

Alcoholic Beverage Control (ABC) Board Title 4 Review Project

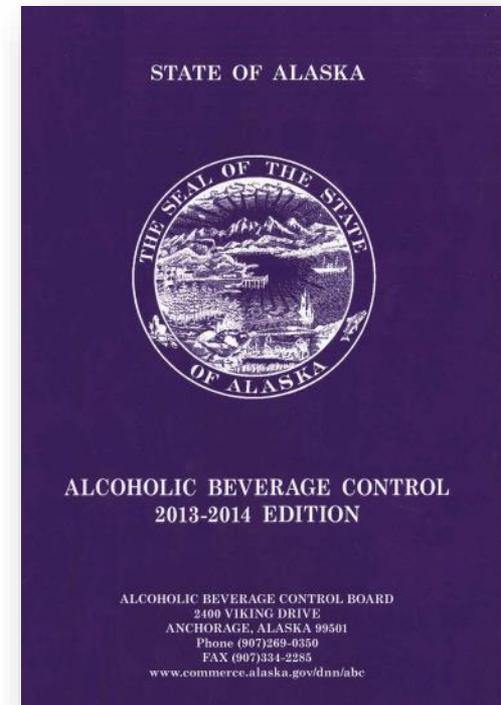
Senate Bill 76

Senate Judiciary Committee

Wednesday, April 11, 2018

Why review Title 4?

- Most of Title 4 has not been updated since 1980. The laws are outdated and confusing.
- Many existing laws do not reflect current trends or values.
- A systematic review of Title 4 helps the Board carry out its mission and will benefit communities and businesses.



Six Years of Work

MAY 2012

2018



More than 100 stakeholders and staff spent over 12,000 hours (and counting) to craft Title 4 recommendations for proposed legislation.

Sectional Overview of SB 76

- **AS 04. Chapter 6:** sections 1 - 8, pp. 1 - 5
- **AS 04. (proposed) Chapter 9:** section 9, pp. 5 - 49
- **AS 04. Chapter 11:** sections 10 - 72, pp. 50 – 79
- **AS 04. Chapter 16:** sections 73 - 121, pp. 79 - 97
- **AS 04. Chapter 21:** sections 122 - 136, pp. 97 - 104
- **Other Titles' Changes:** sections 137 – 148, pp. 104 – 109
- **Transition:** sections 149 – 159, pp. 109 – 114

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 the SB 76 hearing packet, and on the AMCO website: www.commerce.alaska.gov/web/amco

Categories of Title 4 Review 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.

