

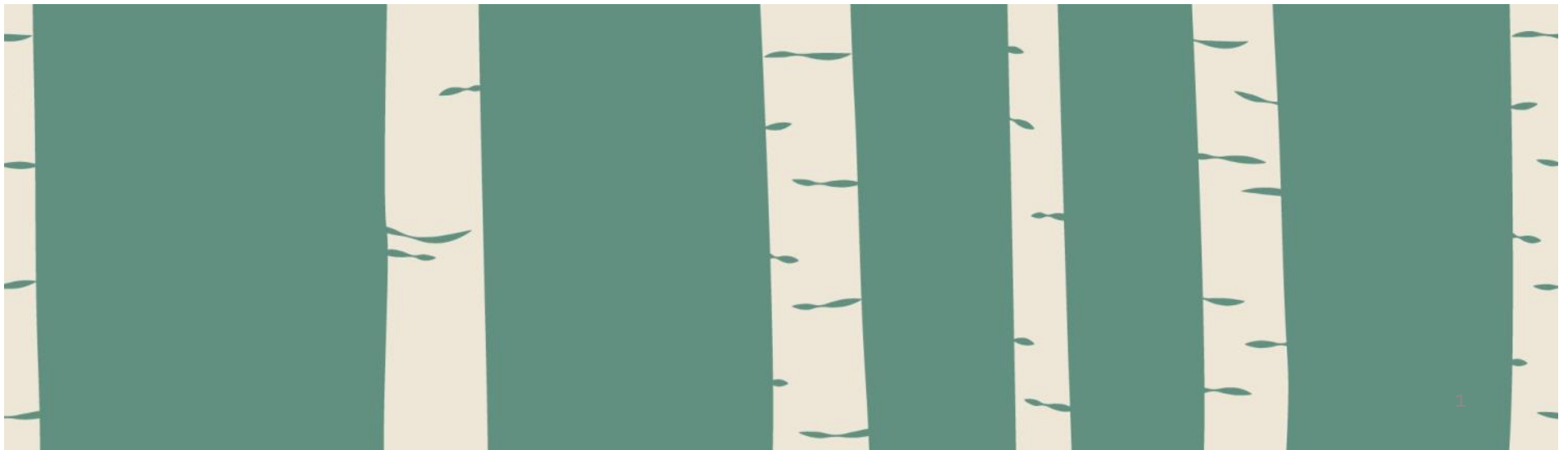
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# Alcoholic Beverage Control (ABC) Board, Title 4 Review Project

## Senate Bill 76

Senate Labor and Commerce Committee

March 13, 2018



# Goals of Title 4 Review Process

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



*Photo: Anchorage Daily News*

- Create rational regulation for all tiers of the state's alcohol industry.
- Limit youth access to alcohol, while ensuring youth are not criminalized
- Promote responsible alcohol use and reduce the harms of overconsumption.

# Goals of Title 4 Review Process

- Make Title 4 a clear and consistent legal framework.
  - Increase swiftness, proportionality and consistency of penalties.
  - Increase local law enforcement of Title 4.
  - Increase licensee accountability before the ABC Board for Title 4 violations.



*Photo: Anchorage Daily News*

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# Categories of 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. Technical or Administrative Law Changes
6. Local Option Communities\*

\* Note: Local Option recommendations are documented in the report, but not included in SB 76. More comprehensive review and discussion of Local Option laws is needed in the future.

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## Today's Overview of SB 76

- **Chapter 6:** sections 1 - 8, pp. 1 - 5
- **Chapter 16:** sections 73 - 121, pp. 79 - 97
- **Chapter 21:** sections 122 - 136, pp. 97 - 104
- **Changes in other titles:** sections 137 – 148, pp. 104 - 109

**Chapter 11** (Licensing and Permits), proposed new **Chapter 9**, and **transition sections** related to licenses in the bill will be covered in a separate presentation.

*Note: please refer to the Title 4 Review Stakeholder Recommendations Report (January 2018) for more detailed information about the project and individual recommendations. The report is available as part of this hearing packet, and on the AMCO website: [www.commerce.alaska.gov/web/amco](http://www.commerce.alaska.gov/web/amco)*

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## 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.
- Coordinate with Department of Health and Social Services and other agencies tasked with alcohol-related education.

