




# **ALASKA TITLE 4 REVIEW**

FOR THE  
Alaska Alcoholic Beverage  
Control Board

Recommendations for Statutory Change  
February 2015



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## INTRODUCTION

“The board shall control the manufacture, barter, possession, and sale of alcoholic beverages in the state. The board is vested with the powers, duties and responsibilities necessary for the control of alcoholic beverages...” ASo4.06.090(a)

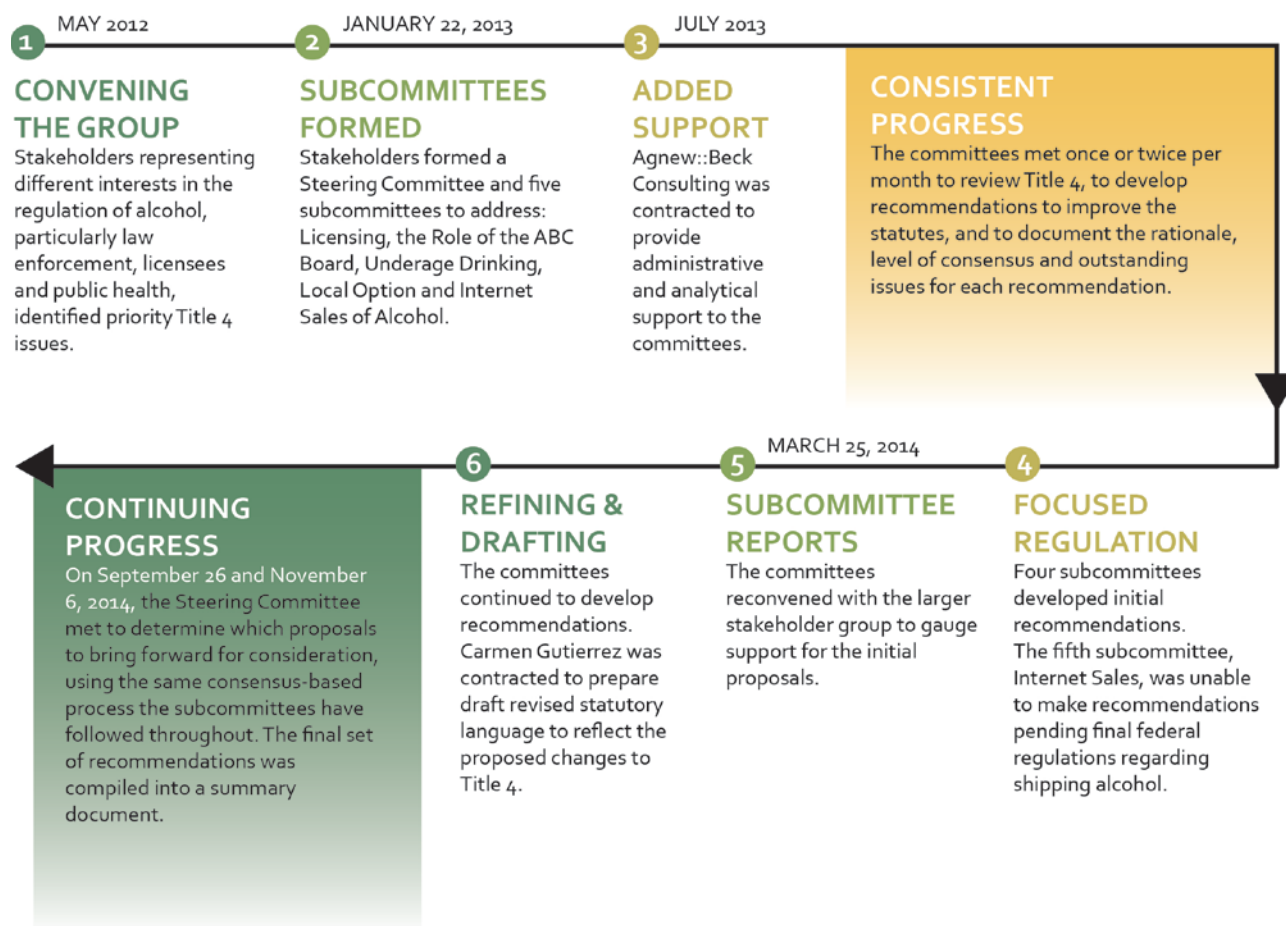
The recommendations in this report are built from a two-year process initiated by the Alcoholic Beverage Control (ABC) Board to engage a diverse group of stakeholders to determine how to improve the structure, organization, specific policies and associated implementation in Title 4, Alaska’s statutes regarding regulation and control of alcoholic beverages in the state. Title 4 is recognized to be in many ways outdated, confusing or otherwise ineffective in carrying out the intent of the statutes. The ABC Board is tasked with interpreting and enforcing the laws of Title 4. This process is intended to benefit the Board as it carries out its mission, as well as benefitting the many other organizations and individuals whose work, community or business is affected by alcohol control laws and regulations.

In May 2012, the ABC Board convened a stakeholder group of approximately 30 people engaged in the alcohol industry, public health, local government, law enforcement, public safety, education, community advocacy and other sectors. The group identified some of the priority issues in statute to address. The stakeholders met again on January 22, 2013 to form five subcommittees to address the priority topics identified by the large group: Licensing, the Role of the ABC Board, Underage Drinking, Local Option and Internet Sales of Alcohol. A Steering Committee composed of ABC Board members, staff and the chairs of each subcommittee formed to coordinate the work of the five subcommittees and make decisions about which proposals to include in the final set of recommendations. Agnew::Beck Consulting was contracted in July 2013 to provide administrative and analytical support to the subcommittees in conducting their review of the Statutes and associated Alaska Administrative Code sections.

The subcommittees met monthly to review their assigned portions of the statutes and regulations related to Title 4, to develop recommendations for improving the statutes and to document their rationale, level of consensus and further issues to be resolved for each recommendation. Four of the subcommittees have developed sets of recommendations that have since been presented for inclusion in this legislative package. The fifth subcommittee, Internet Sales, has discussed the issue of shipments of alcohol from out-of-state companies to individuals through online sales, which bypasses the state’s regulatory and taxation system. The subcommittee identified the point in the shipment process to focus regulation: the major package carriers (UPS, FedEx, DHL), through which alcohol travels into the state. Because the U.S. Postal Service is also considering allowing shipment of alcohol, however, the subcommittee has no recommendation until this decision is made at the federal level.

On March 25, 2014, the subcommittees prepared summary presentations and shared their progress to date with the larger stakeholders group to gauge the level of stakeholder support for the subcommittees’ proposals. Following the stakeholders’ meeting, the subcommittees continued to refine and develop additional recommendations within their topic areas. In preparation for the legislative process and the introduction of a draft bill, Carmen Gutierrez was contracted to prepare

draft statute language to reflect the changes to Title 4 proposed by the subcommittees. The Steering Committee reviewed the subcommittees' sets of recommendations and determine which would be included in the final package described in this summary through meetings on September 26 and November 6, 2014, as well as additional deliberation based on some stakeholders' input in January 2015. The Steering Committee relied on the same consensus-based process that the subcommittees have used to determine which proposals to bring forward for consideration.



This report summarizes the final set of recommendations by subcommittee, the intent of the proposed changes, and if relevant, implications that will require resolution during the legislative process or through ABC Board regulations.

## LICENSING

This subcommittee reviewed the statutes related to alcohol licensing (Chapter 04.11), as well as accompanying regulations regarding licensing (3 AAC 304, Articles 2, 3 and 4). The subcommittee took a comprehensive approach to reviewing individual license types, seeking to create a rational system of licensing of alcohol businesses in order to achieve the following goals:

- Balance preserving and promoting a fair business climate for Alaska businesses with protecting the public health;
- Retain the framework of the three-tier system of alcohol regulation while considering exceptions to the rule that may have other economic, social or regulatory benefits; and
- Make Title 4 a clear and consistent framework for use by licensees, the ABC Board and enforcement personnel.

Because past legislative and administrative decisions over time have created a system that is in many ways misaligned and convoluted, each individual proposal below should be considered in the context of the other proposals as well as what remains the same as current statute. The subcommittee's individual recommendations are inter-related and intended to work effectively as a whole to improve the structure overall.

## RECOMMENDATIONS

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**Recommendation F-1. Adjust License Fees to Reflect Current ABC Budgetary Needs |** Update all license fees according to the relative administrative costs of each, and collect sufficient revenue to cover the ABC Board's required activities, as recommended in RB-3 (Revise ABC Board Budget to Adequately Fund Needed Activities).

### INTENT OF PROPOSED CHANGES

This recommendation represents one thread of several discussions that the subcommittees have had about the ABC Board budget, and the fiscal impacts other recommendations may have. While the Role of the Board Subcommittee has primarily addressed expenditures (enforcement, education and other activities of the ABC Board), the Licensing Subcommittee focused on the revenues of the Board, which determines its projected annual budget.

As a state agency, the ABC Board's annual budget is prepared by the Director and is not to exceed the estimated revenue that the Board will collect from license applications, renewals and other administrative fees in that year (AS 04.11.590). The fees associated with each license have generally not been increased since the statutes were originally enacted in 1980. Although the number of licenses has increased somewhat with population growth, they have not kept up with increasing costs, which now constrain the Board's ability to conduct its mandated education and enforcement activities. Some of the recommendations in this proposal may also require additional resources (primarily in the form of staff time) to implement.

The subcommittee reviewed current license fees, including application, renewal, transfer, permit and other administrative fees. Using information from the ABC Board's budget, the subcommittee estimated the current total revenue available to the Board from these fees. As a comparison exercise, the subcommittee also projected that if fees had been tied to inflation between 1980 and 2014, they would now be more than double the current amounts.

Based on a set of assumptions about the resources needed to fund the Board's activities and about the relative administrative and enforcement costs of all license types, the subcommittee developed a proposed fee structure by license tier and individual license type. Assumptions include:

- Some license types require more enforcement than others, and those with a great deal of interaction with the public (retail licenses) require more enforcement and compliance activities on the part of agency staff.
- New license applications and transfers have much higher administrative costs than renewals and most fees, particularly staff time to process the applications and conduct due diligence required by statute.
- The license fees reflect the fact that although some licenses (particularly those considered seasonal) may have limited operations, the administrative costs for processing an application and ongoing enforcement costs are similar.
- In addition to the costs of administering the license system, there are many other education and enforcement costs related to alcohol regulation: investigating unlicensed establishments and illegal alcohol sales, enforcing local option laws, and consulting with local law enforcement on cases. Fees should be equitably borne by all licensees to cover these other costs not directly related to license administration. These activities are important to public health, public safety and (particularly when dealing with unlicensed establishments) protecting the interests of businesses that do follow the laws and regulations.

The subcommittee also considered the process of reviewing fees: without a mechanism for regular updates to license fees, the gap between revenue and cost may grow again in the future. The subcommittee proposes keeping all license fees in statute (rather than moving them to regulations) and including statutory language that requires periodic review of all license fees by the ABC Board not less than every ten years, perhaps during every other cycle of the agency's five-year sunset review. The subcommittee does not recommend tying increases directly to inflation, rather to consider the effect of rising costs on the overall budget over time.

The subcommittee strongly feels that this recommendation should be accompanied by, and not adopted without, a clear plan and proposed budget from the ABC Board regarding the activities and programs it will conduct with this increased revenue. The subcommittee requests that the Director prepare a draft budget based on the parameters provided through this review process. ABC Board staff have indicated that the primary increase in expense would be staff resources to complete additional compliance and education activities. One idea the subcommittee discussed is hiring Level 1 or 2 investigator staff to complete standard compliance checks; compliance is currently completed by Level 3 and 4 staff, whose grade and experience would be best applied to more complex investigations.

