

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SL&C 12643

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**APPENDIX C**  
**Alcoholic Beverage Control Board**  
**Licenses, Permits, and Fees**  
**FY 03 through FY 06**

<b>TYPES OF LICENSES</b>	<b>BIENNIAL FEE</b>
Application Filing Fee - renewal	\$ 200.00
Application Filing Fee - new, transfer, or relocation of premises	100.00
Beverage Dispensary License - Half Year	1,250.00
Beverage Dispensary License - Tourism - Half Year	1,250.00
Beverage Dispensary License	2,500.00
Beverage Dispensary License - Duplicate	2,500.00
Beverage Dispensary License - Tourism	2,500.00
Beverage Dispensary License - Tourism - Duplicate	2,500.00
Beverage Dispensary License - Public Convenience	2,500.00
Beverage Dispensary License - Community License	2,500.00
Bottling Works License	500.00
Brewery License	1,000.00
Brewpub License	500.00
Caterer's Permit	50.00
Club License	1,200.00
Club License - Half Year	600.00
Club License - Public Convenience	1,200.00
Common Carrier License (after 11/4/2003)	1,000.00
Common Carrier License - Half Year (after 11/4/03)	500.00
Common Carrier License	700.00
Common Carrier License - Half Year	350.00
Distillery License	1,000.00
Golf Course	400.00
Outdoor Recreation Lodge (seasonal)	625.00
Outdoor Recreation Lodge (annual)	1,250.00
Package Store License	1,500.00
Package Store License - Half Year	750.00
Package Store License - Tourism	1,500.00
Package Store License - Public Convenience	1,500.00
Package Store License - Community License	1,500.00
Pub License (University)	800.00
Recreational Site License	800.00
Recreational Site License - Half Year	400.00
Restaurant/Eating Place (Beer & Wine only)	600.00
Restaurant/Eating Place (Beer & Wine only) - Half Year	300.00
Restaurant/Eating Place (Beer & Wine only) - Tourism	600.00
Restaurant/Eating Place (Beer & Wine only) - Public Convenience	600.00
Retail Stock Sale License	100.00
Special Events Permit (fee per day)	50.00
Theater License	600.00
Wholesale License - General (Basic Fee)	2,000.00
Wholesale License - Malt Beverage & Wine	400.00
Winery	500.00

Source of Information: Alcoholic Beverage Control Board

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**APPENDIX D**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Active Licensees**

Questionnaires sent: 317  
 Responses received: 175<sup>1</sup> (55%)

1. How often do you contact the Alcoholic Beverage Control (ABC) Board or its staff on average during a year?

<u>Responses</u>	<u>Percentage</u>	
127	73%	1 - 6 times
27	16%	No contact with the Board
15	9%	7 - 12 times
4	2%	More than 12 times

1a. When you have contacted the Board, what was the nature of your inquiry? (Please select all that apply)

<u>Responses</u>	<u>Percentage</u>	
104	41%	Renewal of license
69	27%	Clarification of law
30	12%	Other <sup>2</sup>
29	11%	Status of your license application
22	9%	Enforcement Activity

1b. Please select the number that best assesses your impression of the ABC Board staff.

	Disagree		Neutral		Agree	
Knowledgeable	7	5%	19	13%	121	82%
Friendly	13	9%	17	11%	118	80%
Helpful	8	5%	20	14%	120	81%
Responsive	12	8%	22	15%	112	77%
Timely	15	10%	24	17%	107	73%

<sup>1</sup> Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others gave more than one response.

<sup>2</sup> Other responses were grouped as follows: 6 license, 13 permit, 1 poster, 1 clarification of law, 1 enforcement, 1 fingerprinting, and 4 general questions.

**APPENDIX D**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Active Licensees**  
**(Continued)**

2. Which classification is your license?

<u>Responses</u>	<u>Percentage</u>	
154	89%	Full year
16	9%	Seasonal
4	2%	Both

3. What type of license(s) do you currently have? (Please select all that apply)

<u>Responses</u>	<u>Percentage</u>	
74	33%	Beverage Dispensary
72	32%	Restaurant/Eating Place
46	21%	Package Store
10	5%	Tourism
10	4%	Club
5	2%	Common Carrier
3	1%	Recreational Site
2	1%	Pub
1	1%	Winery
0	0%	Golf Course
0	0%	Wholesaler
0	0%	Brewery

4. Do you feel there are enough ABC Board meetings held each year to adequately administer liquor licenses?

<u>Responses</u>	<u>Percentage</u>	
80	46%	Yes
70	41%	No Opinion
22	13%	No

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

<u>Responses</u>	<u>Percentage</u>	
107	65%	Yes
31	19%	No
27	16%	Sometimes

**APPENDIX D**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Active Licensees**  
**(Continued)**

6. Are you aware that you can participate in ABC Board meetings in person?

<u>Responses</u>	<u>Percentage</u>	
108	64%	Yes
62	36%	No

7. Are you aware that you can participate in ABC Board meetings by teleconference?

<u>Responses</u>	<u>Percentage</u>	
100	59%	No
69	41%	Yes

8. Have you attended an ABC Board meeting in the past four years, either in person or by teleconference?

<u>Responses</u>	<u>Percentage</u>	
134	78%	No
26	15%	Yes, in person
13	7%	Yes, by teleconference

9. Have you offered public comment to the ABC Board in the past four years?

<u>Responses</u>	<u>Percentage</u>	
148	88%	No
21	12%	Yes

10. How long does it normally take for your license application to be approved or denied by the ABC Board?

<u>Responses</u>	<u>Percentage</u>	
67	40%	0-45 days
58	35%	45-90 days
22	13%	90-120 days
19	12%	more than 120 days

**APPENDIX D**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Active Licensees**  
**(Continued)**

11. Approximately how many ABC Board premises inspections did you receive during each of the following years?

	<u>0</u>		<u>1-2</u>		<u>3-4</u>		<u>More than 5</u>	
2002	39	32%	75	62%	6	5%	1	1%
2003	39	31%	75	61%	8	7%	1	1%
2004	45	35%	68	53%	14	11%	1	1%
2005	45	31%	84	59%	11	8%	3	2%

12. Do you feel ABC Board enforcement activities and procedures adequately police the alcoholic beverage industry?

<u>Responses</u>	<u>Percentage</u>	
111	68%	Yes
34	21%	Somewhat
18	11%	No

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

<u>Responses</u>	<u>Percentage</u>	
93	60%	Complements
32	20%	ABC Board enforcement staff is not active in my area
24	15%	Duplicates
7	5%	Conflicts

14. Do you feel the ABC Board enforces the laws and regulations on all licensees equally?

<u>Responses</u>	<u>Percentage</u>	
107	72%	Yes
29	19%	No
14	9%	Sometimes

**APPENDIX D**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Active Licensees**  
**(Continued)**

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

<u>Responses</u>	<u>Percentage</u>	
106	73%	No
40	27%	Yes

16. Overall, how effective or ineffective is the ABC Board in serving the public interest?

<u>Responses</u>	<u>Percentage</u>	
46	28%	Very effective
95	58%	Generally effective
14	9%	Neither effective nor ineffective
5	3%	Generally ineffective
4	2%	Very ineffective

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**APPENDIX E**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Law Enforcement**

Questionnaires sent: 45  
 Responses received: 38<sup>1</sup> (84%)

1. Are you aware of the purpose of the enforcement staff assigned to the Alcoholic Beverage Control (ABC) Board?

<u>Responses</u>	<u>Percentage</u>	
34	92%	Yes
3	8%	No

2. Are you aware of enforcement by ABC Board staff of any of the following activities in your jurisdiction?

<u>Yes</u>		<u>No</u>		
24	63%	14	37%	Sale of alcohol to minors
20	54%	17	46%	Sale of alcohol to inebriated persons
16	43%	21	57%	Sale of alcohol before or after regulated hours of operation
16	43%	21	57%	Sale of alcohol without a valid permit or license
15	41%	22	59%	Employees without an alcohol servers training card
14	38%	23	62%	Gambling or prostitution on a licensed premises

3. How often does your agency contact the ABC Board enforcement staff during an average year?

<u>Responses</u>	<u>Percentage</u>	
24	63%	1 - 4 times
5	13%	5 - 8 times
3	8%	9 - 12 times
3	8%	More than 12 times
3	8%	We have no contact with the ABC Board enforcement staff

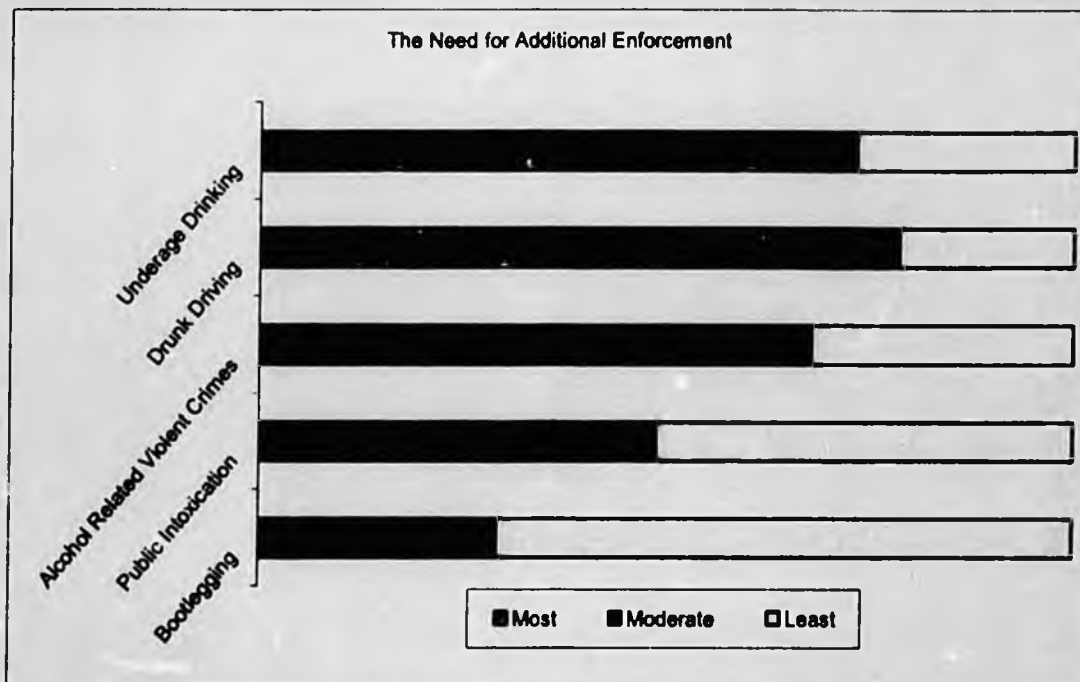
<sup>1</sup> Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others gave more than one response.