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## 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.
- This would include potential creation of a new license type in statute.

## F-1. Adjust License Fees to Reflect Current ABC Budgetary Needs

- Update license fees according to privileges and administrative costs of each, and collect sufficient revenue to cover the ABC Board's required activities:
  - Administration of licenses & permits
  - Education about Title 4 and related regulations
  - Enforcement of Title 4 and related regulations
- ABC Board required to review license fees at least every 10 years.
- (see also RB-3: Revise ABC Board Budget to Adequately Fund Necessary Activities).
- See Appendix, Table 2 on page 66 of the report.



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## 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.
- Written order database can only be accessed by AMCO enforcement staff, other law enforcement, and package store licensees who fill written orders.
- SB 76 would retain privacy for individual information, but allow publication of aggregated data for a region or Local Option community.

*SB 76: sections 6-7, 04.06.095*

# Tracking Alcohol Orders in Local Option Areas:

## *Current Title 4*

Residents in Local Option communities that allow importation of alcohol may order a limited amount of alcohol each month for personal and non-commercial use.

### Monthly Importation Limit



**12 gal. Beer**  
Or 1 half-barrel  
(15.5 gal) keg



**24 L wine**  
(32 bottles)



**10.5 L spirits**  
(14 bottles)



Alaska customer sends  
order to package store



Licensee verifies:

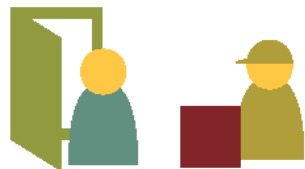
- Is customer 21 or older?
- Has customer met monthly order limit?
- Is new order within monthly limit?



Licensee records  
new order in ABC  
Board database

Access limited to:

- ABC Board
- Package stores
- Law enforcement



Carrier delivers package



Common carrier receives,  
transports and delivers order

*SB 76: sections 6-7, 04.06.095; monthly limits defined in 04.11.010*

# Proposed in SB 76: Publish Community-Level Data in Local Option Order Database

- In current Title 4, *all* data in the Local Option order database is private, and deleted after 1 year.
- SB 76 would keep individual order information private, but retain aggregate data for 10 years and allow the ABC Board to publish annual total sales volume by region or community.
- This valuable information would be available to communities and law enforcement to understand the flow of alcohol into Local Option communities via legal sales.

Keep community  
level data

**10  
years**

Protect individual  
order data



ABC Board publishes  
annual data reports



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## 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.
- Local communities are already allowed to set stricter hours by ordinance.

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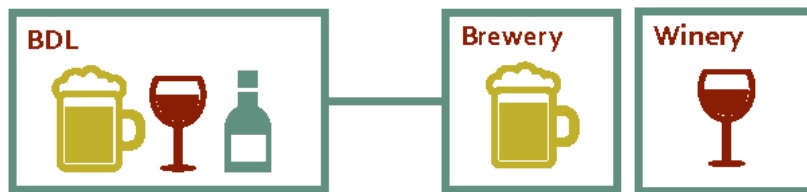
## W-2. Align State Statute with Federal Law Regarding Trade Practices

- Add provisions in Title 4 to match current federal law regarding trade practices and agreements between retailers and wholesalers or manufacturers.
- Alaska is the only state without any laws regarding trade practices, and federal enforcement of existing laws is limited.

# Proposed in SB 76: Regulate Trade Practices

Some activities, known as trade practices, are illegal in federal law: practices of alcohol manufacturers and wholesalers to exert power over retailers' buying decisions, or stopping them from buying competitors' products.

## Tied house



Partial ownership of retail license by a manufacturer, to control what products are sold or exclude competitors. Does not apply to 100% manufacturer-owned licenses.

## Exclusive outlet



Agreement between supplier and retailer to exclude other retailers or suppliers.

## Commercial bribery



Supplier pays bonus or provides merchandise in exchange for exclusive arrangement or agreement not to purchase other products.

