

**HOUSE BILL NO. 327**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/17/08

Referred: Community and Regional Affairs, Judiciary, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to shipping, sending, transporting, or bringing alcohol to a local  
2 option area and providing alcohol to others in the local option area, including penalties  
3 for violations; relating to furnishing alcohol to a minor and to civil penalties for  
4 licensees whose agents or employees furnish alcohol to a minor; relating to  
5 manslaughter as a direct result of ingestion of alcoholic beverages brought in violation  
6 of a local option prohibition; relating to reports of the court concerning certain alcohol  
7 violations by minors; making conforming amendments; and providing for an effective  
8 date."

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

10 \* **Section 1.** AS 04.11.150(h) is amended to read:

11 (h) A package store licensee, agent, or employee may not

12 (1) divide or combine shipments of alcoholic beverages so as to

1 circumvent the limitation imposed under (g) of this section; [OR]

2 (2) in response to a written order, ship alcohol to a purchaser at an  
3 address other than the address where the purchaser resides or, if the purchaser resides  
4 in a municipality or established village that has adopted a local option under  
5 AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2) for which a community delivery site  
6 has been designated under AS 04.11.491(f), to an address other than that community  
7 delivery site except as provided by AS 04.11.491(f)(1) and (2); or

8 **(3) ship alcohol in a plastic container to a person who resides in a**  
9 **municipality or established village that has adopted a local option under**  
10 **AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), unless the shipment is to a**  
11 **community delivery site designated under AS 04.11.491(f).**

12 \* **Sec. 2.** AS 04.11.370(a) is amended to read:

13 (a) A license or permit shall be suspended or revoked if the board finds

14 (1) misrepresentation of a material fact on an application made under  
15 this title or a regulation adopted under this title;

16 (2) continuation of the manufacture, sale, or service of alcoholic  
17 beverages by the licensee or permittee would be contrary to the best interests of the  
18 public;

19 (3) failure on the part of the licensee to correct a defect that  
20 constitutes a violation of this title, a condition or restriction imposed by the board, a  
21 regulation adopted under this title, or other laws after receipt of notice issued by the  
22 board or its agent;

23 (4) conviction of a licensee of a violation of this title, a regulation  
24 adopted under this title, or an ordinance adopted under AS 04.21.010;

25 (5) conviction of an agent or employee of a licensee of a violation of  
26 this title, a regulation adopted under this title, or an ordinance adopted under  
27 AS 04.21.010, if the licensee is found by the board to have either knowingly allowed  
28 the violation or to have recklessly or with criminal negligence failed to act in  
29 accordance with the duty prescribed under AS 04.21.030 with the result that the  
30 agent or employee violates a law, regulation, or ordinance;

31 (6) failure of the licensee to comply with the public health, fire, or

1 safety laws and regulations in the state;

2 (7) use of the licensed premises as a resort for illegal possessors or  
3 users of narcotics, prostitutes, or promoters of prostitution; in addition to any other  
4 legally competent evidence, the character of the premises may be proved by the  
5 general reputation of the premises in the community as a resort for illegal possessors  
6 or users of narcotics, prostitutes, or promoters of prostitution;

7 (8) occurrence of illegal gambling within the limits of the licensed  
8 premises;

9 (9) the licensee permitted a public offense involving moral turpitude  
10 to occur on the licensed premises;

11 (10) violation by a licensee of this title, a condition or restriction  
12 imposed by the board, a regulation adopted under this title, or an ordinance adopted  
13 under AS 04.21.010; [OR]

14 (11) violation by an agent or employee of a licensee of a provision of  
15 this title, a condition or restriction imposed by the board, a regulation adopted under  
16 this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the  
17 board to have either knowingly allowed the violation or to have recklessly or with  
18 criminal negligence failed to act in accordance with the duty prescribed under  
19 AS 04.21.030 with the result that the agent or employee violates the law, condition  
20 or restriction, regulation, or ordinance; or

21 **(12) that an agent or employee of a licensee has been convicted of**  
22 **a violation of AS 04.16.051 occurring on the licensed premises of the licensee,**  
23 **and that the provisions of AS 04.16.180(d) require the suspension of the license.**

24 \* **Sec. 3.** AS 04.16.180(c) is amended to read:

25 (c) In **(b) of** this section, the terms "second conviction" and "third  
26 conviction" include only convictions for violations that occur within five years of the  
27 first conviction. The terms refer to the cumulative number of convictions of a  
28 licensee of any combination of violations of the provisions of this title, regulations  
29 adopted under this title, or ordinances adopted under AS 04.21.010. The terms  
30 "second conviction" and "third conviction" include a conviction of the agent or  
31 employee of a licensee of a violation of a law, regulation, or ordinance if the

1 conviction constitutes a ground for suspension or revocation under  
2 AS 04.11.370(a)(5). **A conviction occurs on the date that sentence is imposed for**  
3 **the offense.**

4 \* **Sec. 4.** AS 04.16.180(d) is amended to read:

5 (d) **The provisions of (e) of this section do not affect the authority of the**  
6 **board to suspend or revoke a license under (b) of this section.** This section does  
7 not affect the authority of the board to suspend or revoke a license when the board  
8 determines that continuance of activities under a license would not be in the best  
9 interests of the public.

10 \* **Sec. 5.** AS 04.16.180 is amended by adding new subsections to read:

11 (e) If an agent or employee of a licensee is convicted of a violation of  
12 AS 04.16.051 occurring on the licensed premises of the licensee, the board shall

13 (1) impose a civil fine of \$500 on the licensee for a first conviction of  
14 an employee or agent;

15 (2) suspend the license for a period of seven days and impose a civil  
16 fine of \$1,000 on the licensee if an agent or employee of the licensee has been  
17 previously convicted once;

18 (3) suspend the license for a period of 30 days and impose a civil fine  
19 of \$2,000 on the licensee if an agent or employee of the licensee has been previously  
20 convicted two or more times.

21 (f) In (e) of this section, a previous conviction of an agent or employee  
22 includes a conviction that occurs within five years of the date of the new offense.  
23 Previous convictions include the cumulative number of convictions of all agents or  
24 employees of a licensee that are committed on the premises of the licensee. A  
25 conviction occurs on the date that sentence is imposed for the offense. A hearing  
26 under AS 44.62.330 - 44.62.630 to suspend a license under (e) of this section shall be  
27 limited to the following questions:

28 (1) was an agent or employee of the licensee convicted by plea or  
29 judicial finding of a violation of AS 04.16.051;

30 (2) did the violation of AS 04.16.051 by the agent or employee of the  
31 licensee occur on the licensed premises of the licensee;

1 (3) did the violation of AS 04.16.051 occur within the time required  
2 for the applicable suspension of the license.

3 \* **Sec. 6.** AS 04.16.200(e) is amended to read:

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

7 (1) except as provided in (3) of this subsection, guilty of a class A  
8 misdemeanor if the quantity of alcoholic beverages is less than 10 and one-half liters  
9 of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages; [OR]

10 (2) guilty of a class C felony if the quantity of alcoholic beverages is  
11 10 and one-half liters or more of distilled spirits, 24 liters or more of wine, or 12  
12 gallons or more of malt beverages; or

13 (3) guilty of a class C felony if the quantity of alcoholic beverages  
14 is less than 10 and one-half liters of distilled spirits, 24 liters of wine, or 12  
15 gallons of malt beverages and the person has been previously convicted under  
16 this subsection or (b) of this section two or more times within 10 years of the  
17 date of the present offense.

18 \* **Sec. 7.** AS 04.16.200 is amended by adding new subsections to read:

19 (f) Upon conviction of a class A misdemeanor under (e)(1) of this section the  
20 court

21 (1) shall impose a minimum sentence of imprisonment of

22 (A) not less than 72 consecutive hours and a fine of not less  
23 than \$1,500 if the person has not been previously convicted;

24 (B) not less than 20 days and a fine of not less than \$3,000 if  
25 the person has been previously convicted once;

26 (C) not less than 60 days and a fine of not less than \$4,000 if  
27 the person has been previously convicted twice and is not subject to  
28 punishment under (g) of this section;

29 (D) not less than 120 days and a fine of not less than \$5,000 if  
30 the person has been previously convicted three times and is not subject to  
31 punishment under (g) of this section;

1 (E) not less than 240 days and a fine of not less than \$6,000 if  
 2 the person has been previously convicted four times and is not subject to  
 3 punishment under (g) of this section;

4 (F) not less than 360 days and a fine of not less than \$7,000 if  
 5 the person has been previously convicted more than four times and is not  
 6 subject to punishment under (g) of this section;

7 (2) may not

8 (A) suspend execution of sentence or grant probation except  
 9 on the condition that the person

10 (i) serve the minimum imprisonment under (1) of this  
 11 subsection; and

12 (ii) pay the minimum fine required under (1) of this  
 13 subsection; or

14 (B) suspend imposition of sentence.

