

SENATE CS FOR CS FOR HOUSE BILL NO. 132(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/7/01

Referred: Rules

Sponsor(s): HOUSE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the possession, distribution, importation, and transportation of**
2 **alcohol in a local option area; requiring liquor license applicants to submit fingerprints**
3 **for the purpose of conducting a criminal history background check, and relating to the**
4 **use of criminal justice information by the Alcoholic Beverage Control Board; relating to**
5 **the offenses of operating a motor vehicle, aircraft, or watercraft while intoxicated and**
6 **refusal to take a breath test; relating to implied consent to take a chemical test; relating**
7 **to presumptions arising from the amount of alcohol in a person's breath or blood; and**
8 **providing for an effective date."**

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

10 * **Section 1.** AS 04.11.150(g) is amended to read:

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

licensee, agent, or employee may not ship to a purchaser more than **10 and one-half** [12] liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in a calendar month.

* **Sec. 2.** AS 04.11 is amended by adding a new section to read:

Sec. 04.11.295. Criminal justice information and records. (a) An applicant for the issuance or transfer of a license under this title shall submit to the board, with the application, the applicant's fingerprints and the fees required by the Department of Public Safety for criminal justice information and a national criminal history record check. The board may require an applicant for renewal of a license under this title to submit fingerprints and pay fees as required by this subsection. The board shall submit the fingerprints to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check. The Department of Public Safety may submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The board shall use the information obtained under this section in its determination of an applicant's qualification for issuance, transfer, or renewal of a license.

(b) In this section,

(1) "applicant" means all individuals whose names and addresses are required to be provided with an application for a new license under AS 04.11.260;

(2) "criminal justice information" has the meaning given in AS 12.62.900.

* **Sec. 3.** AS 04.11.491(f) is amended to read:

(f) **If a** [A] municipality or established village [THAT] has adopted a local option under (a)(1), (2), or (3) or (b)(1) or (2) of this section, **the state, municipality, or established village** may designate **and operate** a site for the delivery of alcoholic beverages to individuals in the area or a site for a person to bring alcoholic beverages if the alcoholic beverages are imported into the area. This subsection does not apply to the delivery or importation of

(1) one liter or less of distilled spirits, two liters or less of wine, or one gallon or less of malt beverages; or

(2) alcoholic beverages to a premises licensed under (a)(2) - (3) or

(b)(2) of this section.

* **Sec. 4.** AS 04.11.491(f) is repealed and reenacted to read:

(f) A municipality or established village that has adopted a local option under (a)(1), (2), or (3) or (b)(1) or (2) of this section may designate a site for the delivery of alcoholic beverages to individuals in the area or a site for a person to bring alcoholic beverages if the alcoholic beverages are imported into the area. This subsection does not apply to the delivery or importation of

(1) one liter or less of distilled spirits, two liters or less of wine, or one gallon or less of malt beverages; or

(2) alcoholic beverages to a premises licensed under (a)(2) - (3) or (b)(2) of this section.

* **Sec. 5.** AS 04.11 is amended by adding a new section to read:

Sec. 04.11.494. Operation of delivery sites. (a) If a site has been designated under AS 04.11.491(f), except as permitted under AS 04.11.491(f)(1) and (2),

(1) alcoholic beverages brought, sent, or transported to an area by a package store or by a person must be sent shipping prepaid and must be addressed to the delivery site;

(2) a person or common carrier with possession of alcoholic beverages, upon importation into the area, including alcoholic beverages transported as checked baggage accompanying a traveler, must deliver the alcoholic beverages to the delivery site upon arrival if the delivery site is open or must keep the alcoholic beverages in secure storage until the earliest time the delivery site is next open; the delivery must be made without opening the package containing the alcoholic beverages; alcoholic beverages transported as checked baggage accompanying a traveler may not be released to the traveler before being delivered to the delivery site;

(3) a person who cannot lawfully receive alcoholic beverages from the delivery site may not solicit another to bring, send, or transport alcoholic beverages to an area for the solicitor's use;

(4) a person may not bring, send, or transport alcoholic beverages to an area upon the solicitation of or with the understanding that the alcoholic beverages are for the use of another person who cannot lawfully receive alcoholic beverages from

1 the delivery site; and

2 (5) alcoholic beverages may not be released from the delivery site
3 except by the operator of the site or an authorized employee or agent of the operator.