## Consignment sales



Supplier and retailer make deals to take back unsold products or other

## RB-6. Revise Title 4 Penalties

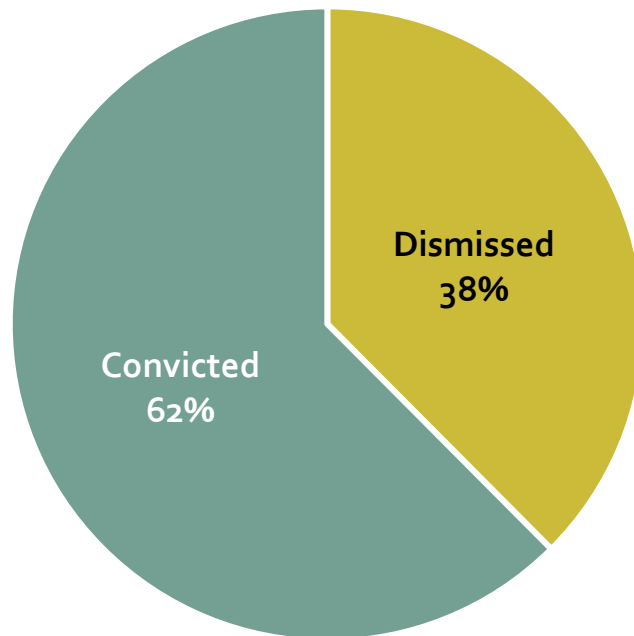
- Review penalties for all Title 4 sections, and revise as needed to make penalties proportionate to the offense, and more consistently enforced.
- Reduce most current Class A Misdemeanors to Minor Offenses.
- Retain existing Misdemeanor and Felony charges for serious offenses, particularly those causing harm to children.
- Ensure that the ABC Board, and licensee if applicable, is informed about Title 4 convictions by requiring the court to send records to AMCO, and AMCO to send to the licensee.
- ABC Board retains its authority to impose conditions or additional penalties, including suspending or revoking license.
- See Appendix, Table 3, pp. 67-72 in Report for table of all current penalties and proposed changes.

*SB 76: defined throughout; most prohibited acts are defined in chapter 16*

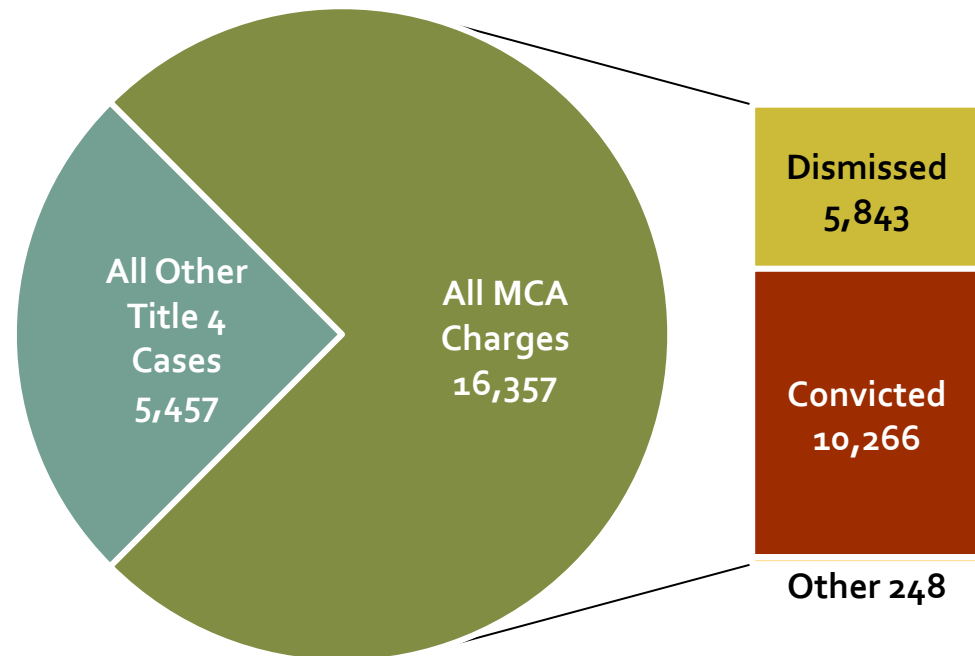
# Why reduce penalties in Title 4?

Prosecutors were dismissing MCA charges; penalties were seen as too high for the offense, or not worth the resources. Much fewer Minor on Premises cases; 47% were dismissed.

