. CONCLUSION

The enactment of Complementary Legislation will streamline enforcement of the NPM Model Escrow Statutes, safeguard annual MSA payments and help combat the proliferation of youth smoking. The Attorneys General regard this legislation as extremely important and recommend that the proposed model Complementary Legislation be given legislative priority. Attorneys from the Alaska Department of Law as well as the NAAG Tobacco Project and the Complementary Legislation Working Group are available to answer additional questions on this issue of critical importance.

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

April 3, 2003

Representative Tom Anderson
House Labor and Commerce
Alaska State Legislature
State Capitol
Juneau, AK 99801

Re: HB 224 – “An act relating to a tobacco product manufacturer's compliance with certain statutory requirements regarding cigarette sales; and providing for an effective date”

Dear Representative Anderson:

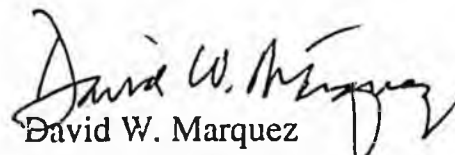
The above referenced bill, which would enact procedural enhancements that will aid the enforcement of AS 45.53 and safeguard the tobacco product Master Settlement Agreement, has been referred to the Senate State Affairs Committee. I am writing today to request that you schedule HB 224 for action in your committee in the near future.

If you have any questions about this legislation, please do not hesitate to contact my office.

Sincerely,

GREGG D. RENKES
Attorney General

By:


David W. Marquez
Assistant Attorney General

DWM:lb

Cc: Mike Tibbles, Legislative Director, Office of the Governor
Deborah Behr, Legislation and Regulations Attorney, Department of Law

HB

227

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB227-ACS-TC-1-16-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title District courts and small claims BRU Alaska Court System
Component Trial Courts
Sponsor House Judiciary Committee
Requester House Labor and Commerce Component No. 766

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

House Bill 227 will increase the jurisdictional limit of the district court from \$50,000 to \$75,000 per defendant. The court does not anticipate a significant impact from this change. The bill also increases the jurisdictional limit of small claims court from \$7,500 to \$10,000 and allows a plaintiff to sue an out-of-state defendant in those cases where the claim arose in Alaska. Both changes are likely to increase the number of cases filed in small claims court. The cases with out-of-state defendants are likely to be more lengthy than would otherwise be the case. However, because the increase in the number of cases filed in small claims court will be partially offset by a corresponding decrease in the number of cases filed in the district court and because the number of likely out-of-state defendants is unknown, the impact of the passage of HB 227 is too speculative to support a fiscal note at this time. If the impact turns out to be significant the court may return to the legislature with a request for additional funding.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
Division Alaska Court System Date/Time 1/16/04 8:17 AM
Approved by: Stephanie Cole, Administrative Director Date 1/16/2004
Agency Alaska Court System

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Dan Ogg
Rep. Jim Holm
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Sponsor Statement HB 227

"An Act increasing the jurisdictional limit for small claims and for magistrates from \$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil cases from \$50,000 to \$75,000; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."

The jurisdictional limit for district courts was last raised in 1990 when the legislature raised the limit from \$35,000 to \$50,000. By raising the jurisdictional limit from \$50,000 to \$75,000, this bill will allow for increases in inflation and provide increased flexibility for litigants regarding whether to file in district court or superior court.

The jurisdictional limit on small claims court and magistrate court was last raised in 1997 when the legislature raised the limit from \$5000 to \$7500. Small claims court offers many advantages over district court to private litigants, including less formal discovery requirements, reduced filing fees, and relaxed evidentiary rules. This bill will increase the limit to \$10,000.

Finally, the bill will allow suits in small claims court against people who caused damage or breached contracts while they were visiting Alaska. Under the current rule governing small claims court, the defendant must be served with process in Alaska. This bill allows suits against defendants who are no longer in Alaska although the claim arose in the state.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Dan Ogg
Rep. Jim Holm
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
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House Judiciary Committee

Sectional Analysis HB 227

"An Act increasing the jurisdictional limit for small claims and for magistrates from \$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil cases from \$50,000 to \$75,000; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."

Section 1 increases the jurisdictional limit of district courts from \$50,000 to \$75,000.

Sections 2 and 3 increase the jurisdictional limits of the small claims court and the magistrate court from \$7500 to \$10,000.

Section 4 allows suits in small claims court against out-of-state defendants who caused damage while they were physically present in Alaska.

HB

232

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 232
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Homer Mercury Classic BRU Revenue Operations
 Component _____
 Sponsor Representative Seaton Component No. _____
 Requester House Labor & Commerce

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation has no fiscal impact on state spending.

Prepared by: Representative Tom Anderson Phone _____
 Division Chair, House Labor & Commerce Committee Date/Time 4/26/03 9:38 AM
 Approved by: Representative Tom Anderson Date 4/26/2003
 Agency House Labor & Commerce Committee

ALASKA STATE LEGISLATURE

Chair
FISHERIES

Vice-Chair
EDUCATION

Member
HEALTH, EDUCATION AND SOCIAL SERVICES

Member
STATE AFFAIRS



REPRESENTATIVE PAUL SEATON
House District 35

Session:
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Juneau, Alaska 99801
Phone 907-465-2689
Fax 907-465-3472
1-800-665-2689
Rep.Paul.Seaton@legis.state.ak.us

Interim:
345 W. Sterling Highway
Suite 102B
Homer, Alaska 99603
Phone 907-235-2921
Fax 907-235-4008

Sponsor Statement

HB 232

“An Act relating to mercury classics; and providing for an effective date.”

House Bill 232 will allow the Homer Chapter of the Kenai Peninsula Boys and Girls Club to operate and implement the “Homer Mercury Classic.” As you may know, classics are not permitted under a gaming permit without legislation allowing a specific group or area to conduct one. There are many classics in Alaskan Statute, ranging from ice classics to a canned salmon classic. Currently, the Greater Fairbanks Chamber of Commerce is the only organization allowed under Alaskan law to conduct a “mercury classic.”

The “Homer Mercury Classic” will be held bi-annually, with winnings awarded in the spring to the person who most accurately guesses when the temperature reaches 55 degrees Fahrenheit. The other cash prize will be given to the person who most closely guesses the time and date that the mercury drops to 15 degrees Fahrenheit each fall. Each entry into the classic will cost \$2. The proceeds from the classic will be divided evenly between the Boys and Girls Club of Homer and the classic winner.

Members of the Boys and Girls Club, who already have the necessary equipment and expertise to manage the operation, will monitor the temperature hourly through a weather station at the Homer Clubhouse. The program that inspired this classic is called GLOBE, which stands for Global Learning and Observation to Benefit the Environment. GLOBE is an international program in association with the National Aeronautics and Space Administration, National Science Foundation, U.S. Environmental Protection Agency and the U.S. State Department. The data collected from schools and other groups around the world are deposited into a database that is accessed by the aforementioned organizations to assist atmospheric scientists in their work. This program allows children to participate in scientific processes, while earning money for their program in a fun, non-competitive and educational way.

Three hundred, primarily seven to twelve year-olds, are involved in the Homer Chapter of the Boys and Girls Club. The “Clubhouse” provides an excellent place for kids to “hang-out” in a safe and learning friendly environment. In light of dwindling

ALASKA STATE LEGISLATURE

Chair
FISHERIES

Vice-Chair
EDUCATION

Member
HEALTH, EDUCATION AND SOCIAL SERVICES

Member
STATE AFFAIRS



REPRESENTATIVE PAUL SEATON
House District 35

Session:
State Capitol Building
Juneau, Alaska 99801
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Rep.Paul.Seaton@legis.state.ak.us

Interim:
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Suite 102B
Homer, Alaska 99603
Phone 907-235-2921
Fax 907-235-4008

State revenues, this will be a valuable fundraiser when other sources of monetary support cannot be guaranteed. The "Homer Mercury Classic" will help to ensure funds that will allow the Club to stay open and fully staffed for years to come.

ALASKA STATE LEGISLATURE

Chair
FISHERIES

Vice-Chair
EDUCATION

Member
HEALTH, EDUCATION AND SOCIAL SERVICES

Member
STATE AFFAIRS



REPRESENTATIVE PAUL SEATON
House District 35

Session:
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Sectional Analysis

HB 232

"An Act relating to mercury classics; and providing for an effective date."

***Section 1.**

- (a) Amends Alaska Statute (AS) 05.15.690(27), by expanding the statute to allow the Boys and Girls Club of the Kenai Peninsula to conduct a mercury classic under their existing gaming permit.
- (b) This mercury classic will be called the "Homer Mercury Classic."

***Section 2.**

Provides the effective date of January 1, 2004 for the act to take effect under AS 01.10.070(c).



Office of the Mayor

(907) 235-8121
Fax 235-3140

Jack Cushing

Homer City Hall 491 E. Pioneer Avenue • Homer, Alaska 99603-7624

April 7, 2003

Honorable Representative Paul Seaton
State Capital Room 428
Juneau, AK 99802

Honorable Representative Seaton:

Thank you for sponsoring House Bill 232 for the Homer Mercury Classic.

