

ALASKA TITLE 4 REVIEW

FOR THE
Alaska Alcoholic Beverage
Control Board

Recommendations for Statutory Change

Updated January 2018

ACKNOWLEDGEMENTS

The Title 4 Review stakeholder group took on a monumental policy project in 2012, and would not have succeeded without the participation and commitment of many diverse perspectives brought by the individuals and organizations listed in this report.

Some of these many organizations are recognized below:



ABOUT THIS REPORT

This report summarizes the original recommendations from the Title 4 stakeholder group, the intent of the proposed changes, and if relevant, implications that will require resolution during the implementation phase through ABC Board regulations and policies. Where recommendations have significantly changed since this report was first published in February 2015, the changes are noted with a brief explanation.

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INTRODUCTION + 2017 UPDATE

"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..." AS 04.06.090(a)

The recommendations in this report are built from a five-year process initiated by the Alcoholic Beverage Control (ABC) Board to engage a diverse group of more than 100 stakeholders to determine how to improve the structure, organization, specific policies and associated implementation issues in Title 4, Alaska's statutes regarding regulation and control of alcoholic beverages in the state.

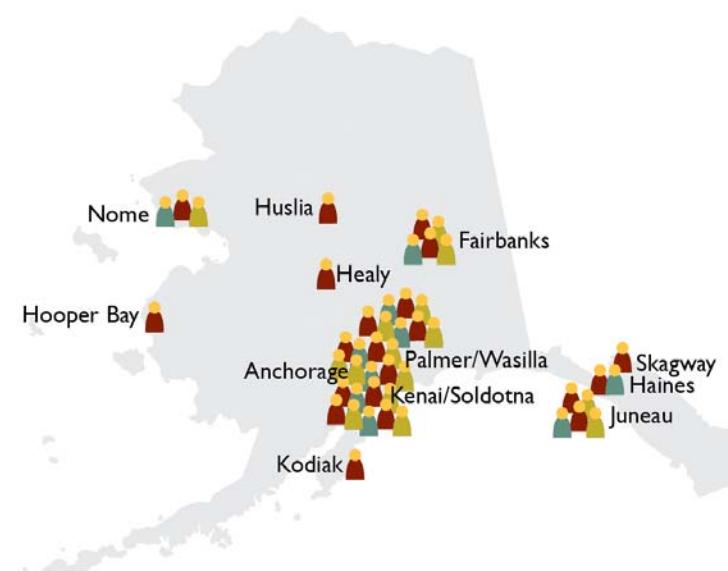


WHY REVIEW TITLE 4?

Title 4 is recognized to be in many ways outdated, confusing or otherwise ineffective in carrying out the intent of the statutes. Much of the statute has not been updated since 1980; incremental updates to the statutes, inconsistent interpretation of the rules, and changing industry trends have reduced the effectiveness of Title 4 for businesses, communities and regulators alike.

The ABC Board, supported by the director and staff of the Alcohol and Marijuana Control Office, is tasked with interpreting, administering and enforcing the laws of Title 4. A systematic review of the statutes helps the Board carry out its mission and will benefit organizations and individuals whose work, community or business is affected by alcohol laws and regulations.

Stakeholders from across the state representing the alcohol industry, public health, local governments, law enforcement, public safety, education, and community advocacy sectors have dedicated over 11,000 hours to date to craft recommendations to improve Title 4. This group, working with the Title 4 Review Steering Committee, has remained involved in the process throughout, helping to refine the original recommendations and analyze new ideas brought forward since the original set of recommendations were put forward.



GOALS OF TITLE 4 REVIEW

Stakeholders in this process established shared goals as the foundation for all recommendations:

Promote a fair business climate and protect public health and safety.

- Create rational regulation for all tiers of the state's alcohol industry.
- Limit youth access to alcohol.
- Promote responsible alcohol use and reduce the harms of overconsumption.

Make Title 4 a clear and consistent legal framework for the ABC Board, licensees and law enforcement.

- Increase swiftness, proportionality and consistency of penalties.
- Increase local Title 4 law enforcement.
- Increase licensee accountability before the ABC Board for Title 4 violations.