**APPENDIX E**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Law Enforcement**  
**(Continued)**

4. What kind of information does your agency receive from the ABC Board enforcement staff? (Select all that apply)

<u>Responses</u>	<u>Percentage</u>	
19	27%	Notice of violation issued to licensee in your area
18	25%	Enforcement assistance
16	23%	License revocations or suspensions in your area
7	10%	None
7	10%	Other <sup>2</sup>
2	3%	Suspected gambling activity in your area
1	1%	Available federal enforcement grants
1	1%	Available training sessions
0	0%	Suspected prostitution activity in your area

5. Please rank the following alcohol related issues from 1-5 in order of need of increased enforcement in your jurisdiction. (Enter 1 for the issue that needs the most enforcement. Enter 5 for the issue that needs the least enforcement.)



<sup>2</sup> Other responses grouped as follows: 2 general communication, 2 information about permit enforcement, 1 not specified, and 2 notice of enforcement or violation.

**APPENDIX E**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Law Enforcement**  
**(Continued)**

6. Does your agency share investigative information with the ABC Board's enforcement staff and notify them of arrests made on licensed premises?

<u>Responses</u>	<u>Percentage</u>	
15	40%	Yes, always share information
11	30%	Occasionally ABC is sent copies of liquor-related arrests and reports
7	19%	Only when ABC requests the information
4	11%	No, never share information

6a. If you share information, which of the following types of information do you share? (Select all that apply.)

<u>Responses</u>	<u>Percentage</u>	
20	22%	After hours sales on a licensed premises
15	16%	Sales of alcohol on a non licensed premises
14	14%	Other <sup>3</sup>
14	14%	Underage drinking
10	10%	Public intoxication
10	10%	Violent crimes involving alcohol
9	9%	Suspected gambling on a licensed premises
5	5%	Suspected prostitution on a licensed premises
0	0%	Not applicable

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

<u>Responses</u>	<u>Percentage</u>	
22	58%	Complements
16	42%	ABC Board enforcement staff is not active in my jurisdiction
0	0%	Duplicates
0	0%	Conflicts

<sup>3</sup> Other responses grouped as follows: 7 crimes on licensed premises, 1 minor on licensed premises, 2 assistance/jurisdictional authority, 4 sales to intoxicated persons, and 1 not specified.

**APPENDIX E**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Law Enforcement**  
**(Continued)**

8. Which of the following statements best describes the level of enforcement of alcohol laws by ABC investigators in your jurisdiction?

<u>Responses</u>	<u>Percentage</u>	
20	52%	There needs to be more enforcement of alcohol laws.
9	24%	There is no enforcement of alcohol laws.
9	24%	There is the right amount of enforcement of alcohol
0	0%	There is too much enforcement of alcohol laws.

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

<u>Responses</u>	<u>Percentage</u>	
30	79%	No
8	21%	Yes

10. Is there a need for new laws or regulations to better serve the public interest when considering alcohol related issues?

<u>Responses</u>	<u>Percentage</u>	
22	59%	No
15	41%	Yes

11. How effective is the enforcement staff of the ABC Board at enforcing the laws controlling the sale of alcoholic beverages in your jurisdiction?

<u>Responses</u>	<u>Percentage</u>	
7	18%	Very effective
14	37%	Somewhat effective
12	32%	Not effective
5	13%	Not applicable. We are a damp/dry community.

**APPENDIX E**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Law Enforcement**  
**(Continued)**

12. Overall, in your opinion, how effective or ineffective is the ABC Board in serving the public interest?

<u>Responses</u>	<u>Percentage</u>	
3	8%	Very effective
20	52%	Generally effective
9	24%	Neither effective nor ineffective
4	11%	Generally ineffective
2	5%	Very ineffective

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**APPENDIX F**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Local Governments**

Questionnaires sent: 145  
 Responses received: 82<sup>1</sup> (57%)

1. Is your local government given adequate notice by the Alcoholic Beverage Control (ABC) Board of proposed issuances of new licenses and transfers, relocations or renewals of existing licenses? (Relocation refers to moving the physical location of the premises. Transfer refers to a change in ownership.)

<u>Responses</u>	<u>Percentage</u>	
39	49%	Yes, always
21	26%	No, never notified
17	22%	Usually
2	3%	Sometimes

2. Since July 1, 2002, has your local government protested the issuance of a new license or the renewal, relocation or transfer of an existing license?

<u>Responses</u>	<u>Percentage</u>	
63	81%	No
15	19%	Yes

- 2a. What was the reason for the protest? (Please select all that apply.)

<u>Responses</u>	<u>Percentage</u>	
10	30%	Delinquent sales taxes
8	25%	Other <sup>2</sup>
7	21%	Delinquent property taxes
3	9%	Public complaints
2	6%	Health and/or safety concerns
1	3%	History of criminal activity on premises
1	3%	Number of police reports
1	3%	Violation(s) of local ordinance

<sup>1</sup> Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others gave more than one response.

<sup>2</sup> Other responses were grouped as follows: 2 delinquent utilities, 4 building or zoning issues, and 2 local government decisions.

**APPENDIX F**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Local Governments**  
**(Continued)**

2b. Was your protest upheld by the ABC Board resulting in the denial of a license issuance, transfer, relocation or renewal?

<u>Responses</u>	<u>Percentage</u>	
10	43%	ABC Board did not provide us with the results
8	35%	No
5	22%	Yes

3. Alaska statute (AS 04.11.080 (c)) allows local governments to recommend conditions be placed on a specific alcoholic beverage license and to notify the ABC Board if the licensee violated a condition imposed. Are you aware of this option?

<u>Responses</u>	<u>Percentage</u>	
42	53%	Yes
37	47%	No

3a. In the last four years, has your local government placed any conditions on a license renewal, issuance, relocation or transfer?

<u>Responses</u>	<u>Percentage</u>	
42	81%	No
10	19%	Yes

3b. Were you notified of the time and place your protest(s) or proposed condition(s) would be considered by the ABC Board?

<u>Responses</u>	<u>Percentage</u>	
25	49%	Not applicable
15	29%	No, never
7	14%	Yes, always
4	8%	Sometimes

**APPENDIX F**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Local Governments**  
**(Continued)**

4. On average how many times a year does your agency contact the ABC Board or its staff?

<u>Responses</u>	<u>Percentage</u>	
35	45%	0 times
33	42%	1-7 times
4	5%	8-15 times
6	8%	more than 15 times

4a. If you have contacted the ABC Board, please select the number that best assesses your impression of the ABC Board staff.

	<u>Disagree</u>		<u>Neutral</u>		<u>Agree</u>	
Knowledgeable	2	5%	5	11%	36	84%
Friendly	1	2%	12	28%	30	70%
Helpful	1	2%	8	19%	34	79%
Responsive	1	2%	11	26%	31	72%
Timely	1	2%	10	23%	32	75%

5. Have you attended an ABC Board meeting in the past four years, either in person or by teleconference?

<u>Responses</u>	<u>Percentage</u>	
73	91%	No
4	5%	Yes, by teleconference
3	4%	Yes, in person

5a. If your representative attended the meeting for a specific matter, was your governing body satisfied with the Board's decision(s)?

<u>Responses</u>	<u>Percentage</u>	
6	50%	Yes
6	50%	No
0	0%	Not applicable

**APPENDIX F**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Local Governments**  
**(Continued)**

6. Which of the following statements best describes the level of enforcement of alcohol laws in your area?

<u>Responses</u>	<u>Percentage</u>	
38	50%	There is the right amount of enforcement of alcohol laws.
28	37%	There needs to be more enforcement of alcohol laws.
9	12%	There is no enforcement of alcohol laws.
1	1%	There is too much enforcement of alcohol laws.

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

<u>Responses</u>	<u>Percentage</u>	
63	89%	No
8	11%	Yes

8. Is there a need for new laws or regulations to help protect the public interest when considering alcohol related issues?