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**Recommendation M-1. Simplify Manufacturing Licenses |** Keep three manufacturing license types: Brewery (AS 04.11.130), Winery (AS 04.11.140), Distillery (AS 04.11.170). Remove Bottling Works (AS 04.11.120) and Brewpub (AS 04.11.135) license types.

#### **INTENT OF PROPOSED CHANGES**

The subcommittee identified two license types within the Manufacturing tier that can be covered within other license types and through the other proposals in this section. There are three basic categories of alcoholic beverages that can be legally manufactured: beer and malt beverages, wine and equivalent products made from fruits, and distilled spirits. (Other non-traditional alcohol products, such as powdered alcohol, are currently illegal in Alaska). This recommendation is primarily aimed at simplifying and reducing the number of license types. The subcommittee recognizes a need to differentiate between manufacturers of different products, but believes these three license types are sufficient, one for each of the product types. To differentiate between this license and the retail operations outlined in Recommendation M-2, the licenses would be renamed as Production licenses (Brewery Production, Winery Production, Distillery Production). The other two manufacturing licenses, Bottling Works and Brewpub, could be successfully converted into one of these three license types. However, in order to remove Brewpub, other changes need to be made to statute (M-2 and M-3) to provide an equivalent framework for the concept.

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**Recommendation M-2. Manufacturer Retail License + Manufacturer Sampling Endorsement |** Add-on retail licenses specifically for manufacturers to allow limited on-site consumption and off-site sales, and a separate endorsement for free samples.

#### **INTENT OF PROPOSED CHANGES**

A strict interpretation of the three-tier system would not allow manufacturers to engage in any retail operations, but it is now common in American craft production to include retail components for on- or off-site consumption. Alaska currently allows some of these activities, primarily for Brewery licenses, but production limits for manufacturers limit the capacity of Alaska businesses to compete with outside manufacturers not under this restriction. Manufacturers are currently not allowed to hold retail licenses (Beverage Dispensary Licenses, Restaurant/Eating Place Licenses) and have restricted on-site operations: limited hours and quantities for sale, no live entertainment. The Brewpub license was created as an exception to these restrictions; it allows only the production and sale of beer and has strict limitations on the allowed volume of sales.

Recommendations M-2 and M-3 propose to allow manufacturers to have access to a retail add-on license (the equivalent structure of a Brewpub license). The terms for on-site and off-site sales are comparable to what is allowed for Breweries and (as of 2014) Distilleries. This proposal would create three license types that correspond with the three Manufacturer licenses; a licensee would only be eligible for an add-on license if the licensee holds the corresponding base license to manufacture that product. The retail add-on license would allow the licensee to:

- sell limited quantities for onsite consumption, proportional to the current statutory limits for Breweries: **36 oz** of beer, **18 oz** of wine, **3 oz** of distilled spirits. Onsite operations have all of the restrictions currently in the Brewery license (no seats at a fixed bar, no live entertainment, limited hours of operation). As with all Retail licenses, these licenses would be subject to server education and signage requirements.



- sell limited quantities to individuals for offsite consumption, proportional to the alcohol content of the product and following current industry standard units of measurement for containers of the different product types: **5.167 gal** of beer (1/6 barrel), **9L** (twelve standard bottles, or one case) of wine; **1.5L** (two standard bottles) of distilled spirits.

This retail add-on license would remove and relocate some activities currently in manufacturers' licenses, making the basic three Manufacturer license types solely for production. The base Manufacturer license would only allow sales to other licensees and out-of-state entities, and if a Manufacturer Sampling Endorsement is obtained, providing free samples of their products at the Production licensed premises. The endorsement is intended to provide manufacturers the opportunity to provide small samples of their product without investing in a Manufacturer Retail License, while ensuring that service of alcohol to the public is regulated consistently. Sample sizes (**12 oz beer, 6 oz wine or 1.5 oz distilled spirits**), advertising restrictions, server requirements, and bi-annual renewal with the license would be the same as the Package Store Sampling Endorsement (see Recommendation R-3).

Furthermore, the Manufacturer-Retail license (add-on) would, unlike the base Manufacturer licenses, be subject to statutory population limits for the same community or catchment area in which the base license is located, increased to 1 license per every 10,000 population or part of that population (see Recommendations P-1 and P-3). This reflects the public health principle of limiting the number of retail outlets that provide public access to alcohol, particularly in small communities with few allowed retail licenses. The Manufacturer Retail Licenses would require an application and community review process separate from the base license, and the retail license could be suspended or revoked independently from the base license if retail operations are non-compliant with the law.

Because retail licenses would be limited in number, even more than other license types, a sunset provision of 8 years, or four license renewals, would be provided which allows current Manufacturer licensees with retail operations, or those in the process of applying in 2015, to continue retail sales (on-site and off-site) without having a retail license. At the end of this period, the licensee would be required to have applied for and received a retail license (Manufacturer Retail License and/or REPL) or close their sales operations, although they would be able to continue sampling if they obtain a Sampling Endorsement.

### IMPLICATIONS TO CONSIDER

- Ensure that operations currently permitted in Bottling Works and Brewpub are incorporated into the Manufacturer Retail Licenses and other statutes as needed, and provide a mechanism to convert current Bottling Works and Brewpub licensees into their respective new license types.

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**Recommendation M-3. Manufacturer Allowed to Hold a Restaurant Eating Place License |** Remove the restriction in Prohibited Financial Interest (AS 04.11.450), which does not allow Manufacturers to hold an REPL (04.11.100).

### INTENT OF PROPOSED CHANGES

As noted in M-2, a strict interpretation of the three-tier system would not allow manufacturers to engage in retail operations, but it is increasingly common for manufacturers to develop brew house or restaurant concepts featuring their products. AS 04.11.450, Prohibited Financial Interest,

prohibits a Manufacturer licensee from holding a Beverage Dispensary License or Restaurant Eating Place License, and a current Brewery or Distillery license only allows limited on-site consumption with an earlier closing time than a typical REPL. This framework also prohibits a manufacturer from completely bypassing distribution through a wholesaler, another feature of the three-tier system. The exception currently in statute is the Brewpub license, which was created to essentially replicate the concept but allows a BDL licensee or REPL licensee to manufacture a limited amount of product, to sell directly to the public and sell to out-of-state distributors up to a limited annual volume. The result is an imbalance between licensees' access to the same concept, depending on which license they hold and whether they already have substantial in-state brewing operations.

Recommendation M-3 would remove the restriction on Brewery and Winery (not Distillery) licensees holding and operating an REPL. Rather than allowing the licensee to supply their own retail outlets at cost with no limits, an REPL can only be owned by a manufacturer in the same catchment area. The REPL would operate as any other license of its type, with a requisite food sales requirement on the licensed premises; the food requirement would only apply to the licensed premises of the restaurant and would not take into account any other licenses' sales receipts (see Recommendation R-4). This proposal would not change the manufacturer's existing ability to self-distribute to other licensees in and out of the state; it is intended to prevent the development of "tied houses," where a manufacturer dominates a market by operating retail outlets that feature exclusively or primarily their own products (see Recommendation W-2 for more on trade practices).

This change complements removing the Brewpub license (Recommendation M-1); it allows the same activities while remaining under the population limits for REPLs. This provision would give manufacturers more flexibility in retail operations, while prohibiting many of the defining features of a "bar" allowed under a BDL. Manufacturers could choose to produce their products with no retail operations, apply for a Retail license and conduct the same activities that are currently allowed under the Manufacturing license types, and/or apply for an REPL to develop a restaurant.

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**Recommendation W-1. Adjust Scaling of Wholesale License Fees and Simplify Supplier Reporting |** Adjust fees for both Wholesale licenses (both listed in AS 04.11.160) to retain current maximum but reduce burden on small operators; remove the requirement to provide a full list of suppliers to the ABC Board.

#### **INTENT OF PROPOSED CHANGES**

Wholesalers have the most complicated fee structure of any license type, and multiple reporting requirements. There are currently two license types in the Wholesale license statute (AS 04.11.160), General Wholesale and Malt Beverage and Wine Wholesale, with separate schedules of annual and biennial fees that are paid according to the size of the licensee's business (dollar sales transacted). Wholesale licensees have a multi-part fee structure: a biennial fee for all licensees; for General Wholesale, a flat fee for each distribution point; and two other scaled fees based on sales volume and number of suppliers. In addition, Wholesale licensees must provide written letters of certification from all suppliers every two years to verify that they are the primary suppliers in Alaska for each product, another protective feature within the three-tier system that prevents wholesalers from having competing relationships with a supplier of a particular product line.

The subcommittee seeks to simplify Wholesale license types to improve licensing and enforcement, retain a fee structure that is fair to all distributors but places less financial burden on small distributors, and retains the primary source supplier system while saving administrative costs by streamlining the reporting process. The subcommittee recommends halving the fees owed for each tier of business transacted, except that the maximum allowable fee remains the same at the highest tier (over \$1 million in annual sales). Because large wholesalers conduct business well above \$1 million annually and smaller operators rarely approach this number, this seemed a reasonable threshold to maintain without disclosing confidential business information. The table on the following page indicates the current and proposed fees.

In addition, the subcommittee discussed the primary source provision which requires a Wholesale licensee to provide a current supplier list for all the products they sell, and submit any changes in supplier or product line to the ABC Board within 10 days. This provision creates an administrative burden on both licensees and ABC staff, who do not proactively review the lists to address any conflicting reports. The subcommittee recommends a simpler requirement that a Wholesale licensee must, on application or renewal of the license, sign an affidavit that they are the duly appointed wholesaler for all of the product lines they sell. Because wholesalers have a business interest in ensuring that they have exclusive relationships with suppliers, any issue of a non-exclusive supplier would be discovered and brought to the Board’s attention by the licensees, and does not require staff time to maintain a list. The Board would have the ability to request a supplier list from the Wholesale licensee when a question arises, according to the licensee’s signed affidavit. Because there is an existing fee calculated based on the licensee’s number of suppliers, the licensee’s affidavit would also require either writing in the total number of suppliers, or self-reporting on their affidavit using the range identified in statute (1 to 25, 26 to 50, 51 to 75 and over 75).

<b>General Wholesale: Proposed Fee Scale</b>		
<b>Annual Business Transacted (\$ sales)</b>	<b>Current Fee</b>	<b>Proposed Fee</b>
up to \$100k	\$0	\$0
>\$100k to \$150k	\$500	\$250
>\$150k to \$200k	\$1,000	\$500
>\$200k to \$250k	\$1,500	\$750
>\$250k to \$300k	\$2,000	\$1,000
>\$300k to \$350k	\$2,500	\$1,250
>\$350k to \$400k	\$3,000	\$1,500
>\$400k to \$500k	\$4,000	\$2,000
>\$500k to \$600k	\$5,000	\$2,500
>\$600k to \$700k	\$6,000	\$3,000
>\$700k to \$800k	\$7,000	\$3,500
>\$800k to \$1M	\$9,000	\$4,500
over \$1M	\$10,000	\$10,000

<b>Limited Wholesale: Proposed Fee Scale</b>		
<b>Annual Business Transacted (\$ sales)</b>	<b>Current Fee</b>	<b>Proposed Fee</b>
up to \$20k	\$0	\$0
>\$20k to \$50k	\$300	\$150
>\$50k to \$100k	\$1,000	\$500
>\$100k to \$150k	\$1,500	\$750
>\$150k to \$200k	\$2,000	\$1,000
>\$200k to \$400k	\$4,000	\$2,000
>\$400k to \$600k	\$6,000	\$3,000
>\$600k to \$800k	\$8,000	\$4,000
over \$800k	\$10,000	\$10,000

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**Recommendation W-2. Align State Statute with Federal Law Regarding Trade Practices |**  
Add provisions in Title 4 to match current federal law regarding trade practices and agreements between retailers and wholesalers or manufacturers.

