

CS FOR HOUSE BILL NO. 132(2d RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE

Offered: 4/29/01

Referred: Today's Calendar

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; relating to**
5 **the offenses of operating a motor vehicle, aircraft, or watercraft while intoxicated and**
6 **refusal to take a breath test; relating to implied consent to take a chemical test; relating**
7 **to presumptions arising from the amount of alcohol in a person's breath or blood; and**
8 **providing for an effective date."**

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

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

11 (c) In a criminal prosecution for possession of alcoholic beverages for sale in
12 violation of (a) of this section, the fact that a person possessed more than six [12] liters

1 of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages
 2 in an area where the sale of alcoholic beverages is restricted or prohibited under
 3 AS 04.11.491 creates a presumption that the person possessed the alcoholic beverages
 4 for sale.

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

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

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

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

24 (b) In this section,

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

27 (2) "criminal justice information" has the meaning given in
 28 AS 12.62.900.

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

30 (f) **If a** [A] municipality or established village [THAT] has adopted a local
 31 option under (a)(1), (2), or (3) or (b)(1) or (2) of this section, **the state, municipality,**

1 **or established village** may designate **and operate** a site for the delivery of alcoholic
 2 beverages to individuals in the area or a site for a person to bring alcoholic beverages
 3 if the alcoholic beverages are imported into the area. This subsection does not apply
 4 to the delivery or importation of

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

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

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

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

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

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

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

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

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

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

1 released to the traveler before being delivered to the delivery site;

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

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

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

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

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

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

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

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

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

30 (6) may not open packages delivered to the site to inspect the contents
31 unless permitted to do so by a search warrant or unless the recipient gives written

1 consent to the opening and inspection;

2 (7) unless the shipper is a licensed package store and the shipping
3 container complies with AS 04.16.125, may not release alcoholic beverages until the
4 alcoholic beverages have been inspected to determine if release would be lawful under
5 this subsection;

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

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

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

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

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

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

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

22 (11) may destroy alcoholic beverages

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

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

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

31 (13) shall immediately report violations of a provision of this title or a

1 regulation adopted under this title to the Alaska state troopers and, if the site is within
2 a municipality, to the municipal police agency;

3 (14) shall maintain records concerning recipients and alcoholic
4 beverages delivered to and released by the delivery site in a manner and for a period of
5 time established under regulations adopted under this section, and shall make the
6 records available for inspection by the Alaska state troopers, a municipal police
7 agency if the site is within a municipality, and the board at reasonable times; and

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

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

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

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

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

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

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

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

29 (A) a felony violation or a felony attempt to commit a violation
30 of AS 11.41; or

31 (B) a misdemeanor violation of or a misdemeanor attempt to

1 violate a provision in this title; or

2 (3) 10 years has elapsed from the person's unconditional discharge due
3 to a conviction or adjudication as a delinquent for a felony violation or a felony
4 attempt to violate a provision of this title or a law or ordinance from another
5 jurisdiction with similar elements.

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

9 (g) In this section,

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

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

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

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

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

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

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

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

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

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

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

1 the sacramental wine. In this section,

2 (1) "bring" means to carry or convey or to attempt or solicit to
3 carry or convey;

4 (2) "send" means to cause to be taken or distributed or to attempt
5 or solicit to cause to be taken or distributed, and includes use of the United States
6 Post Office;

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

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

12 (c) In this section,

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

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

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

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

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

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

25 * **Sec. 10.** AS 28.35.030(a) is amended to read:

26 (a) A person commits the crime of driving while intoxicated if the person
27 operates or drives a motor vehicle or operates an aircraft or a watercraft

28 (1) while under the influence of intoxicating liquor, or any controlled
29 substance;

30 (2) when, as determined by a chemical test taken within four hours
31 after the alleged offense was committed, there is 0.08 [0.10] percent or more by

1 weight of alcohol in the person's blood or 80 [100] milligrams or more of alcohol per
 2 100 milliliters of blood, or when there is 0.08 [0.10] grams or more of alcohol per 210
 3 liters of the person's breath; or

4 (3) while the person is under the combined influence of intoxicating
 5 liquor and a controlled substance.

