



LAWS OF ALASKA

1980

Source

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Chapter No.

129

AN ACT

Relating to local option laws concerning intoxicating liquor, operating or driving a motor vehicle while under the influence of intoxicating liquor, and establishing penalties for violations of liquor laws.

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

THE ACT FOLLOWS ON PAGE 1, LINE 11

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 30, 1980
Actual Effective Date: September 28, 1980

AN ACT

Relating to local option laws concerning intoxicating liquor, operating or driving a motor vehicle while under the influence of intoxicating liquor, and establishing penalties for violations of liquor laws.

* Section 1. AS 04.10 is amended by adding new sections to read:

Sec. 04.10.431. PROHIBITION OF THE SALE OF INTOXICATING LIQUOR.

(a) The following question, alone or with the questions set out in AS 04.10.435 and 04.10.436, may be placed before the voters of a first or second class city or an established village in accordance with AS 04.10.438: "Shall the sale of intoxicating liquor in(name of city or village) be prohibited? (yes or no)".

(b) If a majority of the voters vote "yes" on the question set out in (a) of this section, the board shall be notified immediately after certification of the results of the election and thereafter may not issue, renew, or transfer between holders or locations a license for licensed premises located within the boundaries or perimeter of a city or an established village or in an unincorporated area outside of but within five miles of the boundaries of a city. As of midnight on the date the results of the election are certified, licenses in effect within the boundaries or perimeter of a city or an established village, and in an unincorporated area outside of but within five miles of the boundaries of a city, are void. However, if a retail license is voided under this subsection, the holder of the voided retail license shall be

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1 issued, upon application, a retail stock sale license without the pay-
2 ment of the retail stock sale license fee if he fulfills all other
3 requirements for the issuance of a retail stock sale license.

4 (c) If a majority of the voters vote "no" on the question set out
5 in (a) of this section or vote "yes" on a question set out in AS 04.10.-
6 432 or 04.10.437 in an election conducted in accordance with AS 04.10.-
7 438 after an election in which the voters voted "yes" on the question
8 set out in (a) of this section, the board shall be notified immediately
9 after certification of the results of the election. Thereafter, the
10 prohibitions imposed under (b) of this section on the issuance, renewal,
11 or transfer of licenses between holders and location as a result of the
12 earlier election in which the voters voted "yes" on the question set out
13 in (a) of this section are removed.

14 Sec. 04.10.432. COMMUNITY HELD LICENSE. (a) The following ques-
15 tion, alone or with the questions set out in AS 04.10.435 and 04.10.436,
16 may be placed before the voters of a first or second class city in
17 accordance with AS 04.10.438: "Shall the sale of intoxicating liquor be
18 prohibited in(name of city) unless sold under a(either a
19 beverage dispensary or retail store, or both) license held by the city?
20 (yes or no)".

21 (b) If a majority of the voters vote "yes" on the question set out
22 in (a) of this section, the board shall be notified immediately after
23 certification of the results of the election and thereafter may not
24 issue, renew, or transfer between holders or locations a license for
25 licensed premises located within the boundaries of a city or in an
26 unincorporated area outside of but within five miles of the boundaries
27 of a city, with the exception of beverage dispensary or retail licenses
28 held by the city. As of midnight on the date the results of the elec-
29 tion are certified, licenses in effect within the boundaries of a city

1 and in an unincorporated area outside of but within five miles of the
2 boundaries of a city are void. However, if a retail license is voided
3 under this subsection, the holder of the voided retail license shall be
4 issued, upon application, a retail stock sale license without payment of
5 the retail stock sale license fee if he fulfills all other requirements
6 for the issuance of a retail stock sale license.

7 (c) If a majority of the voters vote "yes" on the question set out
8 in (a) of this section, the city council of the city shall apply for a
9 beverage dispensary or retail license, or both, depending on the terms
10 of the question.

11 (d) If a majority of the voters vote "no" on the question set out
12 in (a) of this section or vote "yes" on a question set out in AS 04.10.-
13 431, 04.10.433, 04.10.434, or 04.10.437 in an election conducted in
14 accordance with AS 04.10.438 after an election in which the voters voted
15 "yes" on the question set out in (a) of this section, the board shall be
16 notified immediately after a certification of the results of the elec-
17 tion. As of midnight on the date the results of the election are certi-
18 fied, a beverage dispensary or retail license held by a city is void and
19 thereafter the prohibitions imposed under (b) of this section on the
20 issuance, renewal, or transfer of licenses between holders and locations
21 as a result of the earlier election are removed. If a retail license is
22 voided under this subsection, the holder of the voided retail license
23 shall be issued, upon application, a retail stock sale license without
24 payment of the retail stock sale license fee if he fulfills all other
25 requirements for the issuance of a retail stock sale license.