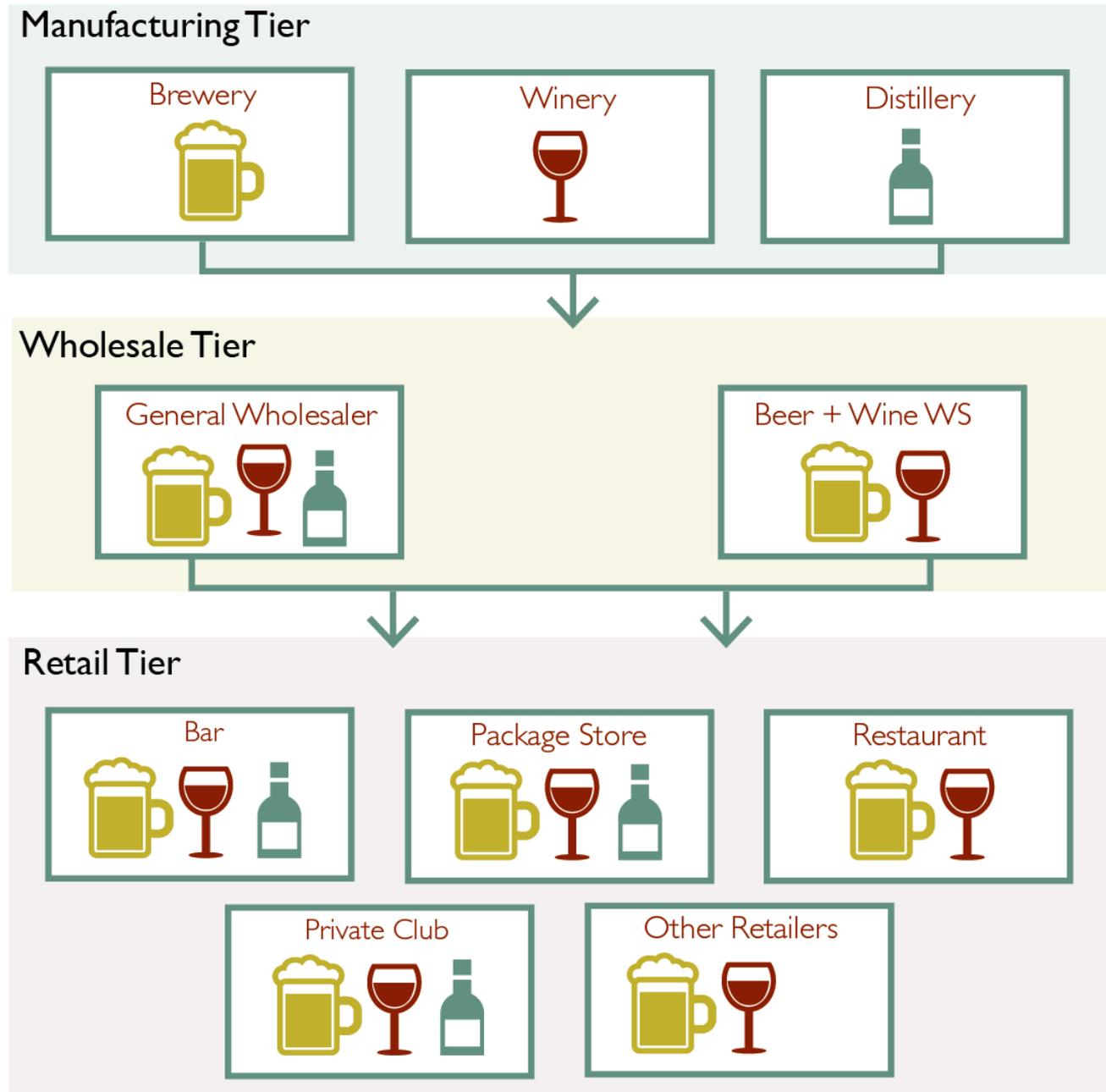
Key Concepts in Title 4

- **Licenses and permits:**
 - **License:** allows a business to sell, serve, distribute and/or manufacture alcohol for term of license (2 years).
 - **Permit:** time-limited alcohol sales or service, by a licensee or non-licensed organization.
- **The 3 tier system:** separation of manufacturers, wholesalers and retailers to prevent monopolies
- **Population limits:** regulates number of licenses available in each community by type
- ***Proposed new concept:* Endorsements** on licenses to expand premises or allowed activities

The 3-Tier System

Alcohol must be manufactured, distributed and sold to the public by different businesses.

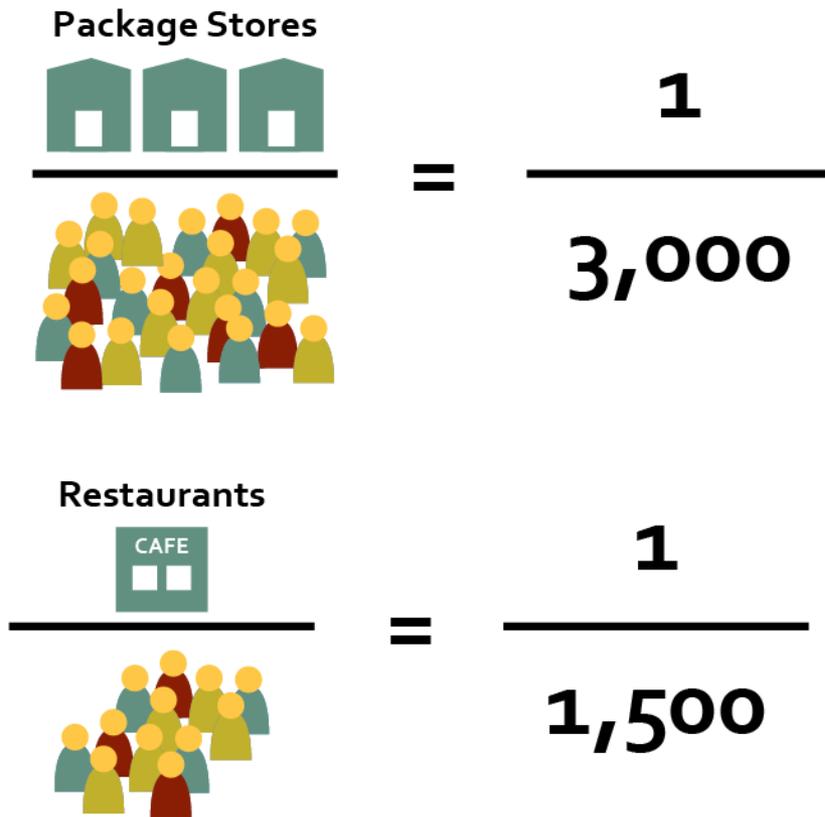
This is designed to prevent monopolies.



Population Limits: *Current Title 4*

(AS 04.11.400)

Population limits determine how many of each license type may be issued in each community.



Restaurants have a 1 : 1,500 limit.

All other license types (bars, package stores, golf courses, breweries) have a 1 : 3,000 limit.

Some licenses are exempt from population limits: bars located in hotels or airports, restaurants issued for public convenience, and licenses that serve tourists.

Population Limits Apply Per License Type

Density = Net Population ÷ Number of Licenses

	Net Population (2015)	÷	Number of Retail Licenses	=	Density	+	Exempt Retail Licenses	Resulting Overall Density
Juneau (city + borough)	32,000		64		1 : 500		7	1 : 450
Nome	3,600		17		1 : 210		3	1 : 180
Fairbanks (city)	23,000		78		1 : 290		5	1 : 280

Net Population = total population minus prisoners and out-of-state residents in military or college

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).
- Wholesale licenses, manufacturer licenses who do not directly serve the public, and some licenses designed to serve tourists would be exempt from limits.