**INTENT OF PROPOSED CHANGES**

This recommendation addresses provisions currently missing in state statutes regarding the relationships between manufacturers, wholesalers and retailers. While the Federal Alcohol Administration (FAA) Act and Alcohol Tax and Trade Bureau (TTB) regulations apply to wine and distilled spirits, they exempt malt beverages at the federal level and leave the matter to states to enact equivalent laws. Alaska is among a handful of states that do not have similar provisions in state law.

The provisions are decades old and address problems previously rampant in the alcohol industry prior to Prohibition. In 1933, a report to prepare America for legal alcohol and its regulation, *Toward Liquor Control* (also referred to as the “Rockefeller Report”), provided guidance to policymakers as they set up regulatory systems for alcohol. Issues identified included a variety of practices that hampered retailers’ ability to make independent purchasing decisions about which products to sell. The intent of the provisions is to prevent undue influence over or coercion of a retailer by a manufacturer or wholesaler, such that they prevent the retailer from purchasing products from or conducting business with whomever they choose.

The subcommittee proposes to enact state statute(s) similar to the Federal Alcohol Administration Act (Title 27, Chapter 8, Subchapter 1, Section 205) which define “unfair competition and unlawful practices” as they relate to relationships between suppliers/wholesalers and retailers, including the following issues:

- **Commercial Bribery** | providing a bribe, promotional bonuses or other compensation by a distributor to a retailer in exchange for an exclusive relationship or an agreement not to purchase other products.
- **Tied House** | part ownership by a manufacturer in a retail establishment, which provides leverage for selling some products and not others.
- **Exclusive Outlet** | requiring a retailer to have an exclusive relationship with a distributor.
- **Consignment Sales** | conditional sales of products which may involve the trade of other products in exchange to circumvent normal distribution relationships.

These practices are already illegal under federal law for wine and distilled spirits, but limited resources and federal staff in Alaska has prevented their enforcement for these products, and existing state statutes do not give the ABC Board the ability to enforce them.

To avoid excessive detail in statute, the subcommittee recommends putting most of the specific language about these practices into regulation, with broader language in statute prohibiting the practices listed above. The subcommittee recognizes that this will stop many practices that are common in Alaska, but that many other practices of a similar nature may not be currently prohibited at the federal level. The regulations should adhere as closely as possible to current federal regulations, and not be made more restrictive than current federal law.

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**Recommendation P-1. Population Limits Apply to Retail Licenses Only |** Apply population limitations on the number of licenses only to retail-tier licenses (excluding Tourism and Public Convenience).

**INTENT OF PROPOSED CHANGES**

There is a shared interest among community members, public health advocates and license holders to regulate the number of available licenses; to determine the best mechanisms to regulate public access to alcohol in Alaska’s communities; and to protect the investment value of existing licenses. The number of allowed liquor licenses of each type is determined by each community or borough’s population, as outlined in AS 04.11.400. The goal of the system is to control public access to alcohol and mitigate the social costs of alcohol consumption in a community by setting limits on the density of retail outlets. The effect of the system, because some retail licenses are in high demand and are transferrable to a new owner, is to create a limited supply of licenses, which sets the market value for some license types for a sale and transfer among businesses.

The current system has allowed a much higher density of outlets than the statute intended. Statute allows each community or borough to have 1 REPL per 1,500 people, and 1 per 3,000 people or part of that population for each other license type. This applies to all Manufacturing, Wholesale and Retail licenses, which would be further limited to 1 license per every 10,000 people, but not to Tourism licenses such as BDL Tourism or Outdoor Recreation Lodge. Most communities are over-licensed with retail establishments because existing licensees were preserved when limitations were codified, or exempted. In addition, when a new license type is added, a new set of licenses are created under the population limits. Adding types increases outlet density beyond statutory intent.

The subcommittee recommends that population limits apply only to Retail licenses, not to Manufacturing Production and Wholesale licenses. Tourism and Public Convenience Licenses would remain exempt (see Recommendation P-3 for more about Public Convenience), as well as Destination Resort, Outdoor Recreation Lodge and Conditional Contractor Permit. Considered jointly with the subcommittee’s other recommendations, the overall intended effect is to control the maximum number of retail licenses that could be issued in a community by limiting the number of license types and making the existing license types more versatile with endorsements on a license.

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**Recommendation P-2. ABC Board Advisory Opinion on Proposed Legislation |** Enable the ABC Board to issue a formal advisory opinion on proposed legislation regarding Title 4.

**INTENT OF PROPOSED CHANGES**

Any statutory change to Title 4 is brought before the Legislature for consideration. Legislators or their aides typically call upon ABC Board staff for feedback, and staff is available during all hearings to answer questions. However, deliberation is not conducted by the Board for official opinions on bills, even when the statutory change may have significant impacts on other portions of Title 4 or on the overall alcohol regulation system. The ABC Board is not prohibited from issuing opinions on proposed legislation related to Title 4, but despite being the regulatory body charged with implementing and enforcing these laws, the Board has no formal advisory role in proposed changes.

The subcommittee recognizes that statute must not constrain the Legislature’s decision making process. Therefore the subcommittee recommends that the process of statutory change for Title 4 would benefit from the formal input and perspective of the ABC Board. The ABC Board would be

formally empowered, but not required, to issue an advisory opinion on active legislation for proposed changes to Title 4 to benefit legislators as they deliberate on the implications of the proposed statute. The Board could issue an opinion on its own, or seek public and stakeholder input to inform its opinion on matters with significant impacts.

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**Recommendation P-3. Seasonal Tourism Restaurant License | Place a permanent moratorium on issuing new Public Convenience licenses, and replace existing licenses with a new license type that allows for seasonal REPL licenses in small communities and unincorporated areas.**

### **INTENT OF PROPOSED CHANGES**

As noted in Recommendation P-1, most but not all license types are subject to the statutory population limits. A Public Convenience License is one exception: subsection (e) and (g) of the Population Limitations (AS 04.11.400) allows an REPL to be located 18 or more miles outside of a city's limits or with a signed petition of nearby residents. Public Convenience Licenses are not transferrable, and therefore have no market value. There are currently 57 Public Convenience Licenses, nine of which are seasonal. Most are located in small communities that have otherwise been issued the maximum number of allowed REPLS, notably in Homer (12), Seward (7) and the rural Kenai Peninsula (10). To date, Public Convenience licensees have not been associated with significant enforcement problems, but circumvent the population limitation system. From the public health perspective, this weakens the control on the number of retail access points to alcohol in a community. From the industry perspective, exempt license types create loopholes to obtain a retail license at a lower cost. The process for obtaining a license is administratively cumbersome for the ABC Board when determining whether petition signatures are valid, and the Board faces difficulty in determining what constitutes "public convenience" in each case.

The ABC Board would like to respond to the demands of the seasonal visitor (tourist, traveler and worker) market in small communities with few retail licenses allowed under the population limits while addressing issues with Public Convenience licenses. The subcommittee proposes a permanent moratorium on issuing new Public Convenience licenses and converting existing Public Convenience Licenses to a new license type (Seasonal REPL Tourism). Existing licenses would be grandfathered for the short term and allowed one transfer of ownership at the same location to provide an opportunity to sell the business, or pass it to the current owner's family or business partner. Following the one allowed transfer, the license would be retired. The REPL Tourism is a parallel concept to the BDL Tourism, but with a different set of parameters and a different scheme for determining eligibility. The REPL Tourism License would function as a standard restaurant but would be a seasonal license, with an operating limit of 6 months of each calendar year. The 6 months would not need to be contiguous, to accommodate businesses with summer and winter visitors. The license would require annual renewal, including documentation of the intended season start and end date(s).

The number of REPL Tourism licenses would be limited by a modified population limit, which the ABC Board would calculate using a formula and publish annually for each catchment area. REPL Tourism Licenses would only be available within local government jurisdictions with a population under 20,000, which excludes larger cities and boroughs outside of small communities. To determine the number allowed per community, the Board would rely on a modified population count for



numbers published by DCCED, which tracks visitor counts above 4,000 annually in each community (the license type would only be available in communities with more than 4,000 visitors annually). Using a rolling multi-year average of visitor counts and the current number of year-round residents, the formula would use a modified population calculation as follows:

$$(Average\ annual\ tourism\ count) / (Length\ of\ season\ [6]) = Estimated\ average\ monthly\ visitor\ population$$

This number would yield a modified monthly population estimate during the standard tourist season (6 months), which would be used in the existing formula to yield the number of additional REPLs available to serve this population:

$$(Modified\ population\ estimate) / 1500 = (Number\ of\ Tourism\ REPLs,\ rounded\ to\ nearest\ whole\ number)$$

REPL Tourism Licenses would be transferrable and would require the same application and transfer process as other license types, including the regulation of where the license can be transferred. To account for existing Public Convenience Licenses in a catchment area, the number of allowable REPL Tourism Licenses will take into account any current Public Convenience Licenses in the same area. For unincorporated areas without a local government, the ABC Board will follow the petition procedure outlined in AS 04.11.460(b), which is administratively cumbersome but provides a process for rural areas with very few residents and limited local government structure.

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**Recommendation R-1. Multiple Licensed Premises with a Beverage Dispensary License | Clarify the parameters that would allow and require multiple fixed counters for a Beverage Dispensary License (AS 04.11.090): create a Multiple Fixed Counter Endorsement, a Hotel/Motel Endorsement, and a Large Resort Endorsement.**

#### **INTENT OF PROPOSED CHANGES**

Beverage Dispensary Licenses (BDLs) have a specific definition of licensed premises. “Licensed premises” is defined as one room with a fixed counter or service bar. Additional rooms in one establishment require Duplicate licenses, even in the same building. Duplicates are not allowed at non-contiguous establishments, even under the same ownership. Exceptions include hotels, motels and similar businesses, which are permitted a Duplicate license “within convenient walking distance” of the original license. In addition, resorts and other large hotel properties that have multiple establishments on a multi-acre property have also been granted Duplicate licenses to execute their concept, even when in separate buildings. Lack of clarity regarding duplicate licenses has made it difficult for the ABC Board to consistently determine when a Duplicate License is appropriate and should be issued. Single establishments with multiple bar rooms have had Duplicates, while other establishments, not meeting the definition of hotel or motel, have used Duplicates to create what appear to be two different establishments, but physically adjacent and under the same business entity. Others have applied to use a Duplicate elsewhere in a larger property, citing the example of existing resorts or hotels that have been granted Duplicates as precedent.

This recommendation presents a logical framework for authorizing multiple licensed premises, and clarifying when this option is available to the holder of a BDL. The proposals below allow businesses some flexibility in operation decisions, but restricts the situations in which more than a single room would be allowed. The definition of BDL Premises remains the same: a single room with a fixed, plumbed bar.

The subcommittee proposes the following parameters for determining the applicable option to each licensee. Licensees currently holding Duplicate license(s) may obtain a Multiple Fixed Counter Endorsement, or if their operations do not conform to the guidelines below, will have a grandfather period of 8 years to obtain another license.

- *A Multiple Fixed Counter Endorsement may be obtained* if the additional counter(s) in the same building and under the same roof, in establishments held by the same owner, and separated either by unlicensed or contiguous licensed premises.
- *A Hotel/Motel Endorsement may be obtained* if the licensee is a hotel, motel, resort or similar business catering to the travelling public, allowing Secondary Location(s) in the same building or readily accessible within convenient walking distance, operated by the same business entity, or an entity that is consolidated with the licensee for tax purposes.
- *A Large Resort Endorsement may be obtained* if the licensee offers overnight guest accommodations, outdoor recreation activities, and has a resort with 10 or more contiguous acres, allowing Secondary Location(s) within the resort boundaries, operated by the same business entity, or an entity that is consolidated with the licensee for tax purposes.