26 Sec. 04.10.433. PROHIBITION OF POSSESSION AND IMPORTATION OF
27 INTOXICATING LIQUOR. (a) The following question may be placed before
28 the voters of a first or second class city or an established village in
29 accordance with AS 04.10.438: "Shall the possession and importation of

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1 intoxicating liquor be prohibited in(name of city or village)?
2 (yes or no)".

3 (b) If a majority of the voters vote "yes" on the question set out
4 in (a) of this section, a person, beginning on the first day of the
5 month following certification of the results of the election, may not
6 possess intoxicating liquor in the city or established village or know-
7 ingly send, transport, or bring intoxicating liquor into the city or
8 established village. The board shall be notified immediately after
9 certification of the results of the election and thereafter may not
10 issue, renew, or transfer between holders or locations a license for
11 licensed premises located within the boundaries or perimeter of a city
12 or established village or in an unincorporated area outside of but
13 within five miles of the boundaries of the city. As of midnight on the
14 date the results of the election are certified, licenses in effect
15 within the boundaries of a city and in an unincorporated area outside of
16 but within five miles of the boundaries of a city are void. However, if
17 a retail license is voided under this subsection, the holder of the
18 voided retail license shall be issued, upon application, a retail stock
19 sale license without the payment of the retail stock sale license fee if
20 he fulfills all other requirements for the issuance of a retail stock
21 sale license.

22 (c) If a majority of the voters vote "no" on the question set out
23 in (a) of this section or vote "yes" on the questions set out in AS 04.-
24 10.432 or 04.10.435 - 04.10.437 in an election conducted in accordance
25 with AS 04.10.438 after an election in which the voters voted "yes" on
26 the question set out in (a) of this section, the prohibition on the
27 possession and importation of intoxicating liquor and the prohibition on
28 the issuance, renewal, or transfers of licenses between holders and
29 locations, imposed as a result of the earlier election in which the

1 voters voted "yes" on the question set out in (a) of this section are
2 removed effective on the first day of the month following certification
3 of the results of the election.

4 Sec. 04.10.434. PROHIBITION OF IMPORTATION OF INTOXICATING LIQUOR.

5 (a) The following question may be placed before the voters of a first
6 or second class city or an established village in accordance with AS 04.-
7 10.438: "Shall the importation of intoxicating liquor into(name
8 of city or village) be prohibited? (yes or no)".

9 (b) If a majority of the voters vote "yes" on the question set out
10 in (a) of this section, a person may not knowingly send, transport, or
11 bring intoxicating liquor into the city or established village, beginning
12 on the first day of the month following certification of the results of
13 the election. The board shall be notified immediately after certifica-
14 tion of the results of the election and thereafter may not issue, renew,
15 or transfer between holders or locations a license for licensed premises
16 located within the boundaries or perimeter of the city or established
17 village or in an unincorporated area outside of but within five miles of
18 the boundaries the city. However, if a retail license may not be re-
19 newed under this subsection, the holder of the voided retail license
20 shall be issued, upon application, a retail stock sale license without
21 the payment of the retail stock sale license fee if he fulfills all
22 other requirements for the issuance of a retail stock sale license.

23 (c) If a majority of the voters vote "no" on the question set out
24 in (a) of this section or vote "yes" on the question set out in AS 04.-
25 10.432, 04.10.435 or 04.10.437, in an election conducted in accordance
26 with AS 04.10.438 after an election in which the voter voted "yes" on
27 the question set out in (a) of this section, the prohibition on impor-
28 tation of intoxicating liquor and the prohibition on the issuance,
29 renewal, or transfer of licenses between holders and locations, imposed

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1 as a result of the earlier election are removed effective the first day
2 of the month following certification of the results of the election.

3 Sec. 04.10.435. PROHIBITION OF IMPORTATION OF INTOXICATING LIQUOR
4 EXCEPT DURING HOLIDAY PERIODS. (a) The following question, alone or
5 with the question set out under AS 04.10.436 if the same holiday periods
6 are listed on the ballot, or with one of the questions set out in AS 04.-
7 10.431, 04.10.432, or 04.10.436 if the same holiday periods are listed
8 on the ballot, or under AS 04.10.437, may be placed before the voters of
9 a first or second class city or an established village in accordance
10 with AS 04.10.438: "Shall the importation of intoxicating liquor into
11(name of city or village) be prohibited, except during
12 (listing of holiday periods during which the importation of intoxicating
13 liquors would be permitted if the measure passes)? (yes or no)".