6 * **Sec. 11.** AS 28.35.030(n) is amended to read:

7 (n) A person is guilty of a class C felony if the person is convicted under (a)
 8 of this section [OF DRIVING WHILE INTOXICATED] and has been previously
 9 convicted two or more times since January 1, 1996, and within the 10 [FIVE] years
 10 preceding the date of the present offense. For purposes of determining minimum
 11 sentences based on previous convictions, the provisions of (o)(4) of this section apply.
 12 Upon conviction, the court

13 (1) shall impose a fine of not less than \$5,000 and a minimum sentence
 14 of imprisonment of not less than

15 (A) 120 days if the person has been previously convicted twice;

16 (B) 240 days if the person has been previously convicted three
 17 times;

18 (C) 360 days if the person has been previously convicted four
 19 or more times;

20 (2) may not

21 (A) suspend execution of sentence or grant probation except on
 22 condition that the person serve the minimum imprisonment under (1) of this
 23 subsection; or

24 (B) suspend imposition of sentence;

25 (3) shall revoke the person's driver's license, privilege to drive, or
 26 privilege to obtain a license under AS 28.15.181(c);

27 (4) may order as a condition of probation or parole that the person take
 28 a drug or combination of drugs, intended to prevent the consumption of an alcoholic
 29 beverage; a condition of probation imposed under this paragraph is in addition to any
 30 other condition authorized under another provision of law; and

31 (5) may also order forfeiture under AS 28.35.036 of the vehicle or

1 aircraft used in the commission of the offense, subject to remission under
2 AS 28.35.037.

3 * **Sec. 12.** AS 28.35.030(o) is amended to read:

4 (o) In this section,

5 (1) [REPEALED]

6 (2) "operate an aircraft" means to [USE,] navigate, pilot, or taxi an
7 aircraft in the airspace over this state, or upon the land or water inside this state;

8 (3) "operate a watercraft" means to navigate [OR USE] a vessel used
9 or capable of being used as a means of transportation on water for recreational or
10 commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial
11 limits or under the jurisdiction of the state;

12 (4) "previously convicted" means having been convicted in this or
13 another jurisdiction, [WITHIN 10 YEARS PRECEDING THE DATE OF THE
14 PRESENT OFFENSE,] of any of the following offenses; however, convictions for any
15 of these offenses, if arising out of a single transaction and a single arrest, are
16 considered one previous conviction:

17 (A) operating a motor vehicle, aircraft, or watercraft while
18 intoxicated, in violation of this section or in violation of another law or
19 ordinance with similar elements, except that the other law or ordinance may
20 provide for a lower level of alcohol in the person's blood or breath than
21 imposed under (a)(2) of this section;

22 (B) refusal to submit to a chemical test in violation of
23 AS 28.35.032 or in violation of another law or ordinance with similar
24 elements; or

25 (C) operating a commercial motor vehicle while intoxicated in
26 violation of AS 28.33.030 or in violation of another law or ordinance with
27 similar elements, except that the other law or ordinance may provide for a
28 lower level of alcohol in the person's blood or breath than imposed under
29 AS 28.33.030(a)(2).

30 * **Sec. 13.** AS 28.35.031 is amended by adding a new subsection to read:

31 (h) Nothing in this section shall be construed to restrict searches or seizures

1 under a warrant issued by a judicial officer, in addition to a test permitted under this
2 section.