**Multiple Fixed Counter Endorsement** | Rather than using Duplicates to extend licensed premises, a Multiple Fixed Counter Endorsement would be available to licensees for use within a single building, under the same roof (to be defined in regulation), and which own or lease all of the portions of the premises they propose to include. The Multiple Fixed Counter (MFC) Endorsement would carry a one-time fee of \$200, and a one-time fee of \$1250 per counter applied for. Only one MFC Endorsement would be required per license; once obtained, a licensee can include additional counter(s) by paying the per-counter fee and providing an updated premises diagram. All licensed premises would be under a single license, subject to existing rules regarding renewal, but would not require application of multiple BDLs. The licensed premises could, for example, be designated as an entire building with one or more additional counters, or a single room with multiple counters.

**Hotel/Motel Endorsement** | If the licensee is a hotel, motel, resort or similar business catering to the travelling public, they may obtain a Hotel/Motel Endorsement which would allow them to qualify for a Multiple Fixed Counter Endorsement at one or more Secondary Locations, either in the same building or readily accessible within convenient walking distance, provided that both licenses are operated by the same business entity. Several provisions pertaining only to these types of businesses would be removed from the BDL statute and placed into this endorsement, with no changes to allowable activities: stocking guest rooms, designating banquet rooms or gathering places as licensed premises, and requiring a key system for storing beverages.

**Large Resort Endorsement** | Because the design and operation of a large resort property or hotel is materially different from a BDL with multiple rooms, the subcommittee proposes creating a Large Resort Endorsement. It is conceptually similar to the Hotel/Motel Endorsement and includes all of the same provisions, except that the licensee is exempt from the requirement that the Secondary Location(s) be within walking distance. The Large Resort Endorsement would not need to “layer” with a Hotel/Motel; a licensee would seek one or the other. A Large Resort would be defined as 10 or more acres, with outdoor recreational activities and overnight lodging for the public. All of the licensed premises would be required to be within resort boundaries and under the licensee’s control



(i.e., not leased to or operated by a separate entity). This endorsement would have a one-time fee and application but cannot be transferred with the license, even at the same location.

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**Recommendation R-2. Recreational Site License** | Ensure that the strict definition of “Recreation” is applied to current and potential Recreational Site License holders; implement a sunset provision to review and revoke any licenses that do not meet the statutory definition (AS 04.11.210).

### INTENT OF PROPOSED CHANGES

There are currently two primary licenses that allow on-site consumption by the general public: the BDL and the REPL, both of which tend to be in high demand due to the population limitations on retail licenses. There are other license types that allow on-site beer and wine consumption in specific circumstances, including: Recreational Site, Golf Course, (University) Pub and Theatre. The ABC Board has received several applications for other license types, particularly the Recreational Site, with many attempts to stretch the definition of “recreation” beyond the statutory definition of a sporting event. The statute was broadly interpreted by a 2011 memo issued by the Attorney General’s office, which outlines “event based” and “activity based” forms of recreation, all of which would be eligible for a Recreational Site License. While the “event based” definition conforms with AS 04.11.210, the “activity based” definition reads as follows: “An activity-based recreational site license would allow the licensee to sell beer and wine during times the recreational activity is taking place. An activity-based recreational site license includes the following recreational activities, or other recreational activities having substantially similar characteristics: baseball, softball, football, soccer, running, skiing, skating, dog sledding, curling, gymnastics, zip lines, volleyball, climbing, hiking, fitness activities, golf, bowling, billiards, hiking, rafting, and boating.” A number of licenses have since been issued under this broadened definition, many of which would not qualify if re-evaluated under the statutory definition. It is difficult for the ABC Board to make fair and consistent decisions and to comply with the intent and letter of statute, as these other license types become more available or broadly interpreted. Current licensees voiced concern that the value of BDLs will be diminished by expansion of other license types. Public health and community advocates would like to avoid any proliferation that increases the density of retail outlets beyond statutory intent. Given the limited number of most license types available, pressure on the Board is likely to continue in the future to creatively adapt this and other license types.

After reviewing the existing statute and the proposed regulation to define “recreational activities” issued by the ABC Board for review in August 2013, the subcommittee determined that the issue is not in statute, but with how it has been interpreted. The subcommittee supports the proposed regulation as it has been drafted, but determined that the statute itself is sufficient and must be interpreted more narrowly when reviewing Recreational Site License applications, and that the policy memo that broadens the intent of the statute should be nullified because it does not appear to have statutory basis. To clarify the intended use of the license, its name should be changed to better reflect its intent: for example, “Sporting Event License” or a similar name reflecting use at specific recreational events, not necessarily all recreational activities.

The primary implication for returning to a strict statutory interpretation is whether existing licenses granted under this broadened definition of recreational activities should be revoked, as they were issued without proper legal basis. The subcommittee weighed the existing licensees’ investment

against the benefits of closing a growing loophole, and recommends that the ABC Board should not renew licenses that do not fit this definition. Instead, it should provide a sunset period to allow non-conforming licensees to depreciate their investment in the license or alter their operations to comply with AS 04.11.210. In the next renewal period for each Recreational Site License, the ABC Board would issue a memo explaining that all licenses of this type will be reviewed by staff and a recommendation made whether it meets the statutory definition of a Recreational Site. Licensees would be given four renewal periods (eight years) to submit an appeal to the ABC Board explaining how they comply with statute or which operational changes they would make (e.g. instituting a seasonal league) to come into compliance. At the end of this period, licenses that are no longer in compliance would not be renewed.

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### Recommendation R-3. Package Store On-Site Product Sampling Endorsement | Create a separate Endorsement to allow on-site sampling at Package Stores (AS 04.11.150).

#### INTENT OF PROPOSED CHANGES

Currently Brewpubs, Wineries and Breweries allow on-site sampling of products and limited sales to individuals for off-site consumption (see Recommendation M-2). Package Store Licenses prohibit onsite consumption of alcohol, but the “growler bar provision” (subdividing containers) was added in regulation to allow package stores to re-package beer into a growler (a 32-oz or 64-oz container provided by or purchased by the customer) for consumption off-site. There has been advocacy to allow onsite sampling at Package Stores. Alaska has not allowed this activity in the past, but many other states allow sampling either as a part of a license or a separate permit for a third party.

Along with reorganizing Package Stores’ existing permits as identified in statute (Recommendation R-7), the subcommittee proposes creating a new Package Store Sampling Endorsement, which would allow a Package Store licensee to provide a limited number of free samples of alcoholic beverages on premises. The subcommittee looked to the Manufacturer Retail recommendation for guidance on sample size, and would include the same limits for the *total* amount of equivalent-alcohol samples served: no more than **12 oz** of beer, **6 oz** of wine or **1.5 oz** of distilled spirits, or a combination not to exceed the equivalent of any of the three. Determining how to track the total product(s) sampled per customer would be left to the licensee, who would present their plan to the ABC Board. The licensee and employees would assume liability for serving and training, and the same retail signage would be required. Sampling activities would be allowed during package stores’ hours of operation.

Because this proposal substantially expands the type of activities allowed at a Package Store, the subcommittee discussed ways to mitigate the potential neighborhood impacts of free sampling at establishments with no previous onsite consumption. The subcommittee proposes that the endorsement require specific review by the community, and may trigger additional requirements at the local level such as a Conditional Use Permit provision allowing onsite consumption. Further limitations on the schedule of sampling activities could be placed on the endorsement through a conditional use permit, e.g. allowing sampling for only four consecutive hours or not before noon. The endorsement would require bi-annual renewal with the license. To address concerns that free sampling would be leveraged in a proliferation of public advertising for free alcohol, the subcommittee recommends codifying restrictions in statute and regulation regarding advertising (such as in Pricing and Marketing, AS 04.16.015). Public advertising of free sampling would not be

permitted, including banners on the exterior of the premises, newspaper ads and other circulars, TV and radio advertising, or handheld signs on street corners. Advertising directed at existing customers would be permitted, including opt-in mailing lists, social media directed toward a network of opt-in followers, and banners or flyers inside the store that are not visible from the exterior.

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**Recommendation R-4. Clarify Restaurant Food Requirement** | Clearly define in statute the calculation of 50% food sales (AS 04.11.100) as the ratio of food sales receipts to alcohol sales receipts for on-site consumption.

#### **INTENT OF PROPOSED CHANGES**

The subcommittee discussed the ratio of food to alcohol required as part of a Restaurant Eating Place License to define a *bona fide* restaurant, as well as specific examples of existing REPL holders that may or may not meet the statutory requirement. The subcommittee did identify an ambiguity in statute: the statute requires “that gross receipts from the sale of food upon the licensed premises constitute no less than 50 percent of the gross receipts of the licensed premises for each of the two preceding calendar years.” As defined, non-food sales could include alcohol, merchandise or other receipts.

The subcommittee discussed the food requirement particularly in the context of a Manufacturer holding an REPL and whether they could successfully meet this requirement. The subcommittee recommends that the statute be re-worded to indicate a more specific calculation: gross receipts of food sales measured against gross receipts of alcohol sold for on-premises consumption. This ratio excludes any other sales, such as merchandise or alcohol sales for off-premises consumption.

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**Recommendation R-5. Golf Course License and Endorsement** | Retain the current Golf Course License (AS 04.11.115), allow a Golf Course to hold a BDL, create a Golf Course Endorsement; adapt AS 04.16.049, 3 AAC 304.715, 3 AAC 304.725 and 3 AAC 304.745 to allow minors to play or work on the golf course or clubhouse.

#### **INTENT OF PROPOSED CHANGES**

In reviewing the Golf Course License and Restaurant Endorsement (previously Restaurant Designation Permit), the subcommittee discovered that, unlike a provision for REPLs, there is no provision permitting minors to work on or play on a golf course if it has been designated a licensed premises. While the general intent of Title 4 is to not allow minors to be on licensed premises and not serve alcohol as part of employment, the lack of a provision regarding minors on licensed golf course premises appeared to be an oversight and, to the subcommittee’s knowledge, is not currently being enforced because it would prevent minors from participating in golfing activities. The holder of a Golf Course License is also currently prohibited from holding a BDL per AS 04.11.115. Although they can serve beer and wine throughout their property (clubhouse and course), there has been pressure in the past to allow all alcohol products to be served under this license.

The subcommittee proposes retaining the Golf Course License as a beer and wine license, but allowing a Golf Course licensee to obtain a BDL if desired and one is available. A Golf Course License would be required in either case in order to serve beer and wine on the course; it is the required foundation for allowing the course to be licensed premises. The applicant and the Board may determine which portion(s) of the course are within the premises boundaries. If a Golf Course

obtains a BDL and wishes to serve all alcoholic beverages on its course, extending the BDL's licensed premises would require a Golf Course Endorsement. Without the Endorsement, the BDL premises is limited to a one-room clubhouse; with the Endorsement, part or all of the course itself could be considered licensed premises. The Endorsement would also include language clarifying that minors would be allowed to work or play on the course. The Golf Course License (and a BDL also held by the licensee with a Golf Course Endorsement) would include a provision to allow minors to work on the licensed premises, similar to the Restaurant Endorsement, with the requisite requirements on the licensee to ensure that minors do not have access to purchase, consume or serve alcohol while on licensed premises.

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**Recommendation R-6. Theatre License | Move the Theatre License into statute and out of regulation 3 AAC 304.695 as an add-on license to a BDL or REPL.**

#### **INTENT OF PROPOSED CHANGES**

The Theatre License, which functions as a regular license type, is not included in statute. Only one is currently in use, available to an existing licensee to provide concessions at a theatre at its own establishment or, as written, a site separate from its own licensed premises. In practice, it functions as a year-round catering concessions contract between a licensee and an otherwise non-licensed premises, and can circumvent local limits in Anchorage on the number of events allowable at a single venue in a calendar year. The subcommittee proposes this license type currently in regulation (3 AAC 304.695) should be codified in statute. A Theatre license is currently only available to existing BDL and REPL holders, and despite its current use, does not mandate an exclusive contract with a single venue. The subcommittee identified this perception of exclusivity as being a point of frustration for other retail license holders, but is not required in statute or regulation.