On behalf of the City of Homer, Homer City Council and Homer's citizenry, I submit this letter in support of House Bill 232 authorizing the Homer Mercury Classic. which will be operated and administered by the Boys and Girls Club of the Kenai Peninsula.

The City of Homer and greater Homer Community is very supportive of the Homer Boys and Girls Club as well as the Kenai Peninsula Boys and Girls Club.

The Homer City Council has continually voiced their support of the Boys and Girls Club and authorized a lease for use of one of the City Facilities.

Sincerely,

CITY OF HOMER

Jack Cushing, Mayor of the City of Homer



BOYS & GIRLS CLUBS
of the Kenai Peninsula - Homer
PO Box 2570

Homer, AK 99603 907-235-2772 fax 907-235-2958

For 140 years, the Boys & Girls Clubs of America have existed "To inspire and enable all young people, especially those from disadvantaged circumstances, to realize their full potential as productive, responsible and caring citizens."

The Boys & Girls Clubs of the Kenai Peninsula opened the doors of its Homer Unit just over 3 years ago. Since that time we have grown to accommodate over 300 members, and support a staff of nine part time employees. This is an expensive stretch for a non-profit budget that has six clubs to support within the Kenai Peninsula.

To assist in the financing of the overall budget, and specifically our local Club, the Homer Unit is seeking to create a fundraising program that would generate a continual influx of income. After two years of speculation and research, it was decided that holding a bi-annual "Mercury Classic" was a good choice for the Boys & Girls Club of Homer because the Club members themselves could become an integral part of the process, including monitoring the weather station, collecting and downloading data onto the computer, and graphing ongoing temperature fluctuations. The Homer Clubhouse Director has completed the required training for "GLOBE," which is an organization that collects, records, and posts weather data on an international level. In addition, the Homer Clubhouse already has the equipment necessary to support the scientifically accurate collection of data required.

Logistically, temperatures will be automatically recorded every hour of every day, and downloaded into the database. For the Autumn Mercury Classic, participants will pay \$2 to guess when the temperature will first reach +15 degrees. For the Spring Mercury Classic, the \$2 will buy the chance to guess when the temperature will first reach +55 degrees.

The prize money, after expenses, will be split 50-50 between the winning participant(s) and the Club. All aspects of the contest will be run in a responsible and professional manner, and all financial records and scientific data will be available for public access and review.

We propose that the existing permit belonging to the Boys & Girls Clubs of the Kenai Peninsula be amended to include a Mercury Classic. It is understood that this permit would allow ANY of the Boys & Girls Clubs of the Kenai Peninsula to hold a Mercury Classic. The Homer Unit may merely be the first.

Supporting the Boys & Girls Clubs is an investment in the future of our children, our families and our community. Please help us attain this important funding source.

Thank you for your time and consideration,

DeWaine Tollefsrud - Clubhouse Director
Boys and Girls Club of the Kenai Peninsula - Homer Unit



BOYS & GIRLS CLUBS

of the Kenai Peninsula, Kenai Unit
705 Frontage Road, Suite B
Kenai, Alaska 99611
e-mail: info@positiveplaceforkids.com
Website: positiveplaceforkids.com
(807) 283-2682
(907) 283-8190 fax

April 9, 2003

Representative Paul Seaton
Alaska State Legislature
State Capitol, Room 428
Juneau, Alaska 99802

Dear Representative Seaton:

The Board of Directors of the Boys & Girls Club of the Kenai Peninsula strongly supports the staff of our Homer Unit in their efforts to hold Mercury Classic fundraisers at their Club site. Our Homer Unit has a weather station and all the equipment necessary to measure the exact time and date the temperature reaches a certain temperature. Homer Club members of all ages will be actively involved in accurately recording the time and temperature changes. This educational component of the Classic was the main reason this fundraiser was chosen by the Homer Club staff over other fundraising activities.

At the December 4, 2002 Boys & Girls Club of the Kenai Peninsula Board of Directors' Meeting, our Board of Directors voted unanimously to support the motion "to allow the Homer Unit staff to proceed with the steps necessary to hold a Mercury Classic." Therefore, we respectfully request that you support House Bill No. 232 and allow the Boys & Girls Club of the Kenai Peninsula's Homer Unit to conduct a Mercury Classic.

Thank you for your assistance.

Sincerely,

Mike Navarre
Immediate Past President
Boys & Girls Club Board of Directors

Peter Micciche
Board President
Boys & Girls Club Board of Directors

MN/PM:kwl

The Positive Place For Kids



HB

234

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2995
Fax: (907) 465-6592



Interim:
716 W 4th Avenue, Suite 300
Anchorage, AK 99501-2133
Phone: (907) 269-0250
Fax: (907) 269-0249

Representative Lesil McGuire
Chair, Judiciary Committee

CSHB 234 (L&C)

23-LS0862\S

Ford

4/10/03

"An Act relating to the sale of beer manufactured at a brewpub; continuing the existence of the Alcoholic Beverage Control Board; and providing for an effective date."

TITLE CHANGE

Sectional Analysis

Section 1 – Amends AS 04.11.135(d)(3)(C) by adding language that will allow brewpub licensees to sell beer to an individual present on the premises, in quantities of 5 gallons a day or less, at the same location where that brewpub licensee also is the holder of beverage dispensary license¹ (Pg.2, Ln. 9-10). **All language, found in Work Draft 23-LS0862I considered by the Labor and Commerce Committee on Wednesday, April 9th, pertaining to removal of peace officer powers for Alcoholic Beverage Control Board investigators has been removed.**

Further, the language restricting the amount of beer (15,000 gallons or the amount sold in 2001 plus 10 percent, whichever is greater) manufactured by the holder of the beverage dispensary license can sell to a person licensed as a wholesaler, has been reinserted (Pg. 2, Ln. 5-8)

Section 2 – Amends AS 44.66.010(a)(1) by extended the date of existence for the Alcoholic Beverage Control Board from June 30, 2003 to June 30, 2006 (Pg. 2, Ln. 13-14).

Section 3 – Provides for an effective date for provisions of this Act of July 1, 2003.

¹ This corrects the arbitrary restriction on Alaska's brewpub licensees who may manufacture their beer in one location in the state, and dispense it in another.

23-LS0862AS
Ford
4/10/03

CS FOR HOUSE BILL NO. 234()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MCGUIRE, Crawford

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the sale of beer manufactured at a brewpub; continuing the**
2 **existence of the Alcoholic Beverage Control Board; and providing for an effective date."**

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

4 *** Section 1.** AS 04.11.135(d) is amended to read:

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

10 (1) manufacture not more than 150,000 gallons of beer in a calendar
11 year on premises other than the premises licensed under the beverage dispensary
12 license;

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

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

2 (A) on the premises licensed under the beverage dispensary
3 license or other licensed premises of the beverage dispensary licensee that are
4 also licensed as a beverage dispensary;

5 (B) to a wholesaler licensed under AS 04.11.160; sales under
6 this subparagraph may not exceed 15,000 gallons or the amount sold under this
7 subparagraph in calendar year 2001, plus 10 percent, whichever amount is
8 greater; or

9 (C) to an individual who is present on the premises described
10 under (A) of this paragraph, or where the beer is manufactured, in quantities
11 of not more than five gallons per day.

12 * Sec. 2. AS 44.66.010(a)(1) is amended to read:

13 (1) Alcoholic Beverage Control Board (AS 04.06.010) - June 30, 2006
14 [2003];

15 * Sec. 3. This Act takes effect July 1, 2003.

Alaska State Legislature

Session:
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Phone: (907) 269-0250
Fax: (907) 269-0249

Representative Lesil McGuire

Chair, Judiciary Committee

AMENDMENTS TO CSHB 234 (L&C)

Work Draft 23-LS0862\S

Ford

4/10/03

Section 1 – Insert language to amend AS 04.11.135(a) with the following:

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 150,000 gallons of beer in a calendar year;

(2) sell beer manufactured on premises licensed under the beverage dispensary license for consumption on the licensed premises or other licensed premises of the beverage dispensary licensee that are also licensed as a beverage dispensary;

(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;

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

(5) sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as a wholesaler under AS 04.11.160 ; sales under this paragraph may not exceed 15,000 gallons [OR THE AMOUNT SOLD UNDER THIS PARAGRAPH IN CALENDAR YEAR 2001, PLUS 10 PERCENT, WHICHEVER AMOUNT IS GREATER].

Appropriately renumber subsequent sections of this act.

Section 2 – Section 1 of this work draft becomes section 2 and further amends AS 04.11.135(d) as follows:

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

(1) manufacture not more than 150,000 gallons of beer in a calendar year on premises other than the premises licensed under the beverage dispensary license;

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

Alaska State Legislature

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Representative Lesil McGuire

Chair, Judiciary Committee

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

(A) on the premises licensed under the beverage dispensary license or other licensed premises of the beverage dispensary licensee that are also licensed as a beverage dispensary,

(B) to a wholesaler licensed under AS 04.11.160 ; sales under this subparagraph may not exceed 15,000 gallons [**OR THE AMOUNT SOLD UNDER THIS SUBPARAGRAPH IN CALENDAR YEAR 2001, PLUS 10 PERCENT, WHICHEVER AMOUNT IS GREATER**]; or

Alaska State Legislature

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Representative Lesil McGuire

Chair, Judiciary Committee

CSHB 234 (L&C)

"An Act relating to the exercise of peace officer powers by employees of the Alcoholic Beverage Control Board; relating to the sale of beer manufactured at a brewpub; continuing the existence of the Alcoholic Beverage Control Board; and providing for an effective date."