Stakeholders identified five topic areas in which to focus on making recommendations:

- 1. Alcohol Licenses, Permits and Trade Practices**
- 2. Role and Functions of the ABC Board and Staff**
- 3. Underage Drinking and Youth Access to Alcohol**
- 4. Regulation of Internet Sales of Alcohol**
- 5. Local Option Communities**

STAKEHOLDER PROCESS (2012 - 2015)

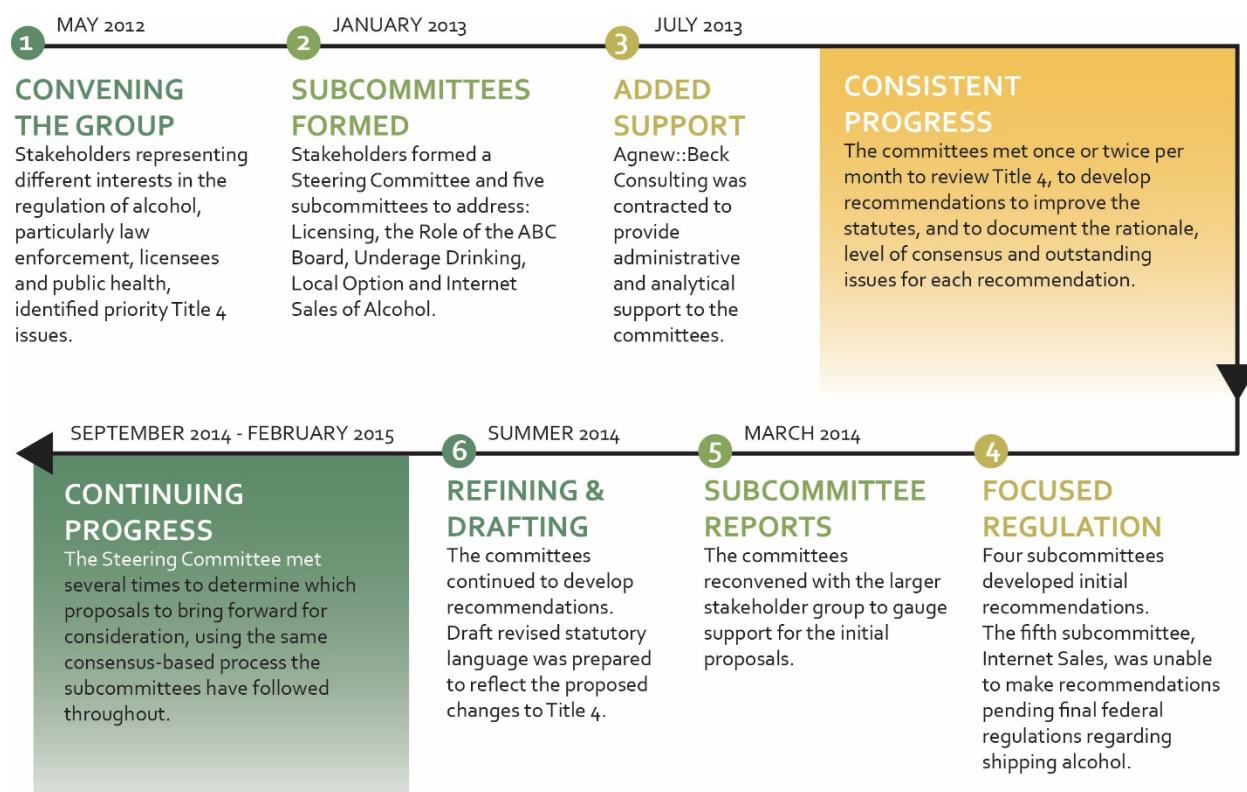
In May 2012, the ABC Board convened a stakeholder group of people engaged in the alcohol industry, public health, local governments, law enforcement, public safety, education, community advocacy and other sectors. The group identified some of the priority issues in statute to address.

Stakeholders met again in January 2013 to form five committees 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 committee formed to coordinate the work of the five committees and make decisions about which proposals to include in the final set of recommendations. Agnew::Beck Consulting was contracted in July 2013 by Recover Alaska, a partnership to reduce the negative harms of alcohol in Alaska, to provide facilitation, administrative support and analysis to the committees while each conducted their review of Title 4 and relevant regulations in the Alaska Administrative Code (3 AAC 304).

The committees met at least 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 committees developed sets of recommendations that were presented for inclusion in the first legislative package in 2015. The fifth committee, Internet Sales, 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 and may be entering Local Option areas

illegally. While this committee's recommendations had not been developed in time for inclusion in the original package, the group has since produced three recommendations included in this report and in the forthcoming legislative package.