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**Recommendations R-7A through M. Endorsements and Permits | Create a clear statutory framework for Endorsements and Permits, with all types defined in statute as well as regulation.**

#### **INTENT OF PROPOSED CHANGES**

As noted throughout most of the other recommendations, the current system of licenses, designations and permits is often inconsistent or convoluted, in part because it has been changed piecemeal and several new license types have been added to address a variety of special situations. Many of these situations have to do with the extent of the licensed premises and which activities are or are not allowed on the premises: for example, a Bowling Alley is treated with a special provision within the BDL statute, while a Golf Course and a Recreational Site are two separate license types. Furthermore, there are permits or licenses that are defined only in regulation (e.g. the Theatre license), and other permits that are defined within specific license statutes but which are more functionally similar to endorsements. Finally, the system of permits, particularly Catering Permits, has been difficult to monitor and implement both at the state and local level.

The subcommittee's general approach to this topic was to examine which provisions should be a distinct license defined in statute, which provisions allowed licensees to conduct certain activities and/or expand the boundaries of their premises (suggesting the need for an endorsement), and which provisions were truly temporary permits that should be refined and inserted into statute, not

regulation. The subcommittee recommends including the following guidelines for each category in an educational document for the general public (not in statute itself):

- *License* defines activities allowed daily on its licensed premises.
- *License Type* is a general category of license activities, based on the three-tier system: Manufacturer, Wholesale, Retail.
- *Endorsement* expands the boundaries of the licensed premises to suit activities associated with some businesses: bowling alley, golf course, theatre, etc. It is similar to Restaurant designation in current statute.
- *Permit* allows time-limited catering and serving activities on other premises; allows eligible non-profit organizations to host fundraising events.

Some endorsements have already been defined in previous recommendations, as they apply directly to a specific recommendation. The remaining list of endorsements and permits below is proposed to be inserted as a series of individual statutes. In most cases, the language describing the permit or endorsement has not changed, only its inclusion in statute. In other cases, language may be expanded or narrowed to clarify the intended use of the endorsement or permit, and to which license(s) it applies.

**R-7A | Bowling Alley Endorsement** | The subcommittee proposes removing this from the BDL statute (AS 04.11.090), but only making it available to BDL holders. Because there was previously no definition for a bowling alley, the subcommittee proposes that the ABC Board define “bowling alley” in regulation. This endorsement application requires information about the specific premises and hours during which alcohol is to be served, when minors are not allowed in the area.

**R-7B | Package Store Shipping Endorsement** | The subcommittee proposes relocating this portion of AS 04.11.150(g-h) into a new statute and endorsement on a Package Store license. The endorsement would not require renewal, but is non-transferrable. The fee for this endorsement would be \$200 because it has associated administrative costs associated with the Written Order Database and compliance with Local Option laws.

**R-7C | Package Store Delivery Endorsement** | The subcommittee proposes relocating this portion of AS 04.11.150(i-j) into a new statute and endorsement on a Package Store license. The endorsement would not require renewal, but is non-transferrable. The fee would be \$50, because it has minimal administrative cost to execute.

**R-7D | Package Store Re-Packaging Endorsement** | The subcommittee proposes relocating this portion of regulation 3 AAC 304.365 into a new statute and endorsement on a Package Store license. The endorsement would not require renewal, but is non-transferrable. The fee would be \$50 because it incurs minimal administrative cost for review.

**Manufacturer Sampling Endorsement** | See Recommendation M-2.

**Multiple Fixed Counter Endorsement** | See Recommendation R-1.

**Hotel/Motel Endorsement** | See Recommendation R-1.

**Large Resort Endorsement** | See Recommendation R-1.



## **Package Store Sampling Endorsement** | See Recommendation R-3.

**R-7E | Permits** | The subcommittee recommends that all permits be clearly defined in statute, with language that limits alcohol service permits to *only* those defined in Title 4. This will eliminate the creation of new permits in regulation, which has contributed to the confusion of which permits are available to whom. A new statute will define a permit, indicate its time-limited nature and list types of permits. After reviewing the cost associated with issuing, inspecting and enforcing permits, the subcommittee proposes that the fee for retail permits should be \$50 per day (except the Retail Stock Sale, previously a 90-day license to sell inventory of a closing business). ABC Board staff indicated that multi-day events tend to have a higher administrative cost for the Board because they are of a larger scale and more elaborate operations. Because enforcement costs for permits will likely rise over time with inflation, the language in statute should read “no less than \$50 per day,” which gives the Board discretion to increase permit fees in regulation to better reflect the cost of enforcement.

### **Provisions that should apply to all permit types:**

- The subcommittee recommends removing the provision that permits must be surrendered back to the ABC Board after their use (AS 04.11.230 and AS 04.11.240). This requirement dates back to the practice of issuing permits in hardcopy only, with the only copy given to the permit holder to be returned to the ABC Board following the event. Staff verified that this provision is no longer enforced because permits are stored electronically.
- To clarify the application process, the subcommittee recommends outlining in the general Permits statute the procedure for applying for a permit, including: obtaining approval from local law enforcement and other local authorities to conduct the event; submitting to the Board an annotated diagram to indicate the licensed premises for the permitted activity (including entrances, exits, serving points and other considerations), and other procedural issues duplicated across individual permits.

**R-7F | Beverage Dispensary Caterer’s Permit** (AS 04.11.230; 3 AAC 304.685) | The current statute is named “Caterer’s Permit,” but because it is specific to BDL holders, the group recommends changing the name to Beverage Dispensary Caterer’s Permit. Originally defined in statute to be used for events such as conventions, sporting events and picnics, it includes a provision that allows its use for “social gatherings,” which has caused considerable confusion and has been broadly applied. This catering permit is intended for events with a specific attraction or celebrating a holiday. Other events that are not open to the public (e.g., family gatherings, weddings, company parties) do not require a catering permit under most circumstances. The recommendation is to remove “social gathering,” add more examples of allowed events (e.g. street fairs, concerts, festivals) and change the fee to \$50 per day, not per event.

**R-7G | Restaurant Caterer’s Dining Permit** (3 AAC 304.680) | This permit, currently only in regulation, allows an REPL or a Golf Course to provide beer and wine for a dinner event. The subcommittee recommends changing the phrase “banquet or dinner event” to “meal or dining event” to broaden the allowable events to a brunch or lunch event, if desired. This permit is intended to be the analog to a BDL Caterer’s Permit, but requires food service at the event, similar to the REPL’s food sales requirement.

**R-7H | Club Caterer’s Permit** (3 AAC 304.690) | The subcommittee proposes no changes to the activities of this permit, other than to move it into statute. The fee would be changed from \$100 per permit to \$50 per day; currently organizations are limited to three (3) events per calendar year.

**R-7I | Nonprofit Event Permit** (AS 04.11.240) | The subcommittee proposes renaming the “Special Event Permit” as the name causes considerable confusion and because it is only available to nonprofit organizations for fundraising activities or member meetings. This permit does not currently allow service of distilled spirits, only beer and wine. This permit is already located in statute (AS 04.11.240) and allows an organization up to five events per calendar year.

**R-7J | Art Exhibit Permit** (3 AAC 304.697) | The subcommittee proposes no changes to this permit other than its fee: currently an organization can pay \$50 per event or a total of \$100 for a year-round permit of up to 12 events. The subcommittee recommends changing the fee to \$50 per day and removing the full-year fee option.

**R-7K | Alcoholic Beverage Auction Permit** (3 AAC 304.699) | The subcommittee proposes renaming this permit from “Wine Auction Permit,” moving it into statute, and allowing any alcoholic beverage to be auctioned, with no other changes to the permit. This permit would only be available to non-profit organizations and can be used with or without another event permit, and either at the licensed premises of a BDL, REPL or Club, or at non-licensed premises. It does not allow onsite consumption of the products being auctioned.

**R-7L | Retail Stock Permit** (AS 04.11.200) | This license type is effectively a 90-day permit for a Package Store to sell its inventory directly to other licensees prior to closing its operation, an activity normally prohibited under the three-tier system. Because this is a special situation and requires a Package Store License to qualify, the group recommends making this a permit. The fee would remain at \$100 for the entire 90-day period, rather than \$50 per day like other permits.

**R-7M | Tasting Event Permit** | In place of using a BDL Caterer’s Permit for industry-sponsored tasting events, a new permit would be created that allows some other license types to host a specific event promoting their products, in place of a broad interpretation of “social gathering” (see Recommendation R-7F). The proposed permit enables a BDL to partner with a Package Store or Manufacturer Retail licensee to produce a tasting event in order to promote the products of that package store, brewery, winery or distillery. The permit, while held by a BDL, would be limited based on the partnering license, with up to 6 events per Package Store or Manufacturer (Brewery, Winery, Distillery) Retail license per calendar year, and must be held in the same geographic area as the partnering license is issued (for example, a Fairbanks BDL may partner with an Anchorage Brewery, but must hold the event in Anchorage). The event may be held on- or off-premises of the partnering licensee, and the host is limited to serving the products currently produced or sold by that partnering licensee. The event must be no more than four hours long, with no alcohol served after 9 p.m. Food must be served with the alcoholic beverages. The cost of the permit would be \$50 per day. The host can charge attendees a flat fee for admission, as wine tasting events and non-profit fundraisers currently allow. The applicant must be a BDL, and must demonstrate that they are working with a partnering licensee who holds a Manufacturer Retail License or Package Store License, with documentation required by the ABC Board to be detailed in regulation.

## ROLE OF THE ABC BOARD

The Role of the ABC Board subcommittee reviewed the statutes related to the powers, duties and structure of the ABC Board itself, as well as the Board's larger role in promoting responsible alcohol industry operations, responsible consumption of alcohol and enforcement of the law. These included Chapter 6 of Title 4, AS §04.06.010 to §04.06.100.

### RECOMMENDATIONS

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#### **Recommendation RB-1. Strengthen Reporting Requirements for Municipal Enforcement |**

Include in statutory requirements that municipalities submit quarterly reports on Title 4 enforcement activities to the ABC Board.

#### **INTENT OF PROPOSED CHANGES**

The ABC Board depends upon municipal police and peace officers, VPSOs and the Alaska State Troopers to enforce Title 4, in addition to the Board's own investigator staff. Where local municipalities have their own police departments, the State provides matching funds back to the local police department (commonly referred to as a "refund") from the General Fund equal to the licensing fees collected within that jurisdiction. The funds are encouraged but not required to be used for Title 4 enforcement activities; municipalities are required by regulation 3 AAC 304.610 to provide quarterly reports on enforcement activities, but this is a difficult provision to enforce. Furthermore, the ABC Board currently has no formal mechanism to engage in planning efforts with local governments on education and enforcement beyond coordinating on individual investigations. Police departments have been required by regulation to report on their activities, but receive no direction about what enforcement is most appropriate or how best to allocate the funds. Some departments are more responsive and some reports more robust than others. If a law enforcement agency reports no violations, it is unclear if violations did not occur, if preventative measures were successful, or if no action was taken. Lack of clarity about what is required and why reduces the efficacy of this reporting requirement.

In 2014, the former director of the ABC Board issued a white paper recommending that:

1. Current specific reporting requirements in code (3 AAC 304.610) be written into statute (AS 04.11.610);
2. Municipal police department reporting be standardized into a uniform format; and
3. The ABC Board work with local municipalities to develop enforcement, education and prevention plans to make best use of the refunds.