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

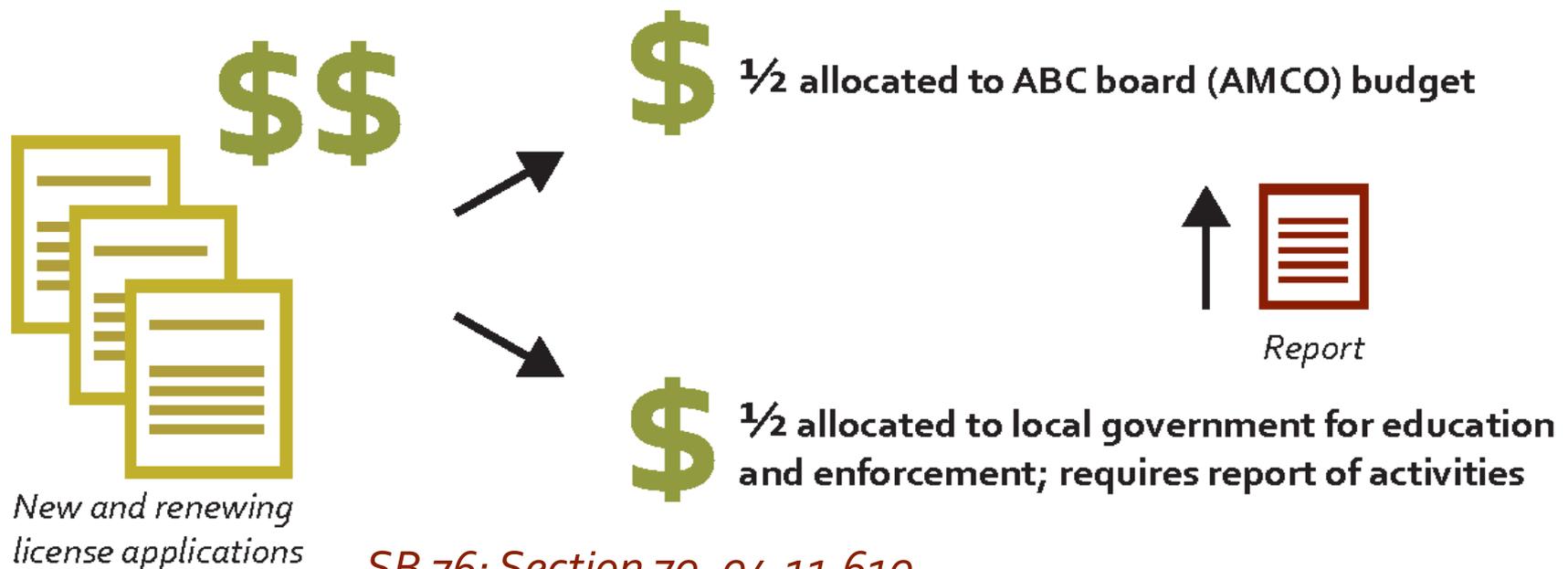
- Update license fees according to privileges and administrative costs of each, and collect sufficient revenue to cover the ABC Board's required activities:
 - Administration of licenses & permits
 - Education about Title 4 and related regulations
 - Enforcement of Title 4 and related regulations
- ABC 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.

RB-1. Strengthen Reporting Requirements for Municipal Enforcement

- Include in statutory requirements (AS 04.11.610) that municipalities submit quarterly reports on Title 4 enforcement and education activities to the ABC Board: violations, educational presentations, other activities related to alcohol control.
- Municipalities with local law enforcement receive a matching allocation (“refund”) of license fees collected within their jurisdiction. Funds intended to be used for Title 4 enforcement.

Proposed in SB 76: Accountability for License Fees Allocated to Local Governments

- Current Title 4 allows for local governments to receive half of the license fees collected in their area, intended for enforcement of Title 4 and related ordinances.
- Reporting on these activities is required, but not well defined in statute. Some jurisdictions report regularly, while others do not.
- SB76 proposes better reporting and prevention about use of these funds, and requiring reports about education activities as well as enforcement.



SB 76: Section 70, 04.11.610

Proposed Changes to Licenses, Endorsements and Permits

SB 76, Section 9: *proposed new Chapter 9 in Title 4*

04.09.010: Types of Licenses

04.09.020 - .040: Manufacturing Tier Licenses

04.09.100 - .110: Wholesale Tier Licenses

04.09.200 – .360: Retail Tier Licenses

04.09.400: Definition of Endorsements

04.09.410 - .520: Types of Endorsements

04.09.600: Definition of Permits

04.09.610 - .690: Types of Permits

License Types by Tier

- Manufacturing Tier
 - Brewery, Winery, Distillery
- Wholesale Tier
 - General Wholesale, Beer & Wine Wholesale
- Retail Tier
 - *Subject to population limits:* Beverage Dispensary, Restaurant or Eating Place, Club, Package Store, Pub, Theater, Common Carrier Dispensary, Sporting Event, Golf Course, Brewery Retail, Winery Retail, Distillery Retail
 - *Exempt from population limits:* Outdoor Recreation Lodge, Destination Resort, Beverage Dispensary Tourism, Seasonal Restaurant or Eating Place Tourism, Winery Direct Shipment License

M-2&3. Manufacturer Retail Operations + Sampling

- Allow small manufacturers to obtain a retail license (restaurant, package store, etc.)
- Add-on retail licenses specifically for manufacturers to allow limited onsite consumption and offsite sales.
 - Existing licensees converted
 - New retail licenses have 1:9,000 population limit
- A separate endorsement for free samples.

