

CS FOR HOUSE BILL NO. 132(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE

Offered: 4/25/01

Referred: Rules

Sponsor(s): HOUSE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the possession, distribution, importation, and transportation of**
2 **alcohol in a local option area; requiring liquor license applicants to submit fingerprints**
3 **for the purpose of conducting a criminal history background check, and relating to the**
4 **use of criminal justice information by the Alcoholic Beverage Control Board; and**
5 **providing for an effective date."**

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

7 *** Section 1.** AS 04.11.010(c) is amended to read:

8 (c) In a criminal prosecution for possession of alcoholic beverages for sale in
9 violation of (a) of this section, the fact that a person possessed more than six [12] liters
10 of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages
11 in an area where the sale of alcoholic beverages is restricted or prohibited under
12 AS 04.11.491 creates a presumption that the person possessed the alcoholic beverages
13 for sale.

1 * **Sec. 2.** AS 04.11.150(g) is amended to read:

2 (g) If a shipment is to an area that has restricted the sale of alcoholic
3 beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store
4 licensee, agent, or employee may not ship to a purchaser more than six [12] liters of
5 distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in a
6 calendar month.

7 * **Sec. 3.** AS 04.11 is amended by adding a new section to read:

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

20 (b) In this section,

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

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

25 * **Sec. 4.** AS 04.11.491(f) is amended to read:

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

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

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

5 * **Sec. 5.** AS 04.11.491(f) is repealed and reenacted to read:

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

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

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

15 * **Sec. 6.** AS 04.11 is amended by adding a new section to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 this subsection;

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

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

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

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

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

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

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

18 (11) may destroy alcoholic beverages

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

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

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

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

30 (14) shall maintain records concerning recipients and alcoholic
31 beverages delivered to and released by the delivery site in a manner and for a period of

1 time established under regulations adopted under this section, and shall make the
 2 records available for inspection by the Alaska state troopers, a municipal police
 3 agency if the site is within a municipality, and the board at reasonable times; and

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

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

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

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

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

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

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

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

25 (A) a felony violation or a felony attempt to commit a violation
 26 of AS 11.41; or

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

29 (3) 10 years has elapsed from the person's unconditional discharge due
 30 to a conviction or adjudication as a delinquent for a felony violation or a felony
 31 attempt to violate a provision of this title or a law or ordinance from another

1 jurisdiction with similar elements.

2 (f) Operation of a delivery site under this section constitutes a criminal justice
3 activity. In this subsection, "criminal justice activity" has the meaning given in
4 AS 12.62.900.

5 (g) In this section,

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

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

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

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

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

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

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

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

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

18 * **Sec. 7.** AS 04.11.499 is amended to read:

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

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

31 **(2) "send" means to cause to be taken or distributed or to attempt**

1 or solicit to cause to be taken or distributed, and includes use of the United States
 2 Post Office;

3 (3) "transport" means to ship by any method, and includes
 4 delivering or transferring or attempting or soliciting to deliver or transfer an
 5 alcoholic beverage to be shipped to, delivered to, or left or held for pick up by
 6 any person.

7 * **Sec. 8.** AS 04.16.125(c) is amended to read:

8 (c) In this section,

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

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

12 * **Sec. 9.** AS 04.16.200(e) is amended to read:

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

15 (1) guilty of a class A misdemeanor if the quantity of alcoholic
 16 beverages [IMPORTED] is less than six [12] liters of distilled spirits, 24 liters of
 17 wine, or 12 gallons of malt beverages; or

18 (2) guilty of a class C felony if the quantity of alcoholic beverages
 19 [IMPORTED] is six [12] liters or more of distilled spirits, 24 liters or more of wine, or
 20 12 gallons or more of malt beverages.

21 * **Sec. 10.** AS 04.11.494, enacted by sec. 6 of this Act, is repealed July 1, 2004.

22 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
 23 read:

24 TRANSITION: PENDING APPLICATIONS. Notwithstanding the requirements of
 25 AS 04.11.295, enacted by sec. 3 of this Act, the Alcoholic Beverage Control Board may
 26 process an application for issuance or transfer of a license under AS 04 without a national
 27 criminal history record check from the Federal Bureau of Investigation if that application was
 28 pending with the board on the effective date of this Act.

29 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 INTERVENING AMENDMENTS. It is the intent of the legislature that intervening

1 amendments to AS 04.11.491(f) are not to be carried forward on the effective date of sec. 5 of
2 this Act.

3 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 **APPLICABILITY.** This Act applies to offenses that occur on or after the effective
6 date of this Act.

7 * **Sec. 14.** Section 5 of this Act takes effect July 1, 2004.

8 * **Sec. 15.** Except as provided in sec. 14 of this Act, this Act takes effect immediately under
9 AS 01.10.070(c).