14 (b) If a majority of the voters vote "yes" on the question set out
15 in (a) of this section, a person, except during the holiday periods
16 listed in the question, may not knowingly send, transport, or bring
17 intoxicating liquor into the city or established village, beginning on
18 the first day of the month following certification of the results of the
19 election. The board shall be notified immediately after certification
20 of the results of the election and thereafter may not issue, renew, or
21 transfer between holders or locations a license for licensed premises
22 located within the boundaries or perimeter of a city or established
23 village, or in an unincorporated area outside of but within five miles
24 of the boundaries of a city, unless the duration of the license is
25 limited to those periods listed on the ballot.

26 (c) If a majority of the voters vote "no" on the question set out
27 in (a) of this section or vote "yes" on the question set out in AS 04.-
28 10.433, 04.10.434, or 04.10.435 if different holiday periods are listed,
29 in an election conducted in accordance with AS 04.10.438 after an elec-

1 tion in which the voters voted "yes" on the question set out in (a) of
2 this section, the prohibition on importation of intoxicating liquor and
3 the prohibition on the issuance, renewal, or transfer of licenses be-
4 tween holders and locations imposed as a result of the earlier election
5 is removed effective on the first day of the month following certifica-
6 tion of the results of the election.

7 Sec. 04.10.436. PROHIBITION OF POSSESSION AND IMPORTATION OF
8 INTOXICATING LIQUOR EXCEPT DURING HOLIDAY PERIODS. (a) The following
9 question, alone or with the questions set out under either AS 04.10.432
10 or 04.10.437, and AS 04.10.435 if the same holiday periods are listed on
11 the ballot, may be placed before the voters of a first or second class
12 city or an established village in accordance with AS 04.10.438: "Shall
13 the possession and importation of intoxicating liquor be prohibited in
14(name of city or village), except during (listing of holiday
15 periods during which the possession and importation of intoxicating
16 liquors would be permitted if the measure passes)? (yes or no)".

17 (b) If a majority of the voters vote "yes" on the question set out
18 in (a) of this section, a person, except during the holiday periods
19 listed on the ballot, may not possess intoxicating liquor in the city or
20 established village or knowingly send, transport, or bring intoxicating
21 liquor into the city or established village, beginning on the first day
22 of the month following certification of the results of the election.
23 The board shall be notified immediately after certification of the
24 results of the election and thereafter may not issue, renew, or transfer
25 between holders or location a license for licensed premises located
26 within the boundaries or perimeter of a city or established village, or
27 in an unincorporated area outside of but within five miles of the bound-
28 aries of a city, unless the duration of the license is limited to the
29 holiday periods listed on the ballot. Beginning on the first day of the

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1 month following certification of the results of the election, licenses
2 in effect within the boundaries or perimeter of the city or established
3 village, and in an unincorporated area outside but within five miles of
4 the boundaries of a city are effective only during the holiday periods
5 listed on the ballot. However, if a retail license is voided under this
6 subsection, the holder of the voided retail license shall be issued,
7 upon application, a retail stock sale license without payment of the
8 retail stock sale license fee if he fulfills all other requirements for
9 the issuance of a retail stock sale license.

10 (c) If a majority of the voters vote "no" on the question set out
11 in (a) of this section or vote "yes" on the question set out in AS 04.-
12 10.433, 04.10.434, or 04.10.435, and 04.10.436 if different holiday
13 periods are listed on the ballot in an election conducted in accordance
14 with AS 04.10.438 after an election in which the voters voted "yes" on
15 the question set out in (a) of this section, the prohibition on posses-
16 sion and importation of intoxicating liquor and the prohibition on the
17 issuance, renewal, or transfer of licenses between holders and locations
18 imposed as a result of the earlier election are removed effective on the
19 first day of the month following certification of the results of the
20 election.

21 Sec. 04.10.437. PROHIBITION OF THE SALE OF INTOXICATING LIQUOR
22 EXCEPT BY SELECTED LICENSES. (a) The following question, alone or with
23 the questions set out in AS 04.10.435 and 04.10.436, may be placed
24 before the voters of a first or second class city or an established
25 village in accordance with AS 04.10.438: "Shall the sale of intoxicating
26 liquor be prohibited in(name of city or village) except by
27 (listing of the types of licenses which premises would be exempted from
28 the prohibition on the sale of liquor if the measure passes)? (yes or
29 no)".