Proposed in SB 76: Volume Limits for Free Samples from Manufacturers

- Small free samples can be provided to the public, with a Manufacturer Sampling Endorsement
- Ounce limits are defined by product type, and roughly correspond to alcohol by volume (ABV)
- A Retail license is not required for sampling, but is required for any product sales to the public

Brewery	Winery	Distillery
<p>12 oz. Beer</p> 	<p>6 oz. Wine or Mead</p> 	<p>1.5 oz. Spirits</p> 
<p>6 oz. Sake</p> 	<p>12 oz. Cider</p> 	

Proposed in SB 76: Multiple Retail License Options for Manufacturers



The Brewery license used as an example. The same system applies for wineries and distilleries.

Proposed in SB76: Onsite Consumption Limits for Manufacturers, in Standard Product Units

	Brewery Retail	Winery Retail	Distillery Retail
On-site Consumption	<p>36 oz. Beer <i>Equivalent: 3 cans</i></p>  <p>18 oz. Sake</p> 	<p>18 oz. Wine or Mead <i>Equivalent: 3 glasses</i></p>  <p>36 oz. Cider</p> 	<p>3 oz. Spirits <i>Equivalent: 3 pours (1 oz. each)</i></p> 
Off-site Consumption	<p>5.167 Gallons Beer <i>Equivalent of 1/6 barrel "pony keg," or 10 growlers</i></p>  <p>9 Liters Sake</p> 	<p>9 Liters Wine or Mead <i>Equivalent: 12 bottles (1 case)</i></p>  <p>5.167 Gallons Cider</p> 	<p>3.75 Liters Spirits <i>Equivalent: 5 standard bottles</i></p> 

Proposed in SB 76: Endorsements

Add endorsements to existing licenses, giving businesses more flexibility without creating more situation-specific license types.



BASE LICENSE

ENDORSEMENTS

Expanded activities and/or premises to fit business model

Endorsements allow sampling on premises, service on a golf course, deliveries by package stores, etc.

SB 76: Section 9, 04.09.400; endorsements defined in 04.09.410 - .520

R-7 Create Endorsements

- Create endorsements as add-ons to licenses in Title 4
- Endorsements must be issued with a license, renewed biannually with the license, and cannot be transferred to a new location
- Endorsements are not population limited
- Convert some existing sections or activities into endorsements; create new endorsements

Proposed Endorsements

- R-7A | Bowling Alley Endorsement
- R-7B | Package Store Shipping Endorsement
- R-7C | Package Store Delivery Endorsement
- R-7D | Package Store Re-Packaging Endorsement
- [M-2] Manufacturer Sampling Endorsement
- [R-1] Multiple Fixed Counter Endorsement
- [R-1] Hotel/Motel Endorsement
- [R-1] Large Resort Endorsement
- [R-3] **Package Store Sampling Endorsement (new)**
- [M-1] Brewery Repackaging Endorsement

Proposed in SB 76: Package Store Sample Limits

- In current Title 4, Package Stores cannot allow any consumption on premises
- SB 76 would allow small free samples, with a Package Store Sampling Endorsement
- Ounce limits defined as: "Any combination of products, not to exceed the alcohol equivalent of any single product type"
- Ex: Customer A chooses 12 oz. beer. Customer B chooses 6 oz. cider and 3 oz. wine. Customer C chooses 2 oz. wine, 2 oz. sake, and 4 oz. beer.

12 oz.	6 oz.	1.5 oz.
Beer 	Wine, Mead 	Spirits 
Cider 	Sake 	

R-7 Standardize Permits

- Define all permit types in statute, not only in regulation
- Fee for all permits is \$50 per event day
- Most permits listed are already in statute or regulation
- New permit: Tasting Event Permit, allowing a Package Store or Manufacturer to host an event on premises, in partnership with a BDL

Proposed Permits

- R-7F | Beverage Dispensary Caterer's Permit (AS 04.11.230; 3 AAC 304.685)
- R-7G | Restaurant Caterer's Dining Permit (3 AAC 304.680)
- R-7H | Club Caterer's Permit (3 AAC 304.690)
- R-7I | Nonprofit Event Permit (AS 04.11.240)
- R-7J | Art Exhibit Permit (3 AAC 304.697)
- R-7K | Alcoholic Beverage Auction Permit (3 AAC 304.699)
- R-7L | Inventory Resale Permit (Retail Stock Sale License, AS 04.11.200)
- R-7M | Tasting Event Permit (proposed in SB 76)

SB 76: Section 9, 04.09.600; permits defined in 04.09.610 - .690

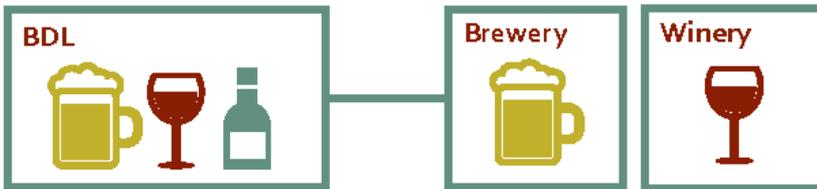
W-2. Align State Statute with Federal Law Regarding Trade Practices

- 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

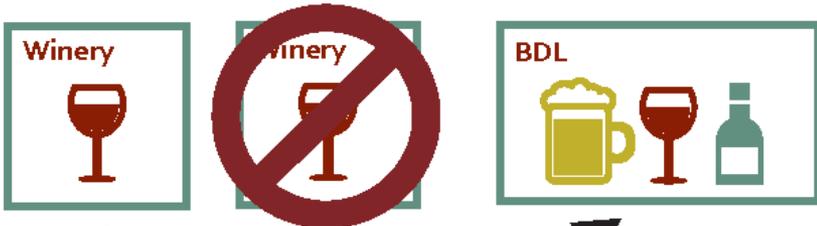
Some activities, known as trade practices, are illegal in federal law: practices of alcohol manufacturers and wholesalers to exert power over retailers' buying decisions, or stopping them from buying competitors' products.