On March 25, 2014, the committees prepared summary presentations and shared their progress to date with the larger stakeholders group to gauge the level of stakeholder support for the committees' proposals. Following the stakeholders' meeting, the committees continued to refine and develop additional recommendations within their topic areas. In preparation for the legislative process and the introduction of a draft bill, legal consultant Carmen Gutierrez was contracted to prepare draft statute language to reflect the changes to Title 4 proposed by the committees. The Steering Committee reviewed the committees' sets of recommendations and determined which would be included in the final package described in this summary through a series of meetings from September 2014 to February 2015. The Steering Committee relied on the consensus-based process that the committees used to determine which proposals to bring forward for consideration, as well as reviewing the entire set of recommendations to ensure logical consistency and balance across the stakeholder constituencies' interests.



LEGISLATIVE + REFINEMENT PROCESS (2015 - PRESENT)

April 2015 | Senator Peter Micciche introduced Senate Bill 99, which included the legislative language to enact all of the Title 4 Review recommendations. While efforts were made to thoroughly review the language for accuracy and fidelity to the group's intent, the bill had several flaws. At 100 pages, the bill also required more time than the 2015 session allowed. Sen. Micciche and the group determined to improve the bill during the interim and re-introduce in the following year.

Summer - Fall 2015 | Alaska CHARR's Government Affairs Committee and several other industry stakeholders conducted a complete review of the bill language, identifying areas where more work may be needed and submitting comments, suggestions or new proposals. Staff for the Title 4 Review project met regularly with representatives to discuss each issue with the bill language, and the Steering Committee began revision of some recommendations, ensuring that the changes still reflected the stakeholders' overall goals for the process and balanced in the interest of all sides.

December 2015 | Recognizing that the package still needed significant work, and knowing that the 2016 legislative session would be focused on large policy issues like the state's fiscal crisis, the Steering Committee recommended a new, two-track process for Title 4 rewrite. The Steering Committee worked with Sen. Micciche to craft a streamlined bill (SB 165) with some priority recommendations that could be implemented sooner than the more complicated changes to licenses and permits. A new version of the comprehensive package would come forward in the next session.

February 2016 | Sen. Micciche introduced SB 165, with proposed changes to ABC Board composition, changes to Minor Consuming Alcohol (MCA) and Minor on Premises penalties. See the following section for more information about SB 165.

July 2016 | After committee hearings and passage of the bill in both the House and Senate, SB 165 was signed into law by Governor Walker on July 6, 2016.

August 2016 | Senator Micciche re-affirmed his commitment to work with the Title 4 Review group to prepare a new version of the comprehensive bill. He and the Steering Committee convened interested members of the stakeholder group to refine the contents of the comprehensive bill, starting with the language in SB 99, for introduction in the 2017 legislative session. Stakeholders submitted items for further discussion, as well as technical changes that were overlooked previously.

Fall 2016 | Stakeholders met regularly to discuss each item brought for consideration, coming to consensus as much as possible on each issue. Additionally, the Internet Sales recommendations were further developed and refined with a group including Alaska stakeholders, representatives from major shipping carriers and a representative for out of state wineries.

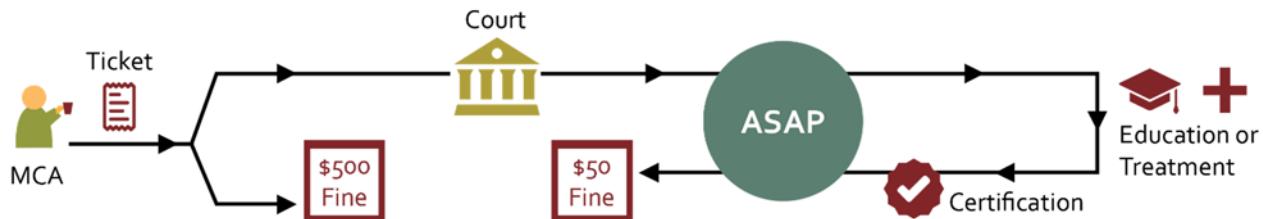
November 2016 - Spring 2017 | Following direction from the discussions throughout the fall, Title 4 Review staff worked with Senator Micciche's staff and Legislative Legal Services to draft new bill language based on the original work, and updated to reflect the current set of recommendations. While the group anticipates further discussion throughout the legislative process, the goal for the new draft bill is to ensure that it accurately reflects the intent of the group's work and addresses any drafting issues from the previous bill. At the time of writing, the stakeholder group is awaiting a complete draft for final review prior to its introduction during this 2017 session.