Sectional Analysis

Section 1 – Amends AS 04.06.110 by removing language authorizing Alcoholic Beverage Control Board investigators to investigate prostitution, gambling, and their related offenses (Pg. 1, Ln. 13-14; Pg. 2, Ln. 1-3).

Section 2 – Amends AS 04.11.135 (a) pertaining to a brewpub licensee who also is the holder of a beverage dispensary license by removing language that restricts the amount of beer (15,000 gallons or the amount sold in 2001 plus 10 percent, whichever is greater) manufactured by the holder of the beverage dispensary license can sell to a person licensed as a wholesaler (Pg. 2, Ln. 19-22)

Section 3 – Amends AS 04.11.135 (d) by removing the same language as found in AS 04.11.135 (a) regarding the amount of beer that maybe sold to a wholesaler (Pg. 3, Ln. 7-11) and amends AS 04.11.135 (d)(3)(C) by adding language that will allow brewpub licensees to sell beer to an individual present on the premises, in quantities of 5 gallons a day or less, at the same location where that brewpub licensee also is the holder of beverage dispensary license¹ (Pg.3, Ln. 13-14).

Section 4 – Amends AS 44.66.010(a)(1) by extended the date of existence for the Alcoholic Beverage Control Board from June 30, 2003 to June 30, 2006 (Pg. 3, Ln. 16).

Section 5 – Provides for an effective date for provisions of this Act of July 1, 2003.

¹ This corrects the arbitrary restriction on Alaska's brewpub licensees who may manufacture their beer in one location in the state, and dispense it in another.

Alaska State Legislature

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State Capitol
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Fax: (907) 269-0249

Representative Lesil McGuire

Chair, Judiciary Committee

CSHB 234 (L&C)

"An Act relating to the exercise of peace officer powers by employees of the Alcoholic Beverage Control Board; relating to the sale of beer manufactured at a brewpub; continuing the existence of the Alcoholic Beverage Control Board; and providing for an effective date."

Sponsor Statement

Committee Substitute for House Bill 234 address several distinct policy issues and combines components of the original House Bill 234 recommendations from the Legislative Audit regarding the Alcoholic Beverage Control Board's sunset review.

First, this substitute removes investigatory obligations from employees of the Alcoholic Beverage Control (ABC) Board relating to prostitution, gambling, and their related offenses. This amendment to existing statute is as a result of the audit recommendations forwarded to the LB&A Committee by Legislative Audit. Legislative Audit's main argument for this recommendation stems from their belief that this added responsibility falls outside the ABC Board's stated statutory mission as defined in AS 04.06.090(a) which is to *"control the manufacture, barter, possession, and sale of alcoholic beverages in the state."*

The second distinct component of this bill eliminates language in AS 04.11.135(a) & (d)(3)(B) that limits the holder of a beverage dispensary license from selling, to a wholesaler, more than 15,000 gallons or the amount sold in 2001 plus 10 percent, whichever amount is greater, beer manufactured under their brewpub license.

The third distinct component of this bill addresses current inconsistencies under AS 04.11.135(d) regarding sales of beer by brewpubs in quantities of not more than 5 gallons per day (so-called "growlers"). Under current statutory language, sales of these growlers are limited to brewpubs that brew their beer on their premises but this restriction unfairly disadvantages Alaskan brewpub operators who may brew their product in one location in the state and dispense their product at another. Although most brewpub operators in Alaska are not hindered by this restriction, brewing and dispensing their product in the same location, this amendment will lift this arbitrary restriction for any current and future operators who brew and dispense in two different locations within the state of Alaska.

Lastly, this substitute incorporates the extension of the sunset date for the existence of the Alcoholic Beverage Control Board to June 30, 2006 and provides for an effective date of July 1, 2003.

23-LS0862V

Ford

4/4/03

CS FOR HOUSE BILL NO. 234()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MCGUIRE, Crawford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the exercise of peace officer powers by employees of the Alcoholic
2 Beverage Control Board; relating to the sale of beer manufactured at a brewpub;
3 continuing the existence of the Alcoholic Beverage Control Board; and providing for an
4 effective date."

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

6 * Section 1. AS 04.06.110 is amended to read:

7 **Sec. 04.06.110. Peace officer powers.** The director and the persons employed
8 for the administration and enforcement of this title may, with the concurrence of the
9 commissioner of public safety, exercise the powers of peace officers when those
10 powers are specifically granted by the board. Powers granted by the board under this
11 section may be exercised only when necessary for the enforcement of the criminally
12 punishable provisions of this title, regulations of the board, and other criminally
13 punishable laws and regulations [, INCLUDING INVESTIGATION OF
14 VIOLATIONS OF LAWS AGAINST PROSTITUTION AND PROMOTING

1 PROSTITUTION DESCRIBED IN AS 11.66.100 - 11.66.130 AND LAWS
2 AGAINST GAMBLING, PROMOTING GAMBLING, AND RELATED OFFENSES
3 DESCRIBED IN AS 11.66.200 - 11.66.280].

4 * Sec. 2. AS 04.11.135(a) is amended to read:

5 (a) A brewpub license authorizes the holder of a beverage dispensary license
6 to

7 (1) manufacture on premises licensed under the beverage dispensary
8 license not more than 150,000 gallons of beer in a calendar year;

9 (2) sell beer manufactured on premises licensed under the beverage
10 dispensary license for consumption on the licensed premises or other licensed
11 premises of the beverage dispensary licensee that are also licensed as a beverage
12 dispensary;

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

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

18 (5) sell beer manufactured on the premises licensed under the beverage
19 dispensary license to a person licensed as a wholesaler under AS 04.11.160 [SALES
20 UNDER THIS PARAGRAPH MAY NOT EXCEED 15,000 GALLONS OR THE
21 AMOUNT SOLD UNDER THIS PARAGRAPH IN CALENDAR YEAR 2001,
22 PLUS 10 PERCENT, WHICHEVER AMOUNT IS GREATER].

23 * Sec. 3. AS 04.11.135(d) is amended to read:

24 (d) Notwithstanding (a) of this section, the holder of a brewpub license who
25 under the provisions of AS 04.11.450(b) formerly held a brewery license and a
26 restaurant or eating place license and who, under the former brewery license,
27 manufactured beer at a location other than the premises licensed under the former
28 restaurant or eating place license may

29 (1) manufacture not more than 150,000 gallons of beer in a calendar
30 year on premises other than the premises licensed under the beverage dispensary
31 license;

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

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

4 (A) on the premises licensed under the beverage dispensary
5 license or other licensed premises of the beverage dispensary licensee that are
6 also licensed as a beverage dispensary;

7 (B) to a wholesaler licensed under AS 04.11.160 [; SALES
8 UNDER THIS SUBPARAGRAPH MAY NOT EXCEED 15,000 GALLONS
9 OR THE AMOUNT SOLD UNDER THIS SUBPARAGRAPH IN
10 CALENDAR YEAR 2001, PLUS 10 PERCENT, WHICHEVER AMOUNT
11 IS GREATER]; or

12 (C) to an individual who is present on the premises described
13 under (A) of this paragraph, or where the beer is manufactured, in quantities
14 of not more than five gallons per day.

15 * Sec. 4. AS 44.66.010(a)(1) is amended to read:

16 (1) Alcoholic Beverage Control Board (AS 04.06.010) - June 30, 2006
17 [2003];

18 * Sec. 5. This Act takes effect July 1, 2003.

Alaska State Legislature

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State Capitol
Juneau, AK 99801
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Representative Lesil McGuire

Chair, Judiciary Committee

CSHB 234 (L&C)

"An Act relating to the exercise of peace officer powers by employees of the Alcoholic Beverage Control Board; relating to the sale of beer manufactured at a brewpub; continuing the existence of the Alcoholic Beverage Control Board; and providing for an effective date."

Sponsor Statement

Committee Substitute for House Bill 234 address several distinct policy issues and combines components of the original House Bill 234 recommendations from the Legislative Audit regarding the Alcoholic Beverage Control Board's sunset review.

First, this substitute removes investigatory obligations from employees of the Alcoholic Beverage Control (ABC) Board relating to prostitution, gambling, and their related offenses. This amendment to existing statute is as a result of the audit recommendations forwarded to the LB&A Committee by Legislative Audit. Legislative Audit's main argument for this recommendation stems from their belief that this added responsibility falls outside the ABC Board's stated statutory mission as defined in AS 04.06.090(a) which is to *"control the manufacture, barter, possession, and sale of alcoholic beverages in the state."*

The second distinct component of this bill addresses current inconsistencies under AS 04.11.135(d) regarding sales of beer by brewpubs in quantities of not more than 5 gallons per day (so-called "growlers"). Under current statutory language, sales of these growlers are limited to brewpubs that brew their beer on their premises but this restriction unfairly disadvantages Alaskan brewpub operators who may brew their product in one location in the state and dispense their product at another. Although most brewpub operators in Alaska are not hindered by this restriction, brewing and dispensing their product in the same location, this amendment will lift this arbitrary restriction for any current and future operators who brew and dispense in two different locations within the state of Alaska.