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

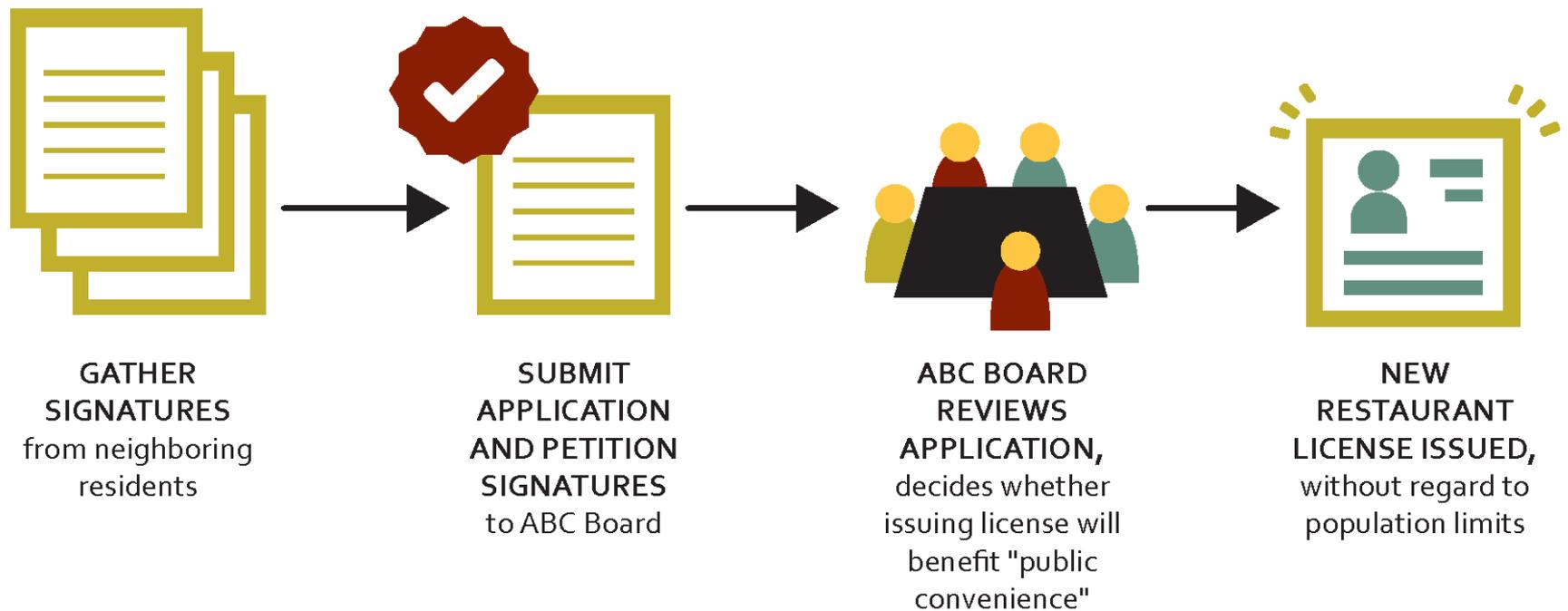
P-3. Retire Public Convenience Process; New Options for REPLs

- Repeal Public Convenience statute.
- Convert all existing Public Convenience license holders to standard, fully transferrable REPLs.
- Create a Seasonal Restaurant Tourism License.
- Allow qualifying municipalities to petition the ABC Board to increase the number of REPLs available in their community.

Public Convenience Petition Process: *Current Title 4*

(AS 04.11.400)

Title 4 allows a license applicant to seek a restaurant license through a local petition process, even if there are no licenses available in the community because the population limit has been reached.



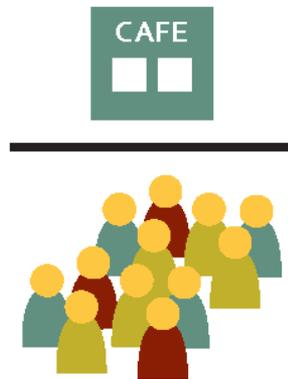
Proposed in SB 76: Local Government Petition for Additional Restaurant Licenses

(Proposed AS 04.11.405)

CITY PREPARES PETITION
to ABC Board for more
restaurant licenses



NUMBER OF RESTAURANTS
must not be more than
1:1500 with new
populations counted



*Non-resident populations:
tourists, visitors, seasonal
workers, residents in
surrounding region*

**ABC BOARD
CONSIDERS PETITION**
and how many
new licenses to
grant to the city



NO
City may
petition again
with revised
application.

YES
New restaurant
licenses available
in the city.
City cannot
petition again for
more licenses for
another 10 years.