SB 165: PRIORITY RECOMMENDATIONS ENACTED IN 2016

Some of the Title 4 recommendations, included in SB 165, became law in 2016. Changes include reducing penalties imposed on minors who are found possessing or consuming alcohol (AS 04.16.050), or who enter licensed premises illegally (AS 04.16.049). The changes enacted in SB 165 are supported by a state plan, *Alaska's Strategies to Prevent Underage Drinking*, the work of several state agencies and departments, including the Department of Health and Social Services, Alcoholic Beverage Control Board, Division of Juvenile Justice, Alaska Native Justice Center, University of Alaska Anchorage Justice Center, Alaska Mental Health Trust Authority, and Alaska Court System.

Recommendation UAD-5 | Minor on Premises and Minor Consuming Alcohol, MCA

The new law restores Minor Consuming Alcohol to a true violation, with an opportunity to reduce the fine if the individual seeks alcohol prevention education or, if needed, treatment:



- Each offense carries a fine of \$500, regardless of the number of prior convictions.
- If the youth appears in court, the fine may be reduced upon completion of a state-approved alcohol education or treatment program or community diversion panel within six months of the court hearing. For first and second convictions, the fine is reduced to \$50; for subsequent convictions, the fine is reduced to \$250. The fine reduction creates an incentive for the minor to seek education or treatment.
- The state's Alcohol Safety Action Program (ASAP) /Juvenile Alcohol Safety Action Program (JASAP) office would refer the young person to qualifying programs, certify completion of the program, and forward certification to the Court for the fine reduction.
- Removed from statutory penalties: mandatory completion of alcohol education or treatment, community work service, potential jail time, and suspension or revocation of driver's license.
- No information about convictions under AS 04.16.049 or -.050 will appear in the individual's record on Court View, regardless of the outcome of the case or the age of the individual.
- If a violation is unpaid and the individual does not appear in court, the fine will be deducted from the minor's Permanent Fund Dividend. This is also a financial incentive against repeat offenses, since it requires education or treatment to get a fine reduction again.
- The same penalty applies for Minor on Licensed Premises (04.16.049), which was previously a Class A Misdemeanor in Title 4, the default penalty for most violations of that title. This new process is intended to ensure swift and consistent enforcement of laws limiting youth access to alcohol, without a long-term stigma for a person for their behavior as a minor.

Recommendation RB-5 | Composition of the ABC Board

Alcohol affects many aspects of life in Alaska, and good regulation depends on balanced perspectives and consideration of how the ABC Board's decisions impact businesses, communities, and individuals. The Title 4 Review group recognizes the important role of the Board in carrying out the intent of Title 4, and recommended that balanced representation on the Board is necessary.

The five-member board previously had three designated seats, two for members of the alcohol industry and one for a member of the public representing a rural area; the other two seats were for members of the public. Rather than adding new seats to the Board, SB 165 changes the composition of the board as follows: the two designated industry seats are retained, as is the rural public member. One of the public seats is now designated for someone representing the public safety sector, which may include someone from law enforcement, the legal system, and others involved in this field. The

original recommendation of the stakeholder group (described in this report) included a designated seat for a member of the public health field, but this was changed during the legislative process to instead retain one seat for a public member. The most recent appointment to the ABC Board, Rex Leath, Jr. of Wasilla, is the first public safety designee on the board following passage of SB 165.

OVERALL BENEFITS OF THE RECOMMENDATIONS PACKAGE

The Title 4 Review process relies on building consensus: finding common ground and crafting recommendations that, considered overall, will benefit all stakeholders. Each decision required compromise. Where possible, the group found mutually beneficial solutions. While full consensus was not possible on all the individual recommendations, the group reviewed the package and considered the extent to which each sector gains overall more than it loses by enacting the proposed changes to Title 4. Below are some benefits for key stakeholder groups:

Benefits for Youth

- Helps prevent youth access to alcohol, while not criminalizing youth for one mistake.
- Incentivizes youth who need it to seek alcohol education, treatment, or community-based justice.
- Holds adults accountable who supply alcohol to youth.
- Creates a monetary incentive for youth to seek alcohol education, treatment, or participate in community-based justice.
- Holds adults accountable who supply alcohol to youth.

Benefits for the Alcohol Industry

- A streamlined, user-friendly Title 4 will be easier to understand and comply with for all businesses, as well as prospective businesses seeking to understand the laws before applying.
- Manufacturers can expand production and continue to serve customers in retail establishments, including restaurants and tasting rooms.
- Wholesalers have less administrative burden and are protected against unfair trade practices.
- Retailers have more opportunities to innovate, such as providing product samples at package stores, while protecting existing business investments.