3 * **Sec. 14.** AS 28.35.032(p) is amended to read:

4 (p) A person is guilty of a class C felony if the person is convicted under this
5 section and has been previously convicted two or more times since January 1, 1996,
6 and within the 10 [FIVE] years preceding the date of the present offense. For
7 purposes of determining minimum sentences based on previous convictions, the
8 provisions of AS 28.35.030(o)(4) apply. Upon conviction,

9 (1) the court shall impose a fine of not less than \$5,000 and a
10 minimum sentence of imprisonment of not less than

11 (A) 120 days if the person has been previously convicted twice;

12 (B) 240 days if the person has been previously convicted three
13 times;

14 (C) 360 days if the person has been previously convicted four
15 or more times;

16 (2) the court may not

17 (A) suspend execution of the sentence required by (1) of this
18 subsection or grant probation, except on condition that the person serve the
19 minimum imprisonment under (1) of this subsection; or

20 (B) suspend imposition of sentence;

21 (3) the court shall revoke the person's driver's license, privilege to
22 drive, or privilege to obtain a license under AS 28.15.181(c);

23 (4) the court may order as a condition of probation or parole that the
24 person take a drug, or combination of drugs, intended to prevent consumption of an
25 alcoholic beverage; a condition of probation imposed under this paragraph is in
26 addition to any other condition authorized under another provision of law;

27 (5) the sentence imposed by the court under this subsection shall run
28 consecutively with any other sentence of imprisonment imposed on the person; and

29 (6) the court may also order forfeiture under AS 28.35.036, of the
30 vehicle or aircraft used in the commission of the offense, subject to remission under
31 AS 28.35.037.

1 * **Sec. 15.** AS 28.35.033(a) is amended to read:

2 (a) Upon the trial of a civil or criminal action or proceeding arising out of acts
3 alleged to have been committed by a person while operating or driving a motor vehicle
4 or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the
5 person's blood or breath at the time alleged shall give rise to the following
6 presumptions:

7 (1) If there was 0.04 [0.05] percent or less by weight of alcohol in the
8 person's blood, or 40 [50] milligrams or less of alcohol per 100 milliliters of the
9 person's blood, or 0.04 [0.05] grams or less of alcohol per 210 liters of the person's
10 breath, it shall be presumed that the person was not under the influence of intoxicating
11 liquor.

12 (2) If there was in excess of 0.04 [0.05] percent but less than 0.08
13 [0.10] percent by weight of alcohol in the person's blood, or in excess of 40 [50] but
14 less than 80 [100] milligrams of alcohol per 100 milliliters of the person's blood, or in
15 excess of 0.04 [0.05] grams but less than 0.08 [0.10] grams of alcohol per 210 liters of
16 the person's breath, that fact does not give rise to any presumption that the person was
17 or was not under the influence of intoxicating liquor, but that fact may be considered
18 with other competent evidence in determining whether the person was under the
19 influence of intoxicating liquor.

20 (3) [REPEALED]

21 (4) If there was 0.08 [0.10] percent or more by weight of alcohol in
22 the person's blood, or 80 [100] milligrams or more of alcohol per 100 milliliters of the
23 person's blood, or 0.08 [0.10] grams or more of alcohol per 210 liters of the person's
24 breath, it shall be presumed that the person was under the influence of intoxicating
25 liquor.

26 * **Sec. 16.** AS 04.11.494, enacted by sec. 6 of this Act, is repealed July 1, 2004.

27 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 TRANSITION: PENDING APPLICATIONS. Notwithstanding the requirements of
30 AS 04.11.295, enacted by sec. 3 of this Act, the Alcoholic Beverage Control Board may
31 process an application for issuance or transfer of a license under AS 04 without a national

1 criminal history record check from the Federal Bureau of Investigation if that application was
2 pending with the board on the effective date of this Act.

3 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 INTERVENING AMENDMENTS. It is the intent of the legislature that intervening
6 amendments to AS 04.11.491(f) are not to be carried forward on the effective date of sec. 5 of
7 this Act.

8 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 APPLICABILITY. This Act applies to offenses committed on or after the effective
11 date of this Act, except that references to previous convictions include convictions occurring
12 before, on, or after the effective date of this Act.

13 * **Sec. 20.** Section 5 of this Act takes effect July 1, 2004.

14 * **Sec. 21.** Sections 10 and 15 of this Act take effect September 1, 2001.

15 * **Sec. 22.** Sections 11 - 14 of this Act take effect July 1, 2001.

16 * **Sec. 23.** Except as provided in secs. 20 - 22 of this Act, this Act takes effect immediately
17 under AS 01.10.070(c).