Application must include:

- *Number of licenses requested*
- *Total population served, in addition to year-round residents in the city*
- *Evidence of local authority for public safety and planning*
- *Number of existing restaurant licenses in the city*

SB 76: Sections 46-48, 04.11.405

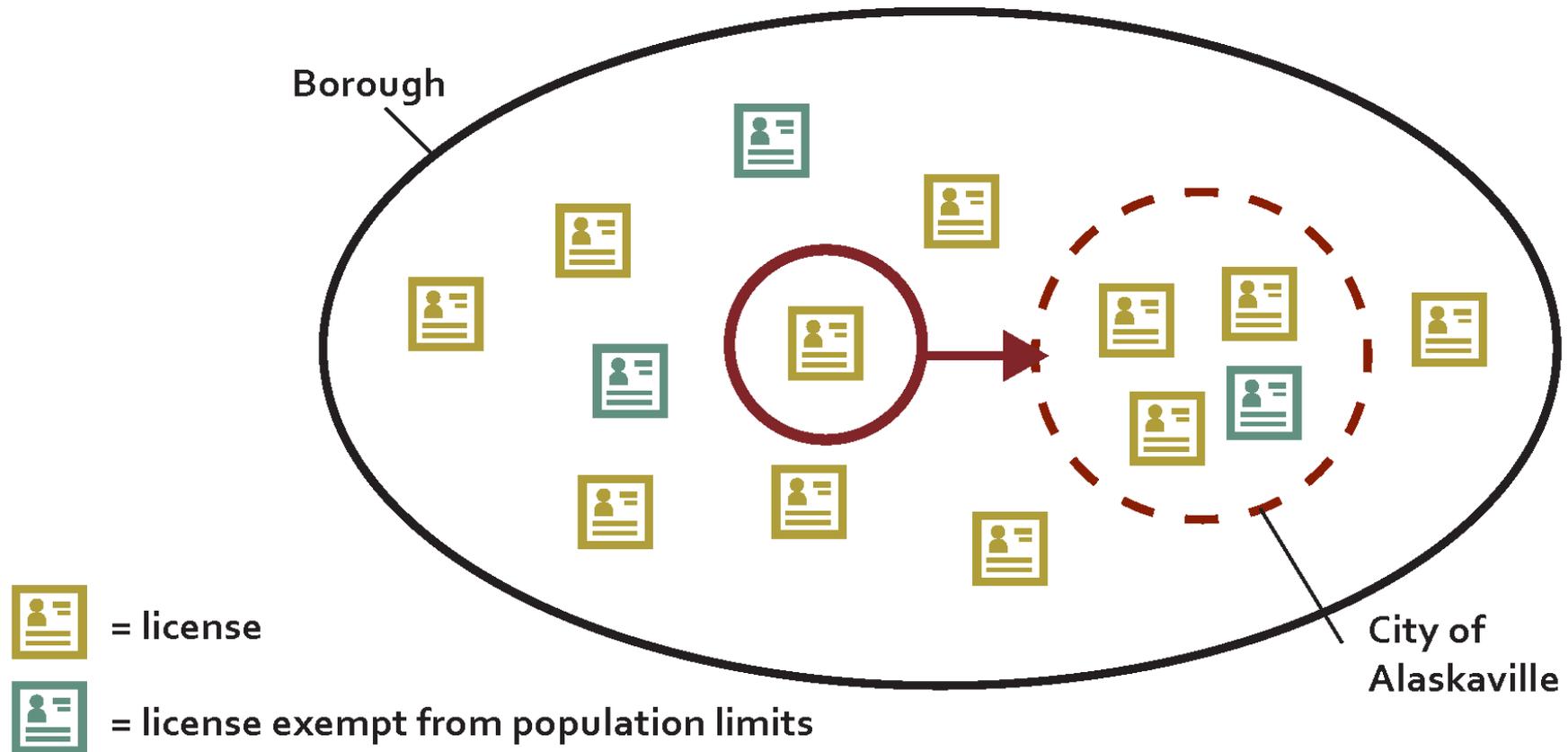
N-7. Allow Relocation of a Package Store from Borough to City

- 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.
- Currently, BDL relocations are allowed in boroughs with at least 60,000 population.
- SB 76 would make relocation available in boroughs with at least 50,000 population and currently-operating licenses that exceed population limits.

Proposed in SB 76: Option to Relocate Some Licenses from a Borough to a City

(AS 04.11.400)

- Current Title 4 allows relocation of a bar (BDL) from a borough to a city within that borough.
- SB 76 proposes also allowing relocation of package stores.



SB 76: Section 45, 04.11.400(k)

Proposed in SB 76: Option to Relocate Some Licenses from a Borough to a City

(AS 04.11.400)

- All eligible boroughs have more licenses issued than population limits allow.
- Only the borough's licenses in excess of population limits would be eligible for relocation into a city.

Licenses Within Population Limit



Not eligible for relocation

Additional Licenses in the Borough



Eligible for relocation

Borough (excluding population of incorporated cities)	Allowed Lic. (1:3000)	Beverage Dispensary (BDL)		Package Store (<i>Proposed</i>)	
		<i>Currently Issued</i>	<i>Qualify for Relocation</i>	<i>Currently Issued</i>	<i>Qualify for Relocation</i>
Fairbanks North Star	21	27	6	26	5
Kenai Peninsula	13	25	12	29	16
Matanuska-Susitna	28	31	3	33	5

RB-4. ABC Board as Key Partner for Alcohol Education Efforts

- Designate the ABC Board and AMCO as the agency to develop a multi-department, public-private sector education plan about responsible alcohol use and applicable laws.
- Coordinate with Department of Health and Social Services and other agencies tasked with alcohol-related education.