1 (b) If a majority of the voters vote "yes" on the question set out
2 in (a) of this section, the board shall be notified immediately after
3 certification of the results of the election and thereafter may not
4 issue, renew, or transfer between holders or locations a license for
5 licensed premises located within the boundaries or perimeter of a city
6 or established village, or in an unincorporated area outside of but
7 within five miles of the boundaries of the city, except those types of
8 licenses listed on the ballot. As of midnight on the date the results
9 of the election are certified, licenses in effect within the boundaries
10 or perimeter of the city or established village, and in an unincorporated
11 area outside of but within five miles of the boundaries of a city,
12 except those types of licenses listed on the ballot, are void. However,
13 if a retail license is voided under this subsection, the holder of the
14 voided retail license shall be issued, upon application, a retail stock
15 sale license without the payment of the retail stock sale license fee if
16 he fulfills all other requirements for the issuance of a retail stock
17 sale license.

18 (c) If a majority of the voters vote "no" on the question set out
19 in (a) of this section or vote "yes" on the questions set out in AS 04.-
20 10.431 - 04.10.434 or 04.10.437 if different types of licenses are
21 listed on the ballot in an election conducted in accordance with AS 04.-
22 10.438 after an election in which the voters voted "yes" on the question
23 set out in (a) of this section, the board shall be notified immediately
24 after certification of the results of the election. As of midnight on
25 the date the results of the election are certified, licenses in effect
26 in the city or established village which were excepted from the prohibi-
27 tion on sale in accordance with the results of the earlier election are
28 void. Thereafter the board may not issue, renew, or transfer between
29 holders or locations a license for licensed premises located within the

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1 boundaries or perimeter of the city or established village, or in an
2 unincorporated area outside of but within five miles of the boundaries
3 of a city, except a license which may be issued to a first or second
4 class city or to one of the types of licenses listed on the ballot as a
5 result of a majority of the voters voting "yes" on the question set out
6 in AS 04.10.432 or this section.

7 Sec. 04.10.438. PROCEDURE FOR LOCAL OPTION ELECTIONS. (a) The
8 city council of a first or second class city, whenever a number of
9 registered voters equal to at least 35 percent of the number of votes
10 cast at the last regular city election petition the city council to do
11 so, shall place upon a separate ballot at the next regular election
12 whichever question or combination of questions set out in AS 04.10.431 -
13 04.10.437 constitute the subject of the petition. The votes shall be
14 canvassed in accordance with election ordinances adopted under AS 29.28.-
15 010 and the vote certified.

16 (b) The lieutenant governor, whenever 35 percent of the registered
17 voters residing within an established village petition the lieutenant
18 governor to do so, shall place upon a separate ballot at a special
19 election that question or combination of questions set out in AS 04.10.-
20 431, or 04.10.433 - 04.10.437 which constitutes the subject of the
21 petition. The lieutenant governor shall conduct the election in the
22 general manner prescribed by the Alaska Election Code (AS 15.05 -
23 15.60).

24 Sec. 04.10.439. REINSTATEMENT OF LICENSES. If a prohibition
25 imposed on the issuance, renewal, or transfer of licenses between
26 holders and locations under AS 04.10.431 - 04.10.437 is removed by a
27 vote of "no" on a question for which the majority of the people voted
28 "yes" in an earlier election, the board shall, upon application, issue
29 the same number and type of licenses which were in effect in the city or

1 established village on the date of certification of the earlier elec-
2 tion. If the prohibition imposed on issuance, renewal, or transfer of
3 licenses between holders and locations is removed by a "yes" vote on a
4 question set out in AS 04.10.431 - 04.10.437, the board may issue the
5 types of licenses specified in the question presented to the voters in
6 the subsequent election. Licenses may be issued for the same or other
7 premises within the city or established village which were licensed on
8 the date of certification of the earlier election. In issuing licenses,
9 the board shall accord priority to those applicants who held licenses
10 which were voided on the date of certification of the earlier election.
11 The director of the board shall notify persons who held licenses in the
12 city or village on the date of certification of the earlier election of
13 their priority under this section.

14 Sec. 04.10.441. NOTICE OF THE RESULTS OF A LOCAL OPTION ELECTION.

15 (a) If a majority of the voters vote "yes" on a question set out in
16 AS 04.10.431 - 04.10.437, the board shall immediately notify the Depart-
17 ment of Law and the Department of Public Safety of the results of the
18 election.

19 (b) If a majority of the voters vote "yes" on a question set out
20 in AS 04.10.433 - 04.10.436, the following actions, in addition to those
21 prescribed in (a) of this section, shall be undertaken before the date
22 the prohibition on importation or possession becomes effective:

23 (1) the board shall notify by registered mail all licensees
24 of the prohibition;

25 (2) the first or second class city or established village
26 shall post notice of the prohibition in the city or village.