4 (b) The operator of a site designated under AS 04.11.491(f) and employees
5 and agents of the operator

6 (1) may not release alcoholic beverages if the package holding the
7 alcoholic beverages is not clearly labeled with the name of the intended recipient or if
8 the package displays the names of more than one recipient;

9 (2) may not release alcoholic beverages without first determining the
10 identity of the recipient by checking a government-issued identification card
11 containing the person's photograph or establishing another means of positive
12 identification;

13 (3) may not release alcoholic beverages if the recipient is different than
14 the person whose name appears on the container as the recipient;

15 (4) may not release alcoholic beverages if the amount released to a
16 recipient in one calendar month is more than a package store is permitted to ship to a
17 purchaser in one calendar month under AS 04.11.150(g) or more than the amount a
18 person may import in one calendar month under a municipal ordinance enacted under
19 AS 04.21.010(a), whichever is less;

20 (5) may not release alcoholic beverages if the alcoholic beverage or its
21 container violates AS 04.16.100, 04.16.110 or a municipal ordinance enacted under
22 AS 04.21.010(a);

23 (6) may not open packages delivered to the site to inspect the contents
24 unless permitted to do so by a search warrant or unless the recipient gives written
25 consent to the opening and inspection;

26 (7) unless the shipper is a licensed package store and the shipping
27 container complies with AS 04.16.125, may not release alcoholic beverages until the
28 alcoholic beverages have been inspected to determine if release would be lawful under
29 this subsection;

30 (8) may not release alcoholic beverages until the recipient has paid all
31 applicable taxes and administrative fees authorized under this section;

1 (9) may not release alcoholic beverages to a recipient and may not
2 employ or otherwise use a person in the operation of the delivery site to handle or
3 secure alcoholic beverages if the person

4 (A) is under the influence of an alcoholic beverage, controlled
5 substance, or inhalant;

6 (B) is under a court order or a condition of bail, probation, or
7 parole that prohibits the person from consuming or possessing alcoholic
8 beverages;

9 (C) is under 21 years of age; or

10 (D) is disqualified due to the person's criminal record under (e)
11 of this section;

12 (10) may return alcoholic beverages to the sender or to the point of
13 shipment at the expense of the recipient if alcoholic beverages cannot be lawfully
14 released under this subsection;

15 (11) may destroy alcoholic beverages

16 (A) that cannot be lawfully released under this subsection if the
17 recipient elects not to pay for the return of the alcoholic beverages under (10)
18 of this subsection; or

19 (B) that have not been released within the time period
20 established by regulations adopted under this section;

21 (12) may establish a voluntary and confidential registration system so
22 as to expedite processing by allowing recipients to be authorized in advance to receive
23 alcoholic beverages;

24 (13) shall immediately report violations of a provision of this title or a
25 regulation adopted under this title to the Alaska state troopers and, if the site is within
26 a municipality, to the municipal police agency;

27 (14) shall maintain records concerning recipients and alcoholic
28 beverages delivered to and released by the delivery site in a manner and for a period of
29 time established under regulations adopted under this section, and shall make the
30 records available for inspection by the Alaska state troopers, a municipal police
31 agency if the site is within a municipality, and the board at reasonable times; and

1 (15) may charge reasonable fees to recipients for registration or for the
2 release of alcoholic beverages under regulations adopted under this section.

3 (c) Except as provided in (b)(14) of this section, records of recipients and
4 alcoholic beverages delivered to and released by the site are confidential and not
5 subject to disclosure except as required by a court order.

6 (d) The board shall adopt regulations to implement this section, including
7 hours of operation, requirements for security and recordkeeping, procedures for
8 delivery, release, processing, and destruction of alcoholic beverages, and
9 administrative fees.

10 (e) A person is disqualified as described under (b)(9) of this section due to the
11 person's criminal record if less than

12 (1) two years has elapsed from the person's unconditional discharge
13 due to a conviction or adjudication as a delinquent for any of the following offenses or
14 a law or ordinance from another jurisdiction with similar elements:

15 (A) driving while intoxicated under AS 28.35.030 or refusal to
16 submit to a chemical test under AS 28.35.032; or

17 (B) a crime involving domestic violence as that term is defined
18 under AS 18.66.990 or violating a protective order under AS 11.56.740;

19 (2) five years has elapsed from the person's unconditional discharge
20 due to a conviction or adjudication as a delinquent for any of the following offenses or
21 a law or ordinance from another jurisdiction with similar elements:

22 (A) a felony violation or a felony attempt to commit a violation
23 of AS 11.41; or

24 (B) a misdemeanor violation of or a misdemeanor attempt to
25 violate a provision in this title; or

26 (3) 10 years has elapsed from the person's unconditional discharge due
27 to a conviction or adjudication as a delinquent for a felony violation or a felony
28 attempt to violate a provision of this title or a law or ordinance from another
29 jurisdiction with similar elements.

30 (f) Operation of a delivery site under this section constitutes a criminal justice
31 activity. In this subsection, "criminal justice activity" has the meaning given in

AS 12.62.900.