<u>Responses</u>	<u>Percentage</u>	
56	80%	No
14	20%	Yes

9. Has your governing body ever made public comment on proposed changes to state statute and/or regulations?

<u>Responses</u>	<u>Percentage</u>	
44	59%	No, have not felt the need
22	30%	No, did not know it was an option
8	11%	Yes, more than once
0	0%	Yes, only once

**APPENDIX F**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Local Governments**  
**(Continued)**

10. If your local governing body receives a share of alcoholic beverage license fees from the State (per Alaska Statute 04.11.610), what are the funds used for?

<u>Responses</u>	<u>Percentage</u>	
32	39%	Not applicable
23	28%	General fund
13	16%	Law enforcement
9	11%	Unknown
3	4%	Other <sup>3</sup>
2	2%	Alcohol specific crime prevention

11. Overall, in your opinion, how effective or ineffective is the ABC Board in serving the public interest?

<u>Responses</u>	<u>Percentage</u>	
11	15%	Very effective
38	51%	Generally effective
18	24%	Neither effective nor ineffective
4	5%	Generally ineffective
4	5%	Very ineffective

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<sup>3</sup> Other responses were as follows: 1 fuel, 1 license processing, and 1 bootlegging enforcement.

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**APPENDIX G**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Community Groups**

Questionnaires sent: 56  
 Responses received: 27 (48%)

1. Are you aware of the purpose of the Alcoholic Beverage Control (ABC) Board?

<u>Responses</u>	<u>Percentage</u>	
25	93%	Yes
2	7%	No

2. Has your group contacted the ABC Board in the last four years for information about a liquor license, enforcement or other alcohol related issues?

<u>Responses</u>	<u>Percentage</u>	
18	67%	No
9	33%	Yes

2a. Please select the number that best assesses your impression of the ABC Board staff.

	Disagree		Neutral		Agree	
Knowledgeable	0	0%	3	37%	5	63%
Friendly	0	0%	5	63%	3	37%
Helpful	0	0%	5	63%	3	37%
Responsive	0	0%	4	50%	4	50%
Timely	0	0%	4	50%	4	50%

3. Has your group ever submitted an objection or complaint with the ABC Board over a liquor license, enforcement, or other alcohol related issue?

<u>Responses</u>	<u>Percentage</u>	
15	60%	No
10	40%	Yes

**APPENDIX G**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Community Groups**  
**(Continued)**

4. Has your group ever attended an ABC Board meeting in the past four years either in person or by teleconference?

<u>Responses</u>	<u>Percentage</u>	
21	81%	No
4	15%	Yes, in person
1	4%	Yes, by teleconference

- 4a. If your group attended the meeting for a specific matter or submitted an objection or complaint, was your group satisfied with the Board's decision(s)?

<u>Responses</u>	<u>Percentage</u>	
3	60%	Yes
1	20%	No
1	20%	Not Applicable

5. Do you feel the public has enough opportunity to provide input to the Board on how liquor licenses in your area are issued, renewed, relocated, transferred or revoked?

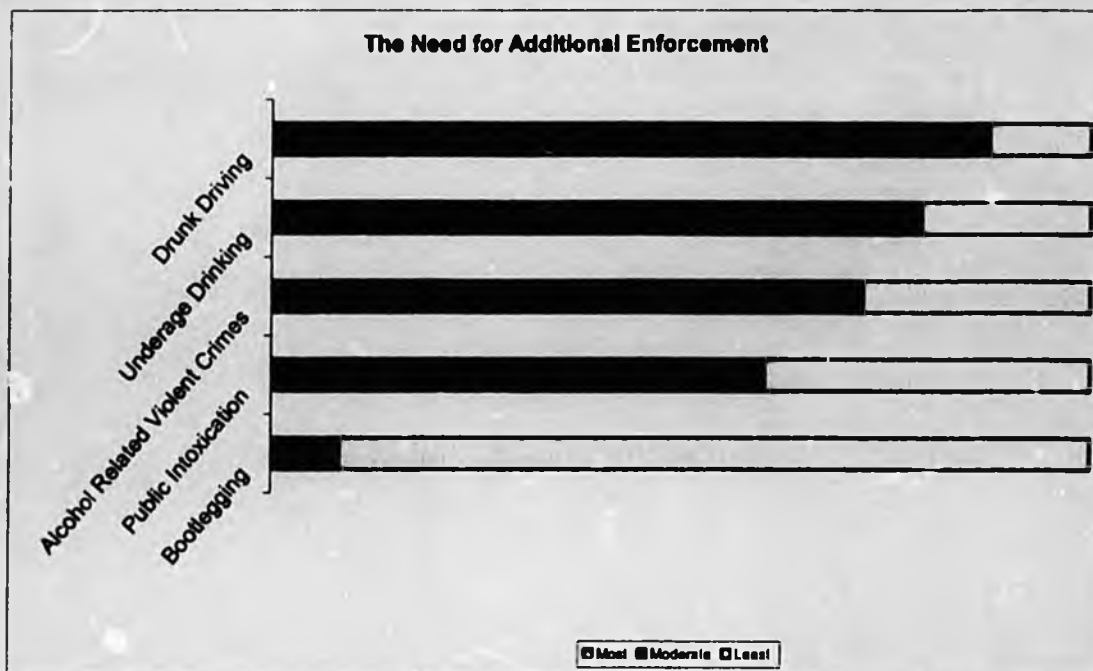
<u>Responses</u>	<u>Percentage</u>	
11	44%	Yes
9	36%	Sometimes
5	20%	No

6. Are proposed regulation changes published in a timely manner so that you are able to participate in the hearings?

<u>Responses</u>	<u>Percentage</u>	
11	48%	Yes
7	30%	No
5	22%	Sometimes

**APPENDIX G**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Community Groups**  
**(Continued)**

7. Please rank the following alcohol-related issues from 1-5 in order of need of increased enforcement in your group's area. (Enter 1 for the issue that needs the biggest increase in enforcement.)



8. What percentage of time does your group spend on alcohol related issues at your meetings?

<u>Responses</u>	<u>Percentage</u>	<u>% of Time</u>
12	46%	0%
10	38%	25%
3	12%	50%
0	0%	75%
1	4%	100%

**APPENDIX G**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**Summary of Responses from Community Groups**  
**(Continued)**

9. Which of the following statements best describes the level of enforcement of alcohol laws in your area?

<u>Responses</u>	<u>Percentage</u>	
15	60%	There needs to be more enforcement of alcohol laws.
8	32%	There is the right amount of enforcement of alcohol laws.
2	8%	There is no enforcement of alcohol laws.
0	0%	There is too much enforcement of alcohol laws.

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

<u>Responses</u>	<u>Percentage</u>	
14	58%	Yes
10	42%	No

11. Overall, how effective or ineffective is the ABC Board in serving the public interest?

<u>Responses</u>	<u>Percentage</u>	
5	21%	Very effective
13	54%	Somewhat effective
2	8%	Neither effective nor ineffective
3	13%	Somewhat ineffective
1	4%	Very ineffective



State of Alaska  
Department of  
**Public Safety**

Frank H. Murkowski, Governor  
William Tandeske, Commissioner

December 4, 2006

Mr. Mark Lundahl, CPA  
In-Charge Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

Dear Mr. Lundahl:

Re: Department of Public Safety  
Alcoholic Beverage Control Board Sunset Review  
August 31, 2006, Audit Control Number 12020047-06

Thank you for the opportunity to comment on the results of the above audit. The department concurs with the overall finding that the Alcoholic Beverage Control Board (ABC) should continue to govern the alcoholic beverage industry and that AS 44.66.010(a) be amended to extend the termination date to June 30, 2013.

That being said, the department would like to comment further on the specifics of the individual recommendations and the findings reported in the audit document.

**General Comments**

AS 04.06.010 establishes the ABC board in the department, but for "administrative purposes only". The verbiage in this statute is similar to the statutes establishing other boards and commissions in this and other agencies. The intent of the language is fully understood by the department to insure that the board is able to accomplish its mission without undue or inappropriate influence from the department. The department takes no issue with the need for their autonomy with regard to regulating the alcoholic beverage industry. The problems with the statutory language are two fold:

1. The statute uses a single word, "administrative", to delineate the department's authority over issues related to ABC but does nothing to define the breadth or the limits of the term's meaning. This creates ambiguity with regard to the department's ability to insure good discipline, rule compliance, efficient and effective supervision and production of work as well as accountability. We see this manifested in many ways. For example, a first line of defense for employees and their bargaining units when an employee has run afoul of policy and is being held accountable is that the department has no authority to impose or enforce its rules of conduct on staff employees. While we strongly disagree with that assertion, it has the potential of negating our ability to insure good order and discipline every time that threshold test is put before an arbitrator.
2. The second difficulty created by how the statute establishes ABC is very closely intertwined with the first. In essence, the statute makes the department responsible for the actions and activities of

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ABC and its employees but places undefined limitations on the department's authority. The department does not direct staff work nor does it have a role in staff business decisions that can adversely impact the public in general or the licensees specifically. However, when something inappropriate occurs, the department is viewed as responsible for actions that it had no part in or any authority to interfere with.

The board itself is ostensibly charged with governance of the staff, maintaining appropriate discipline, directing its work, resolving personnel and other matters and insuring that the public's money is spent in an efficient and effective manner that is focused on accomplishing ABC's primary mission purposes. The problem with that concept is that the board is made up of a group of uncompensated volunteer citizens whose focus is the regulation of the liquor industry and not on the operation of the staff.