27 * Sec. 2. AS 04.10 is amended by adding a new section to read:

28 Sec. 04.10.185. COMMUNITY HELD LICENSE. (a) A beverage dispen-
29 sary or retail license may not be issued or transferred between holders

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1 and locations if the license sought is for premises to be located in a
2 first or second class city where the type of license sought is already
3 held in the name of the city, unless the license sought is to become
4 effective after the license held by the city is no longer effective,
5 either as the result of a local option election or otherwise.

6 (b) A beverage dispensary or retail license may not be issued or
7 transferred between locations or holders if the license sought to be
8 issued or transferred is to be held in the name of a first or second
9 class city, in a city where the type of license sought is already held
10 by a private licensee, unless the license sought is to become effective
11 after the city-held license is no longer effective, either as the
12 result of a local option election or otherwise.

13 * Sec. 3. AS 04.10 is amended by adding a new section to article 3 to
14 read:

15 Sec. 04.10.315. LOCAL OPTION ELECTION REQUIRED IN DRY AREAS. (a)
16 The board may not issue a license for a premises to be located in a
17 first or second class city in which there are no licensed premises on
18 the effective date of this Act unless a majority of voters in a local
19 option election conducted in accordance with AS 04.10.438 have voted
20 "no" on the question set out in AS 04.10.431, or have voted "yes" on a
21 question set out in AS 04.10.432 or 04.10.437.

22 (b) The board may not issue a license for a premises to be located
23 in an established village in which there are no licensed premises on the
24 effective date of this Act unless a majority of the voters in a local
25 option election conducted in accordance with AS 04.10.438 have voted
26 "no" on the question set out in AS 04.10.431, or have voted "yes" on the
27 question set out in AS 04.10.437.

28 * Sec. 4. AS 04.10.320(a) is amended to read:

29 (a) All licenses issued under this title, except for lesser period

1 authorized or required as a result of a local option election held on a
2 question set out in AS 04.10.435 and AS 04.10.436, shall be issued for
3 the calendar year ending December 31.

4 * Sec. 5. AS 04.15.070(a) is amended to read:

5 (a) A municipality may by ordinance provide rules and regulations
6 governing the barter, sale and possession of intoxicating liquor within
7 the municipality necessary to the orderly conduct of the business of
8 selling intoxicating liquor. If, as a result of an election held in
9 accordance with AS 04.10.438 within a first or second class city, the
10 board is prohibited from issuing, renewing, or transferring between
11 holders or locations a license within the city or the possession or
12 importation of intoxicating liquor is prohibited within the city, the
13 city may adopt an ordinance making the sale, possession, or importation
14 of intoxicating liquor a misdemeanor, whether the sale, possession, or
15 importation is under a license or otherwise. [WHEN, UNDER A LOCAL
16 OPTION ELECTION, THE CITY CLERK FINDS THE MAJORITY OF THE VOTERS ARE
17 AGAINST THE SALE OF INTOXICATING LIQUOR, THE MUNICIPALITY, BY ORDINANCE,
18 MAY MAKE THE SALE OF INTOXICATING LIQUOR WITHIN THE MUNICIPALITY A
19 MISDEMEANOR WHETHER THE SALE IS MADE PURSUANT TO LICENSE OR OTHERWISE.]
20 The ordinance may not be inconsistent with this title or the [RULES AND]
21 regulations adopted [PROMULGATED] under this title. A [NO] municipality
22 may not impose taxes other than property taxes on liquor inventories and
23 sales taxes on liquor sales when these taxes are levied on other property
24 and sales within the municipality.

25 * Sec. 6. AS 04.15 is amended by adding a new section to read:

26 Sec. 04.15.095. PENALTIES FOR UNLAWFUL SALE, POSSESSION, AND
27 IMPORTATION. (a) A person who violates AS 04.10.010 is, upon convic-
28 tion, guilty of a class A misdemeanor.

29 (b) A person who violates AS 04.10.010 in an area where the re-

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1 sults of a local option election have, under AS 04.10.431 - 04.10.437,
2 prohibited the board from issuing, renewing or transferring any licenses
3 or permits under this title in the area is upon conviction guilty of a
4 class C felony, if

5 (1) he has previously been convicted of a violation of AS 04.-
6 10.010;

7 (2) the sale or offer for sale was made to a person under 19
8 years of age; or

9 (3) the quantity of intoxicating liquor sold or offered for
10 sale is 12 liters or more of distilled spirits, 24 liters or more of
11 wine, or 45 liters or more of malt beverages.

12 (c) A person who possesses intoxicating liquor in violation of
13 AS 04.10.433(b) and 04.10.436(b) is, upon conviction, guilty of a
14 class B misdemeanor.