(g) In this section,

(1) "area" means a municipality or established village that has adopted a local option under AS 04.11.491(a)(1), (2) or (3) or (b)(1) or (2);

(2) "bring" has the meaning given in AS 04.11.499;

(3) "controlled substance" has the meaning given in AS 11.71.900;

(4) "import" means to send, bring, or transport;

(5) "inhalant" has the meaning given to "hazardous volatile material or substance" in AS 47.37.270;

(6) "recipient" means a person entitled to receive or attempting to receive alcoholic beverages from a delivery site;

(7) "send" has the meaning given in AS 04.11.499;

(8) "transport" has the meaning given in AS 04.11.499;

(9) "unconditional discharge" has the meaning given in AS 12.55.185.

* **Sec. 6.** AS 04.11.499 is amended to read:

Sec. 04.11.499. Prohibition of importation after election. If a majority of the voters vote to prohibit the importation of alcoholic beverages under AS 04.11.491(a)(4) or (5) or (b)(3) or (4), a person, beginning on the first day of the month following certification of the results of the election, may not knowingly send, transport, or bring an alcoholic beverage into the municipality or established village, unless the alcoholic beverage is sacramental wine to be used for bona fide religious purposes based on tenets or teachings of a church or religious body, is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes by a person authorized by the church or religious body to dispense the sacramental wine. **In this section,**

(1) "bring" means to carry or convey or to attempt or solicit to carry or convey;

(2) "send" means to cause to be taken or distributed or to attempt or solicit to cause to be taken or distributed, and includes use of the United States Post Office;

(3) "transport" means to ship by any method, and includes

delivering or transferring or attempting or soliciting to deliver or transfer an alcoholic beverage to be shipped to, delivered to, or left or held for pick up by any person.

* **Sec. 7.** AS 04.16.125(c) is amended to read:

(c) In this section,

(1) "common carrier" means a motor vehicle, watercraft, aircraft, or railroad car available for public hire to transport freight or passengers;

(2) "transport" has the meaning given in AS 04.11.499.

* **Sec. 8.** AS 04.16.200(e) is amended to read:

(e) A person who sends, transports, or brings alcoholic beverages into a municipality or established village in violation of AS 04.11.499 is, upon conviction,

(1) guilty of a class A misdemeanor if the quantity **of alcoholic beverages** [IMPORTED] is less than **10 and one-half** [12] liters of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages; or

(2) guilty of a class C felony if the quantity **of alcoholic beverages** [IMPORTED] is **10 and one-half** [12] liters or more of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages.

* **Sec. 9.** AS 28.35.030(a) is amended to read:

(a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of intoxicating liquor, or any controlled substance;

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is **0.08** [0.10] percent or more by weight of alcohol in the person's blood or **80** [100] milligrams or more of alcohol per 100 milliliters of blood, or when there is **0.08** [0.10] grams or more of alcohol per 210 liters of the person's breath; or

(3) while the person is under the combined influence of intoxicating liquor and a controlled substance.

* **Sec. 10.** AS 28.35.030(n) is amended to read:

(n) A person is guilty of a class C felony if the person is convicted **under (a)**

of this section [OF DRIVING WHILE INTOXICATED] and has been previously convicted two or more times **since January 1, 1996, and** within the **10** [FIVE] years preceding the date of the present offense. For purposes of determining minimum sentences based on previous convictions, the provisions of (o)(4) of this section apply. Upon conviction, the court

(1) shall impose a fine of not less than \$5,000 and a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on condition that the person serve the minimum imprisonment under (1) of this subsection; or

(B) suspend imposition of sentence;

(3) shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(c);

(4) may order as a condition of probation or parole that the person take a drug or combination of drugs, intended to prevent the consumption of an alcoholic beverage; a condition of probation imposed under this paragraph is in addition to any other condition authorized under another provision of law; and

(5) may also order forfeiture under AS 28.35.036 of the vehicle or aircraft used in the commission of the offense, subject to remission under AS 28.35.037.

* **Sec. 11.** AS 28.35.030(o) is amended to read:

(o) In this section,

(1) [REPEALED]

(2) "operate an aircraft" means to [USE,] navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(3) "operate a watercraft" means to navigate [OR USE] a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state;

(4) "previously convicted" means having been convicted in this or another jurisdiction, [WITHIN 10 YEARS PRECEDING THE DATE OF THE PRESENT OFFENSE,] of any of the following offenses; however, convictions for any of these offenses, if arising out of a single transaction and a single arrest, are considered one previous conviction:

(A) operating a motor vehicle, aircraft, or watercraft while intoxicated, in violation of this section or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under (a)(2) of this section;

(B) refusal to submit to a chemical test in violation of AS 28.35.032 or in violation of another law or ordinance with similar elements; or

(C) operating a commercial motor vehicle while intoxicated in violation of AS 28.33.030 or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under AS 28.33.030(a)(2).