All Title 4 Charges, 2009-2013



Minor Consuming Alcohol, 2009-2013



Source Data: Alaska Court System Data, 2009-2013



# Proposed in SB 76: Revise Title 4 Penalties

- In current law, almost all violations of Title 4 are Class A misdemeanors.
- When penalties are set high across the board and perceived to be too strict for most offenses, law enforcement is less likely to issue citations and courts are less likely to pursue those cases.
- In SB76, many penalties would become minor offenses. Serious violations, such as selling alcohol without a license, allowing gambling on the premises, or perjury on a license application would remain misdemeanors or felonies.

## Minor Offense (Violation)

- Up to \$500 fine (most are \$250)
- Community work service
- Does not require court appearance



**Example:** Failure to post required warning signs, noncompliance with a permit requirement

## Class A Misdemeanor

- Up to \$10,000 fine
- Up to 1 year in prison
- 10 years probation
- Requires court appearance



**Example:** Selling alcohol without a license, knowingly allowing underage sales by employees

## Class C Felony

- Up to \$50,000 fine
- Up to 5 years in prison
- 10 years probation
- Requires court appearance



**Example:** Perjury on state license application (Class B), importing large amount of alcohol into local option area

*SB 76: defined throughout; most prohibited acts are defined in chapter 16*

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## 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 with \$500 fine.

## UAD-2. Licensee Liability for Employee Sales to Minors

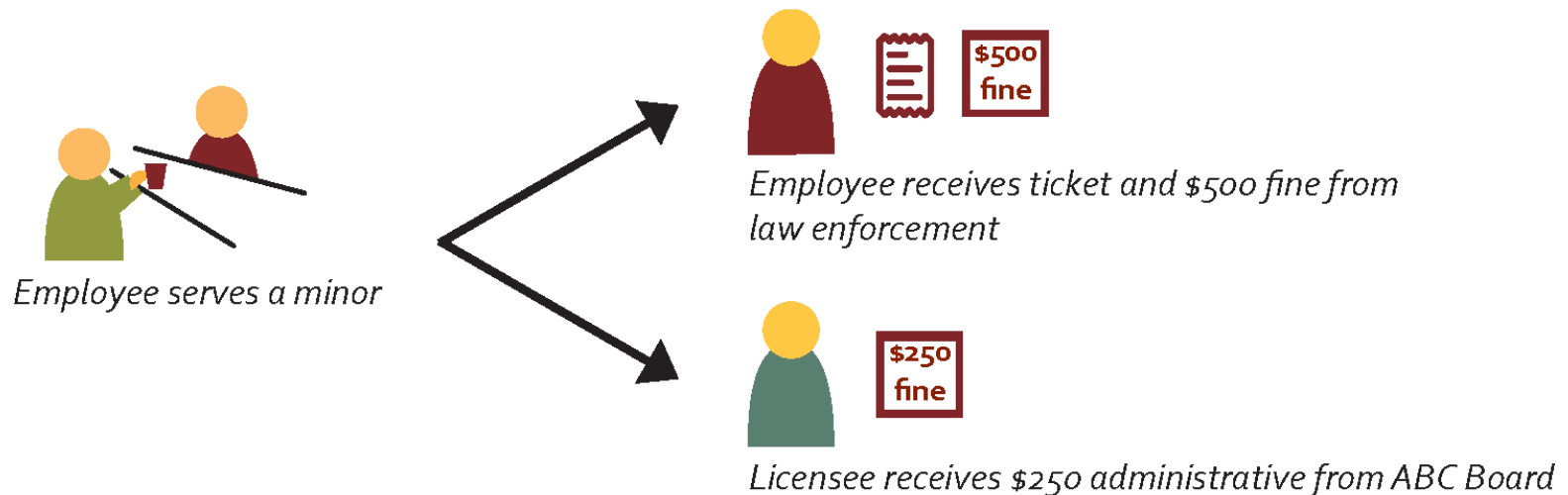
## N-9. Licensee Liability for Overservice by Employees

- Increase the consistency and certainty of sanctions to licensees for violations of AS 04.16.030 and -052.
- A licensee whose employee incurs either violation receives an administrative penalty of \$250.