Lastly, this substitute incorporates the extension of the sunset date for the existence of the Alcoholic Beverage Control Board to June 30, 2006 and provides for an effective date of July 1, 2003.

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Chair, Judiciary Committee

AMENDMENTS TO CSHB 234 (L&C)

Work Draft 23-LS0862\S

Ford
4/10/03

Section 1 – Insert language to amend AS 04.11.135(a) with the following:

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 150,000 gallons of beer in a calendar year;

(2) sell beer manufactured on premises licensed under the beverage dispensary license for consumption on the licensed premises or other licensed premises of the beverage dispensary licensee that are also licensed as a beverage dispensary;

(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;

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

(5) sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as a wholesaler under AS 04.11.160 ; sales under this paragraph may not exceed 15,000 gallons [**OR THE AMOUNT SOLD UNDER THIS PARAGRAPH IN CALENDAR YEAR 2001, PLUS 10 PERCENT, WHICHEVER AMOUNT IS GREATER**].

Appropriately renumber subsequent sections of this act.

Section 2 – Section 1 of this work draft becomes section 2 and further amends AS 04.11.135(d) as follows:

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

(1) manufacture not more than 150,000 gallons of beer in a calendar year on premises other than the premises licensed under the beverage dispensary license;

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

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Chair, Judiciary Committee

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

(A) on the premises licensed under the beverage dispensary license or other licensed premises of the beverage dispensary licensee that are also licensed as a beverage dispensary;

(B) to a wholesaler licensed under AS 04.11.160 ; sales under this subparagraph may not exceed 15,000 gallons [**OR THE AMOUNT SOLD UNDER THIS SUBPARAGRAPH IN CALENDAR YEAR 2001, PLUS 10 PERCENT, WHICHEVER AMOUNT IS GREATER**]; or

Section 3 – Section 2 of the work draft is renumbered to become section 3 and is amends AS 44.66.010(a)(I) to read:

(I) Alcoholic Beverage Control Board (AS 04.06.010) – June 30, **2007**.

Section 4 – Section 3 of the work draft is renumbered to be come section 4.

Amendments to AS 04.06 – Alcoholic Beverage Control Board

AS 04.06.010. Reflects movement from Revenue to Public Safety. Removes provision of “administrative purposes only.” This change will clarify that the ABC Board will be under DPS and the employees will be subject to the policies and standards of the agency as any other employee of the department.

AS 04.06.020 and 030. Adds commissioners of public safety and revenue to the ABC Board. Addition of the Commissioner of Public Safety to the board will ensure cooperation and participation of the DPS in ABC function. DPS commissioner sits on two boards housed in department – Alaska Police Standards Council and Council on Domestic Violence and Sexual Assault. Addition of Revenue commissioner on Board will ensure that expertise and historical perspective of ABC function from revenue is maintained. In a May 2000 report, the Alaska Criminal Justice Assessment Commission recommended that the legislature add two nonindustry members to the board, raising the total membership from five to seven (this recommendation is noted in the Legislative Audit Sunset Review (04-20019-03)).

AS 04.06.070. Modifies the statutory provisions for removal of the director of the board so that the “director shall serve at the pleasure of the governor.” Current language of the statute is archaic.

AS 04.06.110. Modifies peace officer powers. Incorporates recommendation of Legislative Audit Sunset Review of ABC Board. Removal of language providing for “investigation of violations of laws against prostitution and promoting prostitution” will refocus ABC Board to primary enforcement of Title 04.

These changes to the statute will enable the ABC Board to focus on and be responsive in addressing Title 4 alcohol issues. The staff of the ABC Board are employees of the State of Alaska. They must perform to the standards and expectations of the state and the department of which they are a part. Having the ABC Board receive direct guidance and support from the Department of Public Safety will facilitate the Governor’s desire to address alcohol related crime.

*Section . AS 04.06.010 is amended to read:

Sec. 04.06.010. Establishment of board. **There is established in the Department of Public Safety the** [THE] Alcoholic Beverage Control Board [IS ESTABLISHED] as a regulatory and quasi-judicial agency. [THE BOARD IS IN THE DEPARTMENT OF REVENUE, BUT FOR ADMINISTRATIVE PURPOSES ONLY.]

*Sec. . AS 04.06.020 is amended to read:

Sec. 04.06.020. Appointment and qualifications. The board consists of **seven** [FIVE] members: **the commissioner of public safety, the commissioner of revenue, and five members** appointed by the governor and confirmed by a majority of the members of the legislature in joint session. A member of the board may not hold any other state or federal office, either elective or appointive. Two members of the board shall be persons actively engaged in the alcoholic beverage industry, except that no member may hold a wholesale license or be an officer, agent, or employee of a wholesale alcoholic beverage enterprise. No three members of the board may be engaged in the same business, occupation, or profession. At least three members of the board shall represent the general public. A board member representing the general public or an immediate family member of a board member representing the general public may not have any financial interest in the alcoholic beverage industry. In this section, "immediate family member" means a spouse, child, or parent.

*Sec. . AS 04.06.030 is amended to read:

Sec. 04.06.030. Terms of office; chair. (a) **The commissioners of public safety and revenue shall serve as members during their tenure as commissioner.** **The other m**[M]embers of the board shall be appointed for overlapping terms of three years.

(b) **Except for the commissioners of public safety and revenue, a** [A] vacancy occurring in the membership of the board shall be filled within 30 days by appointment of the governor for the unexpired portion of the vacated term.

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

*Sec. . AS 04.06.060 is amended to read:

Sec. 04.06.060. Quorum and majority. **Four** [THREE] members of the board constitute a quorum for the conduct of business, except that a majority of the whole membership of the board must approve all applications for new licenses, and all renewals, transfers, suspensions, and revocations of existing licenses. If a

majority of the board is present and voting, the director, with the consent of the members present, may cast a tie-breaking vote.

*Sec. . AS 04.06.070 is amended to read:

Sec. 04.06.070. Appointment and removal of director. The governor shall appoint a director to serve as the executive officer of the board. **The director serves at the pleasure of the governor.** [THE BOARD MAY REMOVE THE DIRECTOR AT ITS PLEASURE, AND THE GOVERNOR MAY REMOVE THE DIRECTOR FOR MISCONDUCT, MISFEASANCE, OR MALFEASANCE IN OFFICE. THE GOVERNOR MAY NOT REMOVE THE DIRECTOR UNLESS THE DIRECTOR IS GIVEN A COPY OF THE CHARGES AND AFFORDED AN OPPORTUNITY TO BE PUBLICLY HEARD, IN PERSON OR BY COUNSEL, IN DEFENSE AGAINST THE CHARGES UPON AT LEAST 10 DAYS' NOTICE. IF THE DIRECTOR IS REMOVED FOR CAUSE, THE GOVERNOR SHALL FILE WITH THE LIEUTENANT GOVERNOR A COMPLETE STATEMENT OF ALL CHARGES MADE AGAINST THE DIRECTOR AND THE FINDINGS BASED ON THE CHARGES, TOGETHER WITH A COMPLETE RECORD OF ANY HEARING.]

*Sec. . AS 04.06.110 is amended to read:

Sec. 04.06.110. Peace officer powers. The director and the persons employed for the administration and enforcement of this title may, with the concurrence of the commissioner of public safety, exercise the powers of peace officers when those powers are specifically granted by the board. Powers granted by the board under this section may be exercised only when necessary for the enforcement of the [CRIMINALLY PUNISHABLE PROVISIONS OF THIS TITLE,] regulations of the board[, AND OTHER CRIMINALLY PUNISHABLE LAWS AND REGULATIONS, INCLUDING INVESTIGATION OF VIOLATIONS OF LAWS AGAINST PROSTITUTION AND PROMOTING PROSTITUTION DESCRIBED IN AS 11.66.100 - 11.66.130 AND LAWS AGAINST GAMBLING, PROMOTING GAMBLING, AND RELATED OFFENSES DESCRIBED IN AS 11.66.200 - 11.66.280].

December 4, 2002

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
SUNSET REVIEW

November 29, 2002

Audit Control Number

04-20019-03

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, 2003 and will have one year from that date to conclude its administrative operations. We recommend that the legislature extend the ABC Board's termination date until June 30, 2006.

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.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

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

As required by legislative intent, this report shall be considered during the legislative oversight process in determining whether the ABC Board should be reestablished. Currently, under AS 44.66.010(a)(1), the board will terminate on June 30, 2003 and will have one year from that date to conclude its administrative operations.