The board is made up of people with other full time occupations. They each come from different businesses and different walks of life and have little or no familiarity with the multitude of systems and rules in place that define the work environment for state employees. While some might have an interest in insuring that the staff operates appropriately, most are disinclined to take any active role in oversight.

If the department were to make any recommendation for statutory changes it might well be to bring the staff of this and other boards more clearly under the overall control of and, perhaps more importantly, within the responsibilities of the parent agency while still insuring that the board itself had sufficient controls to steer the direction and focus of the work being accomplished by the staff.

More discussion on this topic will be included within our response to Recommendation No. 4.

#### **Recommendation No. 1**

##### **The ABC Board and director should strengthen the control environment over alcohol regulatory functions.**

**1. Licensing.** *The director should insure that applications are complete and all required information is submitted and maintained.*

We strongly agree and would recommend that the board take whatever action is necessary to insure that this is accomplished.

We believe that this is an example of an area that is directly related to the leadership responsibilities of the director. We believe that the autonomy from DPS that is inherent in the statutes establishing the board and providing for a director and staff, make it essential that the board take a more active role in providing clear direction and expectations to the director and then they must hold him accountable for carrying out those expectations through his giving clear direction, setting clear expectations and holding his subordinates accountable to insure that the board's direction and the laws and regulations are complied with.

**2. Database security.** *The director should ensure information in the licensing database is properly protected from unauthorized changes.*

We strongly agree and have taken the steps necessary to see that this is accomplished.

Recognizing a significant need to address recordkeeping and accountability issues, during FY06 DPS invested its own funds beyond the ABC budget to create a new ABC database. That first phase project has been completed and put into service and addressed many of the issues that had come to light. To carry that project forward to address additional security and data integrity related concerns that we have, we sought and obtained funding in the FY07 budget to complete a second phase of the database project that includes migration of the database to a modern system that is housed at a secure location off premises from ABC and which system will have sufficient security to address our

concerns and the concerns raised in the audit. The project is underway and is expected to be completed during the first quarter of CY07.

While the system security issues are being addressed, it is important to keep in mind that the weakest parts in the security of any system are users. It will be incumbent on the board to require that the director issue and enforce a policy concerning who may be given access to the system and for what purposes and other user related security issues such as leaving a session open when away from their desks and maintaining security of their user passwords.

**3. Permitting.** *The ABC Board and director should ensure all permits are pre-numbered, remove investigators from involvement in the cash handling aspects of the process, and perform periodic reconciliation of permits issued versus permits receipts. After more effective controls have been implemented, the ABC Board should propose a statutory change to remove the requirement that permits be returned to the ABC Board.*

We fully agree.

Having previously recognized the general lack of accountability with permits, we addressed the issues of number control of the permits and accountability for money received from the sale of permits and the ability to reconcile the money with permits issued when we designed the new ABC database already mentioned.

We agree that having the outlying ABC investigators involved in the cash handling aspects of the permitting process serves no useful investigative purpose and makes it very difficult to insure proper cash handling compliance. We also agree that the requirement to return a permit to ABC after an event serves little purpose and should be repealed.

We have already built in an accountability process for the permits themselves through design of the new ABC database system that will be deployed very shortly. That will allow permits to be issued from a central system that provides a unique number for each permit. The system also allows for reconciliation of money received for permits against permits issued.

What the new system does not address is investigators receiving and handling cash and other receipts. Our recommendation to ABC is to identify department cash handling systems already in place in Fairbanks and Juneau and establish a process whereby all receipts for permits and any other fees that had previously been collected by investigators now be collected directly by the agent of the currently existing department process. The receipts would not pass through the investigators and would be accounted for and processed by the department agent and in accordance with the Alaska Administrative Manual and other applicable rules.

Alternatively, ABC would have to collect all fees at their Anchorage office regardless of where in the state the permit was being applied for. This is a much less desirable solution.

Regardless of the solution ultimately put in place, the local investigators need to continue to be closely involved in all other aspects of the permitting process to insure that they are aware of permits being issued in their respective areas and to allow them an opportunity to have input prior to approval and to be aware of events that they may choose to inspect to insure compliance with the terms of the permit.

There is a further accountability piece that needs to be pointed out with regard to falsifying a permit completely using a downloaded application. While not impossible, we believe that falsifying a permit is not likely to occur nor are we aware of any past occurrence of this issue.

The validity of a permit is readily verifiable through ABC and will be even more readily verifiable once their new system is completed and the permits are numbered. The two most common permits are the caterer's permit and the special events permits. In the case of a caterer's permit, the permit is issued to an existing licensee. In the case of a special events permit, the permit is issued to a non-profit fraternal, civic or patriotic organization. Neither of these groups is likely to jeopardize their very existence by engaging in an act that would likely result in a license revocation or in irreparable harm to an organization's standing in a community. Neither of these groups is likely to engage in this kind of fraudulent activity nor are we aware of any occurrence of this in the past.

While we do not believe this to be a practical issue it is possible that a private citizen could falsify a permit but even then it would do little more than create grounds for additional charges against the citizen were they to be discovered. In this case, having had the ABC investigators involved in the issuance of the permits to begin with would make it more likely that the illegal event would be discovered in the first place.

We are in the process of modifying the ABC system and forms to physically separate the permit from the permit application as part of the accountability issue. We will continue to allow the application form to be downloadable from the internet and for the application process to continue largely as it currently does. What will be different will be that, once the application has been approved and fee payment received, the ABC database system would be used to print out a separate, numbered permit document for posting at the event. This change should adequately address the concerns with falsifying or forging a permit.

**4. Municipal refunds.** *The ABC Board and director should develop procedures to ensure municipal refunds are paid or denied in accordance with Title IV. Further, the director should insure the information necessary to process these payments provided to the Department of Revenue (DOR) is timely and accurate.*

We strongly agree.

We believe that the board and director should not only be responsible for providing timely and accurate information but also for implementing procedures and should be accountable for enforcement of the procedures as well.

We also believe that to be truly compliant with Title IV, the procedures must provide for some requirement that, in order to qualify to receive a refund of license fees, a municipality must provide a report of their alcoholic beverage law enforcement activities. We do not believe that simply having a police department is enough to meet the intent of the law and that affirmative enforcement is required.

Additionally, the procedures must clearly identify who the refund would be provided to given that Alaska law defines both cities and boroughs as "municipalities". It would be inappropriate, for instance, for a borough to receive a refund of license fees for licenses within the borough based on the enforcement activities of a police department in a city within that borough where no enforcement occurs in any parts of the borough outside that city.

We believe that this is another example of an area that is directly related to the leadership responsibilities of the director. Again, we believe that the autonomy from DPS that is inherent in the statutes establishing the board and providing for a director and staff, make it essential that the board take a more active role in providing clear direction and expectations to the director and then they must hold him accountable for carrying out those expectations through his giving clear direction, setting clear expectations and holding his subordinates accountable to insure that the board's direction and the laws and regulations are complied with.

It is ultimately the responsibility of the director to insure that refunds are accomplished in a timely manner and in compliance with the law. Failure to do so places the DPS commissioner in the position of having to demand money back from communities and reflects poorly on the agency overall.

**5. License fee collection activities.** *The ABC Board should ensure their cash deposit procedures match with the AAM requirements.*

*Areas of improved oversight and review of financial activities include: ensuring only the correct, common carrier fee is accepted after a statute change increased the fee; ensuring accuracy when recording licensing fees to licenses' type specific account codes, and establishing procedures for the tracking of fines to ensure they are paid within the time required by the board.*

We strongly agree.

DPS has provided the framework and direction to address each of the areas discussed in this section. To our knowledge, the daily cash and other receipt deposits are being made daily. The first phase of the new ABC database provided the reporting framework to allow money and license reconciliation. The ABC staff is small enough and can be kept abreast of any changes in laws, regulations or procedures quite easily through word-of-mouth, memorandum or even email. We see no reasonable explanation as to why incorrect fees would be collected nor why appropriate reconciliations are not well established internal practices at this point.

We believe that this is another example of an area that is directly related to the leadership responsibilities of the director. Again, we believe that the autonomy from DPS that is inherent in the statutes establishing the board and providing for a director and staff, make it essential that the board take a more active role in providing clear direction and expectations to the director and then they must hold him accountable for carrying out those expectations through his giving clear direction, setting clear expectations and holding his subordinates accountable to insure that the board's direction and the laws and regulations are complied with.

DPS can do little more than provide the administrative framework and direction as to what should be done. It is the director's responsibility to insure that he and his staff comply or the board must intervene to take corrective action.

**6. Wholesale fee.**

**A.** *The ABC director should ensure all wholesalers are submitting the required affidavits within the statutory deadline and follow-up on those who do not submit the affidavit. In addition, the director should ensure the list of wholesalers, from whom it requests affidavits, is complete.*

We strongly agree.

We believe that this is another example of an area that is directly related to the leadership responsibilities of the director. Again, we believe that the autonomy from DPS that is inherent in the statutes establishing the board and providing for a director and staff, make it essential that the board take a more active role in providing clear direction and expectations to the director and then they must hold him accountable for carrying out those expectations through his giving clear direction, setting clear expectations and holding his subordinates accountable to insure that the board's direction and the laws and regulations are complied with.

**B.** *The ABC Board and director should establish a stronger control environment. The control environment sets the tone of an organization, influencing the control consciousness of its people. It is considered the foundation for all other components of internal control providing discipline and structure.*

We strongly agree.