In addition to reporting on enforcement activities as recommended in the white paper, the subcommittee recommends that these reports require municipalities to document their intended use of these funds for education and prevention activities, including developing action plans in collaboration with ABC Board staff. Including these activities in statute rather than regulation clarifies that they are a requirement, which will result in more consistent reporting from local governments. The reporting format should allow police departments to comment on education and prevention activities, and would not mandate that the funds be specifically spent on enforcement of



Title 4. The requirements are not intended to be so onerous as to place a burden on local enforcement agencies; the subcommittee recommends allowing for some flexibility in the format of reporting (for example, an electronic system and a paper system to choose from).

### IMPLICATIONS TO CONSIDER

- Consider the resources that would be necessary for the ABC to work with municipal police departments on developing enforcement, prevention and education plans.
- The subcommittee recommends soliciting input and discussion from the local law enforcement community before developing detailed requirements for planning and reporting, to ensure that it is an effective system for all.
- Should an enforcement, education and prevention plan be required as condition of receiving funds? Activities may vary by community and which issues are listed as priorities.

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**Recommendation RB-2. Community Analysis of Written Order Database** | Allow data about alcohol purchases (written orders) to be reported/made available, aggregated at the region or community level, for analysis and community self-assessment.

### INTENT OF PROPOSED CHANGES

Currently, all written orders for alcoholic beverages to local option communities purchased through package stores in the state must be recorded in a database maintained by the ABC Board (AS 04.06.095; 3 AAC 304.645).<sup>1</sup> This database is used to track orders to local option communities that allow alcohol importation (coordinating orders from multiple stores) and to enforce a monthly maximum purchase of alcoholic beverages allowed per individual by these communities. The data are confidential, available only to the ABC Board, a law enforcement officer, probation or parole officer, and on a limited basis to a package store licensee, agent or employee when they determine whether to fill an order. Individuals may request reports of their own data, but the information is not available to the public and database is purged annually. The written order database is generally seen as a successful tool, and the data it contains is potentially valuable information for Local Option communities to understand the flow of alcohol in their own area. Because all of the data is confidential as required by statute, not having access to this information at even an aggregated level is a missed opportunity.

The subcommittee proposes adjusting the language of statute to preserve the confidentiality of individual purchasers, while allowing an aggregated form of the data (at the community, ZIP code or region level) to be provided to communities and other researchers upon request. This change would require a longer archival period for the data than annual purges, but would still only make data available in a limited format to the general public. Access to the aggregate data would be useful for state and community analysis, and could be limited to those within a certain community or geographic area.

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<sup>1</sup> The written order database was created in 2007, in response to the problem of individuals in local option communities making several maximum orders at different package stores and thereby exceeding the monthly limit per individual. Package stores enter the amount of alcohol ordered by an individual to ensure that the order will not exceed the monthly maximum per individual that is set by state law. Effectively, the written order database plays the monitoring role of a community distribution center in communities without a central distribution point.

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### **Recommendation RB-3. Revise ABC Board Budget to Adequately Fund Needed Activities |**

Determine the necessary funding level to carry out the ABC Board’s mission and core functions, and adjust revenue (fee amounts) accordingly to meet that need, as recommended in F-1 (Adjust License Fees to Reflect Current ABC Budgetary Needs).

#### **INTENT OF PROPOSED CHANGES**

The ABC Board’s budget includes costs associated with quarterly Board meetings, enforcement activities, education activities for applicant and current licensees, and administrative functions associated with licensing and other Title 4 provisions. The ABC Board Director develops the budget based on the estimated amount of fees collected through applications and renewals of licenses.

The subcommittee compared the Board’s current budget to the costs of its current duties (as defined in Title 4) and any this proposed set of recommended changes to Title 4, and determined that the budget would likely need to increase in order to better perform the Board’s enforcement duties and to engage in more education and outreach (Recommendation RB-4). Additional activities proposed by the subcommittee include:

- Increased funding for research and data evaluation to measure program performance;
- Additional Board outreach and education activities (e.g., additional Board meetings or “listening sessions” in rural communities, beyond the required minimum of at least one meeting in the four judicial districts);
- Additional investigation and enforcement resources for addressing issues such as non-licensed establishments and sales;
- Investigator I level staff to perform routine compliance checks, which would allow Investigator III and IV level staff to perform more complex investigations; and
- Additional staff resources to investigate and prosecute local option cases.

The subcommittee strongly feels that this recommendation should be accompanied by a requirement for the ABC Board Director to produce a detailed plan for the increased expenditures. This recommendation is offered in tandem with the Licensing Subcommittee’s Recommendation F-1, which proposes a scheme for increasing revenue increase through adjustments to current license and permit fees. Both subcommittees look to the ABC Board Director to develop a proposed budget for general review. Education activities conducted by ABC Board staff should also be adequately funded, including: informing licensees of changes to statute or regulation, providing licensees and employees of the industry with information regarding other related changes (e.g., the new Alaska driver’s license design), and educating local governments and other partners on effective implementation of the law (Recommendation RB-4).

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## **Recommendation RB-4. ABC Board as Lead Agency for Alcohol Education Efforts |**

Designate the ABC Board as lead agency in a multi-department, public-private sector education effort about responsible alcohol use and applicable laws.

### **INTENT OF PROPOSED CHANGES**

The ABC Board has the responsibility of approving the alcohol server education courses provided by the alcohol industry. Although the ABC Board does not have an explicit charge in statute to provide alcohol education, ABC staff conduct training classes upon request to licensees and their agents and employees, law enforcement, university students and citizens. According to AS 04.06.090 Powers and Duties, the Board can undertake necessary activities to control and regulate alcohol production and sale, but the only activities specified include granting licenses, enforcement, and notification of changes to Title 4 and associated regulations. ABC Board staff, industry members, local governments, enforcement agencies and other partners value the Board's education activities to help all stakeholders understand and comply with the law, particularly to prevent youth access to alcohol. In addition to the ABC Board efforts, there are currently a variety of efforts through the Alaska Mental Health Trust Authority, the State of Alaska Department of Health and Social Services, and local partners on alcohol education, but there is no centralized coordination of these efforts and inconsistent partnerships between the public and private sector education efforts.

The subcommittee discussed the role of education to various audiences (licensees, employee servers, law enforcement, youth and the public) in promoting responsible use and sales of alcohol, and recommends designating the ABC Board as the lead agency in developing a comprehensive plan and budget for education about the responsible use of alcohol and following alcohol laws, in cooperation with other agencies and stakeholders. This effort would not replace existing programs such as the grants that fund substance abuse prevention through the Division of Behavioral Health, but provide a more formal role for the ABC Board to share information about Title 4 and alcohol regulation.

The current niche of the ABC Board is being the primary agency with which licensees interact regarding Title 4 and other alcohol related issues. Coordination between the ABC Board and other agencies focused on reducing the financial and social costs of alcohol use would promote better communication about issues among all stakeholders. This existing relationship with the alcohol industry is ideal for communicating necessary information (e.g., changes in statute, regulation or policy) that affects business operations or requirements. Other education activities for the Board include educating the public through messaging campaigns about alcohol laws, particularly regarding furnishing minors; social host laws; open container laws; and when a catering permit is required. While local governments may produce educational materials in this area, the ABC Board could produce materials such as a Frequently Asked Questions (FAQ) document or brochures to educate the general public about alcohol laws.

### **IMPLICATIONS TO CONSIDER**

- Education and collaboration with partners in the public and private sector are not currently included in the ABC Board's mission, either in Title 4 or in the Governor's Budget documentation for the agency. The subcommittee discussed, but did not make a specific language change recommendation, for including these functions explicitly in the Board's mission statement or its powers and duties.

- Assemble a plan and budget for educational efforts led by the ABC to address: Who would educational activities target (e.g., public, licensees, servers)? Who would be responsible for implementing and evaluating program effectiveness of these educational activities the ABC Board would coordinate? What are the messages that the education would convey?

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**Recommendation RB-5. Composition of the ABC Board |** Retain the current number of members but add designated seats: 1 public health, 1 public safety, 2 industry and 1 rural public member; include provision for Director’s background in filling the designations.

### **INTENT OF PROPOSED CHANGES**

The qualifications for members of the ABC Board are written in AS 04.06.020, specifying that two members must be engaged in the industry; that no two members can be in the same line of business; that three members should represent the general public, one from a rural area; and that the public members or their immediate family cannot have a financial interest in the industry. While members of other sectors involved with alcohol regulation, particularly public health and public safety, have served on the Board in past years, there is no formal designation for these seats. The ABC Board is intended to control alcohol because it has serious public health and social costs in communities; currently law enforcement and protection of public health are important aspects of the Board's mission, but have no designated representation on the Board except when an individual with those qualifications is appointed.

This recommendation does not change the number of Board members, but creates more designated seats from within the total of five seats. From the three existing public seats, one would become a seat for someone with a public health background, defined as an individual working within the last five years in the field whose charge is to promote wellness and prevent disease through research, evaluation, community-level health interventions, and other activities (a distinct field from medical and health care). Another seat would be designated for someone with a public safety background, defined as an individual charged with enforcing and upholding law. The third public seat would remain a member of the general public who lives in a rural area, as currently defined in statute, and the other two seats would remain industry representatives.

Furthermore, the composition of the Board may be altered if the ABC Board Director, considered a non-voting member of the Board, has the same background as any of the sectors listed above. If the Director could qualify for the public health, public safety or industry seat, the corresponding seat would become another public member: a Director with an industry background would result in one industry seat on the Board; a Director with a public health background would result in no designated seat for public health; and a Director with a public safety background would result in no designated seat for public safety. The group discussed whether this would result in an imbalance on the Board, but determined that while the Director is a non-voting member, the position affords the Director a great deal of influence over the Board’s policies, from issuing permits to issuing temporary licenses to developing the Board’s meeting agendas.

The subcommittee also discussed the current definition of financial interest, as non-industry members on the Board are restricted from having industry ties through their own or their immediately family’s interests. The subcommittee recommends defining “financial interest” consistently with that included in AS 04.11.450 Prohibited Financial Interest, and referencing it in AS 04.06.020.

## IMPLICATIONS TO CONSIDER

- Possible impacts on ABC Board composition by marijuana regulation, until such time as a separate Marijuana Control Board is created.

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**Recommendation RB-6. Update Title 4 Sanctions | Review sanctions for all Title 4 sections; revise penalties to be more proportionate to the crime and more consistently enforced.**

## INTENT OF PROPOSED CHANGES

This recommendation proposes that sanctions for Title 4 provisions be revised as outlined in the attached table. These revised sanctions treat certain activities as serious offenses (such as selling without a license, or selling illegally in a local option area) and treat most other activities as undesirable, but more likely to be stopped if the law is consistently enforced at the minor offense level. The serious offenses are proposed to remain at the felony or misdemeanor level, as they currently are in statute. The less serious offenses are proposed to be made minor offenses (also referred to as violations), which is intended to make them more easily enforced.

With some exceptions, most of the criminal penalties for violations of Title 4 are currently class A misdemeanors. In the experience of those working in the enforcement and prosecution of Title 4, as well as an examination of Alaska's court data from the past five years, this penalty is often seen as being relatively high, resulting in inconsistent enforcement and prosecution of the offenses. Of the 21,000 cases related to Title 4 filed in the last five years, nearly 40 percent (37.8%) were dismissed, suggesting a lack of resources to prosecute and/or a disinterest in pursuing charges on the part of the State. If penalties are strict but inconsistently enforced, they are not effective deterrents.

Minor offense violations are less onerous to initiate into the court system; a law enforcement officer can write a ticket, and if the offender does not attend a court hearing, the Court will simply require payment of a fine. Many of the proposed fines are applied per unit, rather than per incident, to make the cost of violating the law more commensurate with the profit the offender seeks to capture by not following the law. Reducing the severity of these penalties in the statute but increasing the potential fines is intended to increase the consistency of enforcement and address the concern of the fine becoming a cost of doing business.