Objectives

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

Scope

Alaska Statute 44.66.050 requires the factors outlined in the Analysis of Public Need section of this report to be evaluated as part of this audit in order to determine the need for the ABC Board's continued existence. We reviewed ABC Board activity that occurred from FY 98 through FY 02. We also reviewed the Board's proceedings to determine whether it complied with Alaska Statutes and regulations.

Methodology

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

- Title IV and other applicable Alaska Statutes.
- Proposed and passed legislation concerning alcohol and the ABC Board since the previous sunset audit.
- Title 15, Chapter 104 of the Alaska Administrative Code.
- *Final Report of the Criminal Justice Assessment Committee, May 2000* and follow-up status reports.
- ABC Board licensing files.
- ABC Board meeting minutes.
- ABC Board operating budgets and financial records.

- Newspaper articles pertaining to liquor licensing in Alaska.
- Responses to the questionnaires we sent out to governing bodies, law enforcement agencies, community councils, and a sample of active licensees.

In addition, we attended two board meetings, one in person and one via teleconference. We interviewed ABC Board staff, the chairman of the ABC Board, and local community council questionnaire respondents. We also contacted the Alaska Ombudsman, the Attorney General's office, the Division of Equal Employment Opportunity, the Human Rights Commission, the Department of Revenue, and the Office of the Governor.

ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (ABC Board or the board) was established in 1959 by Title IV¹ of the Alaska Statutes as a regulatory and 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. 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 IV and the regulations adopted by the board.

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

ABC Board employees ensure that over 1,800 licensees comply with Title IV. Employees provide three functions including administration, licensing, and enforcement. These services are briefly described below.

Administration: The ABC Board director and an administrative assistant comprise the administrative staff. They have a wide variety of administrative duties including oversight of staff, preparation of budget documents, calculation and issuance of revenue sharing payments to local municipalities, direction of special enforcement investigations and public hearings.

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 and licensees.

Alcoholic Beverage Control Board Members

Bob Klein, Chairman
Anchorage, Industry Member
Term expires January 31, 2003

Jan Wrentmore
Skagway, Industry Member
Term expires March 1, 2005

Toni Lee Jackson
Copper Center, Public Member
Term expires January 31, 2003

Ellen Ganley
Fairbanks, Public Member
Term expires March 1, 2005

Duane Udland
Anchorage, Public Member
Term expires March 1, 2004

¹ Title IV, Alcoholic Beverages, AS 04.06.010 – 04.21.080.

Enforcement: The four-member enforcement staff currently consists of two Anchorage-based investigators, one Fairbanks-based investigator and one Juneau-based investigator. Investigators perform various duties including inspecting licensed premises, investigating complaints of suspected licensing violations, overseeing a federal underage drinking grant, and responding to questions from licensees and the public. Investigators monitor server training courses and perform background checks on applicants. They also give lectures relating to alcoholic beverage control laws and regulations on behalf of the board and provide Title IV training to law enforcement agencies on request.

The ABC Board office is located in Anchorage. In FY 03, the board has an operating budget of \$711,200 for its nine staff positions and activities.

REPORT CONCLUSIONS

In our opinion, the Alcoholic Beverage Control Board (ABC Board or the board) should continue to regulate the manufacture, sale, barter, and possession of alcoholic beverages in Alaska in order to protect the public's health, safety, and welfare. The board has provided protection to the general public through the issuance, renewal, and temporary suspension of liquor licenses. Protection has also been provided through investigations 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 and efficiently meeting its statutory responsibilities, and is operating in the public interest. The ABC Board is organized under statute as a regulatory and quasi-judicial agency; however, it appears to be spending a disproportionate amount of time and resources on police efforts rather than on the regulatory function.

We recommend that Alaska Statute 44.66.010(a)(1) be amended to extend the termination date of the Alcoholic Beverage Control Board to June 30, 2006. This three-year extension will give the board ample time to correct the deficiencies noted in this report and it will trigger a timely follow-up audit to determine if these deficiencies have been fully addressed.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Status of Prior Audit Recommendations

Our prior sunset audit² contained three recommendations. The first advised the Alcohol Beverage Control Board (ABC Board or the board) to take steps to ensure that objections from affected neighborhoods were considered prior to the issuance, transfer, or renewal of a license. The board has increased the awareness of local governing bodies regarding the value of public input. The board has also attached conditions to licenses in response to neighborhood objections. However, according to some questionnaire responses and interviews with community council representatives, there still is not enough consideration of public input in how licenses are issued or renewed. In addition, the community councils would like to receive training on the liquor licensing process so they better understand what options are available to them when an application for a license is received for issuance, transfer, or renewal. (See Appendix E.)

The second recommendation was that the board review the liquor license fee-sharing program to ensure the funds were properly spent by the participating governing bodies. The board has implemented an additional regulation to ensure that the municipalities who participate in the revenue sharing program are in compliance.

The third recommendation advised the board to ensure the amounts of license fees refunded to the local governing bodies as part of the revenue share program were correct. This is still of concern and is included in current Recommendations No. 6 and 7.

Recommendation No. 1

The legislature should consider having the Department of Public Safety (DPS) conduct criminal investigations, rather than the ABC Board.

Major changes were made to the ABC Board's statutes and regulations during the past five years. Effective July 1999, AS 04.06.110 was amended, as follows, to add ABC staff investigation of gambling and prostitution offenses.

The director and the persons employed for the administration and enforcement of this title may, with the concurrence of the commissioner of public safety, exercise the powers of peace officers when those powers are specifically granted by the board. Powers granted by the board under this section may be exercised only when necessary for the enforcement of the criminally punishable provisions of this title, regulations of the board, and other criminally punishable laws and regulations, including investigation of violations of laws against prostitution and promoting prostitution described in AS 11.66.100 – 11.66.130 and laws against gambling, promoting gambling, and related offences described in AS 11.66.200 – 11.66.280

² Department of Revenue, Alcoholic Beverage Control Board, September 8, 1997. (Audit Control No. 04-1452-97.)

[GOVERNING THE MANUFACTURE, BARTER, SALE, CONSUMPTION, AND POSSESSION OF ALCOHOLIC BEVERAGES IN THE STATE].³

The stated mission of the ABC Board, according to AS 04.06.090(a), is to "*control the manufacture, barter, possession, and sale of alcoholic beverages in the state.*" Adding gambling and prostitution to this list significantly expanded the mission of the board as to the types of investigations conducted. Whereas prior to the amendment violations of Title IV and its regulations were subject to conviction for class A misdemeanors,⁴ the new language imposed conviction for class B and C felonies on some violations.

Although the DPS commissioner has historically authorized limited police powers to the investigative staff of the board, these powers were usually restricted to issuing subpoenas and serving search warrants. These limited police powers allowed the board's staff to better perform its job. This was much different than the 1999 expansion of the board's mission mentioned above and is an aspect that should be continued.

A major change to the regulations⁵ took effect in March 1999, shortly before the statute change. The new regulation allowed ABC staff to carry firearms, if authorized by the board and with the DPS commissioner's concurrence. The ABC Board authorized the use of firearms by the enforcement staff at its April 1999 board meeting. However, this authorization was rescinded in June 1999 when the DPS commissioner revoked the limited police powers he had previously approved.

The question of allowing ABC Board staff to carry firearms in the performance of its duties has been decided for now. The Attorney General's office and DPS have determined that ABC staff should not need to use deadly force to complete its assigned duties. We agree with that determination.

As pointed out by the Alaska Criminal Justice Assessment Committee,⁶

The purpose of the Department of Revenue is to raise revenue, not to assist law enforcement. To ensure quality enforcement of Title 4, [the criminal investigation] function should be moved to a law enforcement department. Licensing functions would remain with the Alcoholic Beverage Control Board.

The statute change and the firearm situation has already caused administrative inefficiencies and morale problems within ABC. We believe there would be significant inefficiencies in attempting

³ The new language is bolded; the language it replaced is capitalized and in brackets.

⁴ AS 04.16.180. Penalties for violation.

⁵ 15 AAC 104.505(b) states, "*Consistent with federal, state, and local law, the board's investigative personnel may carry firearms in the performance of their duties, if authorized by the board.*"

⁶ The Alaska Criminal Justice Assessment Committee was created in 1997 to participate in a federally-funded Criminal Justice System Project. Governor Tony Knowles, Chief Justice Warren Matthews, Senate President Mike Miller, and House Speaker Gail Phillips appointed a "blue-ribbon" committee with members representing all three branches of government, other community groups, and individuals interested in criminal justice. The Commission issued its final report in May 2000 and followed up with a status report on its recommendations in January 2002. The January 2003 draft update also carries this recommendation.

to turn ABC into a four-officer, statewide police force. DPS has already set up the administrative and operational controls unique to this type of service. To prevent the wasting of resources and their diversion away from the licensing function, we offer the following alternatives to the present approach:

- Alternative A – No statutory change, but require the ABC Board to contract with DPS to provide criminal investigation services. The board would retain some control over that function by recommending targets while DPS personnel performed the investigations.