* **Sec. 12.** AS 28.35.031 is amended by adding a new subsection to read:

(h) Nothing in this section shall be construed to restrict searches or seizures under a warrant issued by a judicial officer, in addition to a test permitted under this section.

* **Sec. 13.** AS 28.35.032(p) is amended to read:

(p) A person is guilty of a class C felony if the person is convicted under this section and has been previously convicted two or more times since January 1, 1996, and within the 10 [FIVE] years preceding the date of the present offense. For purposes of determining minimum sentences based on previous convictions, the

provisions of AS 28.35.030(o)(4) apply. Upon conviction,

(1) the court shall impose a fine of not less than \$5,000 and a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) the court may not

(A) suspend execution of the sentence required by (1) of this subsection or grant probation, except on condition that the person serve the minimum imprisonment under (1) of this subsection; or

(B) suspend imposition of sentence;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(c);

(4) the court may order as a condition of probation or parole that the person take a drug, or combination of drugs, intended to prevent consumption of an alcoholic beverage; a condition of probation imposed under this paragraph is in addition to any other condition authorized under another provision of law;

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person; and

(6) the court may also order forfeiture under AS 28.35.036, of the vehicle or aircraft used in the commission of the offense, subject to remission under AS 28.35.037.

*** Sec. 14.** AS 28.35.033(a) is amended to read:

(a) Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the person's blood or breath at the time alleged shall give rise to the following presumptions:

(1) If there was 0.04 [0.05] percent or less by weight of alcohol in the

1 person's blood, or 40 [50] milligrams or less of alcohol per 100 milliliters of the
 2 person's blood, or 0.04 [0.05] grams or less of alcohol per 210 liters of the person's
 3 breath, it shall be presumed that the person was not under the influence of intoxicating
 4 liquor.

5 (2) If there was in excess of 0.04 [0.05] percent but less than 0.08
 6 [0.10] percent by weight of alcohol in the person's blood, or in excess of 40 [50] but
 7 less than 80 [100] milligrams of alcohol per 100 milliliters of the person's blood, or in
 8 excess of 0.04 [0.05] grams but less than 0.08 [0.10] grams of alcohol per 210 liters of
 9 the person's breath, that fact does not give rise to any presumption that the person was
 10 or was not under the influence of intoxicating liquor, but that fact may be considered
 11 with other competent evidence in determining whether the person was under the
 12 influence of intoxicating liquor.

13 (3) [REPEALED]

14 (4) If there was 0.08 [0.10] percent or more by weight of alcohol in
 15 the person's blood, or 80 [100] milligrams or more of alcohol per 100 milliliters of the
 16 person's blood, or 0.08 [0.10] grams or more of alcohol per 210 liters of the person's
 17 breath, it shall be presumed that the person was under the influence of intoxicating
 18 liquor.

19 * **Sec. 15.** AS 04.11.494, enacted by sec. 5 of this Act, is repealed July 1, 2004.

20 * **Sec. 16.** The uncoded law of the State of Alaska is amended by adding a new section to
 21 read:

22 TRANSITION: PENDING APPLICATIONS. Notwithstanding the requirements of
 23 AS 04.11.295, enacted by sec. 2 of this Act, the Alcoholic Beverage Control Board may
 24 process an application for issuance or transfer of a license under AS 04 without a national
 25 criminal history record check from the Federal Bureau of Investigation if that application was
 26 pending with the board on the effective date of sec. 2 of this Act.

27 * **Sec. 17.** The uncoded law of the State of Alaska is amended by adding a new section to
 28 read:

29 INTERVENING AMENDMENTS. It is the intent of the legislature that intervening
 30 amendments to AS 04.11.491(f) are not to be carried forward on the effective date of sec. 4 of
 31 this Act.

1 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **APPLICABILITY.** This Act applies to offenses committed on or after the effective
4 date of the relevant section this Act, except that references to previous convictions include
5 convictions occurring before, on, or after the effective date of the relevant section of this Act.

6 * **Sec. 19.** Section 4 of this Act takes effect July 1, 2004.

7 * **Sec. 20.** Sections 9 and 14 of this Act take effect September 1, 2001.

8 * **Sec. 21.** Sections 10 - 13 of this Act take effect July 1, 2001.

9 * **Sec. 22.** Except as provided in secs. 19 - 21 of this Act, this Act takes effect immediately
10 under AS 01.10.070(c).