15 (g) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this  
 16 section the court

17 (1) shall impose a fine of not less than \$10,000 and a minimum  
 18 sentence of imprisonment of

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

21 (B) 240 days if the person has been convicted three times;

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

24 (2) may not

25 (A) suspend execution of sentence or grant probation except  
 26 on the condition that the person

27 (i) serve the minimum imprisonment under (1) of this  
 28 subsection; and

29 (ii) pay the minimum fine required under (1) of this  
 30 subsection; or

31 (B) suspend imposition of sentence.

1 (h) The court shall consider the date of a previous conviction as occurring on  
2 the date that sentence is imposed for the prior offense.

3 \* **Sec. 8.** AS 11.41.120(a) is amended to read:

4 (a) A person commits the crime of manslaughter if the person

5 (1) intentionally, knowingly, or recklessly causes the death of another  
6 person under circumstances not amounting to murder in the first or second degree;

7 (2) intentionally aids another person to commit suicide; [OR]

8 (3) knowingly manufactures or delivers a controlled substance in  
9 violation of AS 11.71.010 - 11.71.030 or 11.71.040(a)(1) for schedule IVA  
10 controlled substances, and a person dies as a direct result of ingestion of the  
11 controlled substance; the death is a result that does not require a culpable mental  
12 state; or

13 (4) violates AS 04.11.010 in an area that the person knows has  
14 adopted a local option under AS 04.11.491, and a person dies as a direct result  
15 of ingestion of the alcoholic beverage brought in violation of the local option;  
16 the death is a result that does not require a culpable mental state [IN THIS  
17 PARAGRAPH, "INGESTION" MEANS VOLUNTARILY OR INVOLUNTARILY  
18 TAKING A SUBSTANCE INTO THE BODY IN ANY MANNER].

19 \* **Sec. 9.** AS 11.41.120 is amended by adding a new subsection to read:

20 (c) In this section, "ingestion" means voluntarily or involuntarily taking a  
21 substance into the body in any manner.

22 \* **Sec. 10.** AS 28.15.191(a) is amended to read:

23 (a) A court that convicts a person of an offense under this title or a regulation  
24 adopted under this title, or another law or regulation of this state, or a municipal  
25 ordinance that regulates the driving of vehicles, or a violation of AS 04.16.050, shall  
26 forward a record of the conviction to the department within five working days. A  
27 conviction of a standing or parking offense need not be reported.

28 \* **Sec. 11.** AS 28.35.028(a) is amended to read:

29 (a) Notwithstanding another provision of law, with the consent of the state  
30 and the defendant, the court may elect to proceed in a criminal case under  
31 AS 04.16.200(b) or (e), AS 28.35.030, or 28.35.032, including the case of a

1 defendant charged with violating the terms of probation, under the procedure  
2 provided in this section and order the defendant to complete a court-ordered  
3 treatment program. The state may not consent to a referral under this subsection  
4 unless the state has consulted with the victim and explained the process and  
5 consequences of the referral to the victim. A court may not elect to proceed under  
6 this section if the defendant has previously participated in a court-ordered treatment  
7 program under this section two or more times.

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

10 APPLICABILITY. (a) Sections 1, 8, and 9 of this Act apply to offenses committed  
11 on or after the effective date of this Act.

12 (b) Sections 2, 4, and 5 of this Act apply to offenses committed on or after the  
13 effective date of this Act; any references in those sections to prior offenses or convictions  
14 include only prior offenses or convictions occurring on or after the effective date of this Act.

15 (c) Section 3 of this Act applies to convictions occurring before, on, or after the  
16 effective date of this Act.

17 (d) Sections 6 and 7 of this Act apply to offenses committed on or after the effective  
18 date of this Act; any references in those sections to previous convictions include previous  
19 convictions occurring before, on, or after the effective date of this Act.

20 (e) Sections 10 and 11 of this Act apply to actions taken by a court on or after the  
21 effective date of this Act, regardless of whether the offense occurred before, on, or after the  
22 effective date of this Act.

23 \* **Sec. 13.** This Act takes effect on July 1, 2008.