In broad terms, this paragraph describes what we believe to be necessary to address most of the issues identified by this audit. We recommend that the board consider this paragraph in light of each of the issues and hold the director accountable to establish a foundation within his organization that reflects the essence of your observation.

**Recommendation No. 2**

**The ABC Board and director should develop and implement an overall plan for enforcement activities to insure the effective allocation of their resources.**

*The ABC Board should develop and implement an overall strategy for enforcement that includes clear guidance to investigators as to priorities for inspections and compliance checks. This should include risk assessment, statewide scheduling of inspections, periodic review of progress, and formulating a plan of action to address the compliance check failure rate, which is currently high at 20%. Procedures should be improved to ensure an accurate, consistent, and complete record of enforcement activities in APSIN. These improvements will enhance the board's ability to make resource allocation adjustments when necessary and improve the overall efficiency and effectiveness of Title IV enforcement.*

We strongly agree.

The audit incorrectly states that there are 3 investigators, one each in Juneau, Anchorage and Fairbanks. In fact, there are 4. There are 3 Investigator IIIs, one each in Juneau, Anchorage and Fairbanks. There is also an Investigator IV in Anchorage. We believe that the positions could be used more productively if they developed a plan and made better use of the Investigator IV position in Anchorage.

We believe that a plan should be developed using all of the assessment criteria described in the audit and that requires that all licensed premises be inspected at least once in any given 2 year period. Given the sheer number of locations that would have to be visited, this would require active enforcement participation by the Investigator IV, a clear division of responsibilities among the Investigator IIIs, enlisting the assistance of local police departments and the Alaska State Troopers as well as developing a working method of tracking the work done and the work remaining.

Compliance checks are a little different and are somewhat restricted by resource availability. While a clear plan requiring that compliance checks be conducted at a set number of licensed premises per year would be appropriate, the plan would have to be flexible enough to allow the checks to be targeted on problem licensees as identified through police reports, citizen complaints and inspection discoveries.

Repeat inspections and repeat compliance checks of some licensed premises will always be appropriate to insure continued compliance with the law. This is particularly true with problem licensees. While this should normally be done in a manner that does not negatively impact their effort to inspect every licensed premise in a given two year period, it sometimes may if they are dealing with particularly difficult licensees.

We believe that this is another example of an area that is directly related to the leadership responsibilities of the director. Again, we believe that the autonomy from DPS that is inherent in the statutes establishing the board and providing for a director and staff, make it essential that the board take a more active role in providing clear direction and expectations to the director and then they must hold him accountable for carrying out those expectations through his giving clear direction, setting clear expectations and holding his subordinates accountable to insure that the board's direction and the laws and regulations are complied with.

**Recommendation No. 3**

**The ABC Board director should ensure compliance with public notice requirements and establish procedures to ensure board meeting records are complete and accurate.**

**1. Board meeting notification.**

*To encourage public participation, the board should ensure all meetings are advertised in applicable local papers and posted on the State of Alaska's Online Public Notices website.*

We strongly agree.

We believe that public participation in the board process is essential to insure the transparency of the process itself and to give the communities a voice in board decisions.

**2. Statute and regulation change notification.**

*The board should ensure that all affected parties are promptly notified of significant changes to statutes and regulations.*

We strongly agree.

We have embraced modern communication technologies to successfully address this very issue in several other business areas. We have aggressively asked various constituent groups to provide us with an email point of contact and have shifted expensive and burdensome antiquated notification processes to email with great success.

We recommend that the director adopt a similar solution and aggressively seek email points of contact for each licensee and each community that must be notified and then make prompt notification to all whenever there is even an insignificant change to statute, regulation or policy.

**3. Board minutes.**

*An accurate and complete record of board meetings, including documentation of public testimony, is vital...*

We strongly agree.

This is not only essential to provide that same level of transparency of government spoken to earlier, but is also essential to insuring that the board itself has a clear understanding and ready reference of its own actions during past meetings.

DPS has provided the director with a sample of the minutes of another board that should provide a solid template from which to restructure their minutes.

*The ABC director should ensure adequate notification of ABC Board meetings is provided to the public, and prompt notification of significant statute or regulation changes is provided to affected licensees and municipalities. Additionally, the director should ensure a consistent and accurate public record of board proceedings is created and maintained.*

We strongly agree.

As we focused on each of the individual issues in an effort to insure that they will be appropriately addressed, it became clear that at the core of each is a lack of clear direction and of individual accountability. As we have stated throughout this document, that is an essential responsibility of the

director and of the board to insure that the director is meeting their expectations. Again, we encourage the board to take a more active role in the day-to-day operation of the board staff and to hold the director accountable for proper leadership of the staff.

**Recommendation No. 4**

*The legislature should seek an amendment to Title IV to remove the voting ability of the board's director.*

*To ensure an appropriate balance of government, the legislature should amend AS 04.06.060 to remove the director's voting ability.*

We agree.

We believe that the Division of Legislative Audit recommendation in this audit will carry this issue forward. DPS will support this change if a bill is offered.

We agree with this recommendation and would recommend that the board voluntarily impose this change by procedural motion pending a statutory change. We believe that this is not appropriate for the reasons described and for the additional reason that it potentially places the director in a difficult position with regard to his relationship with the board. We believe that the board should formally stop any future approval for the director to cast a vote and should consider a tie vote to fail the issue before the board.

Additionally, the board should consider adopting a policy of requiring a 30 minute recess to allow board members to rethink their positions anytime there is a tie vote. If, after the recess, a second vote results in a tie, the issue would fail.

We also believe that this perhaps does not go far enough in illustrating the entire picture with regard to checks and balances and the concept of separating functions of government. Expanding on your theme, consider that the board actually performs roles similar to all 3 branches of government.

They promulgate regulations. While they obviously do not have the authority or ability to make laws (statutes), they do make many rules that impact communities and licensees similar to what the legislative branch of government does.

They enforce the laws made by the legislature and the regulations they make themselves and they collect taxes through license and permit fees similar to what the executive branch of government does.

They resolve issues and impose sanctions through their quasi-judicial authority similar to what the judicial branch of government does.

While your recommendation to remove the ability of the director to break a tie vote is a good first step in separating the functions, it may be time to rethink other separations that are equally as troublesome for this and other similar boards.

Many of the problems identified in this audit would not exist or would at least be more readily addressed if all of the executive branch types of functions were removed from the purview of the board and placed under the authority and responsibility of the parent agency. There would be little functional change in that the same positions would be dedicated to the enforcement and tax collection purposes and a close working relation would continue with the board. However, the positions and responsibility for insuring efficient and effective use of those positions would be placed in an environment where there are clear policies and expectations and where accountability is a hallmark.

**Alaska Department of Public Safety - Page 9**

In many ways, asking a board made up of uncompensated volunteers whose interests are focused on regulation of the alcoholic beverage industry and not on the good order and discipline of the staff is unfair to both the board and to staff. I can tell you that it certainly causes many difficulties for the parent agencies.

DPS would be happy to work with any legislator(s) who might wish to work toward a more workable organizational structure that establishes better controls, clearer lines of authority and that may ultimately serve the safety of the public better.

Sincerely,



**William Tandeske  
Commissioner**

cc: Ted Bachman, Deputy Commissioner, DPS  
Mr. Mike Gordon, Chairman, ABC Board  
Mr. Doug Griffin, Director, ABC Board Staff  
Mr. Dan Spencer, Director, Division of Administrative Services, DPS

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**State of Alaska**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**

**Sarah H. Palin, Governor**  
**Walter Monegan, Commissioner**

December 4, 2006

Pat Davidson, Legislative Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, Alaska 99811-3300

RE Response to Alcoholic Beverage Control Board Sunset Review, AC# 12-20047-06

Dear Ms. Davidson:

Since there was such little change between Management Letter No. 1 and the Preliminary Audit Report, the Alcoholic Beverage Control Board would like Board Chairman Mike Gordon's letter of October 25, 2006 sent to In-Charge Auditor Mark Lundahl to serve as the ABC Board response to the Preliminary Audit Report. In the time since that letter, the ABC Board has worked to implement the changes set out in Mr. Gordon's letter.

At its ABC Board meeting of November 29, 2006 the ABC Board reviewed a copy of the Management Letter No. 1 version of the ABC Board Sunset Audit and draft policies and procedures for database security, noticing board meetings, collecting wholesale fees and affidavits, and documenting board meetings. The ABC Board also approved revising the way catering permits are issued to respond to concerns raised in the audit. An overall enforcement plan to include premise inspections and compliance checks is also being drafted and will be implemented beginning January 1, 2007.

The ABC Board did not discuss at any length the recommendation regarding allowing me to cast votes to break ties. There is a good chance this issue will be revisited at a subsequent ABC Board meeting.

Sincerely,

Douglas B. Griffin  
Director

Enclosure: Letter dated October 25, 2006 from ABC Board Chairman Mike Gordon

cc: Walter Monegan, Commissioner, Department of Public Safety  
Ted Bachman, Deputy Commissioner, Department of Public Safety  
ABC Board Members

**Alcoholic Beverage Control Board**  
5848 E. Tudor Road - Anchorage, AK 99507 - Voice (907) 269-0350 - Fax (907) 272-9412



**State of Alaska**  
Department of Public Safety  
**Alcoholic Beverage Control Board**

Frank H. Murkowski, Governor  
William Tandeske, Commissioner

October 25, 2006

Mark Lundahl, CPA  
In-Charge Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, Alaska 99811-3300

RE: Response to Management Letter No. 1, Department of Public Safety  
Alcoholic Beverage Control Board Sunset Audit

Dear Mr. Lundahl:

I have reviewed your Management Letter No. 1 and met with Alcoholic Beverage Control (ABC) Board Director Doug Griffin regarding the recommendations and findings contained in this correspondence. I have also had the benefit of reviewing the response of Commissioner Tandeske dated October 13, 2006. I appreciate the Division of Legislative Audit granting me additional time to thoroughly review your Management Letter and confer with Mr. Griffin.