# Proposed in SB 76: Licensee Penalties for Overserving an Adult or Serving a Minor

(AS 04.16.030 and AS 04.16.052)

- In current Title 4, a licensee or employee who knowingly overserves an intoxicated adult or who serves alcohol to a minor is guilty of a Class A Misdemeanor.
- SB 76 would change the penalty for both statutes to a Minor Offense, with a \$500 fine.
- In addition to the penalty to the person who commits the violation, the owner of the license would receive an administrative (non-criminal) penalty of \$250. This alerts the owner right away, and encourages licensees to make sure employees are properly trained.



*SB 76: section 81, 04.16.030; section 94, 04.16.052; section 117, 04.16.180*

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## 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.
- Consistent with existing rules for Restaurants.
- Clarify that minors are allowed at certain licensed businesses, in some circumstances: ex. restaurants, common carriers (SB 165)

## UAD-5. Minor Consuming Alcohol (MCA) and Related Violations

- *Enacted in 2016:* Restore Minor Consuming Alcohol (AS 04.16.050) to a true violation; same changes to to Minor on Premises (AS 04.16.049), previously Misdemeanor A.
- Proposed in SB 76: similar changes to penalties for Minor Purchasing or Attempting to Purchase (04.16.060).
- Similar to already enacted changes above, youth charged with 04.16.060 would not appear in Courtview.



*SB 76: section 98, 04.16.060*

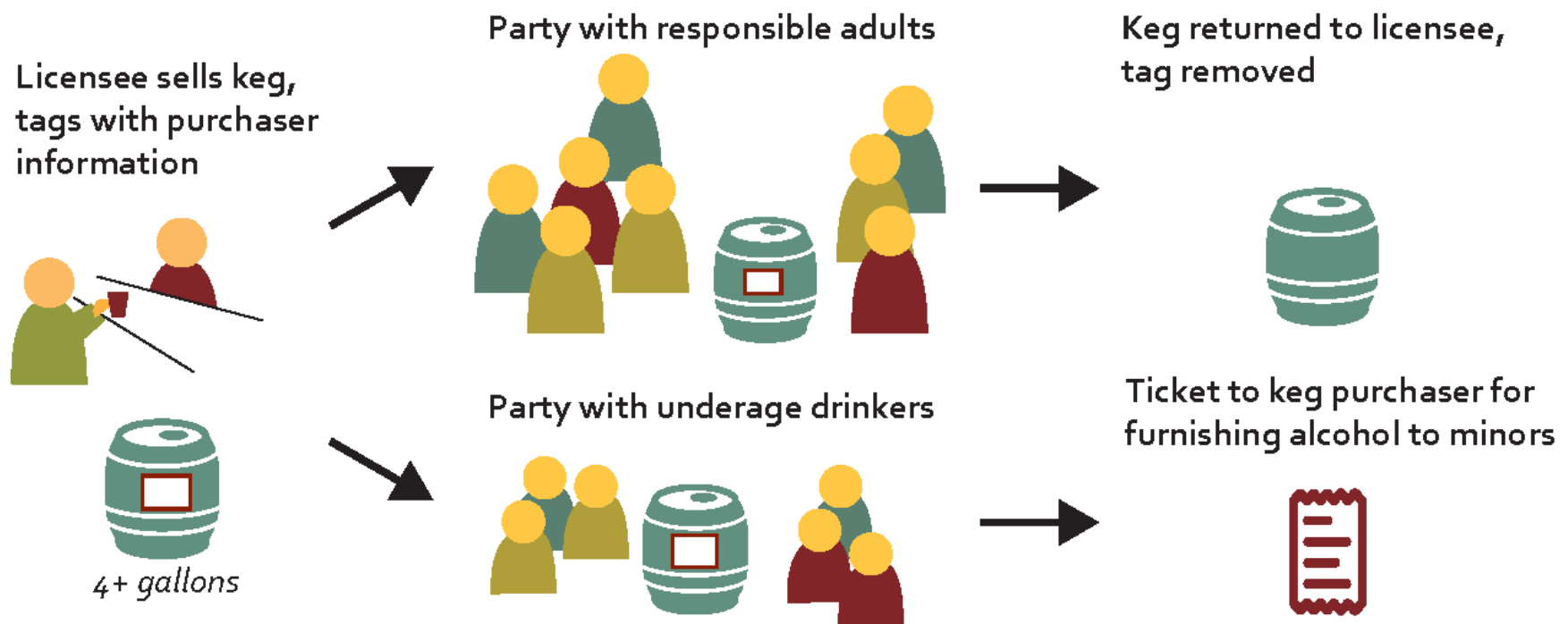
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## UAD-3. Statewide Keg Registration

- Require all beer kegs purchased in the state to be registered (and tagged with customer's name).
- Law enforcement who confiscate a keg at an underage party can determine who legally purchased the keg and hold adults responsible for furnishing alcohol to minors.
- Modeled on existing laws in Anchorage and Juneau
- Applies to kegs (containers) 4 gal. or larger.
- Licensee keeps customer information about keg purchase on file for a period of time.
- Purchaser can be fined for removing tag on a full keg.