By making the enforcement process more streamlined for law enforcement officers (who write the tickets) and the courts (who act on the cases), these changes are also intended to bring more cases and convictions before the ABC Board, who can then review the case and impose administrative sanctions as appropriate. This recommendation includes proposed statutory language requiring the Court to provide the Board with notifications of all Title 4 convictions, not only those initiated by ABC Board investigative staff. Currently, those cases initiated by local law enforcement agencies do not always reach the Board, and staff has limited resources to seek out this information. Receiving more data about Title 4 violations will help the Board establish whether a licensee has a pattern of behavior that requires additional assistance and education to conduct business in a lawful manner, or if the licensee has disregarded the law because they believe it is more profitable to do so than to be a responsible operator, which requires punitive action.

This recommendation proposes retaining the current system of administrative sanctions in which the Board has discretion to act based on the facts of the case. Currently, administrative sanctions are based on precedent sanctions applied: the ABC Board Director maintains a database of past

sanctions applied and provides it as a reference when the Board considers sanctions for current violations. Based on precedents, there is now a general standard (e.g., 45-day penalty suspending license) but no formal structure to the administrative sanction(s) applied to individual cases. The Board ultimately has discretion to follow or disregard precedent and to focus on each case individually. In addition, the subcommittee recommends that for violations of AS 04.16.030 Conduct Involving Drunken Persons, which penalizes the agent or employee of a licensee, the Board should increase compliance checks or inspections upon a conviction, to place more scrutiny on the licensee and determine if it was an isolated incident or an indicator of a larger compliance problem.

Recommendations for specific sections of Title 4 are included in the Local Option (AS 04.16.200(g)) and Underage Drinking subcommittee recommendations (AS 04.16.052, AS 04.16.050).

## LOCAL OPTION

The Local Option subcommittee reviewed the statutes related to AS 04.11.491, which allows individual communities to limit or prohibit the availability of alcohol within their community.

### RECOMMENDATIONS

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**Recommendation LO-1. Repeal Local Option #4 | Repeal section 04.11.491(b)(4) (Local Option #4), which bans the sale and importation of alcohol, not possession.**

#### INTENT OF PROPOSED CHANGES

This recommendation proposes repealing AS 04.11.491(b)(4), the fourth local option available to communities. Originally, Sec. 04.11.491(b) included four choices for communities; the fourth bans the “sale and importation” of alcohol, not its possession. Because selling, importing or producing alcohol is illegal but possession is not in these communities, it is difficult for law enforcement to seize, destroy, investigate and successfully prosecute a case because an individual may claim they “found” the product and were not connected with other activities.

The fifth option, which bans “sale, importation and possession” of alcohol, was later added to statute as a means of closing the loophole created by Local Option 4. Few communities have chosen to adopt Local Option 4 since Local Option 5 was available, but few have chosen to change from Local Option 4 to Local Option 5 because changing among the local options requires repeal and a new vote of the community. Currently, 43 communities have adopted Local Option 4, and 34 have adopted Local Option 5. This recommendation proposes that the communities that have Local Option 4 currently either hold a new election or be grandfathered in for a period of time.

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**Recommendation LO-2. Increase Enforcement and Prosecution Resources | Include in recommendation RB-3 (revised ABC Board budget to adequately fund needed activities) adequate budget for increased dedicated prosecutors and investigators for Title 4, particularly local option law enforcement.**

#### INTENT OF PROPOSED CHANGES

This recommendation proposes that additional staff resources be dedicated to the Alaska State Troopers Statewide Drug Enforcement Unit to investigate local option related cases, and that the number of dedicated state prosecutors for Title 4, local option related crimes be increased. The State Troopers Statewide Drug Enforcement Unit currently has six rural investigators, three based in Anchorage, and there is one dedicated prosecutor for Title 4 offenses based in Anchorage; their caseload is considerable. The intent of this recommendation is to provide more staff resources to investigate and prosecute alcohol related crimes in rural Alaska, crimes that often lead to serious violent crimes. In addition to the limited staff capacity of local police, VPSOs, Title 4 investigators and State Troopers in rural areas, the limited staff availability and high turnover of Assistant District Attorneys is a barrier to prosecuting cases. Without sufficient prosecution staff, cases brought by investigators will continue to be dismissed.



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**Recommendation LO-3. Increase Local Option Perimeter |** Increase the local option perimeter boundary from a 5-mile radius from the village center defined by AS 04.11.508 to a 10-mile radius.

**INTENT OF PROPOSED CHANGES**

This recommendation proposes expanding the local option area to a 10-mile radius from the designated center of the community. The current boundary for a local option statute is defined as 5 miles' radius from the post office or other defined central public building in the community. In some areas of the state, several villages have enacted local option laws that with the 5-mile radius, leaving a patchwork of enforceable and unenforceable territory. Extending the boundaries of the local option areas to close the gaps between local option areas would make it easier to enforce the law across a larger region. Expanding the local option area would also make it more difficult for bootleggers to continue the practice of traveling just outside the local option perimeter created by the 5-mile radius to conduct their operations. Transporting alcohol the extra distance would drive up the cost of doing business because of the high cost of fuel, potentially enough to deter some operations.

This recommendation also proposes that lodges that have been legally operating under an outdoor recreation lodge license (AS 04.11.225) within the expanded perimeter be grandfathered in under the expanded radius, such that a lodge with the outdoor recreation lodge license could operate and serve alcohol beyond the 5-mile radius and within the new 10-mile radius. Any overlapping jurisdictions are already accounted for in AS 04.11.508 subsections (b) and (c).

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**Recommendation LO-4. Increase Mandatory Minimum Penalty for Bootlegging |** Increase the mandatory minimum penalty for bootlegging at the class A misdemeanor level (AS 04.16.200(g)), with increasing penalties for multiple offenses and per-unit fine for the volume of alcohol being illegally sent, brought or transported into the local option community.

**INTENT OF PROPOSED CHANGES**

Sec. 04.16.200 defines the penalties for bootlegging, which include class A misdemeanor and class C felony offense levels. Because of the lucrative nature of bootlegging in rural areas and perceived low level of risk if caught, threat of punishment under AS 04.16.200 is not a deterrent for the misdemeanor level offense.

The minimum penalty upon conviction of a class A misdemeanor includes imprisonment and fines that increase with prior convictions as detailed in Sec 04.16.200(g). This recommendation proposes to raise the minimum fine to \$3,000 (instead of \$1,500) for the first offense and increase subsequent fines by \$1,500, up to a maximum fine of \$10,500 under this scheme.

The recommendation also proposes imposing an additional fine of \$500/container containing 750 mL or less alcohol. If the container contains more than that 750mL, then each 750mL will count as a single container for the purpose of setting the fine. This combination of flat and per-unit financial penalties is intended to be punitive, rather than absorbed as a cost of doing business.



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**Recommendation LO-5. Clarify Language Regarding Homebrew Ingredients |** Make possession of homebrew ingredients and/or equipment with intent to produce alcohol illegal in all local option communities.

**INTENT OF PROPOSED CHANGES**

This recommendation proposes revising AS 04.16.035 so that “A person residing in ~~an area that has adopted a local option to prohibit the sale, importation, and possession of alcoholic beverages under AS 04.11.491(a)(5) or (b)(4)~~ any local option area may not possess sugar, artificial sugar, malt, yeast, or any other material or equipment with the intent to use them to create an alcoholic beverage.”

As currently written, the statute is enforceable only in 34 (Local Option 5) communities. As proposed, the statute would be enforceable in all 108 Local Option Communities.

## UNDERAGE DRINKING

The Underage Drinking subcommittee reviewed the statutes related to reducing and preventing underage consumption of alcohol (AS 04.16.049 to AS 04.16.160). Because of the difficulties of effectively addressing underage drinking through law enforcement alone, the subcommittee discussed Title 4 within the context of a multi-strategy approach that includes enforcement, education, prevention and changing social norms. The multi-strategy approach is informed by the following principles:

- Underage alcohol consumption is a significant public health and public safety concern.
- Local municipal strategies (aligned with state regulations) can be tailored to individual communities to address local needs (e.g., minor curfew, truancy laws, alternative courts).
- Evidence shows that a strong focus on efforts to decrease alcohol availability to underage individuals – both in social and retail settings – reduces youth alcohol use.
- No single strategy can create sustainable and significant community and population change.

These recommendations are supported by the state-level plan *Alaska's Strategies to Prevent Underage Drinking*, which represents the work of a number of state-level agencies and departments, including the Department of Health and Social Services, the Alcoholic Beverage Control Board, the Division of Juvenile Justice, the Alaska Native Justice Center, the University of Alaska Anchorage Justice Center, the Alaska Mental Health Trust Authority, and the Alaska Court System.

## RECOMMENDATIONS

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**Recommendation UAD-1. Employee Penalty for Selling Alcohol to a Minor | Reduce the penalty for a licensee, agent or employee selling alcohol to a minor (Sec. 04.16.052) from a class A misdemeanor to a minor offense violation.**

### INTENT OF PROPOSED CHANGES

As currently written, Sec. 04.16.052 (furnishing of alcoholic beverages to persons under the age of 21 by licensees) applies to licensees, their agents or employees. It is a class A misdemeanor with a penalty that may include fines, jail time and suspension or revocation of the license upon conviction. As a misdemeanor, the penalty is perceived to be too severe and disproportionate to the offense to be effectively and consistently enforced. This recommendation proposes reducing the penalty to a minor offense violation to ensure swifter and more consistent enforcement. The proposed change would reduce the penalty for a licensee, agent or employee of a licensee selling alcohol to an underage person from a misdemeanor to a violation with a criminal fine of \$250 to \$500. The fine range gives the judge or magistrate some discretion in adjusting the penalty for mitigating circumstances.

Research on deterrence shows that to be effective, there must be a credible threat that a significant negative consequence will occur, and the threat must be perceived to be swift and certain for the effect to be maintained over time. This recommendation is considered a best practice by the Pacific

Institute for Research and Evaluation, and is also included as a recommendation in *Analysis of Strategies Designed to Reduce Sales of Alcohol and Tobacco to Underage Persons Preliminary Report* (2012) produced by the UAA Justice Center.

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**Recommendation UAD-2. Sanctions to Employers for Employee Sales to Minors** | Increase the consistency and certainty of sanctions to licensees upon conviction of violating Sec. 04.16.052.

### INTENT OF PROPOSED CHANGES

As currently written, Sec. 04.16.052 (furnishing of alcoholic beverages to persons under the age of 21 by licensees) applies to licensees, their agents or employees. This recommendation proposes additional provisions that would require the ABC Board to apply additional administrative sanctions against licensees upon the conviction of the licensee, agent or employee for violating AS 04.16.052, including fines and possible license suspension. Similar administrative remedies are already available to the ABC Board, but existing statutes give the Board more discretion to set fine amounts and suspend or revoke license than the proposed statute language, making it less certain which, if any, penalties licensees can expect. The proposed administrative sanctions include a first conviction fine of \$250 to the licensee, with increasing fine amounts for subsequent convictions. Upon subsequent convictions, the licensee may request a hearing with the ABC Board to present evidence of mitigating circumstances (e.g., the licensee implemented their own additional training or has a history of responsible law-abiding conduct regarding their license to sell alcohol) and thereby reduce the fine imposed by the ABC Board upon the licensee. The fines are intended to be punitive for licensed businesses with a pattern of violations (greater than simply a cost of doing business), but not punitive to a generally well-managed licensed business with occasional violations that may occur. The proposal also includes provision requiring the Court to alert the ABC Board upon conviction of the AS 04.16.052 violation, so there is more certainty and transparency where ABC Board notifications of violation are concerned for this offense. By increasing the certainty of administrative sanctions to the licensee, these proposed provisions are intended to create a stronger incentive for the licensee to increase and improve oversight to ensure their agents and employees do not knowingly sell alcohol to minors.