15 (d) A person who sends, transports, or brings intoxicating liquor
16 into a city or established village in violation of AS 04.10.434 or
17 04.10.435, is, upon conviction,

18 (1) guilty of a class A misdemeanor if the quantity imported
19 is less than 12 liters of distilled spirits, 24 liters of wine, or 45
20 liters of malt beverages;

21 (2) guilty of a class C felony if the quantity possessed is
22 12 liters or more of distilled spirits, 24 liters or more of wine, or 45
23 liters or more of malt beverages; or

24 (3) guilty of a class C felony if he has previously been
25 convicted of a violation of AS 04.10.434 or 04.10.435.

26 * Sec. 7. AS 04.15.100(a) is amended to read:

27 (a) Except as provided in AS 04.15.095, a [A] person who violates
28 any provision of this title other than AS 04.15.080 is guilty of a
29 misdemeanor, and upon conviction is punishable by imprisonment of not

1 more than one year, or by a fine of not more than \$500. Each violation
2 is a separate offense.

3 * Sec. 8. AS 04.15 is amended by adding a new section to read:

4 Sec. 04.15.115. SEIZURE, FORFEITURE, AND SALE OF CONVEYANCE. (a)
5 An aircraft, vehicle, or vessel is subject to forfeiture if used to
6 transport or facilitate the transportation of

7 (1) intoxicating liquor manufactured, sold, offered for sale,
8 possessed for sale, trafficked in, bartered, or exchanged for goods in
9 violation of AS 04.10.010 in a first or second class city or established
10 village where the results of an election held in accordance with AS 04.-
11 10.438 on a question set out in AS 04.10.431 - 04.10.437 have prohibited
12 the board from issuing, renewing, or transferring between holders or
13 locations the type of license which would authorize the manufacture,
14 sale, offering for sale, possession for sale, trafficking, barter, or
15 exchange of intoxicating liquor;

16 (2) intoxicating liquor imported or possessed in a city or
17 established village in violation of AS 04.10.433(b) and 04.10.436(b); or

18 (3) intoxicating liquor transported or imported into a city
19 or established village in violation of AS 04.10.434(b) and 04.10.435(b).

20 (b) Property subject to forfeiture under this section may be
21 actually or constructively seized under an order issued by the superior
22 court upon a showing of probable cause that the property is subject to
23 forfeiture under this section. Constructive seizure is effected upon
24 posting a signed notice of seizure on the item to be forfeited, stating
25 the violation and the date and place of seizure. Seizure without a
26 court order may be made if

27 (1) the seizure is incident to a valid arrest or search;

28 (2) the property subject to seizure is the subject of a prior
29 judgment in favor of the state; or

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1 (3) there is probable cause to believe that the property is
2 subject to forfeiture under (a) of this section; property seized under
3 this paragraph may not be held over 48 hours or until an order of for-
4 feiture is issued by the court, whichever is earlier.

5 (c) Within 30 days of a seizure under this section the Department
6 of Public Safety shall make reasonable efforts to ascertain the identity
7 and whereabouts of any person holding an interest or an assignee of a
8 person holding an interest in the property seized, including a right to
9 possession, a lien, mortgage, or conditional sales contract. The De-
10 partment of Public Safety shall notify the person ascertained to have an
11 interest in property seized of the impending forfeiture, and before
12 forfeiture the Department of Law shall publish, once a week for four
13 consecutive calendar weeks, a notice of the impending forfeiture in a
14 newspaper of general circulation in the judicial district in which the
15 seizure was made, or if no newspaper is published in that judicial
16 district, in a newspaper published in the state and distributed in that
17 judicial district.

18 (d) Property subject to forfeiture under (a) of this section may
19 be forfeited

20 (1) upon conviction of a person under AS 04.10.010, 04.10.-
21 433(b), 04.10.434(b), 04.10.435(b), or 04.10.436(b);

22 (2) upon judgment by the superior court in a proceeding in
23 rem that the property was used in a manner subjecting it to forfeiture
24 under (a) of this section.

25 (e) The owner of property subject to forfeiture under (a) of this
26 section is entitled to relief from the forfeiture in the nature of
27 remission of the forfeiture if in an action under (d) of this section
28 the owner shows that he was not a party to the violation and had no
29 actual knowledge that the property was used or was to be used in viola-

1 tion of the law.

2 (f) A person other than the owner holding, or the assignee of, a
3 lien, mortgage, conditional sales contract on, or the right to possess-
4 ion to, property subject to forfeiture under (a) of this section is
5 entitled to relief from the forfeiture in the nature of remission of the
6 forfeiture, if in an action under (d) of this section, the person shows
7 that he was not a party to the violation subjecting the property to
8 forfeiture and had no actual knowledge that the property was used or was
9 to be used in violation of the law.