I am responding as Chairman of the ABC Board and my opinions and views may not reflect the wishes of the ABC Board as a whole. I have asked Mr. Griffin to place the ABC Board Sunset Audit on the agenda for the next ABC Board meeting scheduled for November 29, 2006 in Anchorage.

I appreciate the thorough review you and your team did this summer in reviewing the activities and systems of the ABC Board and its staff in its effort to carry out its statutory duties. I will respond as specifically and precisely as I can to the finding and recommendations in your Management Letter.

#### **Status of Prior Audit Recommendations**

I am pleased to see that the ABC Board has either partially implemented or fully resolved the recommendations of the Division of Legislative Audit from the last audit conducted. The ABC Board has historically been under funded and this was a major barrier in addressing some of the improvements recommended in the earlier audit. It was only with the assistance of the Department of Public Safety that projects like completion of the first phase of the licensing database became possible.

#### **Current Recommendations**

##### Recommendation No. 1

The ABC board and director should strengthen the control environment over alcohol regulatory functions.

1. Licensing – The Licensing staff of the ABC Board does have policies, procedures, desk manuals, checklists, a licensing database and regular training discussions in an attempt to provide consistency

Alcoholic Beverage Control Board  
550 West 7<sup>th</sup> Avenue - Anchorage, AK 99501 - Voice (907) 269-0350 - Fax (907) 272-9412

and efficiency in processing liquor license renewals, transfers, and applications for new licenses. As licensing staff received information from Legislative Audit staff regarding gaps in files, it adopted additional procedures to address these concerns. For example, concerns regarding "right, title, and interest" are being addressed by a new procedure to prominently note dates of expiration of a lease or acceptance of a recorded deed at the bottom of the status check sheet. Licensing staff has been instructed to be more careful and diligent in reviewing applications to insure that they are complete.

2. Database Security – The development and completion of the database is a work in progress and the comments of Legislative Audit regarding security concerns will be provided to the contractor working on completion of the database. Commissioner Tandeske has further addressed this issue with his explanation of the how the "migration of the database to a modern system that is housed at a secure location off premises" from the ABC Board offices will be completed in the second phase of the data base upgrade. The ABC Board Director will draft policies concerning user security of the database system and present those to the ABC Board at its November 29, 2006 meeting. The Director will be charged with enforcing these security policies.
3. Permitting – Segregation of duties for the issuance of permits in Juneau and Fairbanks is problematic since both of these locations have only a single ABC Investigator. These offices provide permits for the convenience of the residents and licensees of the state served by these locations. This is again a function of the ABC Board's small size. The only solution to address this finding is to only issue permits out of our Anchorage office (where there is adequate staff to segregate duties) or increase the ABC Board budget to pay for staffing in Juneau and Fairbanks to adequately segregate the tasks associated with the issuance of permits. The first alternative will greatly reduce service to the public and the second will increase the ABC Board budget.

There is a log kept for permits issued to the public and ABC Board staff are looking for a cost effective way to address the permit control issues (permits are not pre-numbered) and reconciliation of permits issued to permit revenue received. This effort will result in a monthly or quarterly report accounting for permit funds. Redirecting staff resources into issuing prenumbered permits and reconciliation instead of tracking down used permits may be the best way to address this finding.

I concur with arguments made by Commissioner Tandeske regarding the usefulness of having ABC Investigators involved in issuing permits.

4. Municipal Refunds – The procedure outlined in AS 04.11.610 will be followed in the future. I have directed the Director to prepare written policies and procedures and provide a copy of them to the ABC Board at its next meeting scheduled for November 29, 2006. This statute gives the Commissioner of the Department of Public Safety a key role in determining whether enforcement of alcohol laws by municipal law enforcement agencies is active enough to warrant a refund of retail liquor license fees to local governments. The statute gives the ABC Board the role of determining when enforcement of liquor laws is sufficient to warrant resumption of a municipal refund. These provisions demand a level of collaboration between the Commissioner and the ABC Board. The Commissioner, in his response to the Management Letter No. 1, has determined that a report of a municipality's law enforcement activities be required in order to grant a refund. This is the Commissioner's responsibility, but I concur with his reading of the intent of the law. I have directed the ABC Board Director to meet with Commissioner Tandeske, or his designee, to revise the license fee sharing process in a manner that meets the intent of the law and report back to the ABC Board at its November 29, 2006 meeting.
5. License Fee Collection Activities – The ABC Board staff believed it was following procedures set out by the DPS' Administrative Services. ABC Board staff has developed further reconciliation reports that will account for all money received by the ABC Board and show it has been properly deposited. I have directed the ABC Board Director to share these reports with the Department of Public Safety and the ABC Board on at least a quarterly basis. The staff of the ABC Board will welcome any comments or suggestions on these reports to make sure they address the reconciliation, compliance, and oversight issues raised by this Finding. Once these reports prove satisfactory, a written policy will be drafted and implemented.

6. Wholesale Fee – I have directed the Director to develop, implement, and enforce written policies and procedures to improve communication between ABC staff involved in the receiving of wholesale affidavits and fees. A copy of these policies and procedures will be presented to the ABC Board when it meets on November 29, 2006.

Recommendation No. 2

The ABC Board and director should develop and implement an overall plan for enforcement activities to ensure the effective allocation of their resources.

The ABC Board enforcement staff will develop and implement an overall plan for premise inspections and compliance checks and share this with appropriate personnel in the Department of Public Safety. This will allow for improved coordination with state troopers who assist the ABC Board with its inspections. An overall plan for compliance checks will be developed and implemented beginning January 1, 2007. Other aspects of the ABC Board's enforcement efforts are in response to licensee violations, requests for assistance from law enforcement agencies, and requests from the public and, therefore, do not lend themselves to a predetermined plan.

Recommendation No. 3

The ABC Board director should ensure compliance with public notice requirements and establish procedures to ensure board meeting records are complete and accurate.

1. Board Meetings – The ABC Board director will develop and implement written policies and procedures for the noticing of ABC Board meetings to ensure that they meet statutory and regulatory requirements.
2. Statute and Regulation Change Notification – The ABC Board will expand its statute and regulation notification process to address this recommendation. The notification requirements of notifying every liquor licensee are expensive and time consuming and, therefore, have only been used when a significant change has occurred. Based on this finding, the ABC Board will take extra care to define what constitutes a "significant" change to statutes and regulations and notify the appropriate licensees when these changes occur.
3. Board Minutes – The ABC Board Director will spend more time to insure that minutes of the ABC Board's meetings do a better job of capturing members in attendance, vote tallies, meeting locations, and the testimony of persons appearing before the Board. Minutes posted on the ABC Board's website will be consistent with minutes in the official record. Written policies and procedures for taking and posting minutes of the ABC Board Meetings will be drafted and presented to the ABC Board at its next meeting.

Recommendation No. 4

The legislature should seek an amendment to Title IV to remove the voting ability of the board's director.

I believe that this recommendation should be discussed and considered by the ABC Board at its next meeting. The full board may decide to not grant its consent for the Director to act as a tie-breaking vote. I have, therefore, directed the Director to place this on the agenda for the ABC Board meeting of November 29, 2006. The arguments made by Legislative Audit to support this recommendation have merit and deserve consideration. The idea of a 30-minute recess as a tool to see if a tie vote can be resolved is also an interesting idea that the ABC Board may consider. The effect of the finding would be to require three votes from the ABC Board to pass matters before it. This would make attendance and concerns regarding conflicts of interest when members may not vote more critical. This may also have the effect of

delaying action on a license application and reducing the timeliness of decisions required under AS 04.11.510(a).

While I understand the concerns of the Commissioner with regard to the independence of the ABC Board and its staff, I do not agree that major change would improve its effectiveness. As the Commissioner points out in his letter, the ABC Board does possess considerable authority and power. Those that drafted and enacted the majority of Title 4 in 1979- 80, believed that the unique job of regulating alcoholic beverages would best be executed by an independent board that included representatives of the alcoholic beverage industry, but had a majority of strong public members. This configuration may create a degree of tension, but it is also a check and balance that provides for the public safety and welfare while guaranteeing a fair hearing for businesses engaged in the sale and manufacture of alcoholic beverages. I fear that tampering with this independence and autonomy, including removing staff from the ABC Board and placing them in a line agency, would upset the balance that presently exists.

The ABC Board has historically been under funded and many of the problems noted in this sunset audit can be attributed to lack of money to travel and develop the data controls necessary to serve and regulate the alcoholic beverage industry and respond to requests from the public. The Department of Public Safety recognized this problem and has been generous in providing direct contributions to the ABC Budget for development of a workable database and securing budget increases for the ABC Board.