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.
- Personal information would be kept confidential.

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



RB-6. Revise Title 4 Penalties

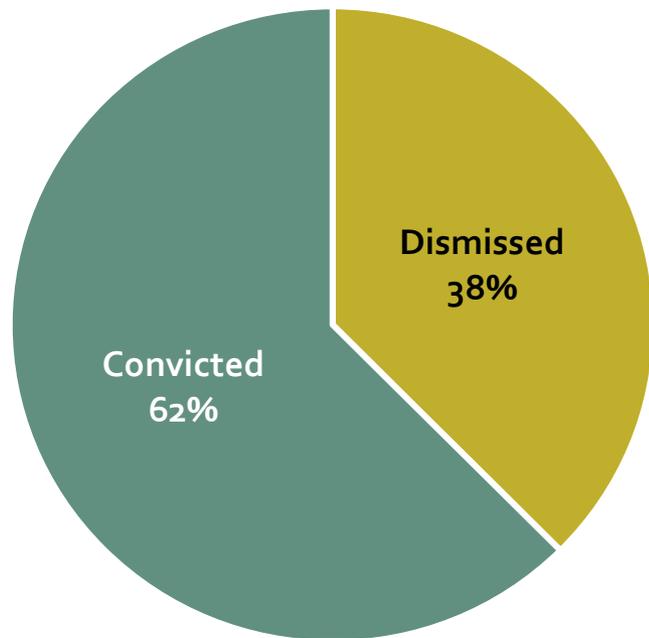
- Review penalties for all Title 4 sections, and revise as needed to make penalties proportionate to the offense, and more consistently enforced.
- Reduce most current Class A Misdemeanors to Minor Offenses.
- Retain existing Misdemeanor and Felony charges for serious offenses, particularly those causing 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

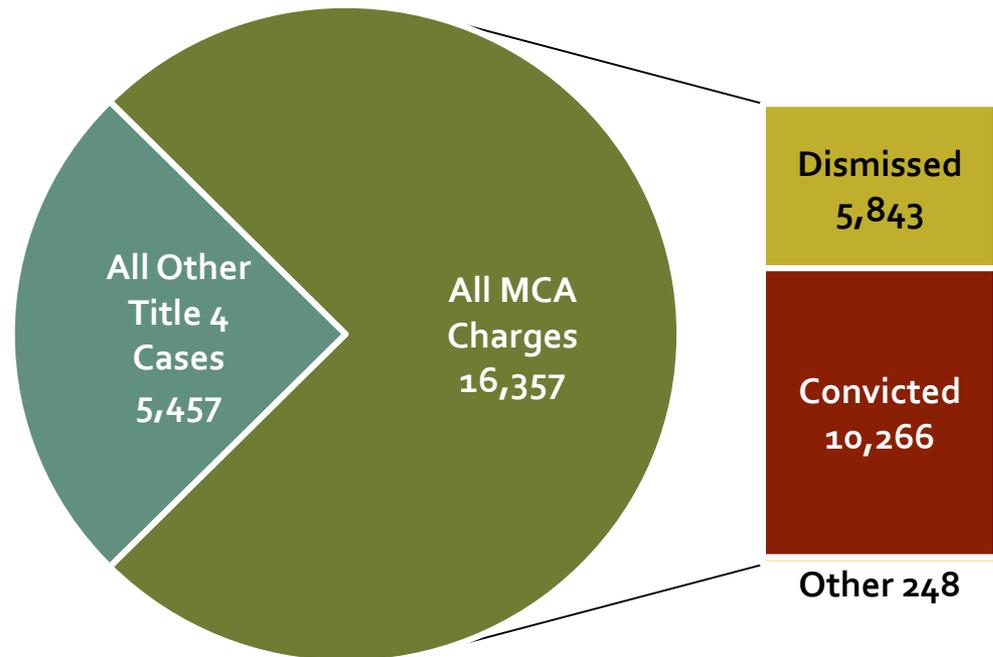
Why reduce penalties in Title 4?

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



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

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

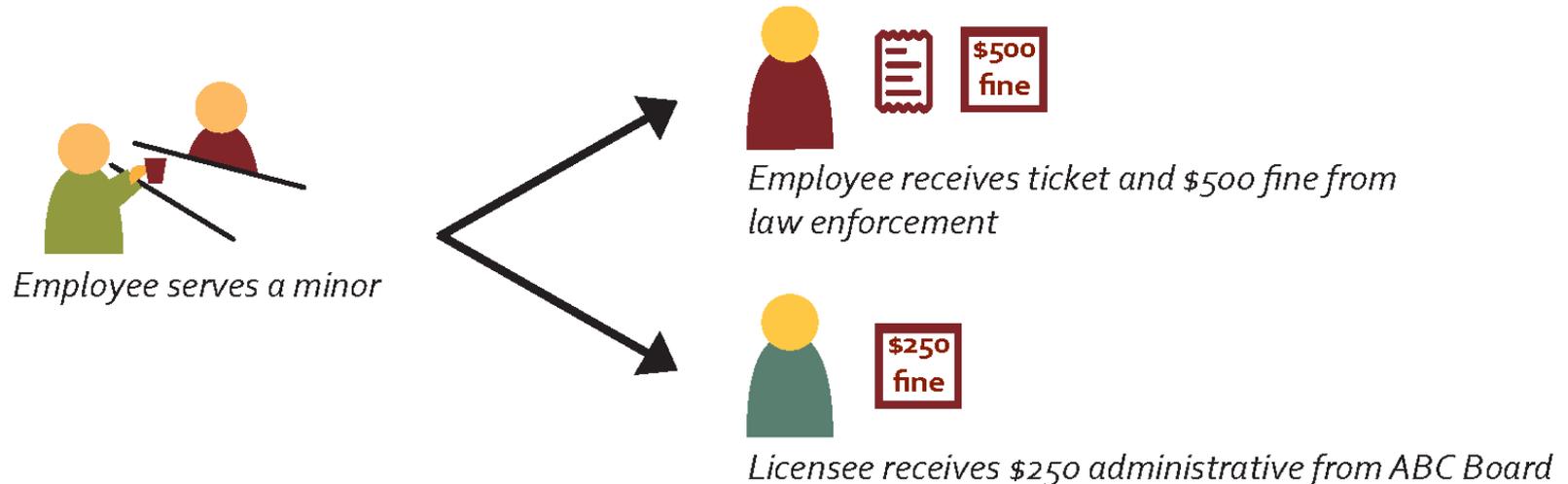
N-9. Licensee Liability for Overservice by Employees