# Proposed in SB 76: Keg Registration

- Reduces adults' incentive to legally purchase alcohol and supply an underage drinking party.
- Kegs tagged with the purchaser's contact information can be tracked if confiscated at an underage party or other situation where minors are given access to alcohol.
- A person, not a licensee, possessing an untagged keg containing alcohol could be fined.
- Modeled on existing Anchorage and Juneau ordinances.



*SB 76: section 122, 04.21.012*

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# Require Server Education Card for All Retail Sales & Service of Alcohol

- Server education includes training in verifying age and identification, responsible alcohol service, overserving, and applicable penalties for violations.
- Some, but not all, license types are required that servers (employees) have alcohol server education cards. Also not required for servers at permitted events.
- Proposed in SB76: Require all license types who serve the public, including sampling activities, to maintain server education cards.
- Require servers for permitted events to be certified prior to the actual event.



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## Current Title 4: Few Rules

- Alaska Package Stores cannot sell alcohol online, only via written order to “known” customers with ID on file.
- Alaska Wineries and Package Stores can ship wine to customers in some circumstances.
- Without state laws restricting online sales, there are currently no limits on purchases of alcohol online from out-of-state sellers.
- Alaska is one of the only states with no rules about Internet sales of alcohol.

## 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.
- Modeled on similar licenses or permits for wineries that exist in 44 other states.
- Requires age verification and delivering to the customer in person, including a signature to acknowledge receipt.
- Exempt from Alaska population limits.

# Proposed in SB 76: Regulate Internet Alcohol Sales

- Alaska does not limit online sales of alcohol. Orders from out of state businesses are not subject to Alaska's alcohol excise tax, and the state cannot track how much alcohol is ordered each year.
- SB 76 would create a Winery Direct Shipment License and allow online alcohol sales only from U.S. wineries and Alaska package stores.



Alaska customer orders wine online from winery



Wine only: no beer or spirits



Winery Direct Shipment Licensee verifies:

- Is customer 21 or older?
- Is customer in a non-Local Option area?
- Is order within limit for personal use?  
6 cases per sale  
12 cases per year



Common carrier receives, transports and delivers order



Carrier verifies customer is 21+, delivers package in person

*SB 76: (Chapter 9) section 9; 04.09.360*

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## 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.
- Currently, no tax is collected from online sales of alcohol to Alaska customers.
- Legal precedent for collecting state alcohol tax from out-of-state alcohol manufacturers:  
*Granholm v. Heald (2005)*

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## INT-3. Board Approval of Common Carriers for Alcohol Delivery

- Require all common carriers who transport deliver alcohol directly to consumers in Alaska to be approved by the ABC Board.
- Carriers must maintain policies for age verification, safe handling of alcohol, and in-person delivery to an adult customer.
- Does not apply to shipments of alcohol from business to business, only customer orders.

# Proposed in SB 76: Regulate Internet Alcohol Sales

- Common carriers would need to be approved by the ABC board to transport and deliver alcohol to consumers throughout the state.
- Carriers must demonstrate that they have policies and train employees to properly handle shipments of alcohol.



## Carrier maintains policies:

- Safe alcohol handling
- Delivery to adult, age 21+
- Delivery in-person only

ABC board reviews  
and approves carrier  
for alcohol transport  
and delivery

ABC board  
publishes list of  
approved carriers

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## For more information

### ***About Title 4 Proposed Legislation, SB 76:***

#### **Office of Sen. Peter Micciche**

Rachel Hanke, Legislative Aide

(907) 465-2828

rachel.hanke@akleg.gov

### ***About the Title 4 Review Process:***

#### **Alcohol and Marijuana Control Office**

<https://www.commerce.alaska.gov/web/amco/>

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