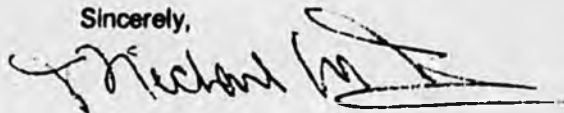
Most of the findings and recommendations of the Division of Legislative Audit are easily correctable now that the resources are available to address them. The thorough audit conducted this summer gives the ABC Board a clear road map to improve its internal controls and processes and, as you can see from my response, we are taking steps to do so. I believe the ABC Board can provide the oversight and direction described by Commissioner Tandeske, and I am having frequent communication with the ABC Board Director to address areas of concern. Additionally, the ABC Board Director will be consulting more closely with the ABC Board on legislation, internal policies and procedures, and public relation matters in the future.

#### AUDITORS COMMENTS

I believe that the response to questionnaires sent to police departments, licensees, local governments, and community councils was fair and reflects the work done by ABC Board staff to work with these various stakeholders involved in the regulation of alcoholic beverages. I view suggestions regarding increasing license fees to be matter for legislative consideration. If fees are raised and additional program receipts are generated, I would hope that additional funding could be directed to the ABC Board for increased enforcement, education, and improved internal controls.

Thank you again for the extension of time in which to comment on Management Letter No. 1.

Sincerely,



Mike Gordon  
Chairman  
ABC Board

cc: William Tandeske, Commissioner, DPS  
Ted Bachman, Deputy Commissioner, DPS  
Doug Griffin, Director, ABC Board

**HB**

**170**



# ALASKA STATE LEGISLATURE

## HOUSE LABOR & COMMERCE COMMITTEE

**REP. KURT OLSON**

Chairman  
State Capitol, Room 17  
Juneau, AK 99801-1182  
(907) 465-2693 FAX 465-3835

Rep. Mark Neuman, V-Chair    Rep. Carl Gatto  
Rep. Jay Ramras                Rep. Berta Gardner  
Rep. Gabrielle LeDoux        Rep. Bob Buch

### **Sponsor Statement**

#### **HB 170 Insurance**

HB 170 relates to the accreditation of the Division of Insurance and includes other minor clarifying changes to the insurance code.

The Bill requires that insurers submit an audit report to the Director each year and other internal control reports if required by the Director. The Certified Public Accountant performing audit services for the insurer must be qualified and independent and must register with the Director. The bill also prohibits a person from making false or misleading statements to an auditor. This reporting is an accreditation standard and is required in order to be uniform with other states and maintain accreditation of the Division of Insurance.

HB 170 puts requirements on custodians of insurer assets. It specifies who may act as a custodian and requires they be approved by the Director. The bill specifies how clearing corporations may hold assets. All custodial agreements must be in writing and in compliance with requirements of the Director. These rules are necessary for the secure control of assets of an insurer and will be accreditation requirements.

The bill also clarifies language in several sections by adopting wording that is consistent with similar wording in other sections, removing unnecessary notarization requirements, and clarifying definitions.

## **Insurance Legislation**

### **Sectional Analysis by the Department of Commerce, Community and Economic Development Division of Insurance**

#### **Section 1. AS 21.09.195 Registration for annual preparer of an insurer's audited financial report.**

This section has been added to require the director to establish a system of registration of certified public accounts who will be conducting audits on Alaska insurance companies.

#### **Section 2. AS 21.09.200 Insurer annual audited financial report.**

These sections require the insurer to engage a certified public accountant to conduct an annual audit and submit reports to the division.

Subsection (g) specifies that the audit report filing is due by June 1 of each year unless the director exempts the insurer based on financial or organizational hardship or extends the due date based on a showing by the insurer that they have met standards for an extension given in regulations. The director may require an insurer to file the audit report before June 1 for good cause and 90 days advance notice to the insurer. The audit report must be prepared by a qualified independent certified public accountant registered with the director.

Subsection (h) requires the insurer to file a written report on any unremediated material weaknesses in internal control over financial reporting which are noted during the audit. The filing must be no later than 60 days after the filing of the audit report.

Subsection (i) says that the director may require for good cause that the insurer file a report on internal control over financial reporting. The internal control report shall be filed on the date specified by the director.

Subsection (j) says that any additional information the director requires to supplement the reports required in subsection (h) and (i) must also be filed by the date specified by the director. The filed reports on internal control are confidential documents.

Subsection (k) requires that an audit committee shall be designated in accordance with regulations. The audit committee will hire the qualified independent certified public accountant registered with the division to conduct the annual audit and shall monitor services performed by the certified public accountant. If no audit committee is designated by the insurer, the whole governing board of the insurer is deemed to be the audit committee.

Subsection (l) requires the certified public accountant to notify the audit committee or governing board of the insurer in writing that the insurer has misstated its financial condition as reported to the director or that the insurer does not meet minimum capital and surplus requirements of statute. An insurer receiving such a report shall forward a copy to the director. The certified public accountant shall forward the report to the director unless the insurer provides evidence that the report has been forwarded to the director.

**Section 3. AS 21.21.410 Custodian of Insurer Assets.**

This section specifies new requirements for custodians of the assets of an insurance company.

Subsection (a) specifies that a custodian may only be a bank, trust company, securities firm or clearing corporation who is properly authorized by the insurer and approved by the director.

Subsection (b) allows that when securities are deposited with a clearing corporation the certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited by any person, regardless of ownership of such securities.

Certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of a custodian must at all times show which securities are held for which insurer accounts including when the securities are in a clearing corporation through the custodian. Securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery.

Subsection (c) requires that a custodial agreement between an insurer and the custodian be in writing and authorized by a resolution of the board of directors of the insurer or an authorized committee of the board. The terms of the agreement must comply with requirements of the director as adopted in regulations.

**Section 4. AS 21.34.030(a) Workers' compensation written in the surplus lines market.**

The amendment to Subsection (a) changes the written document requirement from a directive by the director to an order of the director when allowing workers compensation insurance to be written by a nonadmitted insurer.

**Section 5. AS 21.34.170 Monthly report of surplus lines broker.**

The amendment to subsection (a) is to remove the need for the monthly report to be verified with a notarization.

**Section 6. AS 21.34.900 (9) Definition of wet marine and transportation insurance.**

The amendment to paragraph (9) is to clarify that only one or more of the described coverages may be present to have insurance defined as wet marine and transportation insurance. All of the described coverages need not be present to have wet marine and transportation insurance.

**Section 7. AS 21.36.060 Materially false or misleading statements.**

The addition of subsection (c) prohibits a person from making or causing to be made materially false or misleading statements or omitting or causing another to omit any material fact necessary to make other statements made not misleading to an accountant in connection with a report required under AS 21.09.200.

The addition of subsection (d) prohibits a person from taking action to coerce, manipulate, mislead or fraudulently influence an accountant performing an audit under AS 21.09.200 if the person knew or should have known that the action would make the financial statement materially misleading.

**Section 8. AS 21.79.040 Alaska Life and Health Insurance Guaranty Association member insurer.**

The amendment to subsection (a) clarifies that a member insurer as defined in AS 21.79.900 is a member as a condition of the insurer's authority to transact insurance in Alaska.

**Section 9. AS 21.79.900 Definition of member insurer.**

The amendment to paragraph (10) clarifies that a member insurer is one that is licensed to transact in Alaska the kinds of insurance covered by the Alaska Life and Health Insurance Guaranty Association.

**Section 10. Regulations.**

The director may adopt regulations necessary to implement this act but the regulations may not take effect prior to July 1, 2007.

**Section 11. Effective date.**

The effective date of Section 3 regarding the custodian of insurer assets is January 1, 2008.

**Section 12. Effective date.**

The authority in Section 10 to adopt regulations to implement this act takes effect immediately.

**Section 13. Effective date.**

All sections of the act are effective on July 1, 2007, except Section 11 and 12 that specify different effective dates for sections 3 and 10.

**Insurance Legislation  
HB 170 – Version M  
Sectional Analysis by the  
Department of Commerce, Community and Economic Development  
Division of Insurance**

**Section 1. AS 21.09.200 Insurer annual audited financial report.**

These sections require the insurer to engage a certified public accountant to conduct an annual audit and submit reports to the division.

Subsection (g) specifies that the audit report filing is due by June 1 of each year unless the director exempts the insurer based on financial or organizational hardship or extends the due date based on a showing by the insurer that they have met standards for an extension given in regulations. The director may require an insurer to file the audit report before June 1 for good cause and 90 days advance notice to the insurer. The audit report must be prepared by a qualified independent certified public accountant and the insurer must notify the director of the auditor engaged to conduct the audit.

Subsection (h) requires the insurer to file a written report on any unremediated material weaknesses in internal control over financial reporting which are noted during the audit. The filing must be no later than 60 days after the filing of the audit report.

Subsection (i) says that the director may adopt regulations to require the insurer to file a report on internal control over financial reporting. The internal control report shall be filed on the date specified by the director.

Subsection (j) says that any additional information the director requires to supplement the reports required in subsection (h) and (i) must also be filed by the date specified by the director. The filed reports on internal control are confidential documents.

Subsection (k) requires that an audit committee shall be designated in accordance with regulations. The audit committee will hire the qualified independent certified public accountant registered with the division to conduct the annual audit and shall monitor services performed by the certified public accountant. If no audit committee is designated by the insurer, the whole governing board of the insurer is deemed to be the audit committee.

Subsection (l) requires the certified public accountant to notify the audit committee or governing board of the insurer in writing that the insurer has misstated its financial condition as reported to the director or that the insurer does not meet minimum capital and surplus requirements of statute. An insurer receiving such a report shall forward a copy to the director. The certified public accountant shall forward the report to the director unless the insurer provides evidence that the report has been forwarded to the director.