Research on deterrence shows that to be effective, there must be a credible threat that a significant negative consequence will occur, and the threat must be perceived to be swift and certain for the effect to be maintained over time. This recommendation is considered a best practice by the Pacific Institute for Research and Evaluation, and is also included as a recommendation in *Analysis of Strategies Designed to Reduce Sales of Alcohol and Tobacco to Underage Persons Preliminary Report* (2012) produced by the UAA Justice Center.

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**Recommendation UAD-3. Statewide Keg Registration** | Require all beer kegs purchased in the state to be registered.

### INTENT OF PROPOSED CHANGES

The proposed addition to statute would require the registration of all beer kegs purchased in the state. This recommendation proposes a minimum container size of four (4.0) gallons to ensure that the regulation will apply to standard kegs (15.5 gallons), pony kegs (5.5 gallons), and brewery sampler kegs (5.167 gallons).

The ability to track the purchase of a keg confiscated at a party would be beneficial in pursuing charges for adults who supply alcohol to underage persons. Anchorage and Juneau municipal codes currently require registration for all keg purchases. In Juneau and nationally, reports from law enforcement agencies suggest that keg registration substantially reduces young people’s keg use. Implementation of beer keg registration is considered a best practice by the Institute for the Study of Social Change and the Pacific Institute for Research and Evaluation. This is also a recommendation from *Alaska’s Strategies to Prevent Underage Drinking* (2013).

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**Recommendation UAD-4. Clarify Wording on Required Signage |** Revise the ABC requirements for warning signs posted at licensee establishments to make it clear that minors are prohibited from being on premises, with the exception of certain circumstances.

**INTENT OF PROPOSED CHANGES**

AS 04.21.065(b) requires that warning signs posted at licensee establishments including one that says, “A person under 21 years of age who enters these premises in violation of law could, under AS 04.16.049(e) be civilly liable for damages of \$1,000.”

The civil fine amount listed in 04.16.049(e) is \$1,500. This recommendation proposes to change the required language for this signage to read:

WARNING: An unaccompanied person under 21 years of age who enters these premises in violation of law ~~could~~ can, under AS 04.16.049(e) be civilly liable for damages of \$1,500 and be subject to criminal charges.

The proposed language changes are intended to clarify the intent of the signage and more effectively deter minors from illegally entering licensed establishments. The ineffectiveness of existing signage is reflected in a recent case involving a minor entering a retail establishment and attempting to purchase alcohol, in which the minor claimed that he did not know he was not supposed to be there. The jury decided that despite the licensee posting the warning signs as required by law, it was still not clear to the minor that he was prohibited from being on premises.

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**Recommendation UAD-5. Minor Consuming Alcohol (MCA) as Violation |** Restore Minor Consuming Alcohol (AS 04.16.050) to a true violation.

**INTENT OF PROPOSED CHANGES**

This recommendation proposes to make the Minor Consuming Alcohol offense (AS 04.16.050) a true violation with a fine of \$500 regardless of the number of prior convictions, with provisions for the fine to be reduced upon completion of a state-approved alcohol education or treatment program within six (6) months of the court hearing. The proposal removes mandatory completion of alcohol education or treatment, community work service, and suspension or revocation of driver’s license.

This proposal would restore AS 04.16.050 to a minor offense violation. As an unclassified offense that has been interpreted more closely to a misdemeanor than a violation, the penalty is perceived to be too severe and disproportionate to the offense to be effectively and consistently enforced. A minor with a first-time or repeat MCA commits an offense that is permanently, publicly maintained in Court View. A third (“habitual”) MCA offense becomes a class B misdemeanor that may result in penalties that are less harsh than those for first-time or repeat MCA. For example, if the minor is

under age 18, the case is referred to the Division of Juvenile Justice, which has strict confidentiality rules and would not make the records publicly available. If the minor is 18 to 20 years old, the case would be referred to District Court, where it again would be maintained in Court View and available for the public to search. An individual with a permanent public record may have difficulty securing employment, enlisting in the military, and face other barriers by having such a record. By restoring AS 04.16.050 to a true violation, this proposal is intended to ensure swift and consistent enforcement while not creating a long-term stigma for a person for their behavior as a minor. As a violation, the offense would no longer go on the permanent public record.

The proposal to make the penalty the same regardless of the number of prior convictions is intended to result in more immediate consequences for the minor, and to make the offense more easily (and therefore likely to be) enforced. If unpaid, the fine will be deducted from the minor's Permanent Fund Dividend, which may alert a parent or guardian if they are not previously aware of the charge against their child. For subsequent convictions, the fine amounts will accrue, and this is believed to be an adequate deterrent to repeat offenses.

Removing mandatory completion of alcohol education or treatment, community work service, and suspension or revocation of driver's license are all necessary to restore the MCA to a true violation, as these provisions are the reason the Alaska Supreme Court decided that it must be treated as a criminal offense.<sup>2</sup> To accomplish the aim of providing restorative justice to the extent possible, the proposal includes a fine reduction for the completion of a state-approved alcohol education or treatment program within six (6) months of the court hearing. The minor would be directed to the state Alcohol Safety Action Program (ASAP)/Juvenile Alcohol Safety Action Program (JASAP) office to identify a program that would satisfy this provision; the ASAP office would certify completion and forward the certification to the Court for the fine reduction. The fine reduction is intended to create an incentive for the minor to seek and complete the education or treatment.

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<sup>2</sup> Minor Consuming Alcohol is currently considered an unclassified offense. AS 04.16.050 was originally written as a violation, but the Alaska Supreme Court ruled that it must be treated as a criminal offense. The Alaska Supreme Court decided that if a valuable license was affected, then the individual is entitled to a defense lawyer, jury trial, etc. There are five minor offenses in this group: 1) first MCA, 2) repeat MCA, 3) refusing to submit to a chemical test, 4) driving after consuming, 5) operating a vehicle within two days of receiving an MCA (first or repeat). These are found in Rule 18 of the Minor Offense Code, which lists minor offenses that must be filed as criminal cases, assigned criminal case numbers, and for which criminal procedures apply because the drivers' license (a valuable license) could be suspended or revoked.

## APPENDIX

### ABC BOARD TITLE 4 REVIEW STAKEHOLDERS

	Name	Organization or Agency	Sector(s) Represented
1	Aleesha Towns-Bain *	Rasmuson Foundation	Public Health
2	Amanda Moser	Municipality of Anchorage	Licensing Specialist
3	Amber Willis	Alaska State Fair	Recreational Site Licensee
4	Anna Nowak	Anchorage Municipality [former]	Former Licensing Specialist
5	Anthony Henry	Anchorage Police Department	Law Enforcement
6	Barb Miller *	Midnight Sun Brewing	Brewery Licensee
7	Beth McEwen *	City and Borough of Juneau	Local Governing Body
8	Bob Beasley *	ABC Board Staff	Acting Director / Enforcement
9	Bob Klein *	ABC Board	Industry Member
10	Bob Winn *	Self Employed	Liquor Industry
11	Bobby Evans	ABC Board	General Public Member/Rural
12	Charlie Daniels *	Volunteers of America	Public Health
13	Chris Lambert	ABC Board Licensing Supervisor	Law Enforcement
14	Chris Simon *	Department of Education	Education
15	Chris Thompson	Alaska State Troopers	Law Enforcement
16	Christine Lambert *	ABC Board [former]	Former Licensing Specialist
17	Curtis Vic	Alaska State Troopers	Law Enforcement
18	Cynthia Franklin *^	Anchorage Municipality [former]	Local Governing Body [former]
19	Dale Fox *	Alaska CHARR	Liquor Industry
20	Danna Grammer *	Stellar Wines Distributing	Wholesale Licensee
21	Dick Rosston *	Private Attorney	Rep. Resort+Package Store Lic.
22	Don Grasse *	K & L Distributors	Wholesale Licensee
23	Doran Powell	Chilkoot Charlie's	Beverage Dispensary Licensee
24	Dorcas Bloom *	Retired	Public Health/Education
25	Ellen Ganley *	ABC Board	General Public Member
26	Eric Olsen	ABC Board Investigator	Law Enforcement
27	Eric Pratt *	Anchorage Police Department	Law Enforcement
28	Ethan Billings	ABC Board	Industry Member
29	Fred Odsen *	Private Attorney	Rep. Package Store+Rec. Site Lic.
30	George Gatter *	Tony's Bar	Beverage Dispensary Licensee
31	Glenn Brady *	Silver Gulch Brewing	Brewery+Package Store Licensee
32	James Cockrell	Alaska State Troopers	Law Enforcement
33	James Hoelscher	Village Public Safety	Law Enforcement
34	Jan Hill *	SEARHC	Tribal Health
35	Jeff Jessee *	Mental Health Trust Authority	Public Health
36	Joe Darnell	Behavioral Health	Public Health
37	Joe Hamilton	ABC Board Staff	Law Enforcement
38	Joel Kadarrauch	Odom Corporation	Wholesale Licensee



39	John Novak	Asst. Attorney General, Dept. Public Safety	Law Enforcement
40	Johni Blankenship	Kenai Peninsula Borough	Local Governing Body
41	Katie Baldwin-Johnson *	Mental Health Trust Authority	Public Health
42	Kate Burkhart	ABADA	Public Health
43	Kevin Blanchette *	Alaska State Troopers	Law Enforcement
44	Kyle Wark *	First Alaskans	Tribal Health
45	L. Diane Casto *	Behavioral Health	Public Health
46	Laura Porter	Mat-Su School District	Education
47	Liz Medicine-Crow *	First Alaskans	Tribal Health
48	Mark Mew	Anchorage Police Department	Law Enforcement
49	Marny Rivera *	University of Alaska Anchorage	Education
50	Marvin Yoder *	ABC Board	General Public Member
51	Matt Felix	NCADDJ-retired	Public Health
52	Matt Jones *	Bear Tooth Grill + Theatrepub	Beverage Dispensary Licensee
53	Mike Dodge	HottStixx	Beverage Dispensary Licensee
54	Molly Poland	Hooligans	Beverage Dispensary Licensee
55	Natasha Pineda	Mental Health Trust Authority	Public Health
56	Paul Thomas *	Alaska Cache Liquor	Package Store Licensee
57	Peggy Phillips	Fairbanks North Star Borough	Local Governing Body
58	Pete Burns *	Humpy's Alaskan Alehouse	Beverage Dispensary Licensee
59	Randy McCain	Eagles Lodge	Club Licensee
60	Rebecca Neagle	Sitnasuak Native Corporation	Public Health
61	Rich Sayers	Anchorage Golf Course	Golf Course Licensee
62	Robert McCormick	Glacier Brewhouse/Orso	Beverage Dispensary Licensee
63	Sara Clark *	Behavioral Health	Public Health
64	Sarah Oates	ABC Board Staff	Licensing Specialist
65	Sheri Musgrave *	Alaska State Fair	Recreational Site Licensee
66	Shirley Coté *	ABC Board Staff [retired]	Former Director
67	Susan Osborne	Gold Hill Liquor	Package Store Licensee
68	Teri Tibbett	ABADA	Public Health
69	Trish Smith	Volunteers of America, Alaska	Public Health
70	Tony Newman	Division of Juvenile Justice	Public Health
71	Walt Monegan *	Retired	Law Enforcement

*\* All of the stakeholders listed above were invited to the March 25, 2014 meeting and have been involved in the process since 2012. Names indicated with (\*) attended the March meeting.*

*^ Cynthia Franklin, formerly a prosecutor with the Municipality of Anchorage, became the next ABC Board Director as of September 22, 2014. Her participation in this process was both as a stakeholder and subsequently as a member of the Steering Committee, representing the ABC Board Staff.*