0 (g) It is no defense in an in rem forfeiture action brought by the
1 Department of Law under (d)(2) of this section that a criminal proceed-
2 ing is pending or has resulted in conviction or acquittal of a person
3 charged with violating AS 04.10.010, 04.10.433(b), 04.10.434(b), 04.10.-
4 435(b), or 04.10.436(b).

5 (h) Property forfeited under this section shall be placed in the
6 custody of the commissioner of public safety for disposition according
7 to an order entered by the court. The court shall order destroyed any
8 property forfeited under this section which is harmful to the public.
9 Other property shall be ordered sold and the proceeds used for payment
0 of expenses of the proceedings for forfeiture and sale, including ex-
1 penses of seizure, custody and court costs. The remainder of the pro-
2 ceeds shall be deposited in the general fund.

3 * Sec. 9. AS 04.20.010 is amended to read:

4 Sec. 04.20.010. DEFINITIONS [INTOXICATING LIQUOR DEFINED]. As
5 used in this title,

6 (1) "intoxicating liquor" includes whiskey, brandy, rum, gin,
7 wine, ale, porter, beer and all other spirituous, vinous, malt and other
8 fermented or distilled liquors intended for human consumption and con-
9 taining more than one percent alcohol by volume;

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1 (2) "board" means the Alcoholic Beverage Control Board;

2 (3) "established village" means an unincorporated area that

3 (A) is within the perimeter of a circle described by
4 drawing a five-mile radius around a post office station; and

5 (B) has 25 or more permanent residents.

6 * Sec. 10. AS 28.35.030 is repealed and re-enacted to read:

7 Sec. 28.35.030. DRIVING WHILE INTOXICATED. (a) A person commits
8 the crime of driving while intoxicated if he operates or drives a motor
9 vehicle

10 (1) while under the influence of intoxicating liquor, de-
11 pressant, hallucinogenic, stimulant or narcotic drugs as defined in
12 AS 17.10.230(13) and AS 17.12.150(3);

13 (2) when there is 0.10 percent or more by weight of alcohol
14 in his blood or 100 milligrams or more of alcohol per 100 milliliters of
15 his blood, or when there is 0.10 grams or more of alcohol per 210 liters
16 of his breath; or

17 (3) while he is under the combined influence of intoxicating
18 liquor and another substance.

19 (b) Driving while intoxicated is a class A misdemeanor.

20 (c) Upon conviction under this section the court shall impose a
21 minimum sentence of imprisonment of not less than three consecutive
22 days. Upon a subsequent conviction within five years after a conviction
23 under this section, the court shall impose a minimum sentence of im-
24 prisonment of not less than 10 consecutive days. The execution of
25 sentence may not be suspended nor may probation be granted until the
26 minimum imprisonment provided in this section has been served. Im-
27 position of sentence may not be suspended, except upon the condition
28 that the defendant be imprisoned for no less than the minimum period
29 provided in this section. In addition, his operator's license shall be

1 revoked in accordance with AS 28.15.181. In addition, a person con-
2 victed under this statute shall undertake, for a term specified by the
3 court, that program of alcohol education or rehabilitation which the
4 court, after consideration of any information compiled under (d) of this
5 section, finds appropriate.

6 (d) Except as prohibited by federal law or regulation, every
7 provider of treatment programs to which persons are ordered under (c) of
8 this section shall supply the Alaska court system with the information
9 regarding the condition and treatment of those persons as the supreme
0 court may require by rule. Information compiled under this subsection
1 is confidential and may only be used by a court in sentencing a person
2 convicted under (c) of this section, or by an officer of the court in
3 preparing a presentence report for the use of the court in sentencing a
4 person convicted under (c) of this section.

5 * Sec. 11. AS 28.35.031 is amended to read:

6 Sec. 28.35.031. IMPLIED CONSENT. A person who operates or drives
7 a motor vehicle in this state shall be considered to have given consent
8 to a chemical test or tests of his breath for the purpose of determining
9 the alcoholic content of his blood or breath if lawfully arrested for an
0 offense arising out of acts alleged to have been committed while the
1 person was operating or driving a motor vehicle while intoxicated [UNDER
2 THE INFLUENCE OF INTOXICATING LIQUOR]. The test or tests shall be
3 administered at the direction of a law enforcement officer who has
4 reasonable grounds to believe that the person was operating or driving a
5 motor vehicle in this state while intoxicated [UNDER THE INFLUENCE OF
6 INTOXICATING LIQUOR].