Benefits for Public Health and Safety

- Preserves limits on the density of retail alcohol outlets in communities: having many access points for alcohol is correlated with negative health and safety impacts.
- Promotes responsible service and consumption of alcohol at establishments and special events by requiring that anyone serving alcohol have a server education card.
- Fairly regulates all alcohol purchases shipped directly to customers through online sales.
- Increases availability of aggregated data on alcohol orders in local option areas, and local enforcement of Title 4.
- Provides more resources for state- and local-level education and enforcement of Title 4.

Benefits for Local Governments

- Provides options for economic development, tourism and hospitality with more liquor licenses.
- Increases resources for educating local governments about their role in alcohol control.

SUMMARY RECOMMENDATIONS

Alcohol Licenses, Permits and Trade Practices	
F-1. Adjust License Fees to Reflect Current ABC Budgetary Needs	Update license fees according to the relative privileges and administrative costs of each, and collect sufficient revenue to cover the ABC Board's required activities (see RB-3: Revise ABC Board Budget to Adequately Fund Necessary Activities).
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 from statute.
M-2. Manufacturer Retail License + Manufacturer Sampling Endorsement	Add-on retail licenses specifically for manufacturers to allow limited onsite consumption and offsite sales, and a separate endorsement for free samples.
M-3. Small Manufacturers Allowed to Hold Retail Licenses	Remove the restriction in Prohibited Financial Interest (AS 04.11.450), which does not allow manufacturers to hold retail licenses, for smaller manufacturers.
W-1. Adjust Wholesale License Fees and Simplify Supplier Reporting	Adjust fees for both Wholesale licenses (both defined 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.
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.
P-1. Population Limits Apply to Retail Licenses Only	Apply population limitations on the number of licenses only to retail-tier licenses (excluding tourism-focused licenses and Winery Direct Shipment License).
P-2. ABC Board Advisory Opinion on Proposed Legislation	Enable the ABC Board to issue a formal advisory opinion on any proposed legislation regarding Title 4.
P-3. Retire Public Convenience Process; New Options for REPLs	Convert all existing Public Convenience license holders to standard, fully transferrable REPLs; repeal Public Convenience; allow qualifying municipalities to petition the ABC Board to increase the number of REPLs available in their community.
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 Multiple Fixed Counter endorsement, Hotel/Motel endorsement, and Large Resort endorsement.
R-2. Rename Recreational Site License to Sporting Event License	Ensure the definition of "recreation" is consistently applied to Recreational Site license holders; make sunset provision to review and retire licenses that do not meet this definition (AS 04.11.210).
R-3. Package Store Onsite Product Sampling Endorsement	Create a separate endorsement to allow onsite sampling at Package Stores (AS 04.11.150).

R-4. Clarify Restaurant Food Requirement	Clearly define in statute the ratio of food to alcohol sales for restaurants: food sales receipts must be greater than those of alcohol sales receipts for onsite consumption.
R-5. Golf Course License and Endorsement	Retain the current Golf Course license (AS 04.11.115); create a Golf Course endorsement for a BDL; 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.
R-6. Theater License	Move the Theater license into statute and out of regulation 3 AAC 304.695 as an add-on license to a BDL or REPL.
R-7A through M. Endorsements and Permits	Create a clear statutory framework for endorsements and Permits, with all types defined in statute and with clear and consistent requirements.
Role and Functions of the ABC Board and Staff	
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.
RB-2. Community Analysis of Written Order Database	Allow data about direct shipment orders of alcohol in local option communities to be made publicly available, aggregated at the region or community level, for analysis and community planning.
RB-3. Revise ABC Board Budget to Adequately Fund Necessary Activities	Determine the funding level to carry out the ABC Board's mission and core functions, and adjust revenue (fee amounts) accordingly to meet that need (see also Licensing, F-1).
RB-4. ABC Board as Lead Agency for Alcohol Education Efforts	Designate the ABC Board and AMCO as the lead agency in a multi-department, public-private sector education effort about responsible alcohol use and applicable laws.
RB-5. Composition of the ABC Board <i>Enacted in SB 165 (2016)</i>	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.
RB-6. Revise Title 4 Penalties	Review penalties for all Title 4 sections; revise penalties to be more proportionate to the crime and more consistently enforced; reduce most current Class A Misdemeanor offenses to Minor Offenses.
Underage Drinking and Youth Access to Alcohol	
UAD-1. Employee Penalty for Selling Alcohol to a Minor	Reduce the penalty for a licensee, agent or employee selling alcohol to a minor (AS 04.16.052) from a Class A Misdemeanor to a Minor Offense violation.
UAD-2. Sanctions to Employers for Employee Sales to Minors	Increase the consistency and certainty of sanctions to licensees for violations of AS 04.16.052.
UAD-3. Statewide Keg Registration	Require all beer kegs purchased in the state to be registered.