Alaska Statute 04.06.090(d) allows the board to contract “. . . with other departments and agencies of the state . . . [as] necessary to carry out the purposes of this title.” A contract with DPS would allow the board to purchase state trooper time when and where it is needed to enforce the provisions of Title IV. For example, the board could contract for a one-half full-time equivalent (.5 FTE) trooper position. These services would be on an as-needed and as-available basis for gambling, prostitution, and alcohol investigations as designated by the board. This approach would take advantage of the many locations served by DPS.

- Alternative B – Remove the criminal investigation function from the ABC Board.

These criminal investigations would be handled by DPS, which already has jurisdiction. Although these are perhaps less serious crimes than many investigated by DPS, they need not be slighted. DPS could even set up a dedicated alcohol, gambling, and prostitution team if the legislature believed it to be necessary. Through the budgetary process, the legislature could ensure that the appropriate emphasis continues.

Either of the above alternatives would allow the ABC Board and its staff to retain focus on their mission as a regulatory and licensing agency.

Regardless of how this function is eventually structured, we encourage the board to share information with DPS and local police forces that would assist them in making the most of their limited resources.

Recommendation No. 2

The ABC Board should seek an amendment to Title IV to allow the board to summarily suspend liquor licenses.

The process for revoking a license can take several years if the license holder chooses to pursue all avenues of due process accorded by law. The due process rights granted liquor licensees range from informal hearings before the board to an appeal before the Supreme Court. Since the revocation does not take effect until all due process rights have been exhausted, licensees whose liquor licenses have been revoked may be able to operate for two or more years after the revocation is imposed.

As a result, the ABC Board has resorted to either denying a license renewal or allowing a licensee a set period of time to sell the liquor license in question rather than revoking the license.

Relative to revocation, these procedures reduce the length of time a licensee actually operates after the sanction has been imposed.

However, the board's revocation and nonrenewal practices still allow these licensees to remain open for some time. The practice of allowing some of these licensees to continue to operate is not in the public interest. It sends the wrong message to other licensees. The current practice's value as a deterrent is greatly reduced.

Summarily suspending⁷ a license takes effect immediately and is used when the licensee is a danger to the public. After a license is summarily suspended, revocation is the next step. However, the licensee will not be operating the business while exercising his due process rights. This approach is used by the occupational licensing boards in Alaska and would seem to be appropriate for the ABC Board also.

Currently the ABC Board does not have the power to summarily suspend a liquor license. The board should seek an amendment to its statute to give it this authorization.

Recommendation No. 3

The ABC Board should conduct routine background checks on all licensees as they renew their licenses or should track licensees through the DPS information system.

Alaska Statute⁸ allows the board to conduct background checks during the license renewal process. However, the board does not currently require routine background checks for renewals. Although licensees are asked on the renewal application whether they have been convicted of a felony or Title IV violation during the prior license period, they are not asked about driving while intoxicated convictions or other offenses that may be relevant. In addition, the board does not appear to verify the information provided on the renewal applications. False statements on an application are a class B felony.⁹ Arrests and convictions will show up on a background check.

An alternative to a complete background check on licensees at renewal time is to request the Department of Public Safety to provide information from the Alaska Public Safety Information Network (APSIN) system. Similar to the APSIN information provided to the Division of Family and Youth Services (DFYS) on an on-going basis, the ABC Board could be electronically notified whenever the previously identified individuals are arrested or convicted. This "real time" reporting of arrests and convictions would provide both helpful and timely information to the ABC Board.

⁷ Guidance for summarily suspending licenses comes from Business and Professions, Centralized Licensing, AS 08.01.075(c) which states, "A board may summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety."

⁸ AS 04.11.295 provides that "The board may require an applicant for renewal of a license under this title to submit fingerprints to the Department of Public Safety. . . ."

⁹ AS 04.11.210 states, "If a false statement is made in an application . . . the applicant is guilty of perjury. . . ."

The ABC Board should institute background checks as part of the renewal process or request DPS to provide information from APSIN to track its licensees.

Recommendation No. 4

The director should ensure that all fines are collected and deposited into the General Fund.

Alaska Statute¹⁰ requires all fines imposed by the board be deposited into the General Fund.

The board has instituted a new procedure used in settlement agreements with licensees which does not follow the requirements of this statute. The new procedure evolved when the board imposed a \$1,000 fine on a licensee in a settlement agreement. To avoid having the fine paid into the General Fund, which the board sees as lost money,¹¹ and in an effort to provide restitution, the board instructed the director to refer to the fine as a "donation" and to have the licensee pay it to a local police department.

Current statutes provide the board with only three penalties it can impose on licensees who have violated Title IV: civil fines,¹² and/or temporary suspension or revocation.¹³ The statutes do not give the board authority to require a licensee to pay "restitution" or make a "donation" to a third party. (The process of imposing penalties should be clearly spelled out in the agency's procedural manuals. See Recommendation No. 7.)

As a result, the ABC Board has diverted money that should have been deposited into the General Fund and been available for appropriation by the legislature into the control of a third party. Diversion of monies from the General Fund to another entity may violate the state constitution. It erodes the legislature's most significant power, that of appropriation. Executive or judicial branch agencies appropriating general funds may violate the most basic separation of powers doctrine. While in this instance the \$1,000 involved is not material to either the ABC Board or the State, court decisions have maintained that all appropriations must be made by the legislature.

The board should follow the direction provided by statute and the constitution and deposit all fines into the General Fund. The board should also seek the return of any such "donations" made in the past.

Recommendation No. 5

The ABC Board and its director should provide goals for the enforcement staff.

¹⁰ AS 04.11.590 (a) directs that fines "... shall be transferred by the board to the Department of Revenue and deposited in the General Fund."

¹¹ The board sees these revenues as lost because the money goes into the General Fund, rather than being designated for the board's own use.

¹² AS 04.11.575(a). Civil fine.

¹³ AS 04.11.370. Suspension and revocation of licenses and permits.

The enforcement staff lacks focus in its activities. Of primary concern is the backlog of unissued notices of violation (NOVs) stemming from police reports and compliance checks conducted under a federal underage drinking grant.¹⁴ NOVs are issued to licensees when staff becomes aware that violations of Title IV have taken place at a licensed premise. Throughout FY 02, the staff was at least six months behind¹⁵ in the issuance of NOVs for premises in Anchorage. The backlog limits the ability of the board to monitor the liquor industry.

The enforcement staff is spending the majority of its time managing an underage drinking grant and is allowing other enforcement work to go unfinished. As a result, the licensees, who are cited by law enforcement for selling to a minor during a compliance check, are not issued NOVs in a timely manner.

The public welfare is not adequately protected when licensees who have violated Title IV and have been cited by the police do not receive the associated NOV for six months or more. The board and local governing bodies cannot adequately review the licensee during the renewal period without complete information.

Another concern is that between FY 94 and FY 02 the number of premise inspections conducted has dropped by 62%. Spending an inordinate amount of time on the underage drinking grant and replacing the premise inspection with a walk-through procedure are two of the reasons for the decline in premise inspections. Staff stated that the walk-through consists of an investigator walking into a licensed premise, looking around briefly for drunk or underage customers, and walking out. This substitution frees up more time for the investigator.

However, investigators are not tracking which licensees have been given a walk-through, what the results were, or whether the licensee even knew it had taken place. Walk-throughs are not effective without planning, consistency, and notification of enforcement presence. With the current process, the effectiveness of a walk-through cannot be evaluated by the director or the board.

The staff is directed by the board to enforce Title IV and given a variety of ways to enforce it. However, without board-directed goals, the enforcement staff cannot seem to prioritize its workload. Staff currently appears to be more interested in performing police-type activities than regulatory activities. As a result, it appears that enforcement activities are unorganized and inefficient.

The board and the director should establish specific goals for the enforcement staff so it can perform more efficiently and effectively.

Recommendation No. 6

¹⁴ This federal grant program aids states in reducing underage drinking. The grant amount began in FY 00 and has grown to approximately \$100,000. The grant funds are primarily passed through to the Alaska State Troopers and local law enforcement agencies who then conduct compliance checks ("stings") on local liquor stores.

¹⁵ This backlog was cleared up by the ABC Board staff in late October 2002.

The director should upgrade the ABC Board licensing database.

The current procedures used by the staff to issue permits, account for receipts, produce the revenue sharing payment amounts, and track required documentation for licensure are largely manual. We tested 60 licensing files and the procedures followed for processing the revenue sharing program. There were one or more errors in 28 of the 60 files (47%). Errors included missing information, incomplete information, and missed filing deadlines. Licenses are being issued or renewed without the information required by current statutes and regulations. Our testing also showed that revenue sharing payments of \$15,300 were sent to municipalities which do not qualify for revenue sharing.

The staff currently has no method of tracking what conditions may have been placed on a license. These conditions are imposed by the board to protect the public welfare. However, the public is not adequately protected if the conditions are not documented and enforced by the staff.

The enforcement section keeps a database which tracks premise inspections and notices of violation issued. A hard copy of these items is no longer routinely placed in the licensee's file. The enforcement database is separate from the licensing database and does not link to it. In addition, the data is not available for viewing on the Internet. If enforcement information about licensees is not included in the licensing file or on the Internet, appropriate judgments about the acceptability of a licensee cannot be made.