7 * Sec. 12. AS 28.35.032 is amended to read:

8 Sec. 28.35.032. REFUSAL TO SUBMIT TO CHEMICAL TEST. (a) If a
9 person under arrest refuses the request of a law enforcement officer to

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1 submit to a chemical test of his breath as provided in AS 28.35.031,
2 after being advised by the officer that his refusal will result in the
3 suspension, denial or revocation of his license and that the refusal may
4 be used against him in a civil or criminal action or proceeding arising
5 out of an act alleged to have been committed by him while operating or
6 driving a vehicle under the influence of intoxicating liquor, a chemical
7 test shall not be given.

8 (b) Upon receipt of a sworn report of a law enforcement officer
9 that a person has refused to submit to a chemical test authorized under
10 AS 28.35.031, containing a statement of the circumstances surrounding
11 the arrest and the grounds upon which his belief was based that the
12 person was operating or driving a motor vehicle in violation of AS 28.-
13 35.030, the Department of Public Safety shall notify the person that his
14 license or nonresident privilege to drive or operate a motor vehicle in
15 the state is revoked or suspended, or that no original license or permit
16 will be issued for three months. In the same notice the department
17 shall inform the person that he may initiate a proceeding in the district
18 court to rescind the department's action. The court proceeding shall be
19 without jury and shall be limited to the issues of whether

20 (1) the arresting officer had reasonable grounds to believe
21 the arrested person had been operating or driving a motor vehicle in the
22 state while under the influence of intoxicating liquor;

23 (2) the arrested person refused to submit to the breath test
24 upon request of the officer after being advised that his refusal would
25 result in the suspension, revocation, or denial of his license; and

26 (3) the accused defendant was informed fairly of the nature
27 of the tests, the accuracy of the methods, machines, equipment involved,
28 the expertise of the person administering the tests, or operator of the
29 machines, and the accused given such other reasonable information as may

1 be requested by him.

2 (c) If the issues set out in (b)(1), (2) and (3) of this section
3 are determined in the affirmative, the court shall sustain the action of
4 the department. If one or more of the issues are determined in the
5 negative, the department's action shall be rescinded. If the action of
6 the department in suspending or revoking a nonresident's privilege to
7 operate or drive a motor vehicle in this state is sustained by the
8 court, the department shall give information in writing of the action
9 taken to the motor vehicle administrator of the state of the person's
0 residence and to any state in which he has a license.

1 (d) If the person who refuses to submit to the chemical test
2 authorized by AS 28.35.031, within two years previous to his arrest, has
3 been convicted in this or any other state of operating or driving a
4 motor vehicle while intoxicated, the period of suspension for his li-
5 cense, nonresident privilege to drive, or denial of [OR] original li-
6 cense shall be one year.

7 (e) The refusal of a person to submit to a chemical test of his
8 breath under (a) of this section is admissible evidence in a civil or
9 criminal action or proceeding arising out of an act alleged to have been
0 committed by the person while operating or driving a vehicle under the
1 influence of intoxicating liquor.

2 * Sec. 13. AS 28.35.033(a) is amended to read:

3 (a) Upon the trial of a civil or criminal action or proceeding
4 arising out of acts alleged to have been committed by a person while
5 operating or driving a motor vehicle under the influence of intoxicating
6 liquor, the amount of alcohol in the person's blood or breath at the
7 time alleged [, AS SHOWN BY CHEMICAL ANALYSIS OF THE PERSON'S BREATH,]
8 shall give rise to the following presumptions:

9 (1) If there was 0.05 percent or less by weight of alcohol in

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

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

14 (3) [IF THERE WAS 0.10 PERCENT OR MORE BY WEIGHT OF ALCOHOL
15 IN THE PERSON'S BLOOD, IT SHALL BE PRESUMED THAT THE PERSON WAS UNDER
16 THE INFLUENCE OF INTOXICATING LIQUOR.]

17 * Sec. 14. AS 28.35.034 is amended to read:

18 Sec. 28.35.034. PERIOD OF REVOCATION. A person whose license or
19 permit to operate or drive a motor vehicle has been suspended or revoked
20 under the provisions of AS 28.35.032 shall surrender his license or
21 permit to the department on receipt of notice of the revocation. Such a
22 person is ineligible for an operator's license or permit for three
23 months following the date on which the license or permit was received by
24 the department, unless the district court finds that extenuating circum-
25 stances exist which would cause extreme hardship, in which case the
26 suspension or revocation may be modified or nullified. After the three
27 months' period has expired the person may make application for a new
28 license as provided by law.

29 * Sec. 15. AS 04.10.139, 04.10.300(b), 04.10.300(d), 04.10.430, and

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1 AS 04.15.110 are repealed.
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