UAD-4. Clarify Wording on Required Signage <i>Enacted in SB 165 (2016)</i>	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.
UAD-5. Minor Consuming Alcohol (MCA) as Violation <i>Enacted in SB 165 (2016)</i>	Restore Minor Consuming Alcohol (AS 04.16.050) to a true violation.
<h2>Regulating Internet Sales of Alcohol</h2>	
INT-1. Winery Direct Shipment License	Create a license available to U.S. wineries to ship orders of wine to Alaska customers; prohibit online sales through this license in Local Option areas; prohibit other online sales of alcohol not under this license or the Package Store Shipping endorsement.
INT-2. Collect Alaska Excise Tax for Internet Sales	In addition to maintaining current collection of excise tax on sales from in-state wineries, require all out-of-state holders of a Winery Direct Shipment license to pay the same excise tax on Alaska orders.
INT-3. Board Approval of Common Carriers for Alcohol Delivery	Require all common carriers who deliver alcohol directly to consumers in Alaska to be approved by the ABC Board.
<h2>Local Option Communities</h2>	
LO-1. Repeal Local Option #4 <i>Withdrawn for Further Discussion</i>	Repeal AS 04.11.491(b)(4) (Local Option #4), which bans the sale and importation of alcohol, not possession.
LO-2. Increase Enforcement and Prosecution Resources <i>Withdrawn for Further Discussion</i>	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.
LO-3. Increase Local Option Perimeter <i>Withdrawn for Further Discussion</i>	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.
LO-4. Increase Mandatory Minimum Penalty for Bootlegging <i>Withdrawn for Further Discussion</i>	Increase the mandatory minimum penalty for bootlegging at the Misdemeanor level defined in 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.
LO-5. Clarify Language Regarding Homebrew Ingredients <i>Included in SB 76</i>	Clarify that possession of homebrew ingredients and/or equipment with intent to produce alcohol is illegal in all local option communities.
<h2>Additional Recommendations (2017)</h2>	
N-1. Define Qualifications for Alaska Manufacturing Licenses	Require in Brewery, Winery, and Distillery Manufacturer licenses that at least 80 percent of alcohol products for sale were made on the Alaska licensed premises.

N-2. Change Sample and Sales Volumes for Certain Products	Cider under 8.5% ABV follows per-ounce volume limits for beer; sake and mead follows volume limits for wine.
N-3. Expand Package Store Shipping Order Options	Allow orders under a Package Store Shipping endorsement to be received in formats other than a written order from a known customer.
N-4. Pub License Alternating Premises	Allow a university with a Pub license to designate a second licensed premises, operated during mutually exclusive hours.
N-5. Make Licenses Transferrable to a New Owner	Allow most license types to be transferred to a new owner, except Winery Direct Shipment License; retain any existing restrictions on licenses for transfer of location.
N-6. Improve the License, Endorsement and Permit Application Process	Apply several technical changes to statutes for applications for a license, endorsement or permit.
N-7. Allow Relocation of a Package Store from Borough to City	Amend AS 04.11.400(k) to allow transfers of both BDL and Package Store licenses from a borough to a city within the borough.
N-8. Allow Business Activities on Licensed Premises During Off Hours	Retain required closing hours (5:00 to 8:00 a.m.) for service and sales of alcohol to consumers, but allow other non-serving business activities on the premises.
N-9. Licensee Liability for Overservice by Employees	Apply the same administrative penalty and mitigating circumstances proposed in Recommendation UAD-2 for violations of AS 04.16.030.
N-10. Allow Minors on Some Licensed Premises for Employment or Travel	Allow limited employment of minors by Wholesalers, Common Carriers, and Outdoor Recreation Lodges; clarify that minors are allowed at certain businesses.
N-11. Repeal Alcohol Sales Restriction on Election Day	Repeal outdated statute prohibiting sales of alcohol during federal, state and local elections.
N-12. Transition Provisions for Existing Licensees	Define process for current licensees of certain types to be converted to equivalent license(s) in the new system.