The licensing database should be upgraded to combine the receipting functions, licensing permit forms, and enforcement activities and to allow the data to be copied onto the Internet for public use. The director should also develop a policies and procedures manual and institute supervisory review of license applications and revenue share payments. The director should also pursue recovery of the \$15,300 paid to municipalities in error for deposit back into the General Fund.

Recommendation No. 7

The director should require staff to prepare and maintain procedural manuals.

Comprehensive procedural manuals have not been prepared. There has been considerable turnover during the past five years, and the lack of manuals has created difficulties when new employees were hired. Prior to the large turnover, writing procedural manuals was a low priority for the director. As a result, new employees were ill-equipped to complete their assigned duties. The difficulties of training a new employee are compounded when clear, written instructions are unavailable.

The lack of procedural manuals has also adversely impacted the agency's internal controls. Prior controls were lost when new employees created their own procedures to do the work.

In general, internal controls are the processes established by management to ensure that its objectives will be met. These objectives are in the areas of financial reporting, effectiveness and efficiency of operations, compliance with applicable laws and regulations, and safeguarding of assets. We offer suggestions for specific controls in Recommendation Nos. 3 through 6.

Recommendation No. 8

The ABC Board members should urge the governor's office to fill board vacancies within the 30-day timeline required by statutes.

Current statutes¹⁶ require the governor to appoint a replacement to the board within 30 days of a vacancy occurring. There were two instances where board seats were vacant for seven months, and one instance of a thirteen-month vacancy. Effectively, only three board members were active during the audit period.

A majority of the board, or three of the five members, is required to approve or deny all license applications.¹⁷ There were various instances when the board only had three members where action on a license was postponed because a majority vote could not be reached due to dissent or abstention. In one instance, the renewal decision on a license was postponed for over a year. During that year the licensee was able to operate without a board-approved license.

The board cannot fulfill its mission when it is unable to complete actions in a timely manner because of vacancy levels. The board and the director should urge the governor's office to fill board vacancies within the 30-day timeline.

¹⁶ AS 04.06.030(b) states, "A vacancy occurring in the membership of the board shall be filled within 30 days by appointment of the governor for the unexpired portion of the vacated term."

¹⁷ AS 04.06.060 states, ". . . a majority of the whole membership of the board must approve all applications for new licenses, and all renewals, transfers, suspensions, and revocations of existing licenses."

A ANALYSIS OF PUBLIC NEED

Limited Analysis

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

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

The board operates in the public interest and protects the public's health, safety and welfare. The board has made an effort to allow only qualified applicants to own and operate licensed premises. It conducts background checks to ensure that licenses are not initially granted to individuals with significant criminal records. However, we recommend that background checks also be performed for license renewals. (See Recommendation No. 3.)

The board limits the number of licenses authorized and reviews license applications to ensure that licensed premises comply with health and safety codes and local zoning requirements. It provides license regulation and enforcement, investigates complaints and, when warranted, takes licensing actions such as revocation or temporary suspension.

In addition, ABC Board staff monitors the alcohol server training courses and answers questions from members of the public, licensees, law enforcement agencies, and local governing bodies regarding alcoholic beverage control statutes and regulations.

The board imposes fines and may temporarily suspend or revoke licenses or permits previously authorized if it is in the best interest of the public. However, vacancies on the board have made it difficult to fulfill its mission. (See Recommendations Nos. 4 and 8.)

The actions taken by the board during our audit period of FY 98 through FY 02 are summarized in Exhibit 1.

Exhibit 1	ABC Board Actions FY 98 to FY 02					
	FY 98	FY 99	FY 00	FY 01	FY 02	Total
Fines	3	4	4	1	2	14
Temporary Suspensions	1	2	1	3	2	6
New Denial	3	2	2	4	1	12
Renewal Denial	7	6	6	3	0	22
Revocation	0	0	0	0	0	0
Actions Pending	0	0	0	0	5	5
Total	<u>14</u>	<u>14</u>	<u>13</u>	<u>11</u>	<u>10</u>	<u>62</u>

The lack of revocations is due to the implementation of two new board procedures. The board effectively revokes a license by either (1) denying the renewal or (2) allowing a licensee a set time period to transfer or sell the license. If the license is not transferred within the allotted time period, the license holder is asked to voluntarily relinquish it.

We do not believe these procedures are in the best interest of the public. Allowing licensees to continue operating until their licenses are due to be renewed, or to sell their licenses, is not an effective penalty. It also would not have a major long-term impact on the liquor industry. Our primary concern is how the public would be adversely affected during this interim period by licensees who disregard the alcoholic beverage control laws and regulations.

Other occupational licensing boards currently use summary suspension as a means to protect the public and sanction licensees. The ABC Board does not currently have the power to summarily suspend a license. This means that licensees can continue to operate on revoked licenses until they have exhausted all due process rights allowed them. Exhausting all these rights, which can include an appeal to the Supreme Court, can take two or more years.

In contrast, a license that is summarily suspended cannot be used while the licensee is pursuing due process. Summary suspension should only be used in those instances where continued operation of a license poses a "clear and immediate danger" to public health and safety. (See Recommendation No. 2.)

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

We found no statutes that were obsolete, vague, or unduly restrictive.

Questionnaires were sent to local governing bodies, law enforcement agencies, community councils, and licensees to assess the impact of the board's programs and procedures. The questionnaires covered a number of issues. (See Appendices C through F.)

Some law enforcement and licensee respondents indicated that they consider AS 04.16.030 vague. This section of statute, entitled "Prohibited conduct relating to drunken persons", states that, "*A licensee, an agent, or employee may not with criminal negligence . . . sell, give, or barter alcoholic beverages to a drunken person.*" The respondents feel that they cannot always determine when a person is drunk and they want a more specific definition. The standard is whether or not a reasonable person would come to the conclusion that the patron is drunk. Although this may not be a perfect standard, people who deal with serving alcohol on a daily basis should be able to determine if a patron is visibly drunk. Therefore, no clarification of the statute is considered necessary.

Respondents from all surveyed groups indicated a need for more consistent enforcement. There is the perception that some licensees are violating sections of Title IV because the enforcement

staff does not routinely conduct inspections in rural communities or in licensed premises located outside of the Anchorage, Fairbanks, or Juneau areas.

However, the opposite is true. Exhibit 2 summarizes the number and percent of licensed premises that received at least one premise inspection in our audit period. It shows that licensed premises in Anchorage and Fairbanks are less likely to be inspected than other locations statewide.

Exhibit 2		Premise Inspections FY 98 to FY 02	
<u>Geographical Area</u>	<u>Number of Premises Inspected</u>	<u>Total Licensed Premises¹⁸</u>	<u>Percent of Premises Inspected</u>
Municipality of Anchorage	164	445	37%
Fairbanks	27	179	15%
City & Borough of Juneau	60	92	65%
All Other Areas ¹⁹	<u>523</u>	<u>857</u>	<u>61%</u>
Total	<u>774</u>	<u>1,573</u>	<u>49%</u>

Respondents from all four groups commented that the enforcement staff is either too small or too busy to respond when an entity asks for assistance or tries to file a complaint about a licensed premise. It appears that the enforcement staff routinely refers complaints to the local law enforcement agency. The respondents stated that, in some instances, the local law enforcement agency is unable to address the complaint because of local politics.

The ABC Board budgetary data graphed in Exhibit 3 (shown on the next page) is adjusted for inflation to reflect FY 02 dollars and is presented as a percentage of FY 02 levels. The board's total budget has remained relatively stable over the past ten years while its travel component has dropped. (See Appendix A for additional revenue and expenditure information.)

The board's homepage shows that basic information is available to the public on the Internet. However, most of the information on the website is directed toward aiding the current or prospective licensee. In addition, the website is difficult to navigate as choices are poorly titled and not well organized.

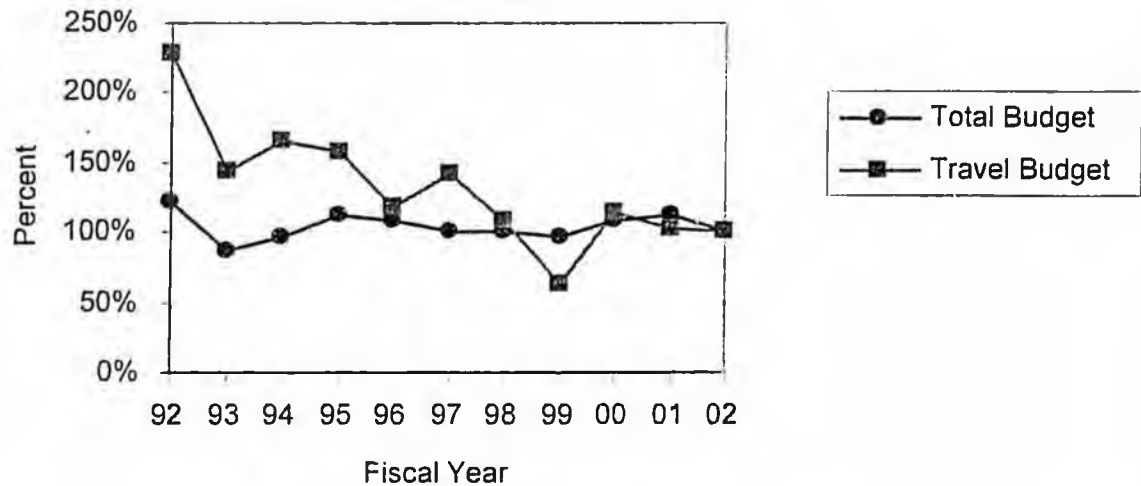
¹⁸ This number does not include licenses issued to airline companies, cruise lines, and the Alaska Railroad.