**Section 2. AS 21.09.270(f) Retaliatory fee exclusions.**

Subsection (f) is amended to relocate the reference to the location of the definition of health care insurer to just after the first mention of health care insurer in the subsection.

**Section 3. AS 21.21.410 Custodian of insurer assets.**

This section specifies new requirements for custodians of the assets of an insurance company.

Subsection (a) specifies that a custodian may only be a bank, trust company, securities firm or clearing corporation who is properly authorized by the insurer and approved by the director.

Subsection (b) allows that when securities are deposited with a clearing corporation the certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited by any person, regardless of ownership of such securities. Certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of a custodian must at all times show which securities are held for which insurer accounts including when the securities are in a clearing corporation through the custodian. Securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery.

Subsection (c) requires that a custodial agreement between an insurer and the custodian be in writing and authorized by a resolution of the board of directors of the insurer or an authorized committee of the board. The terms of the agreement must comply with requirements of the director as adopted in regulations.

**Section 4. AS 21.34.030(a) Workers' compensation written in the surplus lines market.**

The amendment to Subsection (a) changes the written document requirement from a directive by the director to an order of the director when allowing workers compensation insurance to be written by a nonadmitted insurer.

**Section 5. AS 21.34.170 Monthly report of surplus lines broker.**

The amendment to subsection (a) is to remove the need for the monthly report to be verified with a notarization.

**Section 6. AS 21.34.900 (9) Definition of wet marine and transportation insurance.**

The amendment to paragraph (9) is to clarify that only one or more of the described coverages may be present to have insurance defined as wet marine and transportation insurance. All of the described coverages need not be present to be wet marine and transportation insurance.

**Section 7. AS 21.36.060 Materially false or misleading statements.**

The addition of subsection (c) prohibits a person from making or causing to be made materially false or misleading statements or omitting or causing another to omit any material fact necessary to make other statements made not misleading to an accountant in connection with a report required under AS 21.09.200.

The addition of subsection (d) prohibits a person from taking action to coerce, manipulate, mislead or fraudulently influence an accountant performing an audit under AS 21.09.200 if the person knew or should have known that the action would make the financial statement materially misleading.

**Section 8. AS 21.42.405 High deductible health plan.**

This new section specifies in subsection (a) that a health care insurer may have deductible or copayment requirements on health care insurance plans that qualify as high deductible health plans.

Subsection (b) specifies that the meaning of "high deductible health plan" is as is given in the Internal Revenue Code at 26.U.S.C. 223.

**Section 9. AS 21.55.220(f) Premium Tax Credit.**

The amendment to subsection (f) specifies that the premium tax credit given in this subsection for payments by an insurer to the Comprehensive Health Insurance Association is not to be included in the calculation of retaliatory fee in AS 21.09.270. The calculation of the retaliatory fee is not to negate the effect on an insurer of this premium tax credit to lower taxes owed.

**Section 10. AS 21.79.040 Alaska Life and Health Insurance Guaranty Association member insurer.**

The amendment to subsection (a) clarifies that a member insurer as defined in AS 21.79.900 is a member as a condition of the insurer's authority to transact insurance in Alaska.

**Section 11. AS 21.79.900 Definition of member insurer.**

The amendment to paragraph (10) clarifies that a member insurer is one that is licensed to transact in Alaska the kinds of insurance covered by the Alaska Life and Health Insurance Guaranty Association.

**Section 12. AS 21.89.070 Premium Tax Credit.**

A new subsection is added to clarify that a premium tax credit that is earned by a gift to a college allowed in AS 21.89.070(a) is not to be included in the calculation of retaliatory fee in AS 21.09.270. The calculation of the retaliatory fee is not to negate the effect on an insurer of this premium tax credit to lower taxes owed.

**Section 13. AS 21.89.075 Premium Tax Credit.**

A new subsection is added to clarify that a premium tax credit that is earned by a gift to the Alaska Fire Standards Council allowed in AS 21.89.075 is not to be included in the calculation of retaliatory fee in AS 21.09.270. The calculation of the retaliatory fee is not to negate the effect on an insurer of this premium tax credit to lower taxes owed.

**Section 14. Regulations.**

The director may adopt regulations necessary to implement this act but the regulations may not take effect prior to the effective date of the statutory changes.

**Section 15. Effective date.**

The effective date of Section 1 and 3 regarding the filing of an annual audit report by an insurer and the custodian of insurer assets is January 1, 2008 except that subsection (i) of AS 21.09.200 in Section 1 of the bill regarding the filing of a report from management describing internal control over financial reporting will be effective on December 31, 2010 and subsection (k) of AS 21.09.200 in Section 1 of the bill regarding the designation of an audit committee by an insurer will be effective on January 1, 2010.

**Section 16. Effective date.**

The authority in Section 14 to adopt regulations to implement this act takes effect immediately.

**Section 17. Effective date.**

All sections of the act are effective on July 1, 2007, except Sections 15 and 16 that specify different effective dates for Section 1, 3 and 14.

**HEB**

**182**

# Alaska State Legislature

**Chairman**  
State Affairs Committee

**Wice-Chairman**  
Economic Development, Trade & Tourism  
Committee

**Member**  
Judiciary Committee  
Joint Armed Services Committee

**Finance Subcommittees**  
Corrections  
Labor and Workforce Development  
Military and Veterans' Affairs  
Public Safety



*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail: [Representative\\_Bob\\_Lynn@legis.state.ak.us](mailto:Representative_Bob_Lynn@legis.state.ak.us)**  
**"Bob Lynn's Alaska Blog" [RepBobLynnBlog.com](http://RepBobLynnBlog.com)**

**Session:**  
Alaska State Capitol  
Juneau, AK 99801-1182

Phone: (907) 465-4931  
Fax: (907) 465-4316  
Toll Free: (800) 870-4391

**Interim:**  
716 W. 4<sup>th</sup> Ave., #650  
Anchorage, AK 99501-2133

Phone: (907) 269-0205  
Fax: (907) 269-0207

## **HB 182 Sponsor Statement**

**"An Act making the offering of certain promotional checks an unfair or deceptive act or practice."**

**There is no such thing as free money!**

Just ask the many Alaskans who have received checks in the mail with seemingly no strings attached. Many of these consumers cash these checks, usually for small amounts, only to find themselves obligated for products and services they never intended to buy.

HB 182 amends the Unfair Trade Practices and Consumer Protection Act (Consumer Protection Act), AS 45.50.471, by making the offering of a promotional check, through the mail or by other means, an unfair or deceptive act or practice in violation of the Consumer Protection Act. Promotional checks subject to the legislation are live checks offered to consumers to promote goods or services which, when cashed or deposited, obligate the endorser or payee on the check to pay for goods or services.

Thousands of these promotional checks are sent unsolicited to Alaskan individuals, businesses, churches and schools (hereafter "consumers"). Consumers receiving them often believe them to be refund or rebate checks or ordinary business receivables. They unwittingly cash the checks without realizing that they have entered into a contract, usually for goods or services they do not want, do not use, and often do not even realize they have. By cashing the checks consumers also have often unknowingly agreed to have monthly payments automatically taken from their bank accounts, or added to credit card or utility bills. Consumers usually do not realize the debits or charges have occurred and accept or pay for them believing them to be legitimate charges. Prohibiting the use of these checks is the only effective method of preventing these accidental agreements, and subsequent charges, from occurring.

By making the offering of these promotional checks an enumerated unfair or deceptive act or practice, use of the promotional checks will be prohibited as an automatic violation of the Consumer Protection Act. The Attorney General will then be able to take enforcement action under the Act to stop the use of such checks using the remedies afforded under the Act.



March 31, 2007

The Honorable Jay Ramras, Chair  
House Judiciary Committee  
Alaska State Capitol, Room 118  
Juneau, Alaska 99801-1182

HB 182 (Lynn)—Support

Dear Chair Ramras:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Judiciary Committee to support HB 182, authored by your Committee's colleague Representative Bob Lynn and co-sponsored by you and six additional House members.

HB 182 would create a new category under the Consumer Act's deceptive practices to prohibit the use of "promotional checks." All of us receive these checks in our mailboxes and often they are designed to look like a refund for an overpayment or a rebate.

We would like to think that, as we grow older, we also become more savvy consumers. Unfortunately, the evidence does not support that premise.

Older people are often the targets of fraud and deceptive marketing tactics. Half of all telemarketing fraud complaints are made by victims over age 50. If you ask any of your older constituents, you will find they are bombarded regularly with deceptive mailings, come-ons, and telephone pitches. Unfortunately, the oldest of the old are generally the ones most likely to be victimized. They have a tendency to open and read all their mail and to be polite to telephone solicitors.

HB 182 will not protect all consumers of every age from becoming victims. What it will do is end one form of deceptive marketing, the use of promotional checks. This will help

our citizens as well as our businesses who often have checks processed without carefully looking at the source.

Battling scams and deceptive marketing schemes is a never-ending effort. HB 182 is one more tool that the Attorney General can use in this effort.

AARP recommends an "AYE" vote on HB 182.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator  
AARP Capital City Task Force  
415 Willoughby Avenue, Apt. 506  
Juneau, AK 99801  
586-3637 (voice)  
463-3580 (fax)

CC: Vice-Chair Nancy Dahlstrom  
Representative John Coghill  
Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes  
Representative Bob Lynn