- 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

UAD-5. Alcohol Related Violations For Minors

- *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.



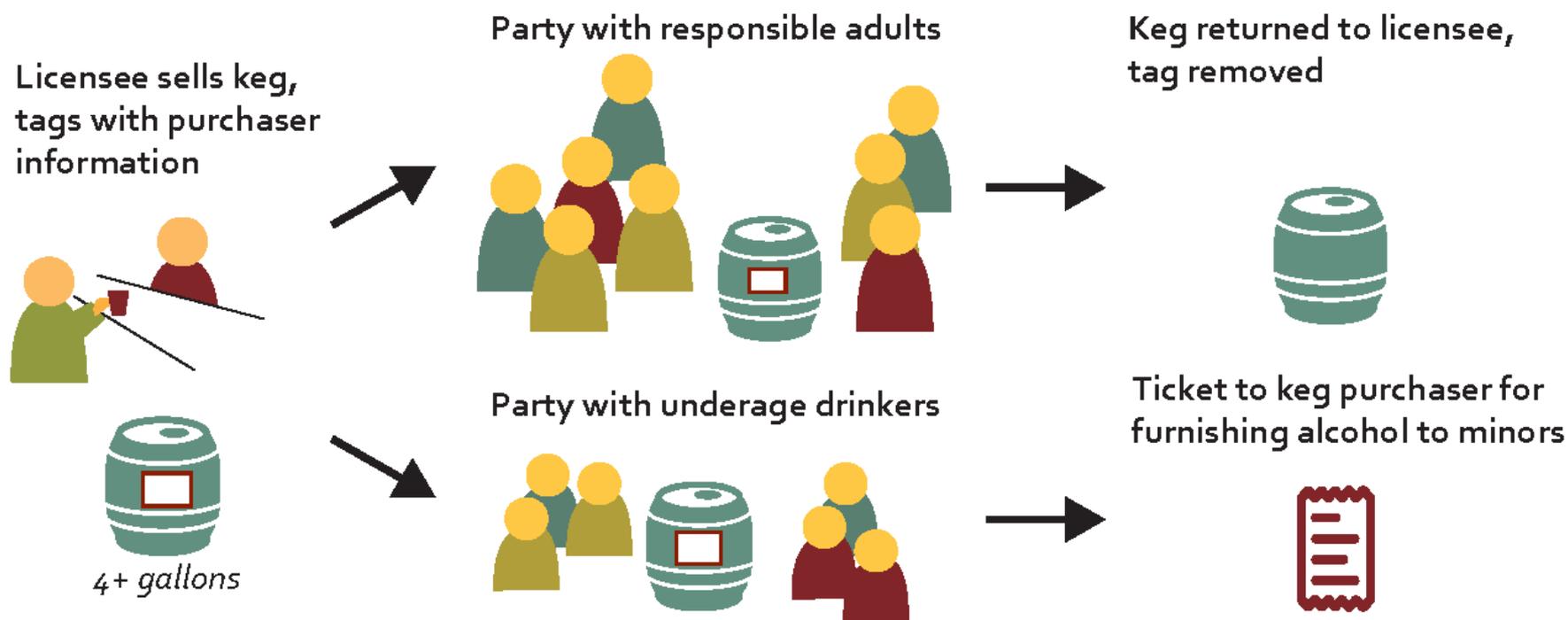
SB 76: section 98, 04.16.060

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.

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.



Internet Sales in Alaska: Few Rules

- **Alaska is one of the only states with no rules about Internet sales of alcohol.**
- 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.

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

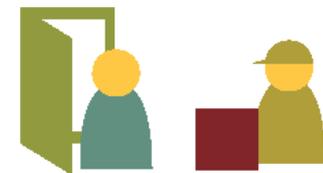


Winery Direct Shipment Licensee verifies:

- 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

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)

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.
- This allows online ordering from in-state package stores, including customers in Local Option areas.
- Existing requirements in AS 04.11.150(a) for ID, shipping and delivery still apply. Package stores would still be required to report all orders to Local Option areas in Written Order Database.

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

For more information

About Title 4 Proposed Legislation:

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/>

(907) 269-0350

amco.regs@alaska.gov