¹⁹ "Other" includes the remaining premises that are not located on a road system connected to Fairbanks or Anchorage.

Exhibit 3

Total Budget and Travel Budget

Inflation Adjusted to 2002 Dollars



The board is currently trying to update the website to make it easier to navigate and to provide additional public interest items, such as information on individual licensees, notices of violation²⁰ (NOV) issued, and complaint forms. Part of improving the webpage will entail improving the licensing database.

The current database, which includes all active and inactive licenses, is outdated and difficult to manage. The staff is not adequately trained on its use. We understand that the original structure of the database is password protected and that the password is unknown to the staff, making the database largely unusable. (See Recommendation No. 6.)

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

Four significant statutory changes pertaining to the liquor industry were made during the last five years. The first three of these changes were generally of benefit to the public. However, the fourth statutory change, regarding the investigation of gambling and prostitution, detracts from the board's primary mission.

Local Governing Bodies Allowed to Place Conditions on a Licensee

²⁰ A notice of violation is an investigative staff communication informing the licensee that a violation of statutes, regulations, or municipal ordinances by their employees or patrons may be occurring or has occurred on the licensed premise.

The legislature strengthened the control local governing bodies have over licensed premises in their area by allowing them to place conditions²¹ on an individual licensee. The local governing bodies can also enforce these conditions at the local level after the board has approved them. Failure by a licensee to abide by the imposed conditions can mean fines, temporary suspensions, or license revocation by the board.

Elimination of Possible Loophole for Bartenders Who Over Serve

The legislature has strengthened both the enforcement of Title IV and the court's ability to convict licensees or their employees if they serve an intoxicated customer. This was done by eliminating the defense²² that the customer voluntarily drank to the point of public inebriation.

Civil Liability Added to List of Penalties

The penalty²³ for selling alcohol without a license now also carries the additional penalty of strict liability for civil damages, including the cost of prosecution.

ABC Board to Investigate Gambling and Prostitution Offenses

Title IV was revised in 1999 to have ABC Board staff investigate violations of gambling and prostitution on licensed premises.²⁴

The inclusion of gambling and prostitution enforcement in Title IV significantly expands the focus of the agency from its initial mission as a regulatory agency to that of a fledgling police force. This expansion is more pronounced because all current ABC investigators are ex-police officers who would like to carry guns and investigate other crimes. In fact, they seem to be intensely preoccupied with the topic. However, we note that the Department of Public Safety (DPS) is the State's police force, and it is already administratively and operationally set up to perform this function.

The board should focus its efforts on regulatory issues instead of on building a police force of its own. The inclusion of gambling and prostitution investigations in Title IV is diluting the focus and efficiency of the ABC Board and its enforcement actions. The legislature should consider having DPS conduct these criminal investigations, rather than the ABC Board. (See Recommendation No. 1.)

²¹ AS 04.11.480(c) gives a local governing body the option to "... recommend that a license be issued, renewed, relocated, or transferred with conditions."

²² AS 04.21.020(c) states, "It is not a defense that the person drank voluntarily or was voluntarily under the influence of the alcoholic beverage."

²³ AS 04.21.020(b) states that "... a person who sells or barter an alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable ... to the recipient or another person for civil damages. ..." The person is also liable to the State for the costs of prosecution.

²⁴ AS 04.06.110 gives the staff the authority to exercise police powers with the concurrence of the DPS commissioner when enforcing criminally punishable laws "... including investigation of violations of laws against prostitution and promoting prostitution described in AS 11.66.100 - 11.66.130 and laws against gambling, promoting gambling, and related offenses described in AS 11.66.200 - 11.66.280."

No statutory changes have been requested to implement the Alaska Criminal Justice Assessment Commission's recommendations.

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.

Public participation is encouraged at each board meeting. In addition, time for public comment on each board meeting agenda item is allowed.

The board is required by statute²⁵ to hold an annual meeting in each of the four judicial districts of the State. The board holds at least one meeting in Anchorage, Fairbanks, Juneau, and Nome. One board member is physically present at each of the board meetings except Nome. Because of the travel costs, the current procedure is to have the director represent the board in Nome while the board members themselves participate via teleconference.

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,²⁶ 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, board meetings are open to the public and public comment is encouraged. The eight regulation changes, proposed from FY 98 through FY 02, were noticed in the newspapers.

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.

No complaints about the board or its actions were reported during the audit period to the Attorney General's Office, the Office of the Ombudsman, or the Department of Revenue.

The extent to which a board or commission which regulates entry into an occupation or

²⁵ AS 04.06.050 directs the board to "... meet at least once each year in each judicial district of the state."

²⁶ AS 04.06.090(e) directs the board to "... promptly notify all licensees and municipalities of major changes to this title and to regulations adopted under this title."

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. Some of the requirements include showing proof that the applicant advertised the location and type of license in a local newspaper, showing proof the applicant posted the license application on the building where the premise will be located, showing proof of title or lease for the premises, and submitting fingerprint cards so a background check can be completed. Our review of applicants' files disclosed no violations of these requirements.

Although the board routinely requires fingerprint cards to conduct background checks from new applicants, it does not require background checks on existing licensees. The question of whether an existing licensee has been convicted of a felony or violation of Title IV since the last renewal period is important enough to be included in the renewal application. However, the board does not verify this information by requiring another background check. (See Recommendation No. 3.)

The board is required to take licensing action when it finds that violations have occurred on licensed premises.²⁷ These offenses include violating a condition or restriction imposed by the board. Examples of conditions and restrictions are requiring additional background checks on an annual basis, limiting hours of operation, and not allowing live bands to entertain without prior ABC Board authorization. A notice of violation should result when the conditions and restrictions are ignored.

Throughout FY 02, the enforcement staff was at least six months behind in issuing notices of violations in Anchorage.²⁸ The backlog consisted of violations reported in police reports or from compliance checks. This raises concerns regarding the ability of the board to make informed decisions when considering whether licensing actions are necessary. (See Recommendation No. 5.)

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.

There was no evidence that hiring practices or board appointments were contrary to state personnel practices. No complaints have been filed with the Division of Equal Employment Opportunity, the Human Rights Commission, the Governor's Office, or the Office of the Attorney General.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to

²⁷ AS 04.11.370(10) requires license suspension or revocation if the board finds a ". . . violation by a licensee of this title, a condition or restriction imposed by the board, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010."

²⁸ According to the ABC Board director, this backlog was cleared up by the ABC Board staff in late October 2002.

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 section of this report.

Status of ABC Board-related recommendations made by the Alaska Criminal Justice Assessment Commission

In its May 2000 report, the Alaska Criminal Justice Assessment Commission made 21 alcohol-related recommendations. Of those, the two most directly affecting the ABC Board were to increase the board's size and to move its criminal investigation functions to the Department of Public Safety (DPS).

The commission recommended that the legislature add two nonindustry members to the board, raising the total membership from five to seven. It noted that, while AS 04.06.020 mandated that two board members be actively engaged in the alcoholic beverage industry, "*historically . . . at least one other member of the board has created a majority for alcohol dispenser interests because of past experience in the industry.*" The commission believed that adding a member from the public health or medical community and one from law enforcement would better protect the public interest.

In a draft update, dated November 2002, the commission observed that while

the legislature did not act on this recommendation Governor Knowles nominated, and the legislature confirmed, the appointment of former Anchorage Police Department Chief Duane Udland as one of the three public members of the Alcohol Beverage Control Board In addition, the Fairbanks member of the Board is a consultant to the Mental Health Trust and the third public member is employed by the Copper River Native Health Center. Neither member is a physician or medical practitioner, but both give some voice to the public health and medical communities. Therefore, although the [commission's] recommendation was not implemented, some of its concerns have been addressed.

Future governors are, however, not required to appoint members from the health or law enforcement communities. The commission continues to recommend an increase in membership to make the board "*reflective and responsive to the public's interests.*"

In addition to, or as an alternative to, increased membership the legislature may wish to consider converting the two current industry members to nonvoting industry advisors. This would have a similar effect, in that it would dilute the industry's influence on the board.

In May 2000, the commission also recommended that the legislature "*remove the law enforcement functions of the ABC Board from the Department of Revenue and place them in the Department of Public Safety.*"

In its November 2002 draft update, the commission states that DPS "*is satisfied with the present situation.*" Yet, the commission continues to recommend that investigative and law enforcement functions be assigned to the state troopers, as they are "*better trained and equipped*" to perform these tasks. In our discussions with the DPS commissioner, he stated that these tasks would best be performed by his department, and would be if funding were made available.

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