

Introduced: 3/21/86
Referred: Community & Regional
Affairs, Judiciary and Finance

BY THE RULES COMMITTEE
BY REQUEST

1 IN THE HOUSE

2 HOUSE BILL NO. 700

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulation of alcoholic beverages
7 and enactment of municipal ordinances."

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

9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10 (1) abuse of alcohol seriously interferes with the rights and
11 privileges of the people of the state;

12 (2) the public health, safety, and welfare does in fact suffer
13 when alcohol abuse is not controlled;

14 (3) prohibition of alcohol in rural areas of the state is an
15 effective tool for controlling the abuse of alcohol;

16 (4) serious crimes and a wide variety of other social problems
17 could be prevented if the possession of alcohol were prohibited;

18 (5) there is a strong and unmistakable correlation between
19 alcohol consumption and poor health, fetal damage, suicide, domestic
20 violence, and crime;

21 (6) the dangers resulting from alcohol abuse are particularly
22 acute in rural areas of the state because the communities are small,
23 isolated, without adequate law enforcement, without adequate health care
24 facilities, and populated by people who are closely related and interdepen-
25 dent; and

26 (7) the economic cost of alcohol abuse is high, and cannot be
27 afforded by the state or small rural communities.

28 * Sec. 2. AS 04.11 is amended by adding a new section to read:

29 Sec. 04.11.498. PROHIBITION OF POSSESSION OF ALCOHOLIC

1 BEVERAGES. (a) The following question, appearing alone, may be
2 placed before the voters of a municipality or an established village
3 in accordance with AS 04.11.502: "Shall the possession of alcoholic
4 beverages be prohibited in (name of municipality or vil-
5 lage)? (yes or no)."

6 (b) If a majority of the voters of an established village vote
7 "yes" on the question set out in (a) of this section, a person, begin-
8 ning on the first day of the month following certification of the
9 results of the election, may not knowingly possess an alcoholic
10 beverage in the established village, unless the alcoholic beverage is
11 sacramental wine to be used for bona fide religious purposes based on
12 tenets or teachings of a church or religious body, is limited in
13 quantity to the amount necessary for religious purposes, and is dis-
14 pensed only for religious purposes by a person authorized by the
15 church or religious body to dispense the sacramental wine. The board
16 shall be notified immediately after certification of the results of
17 the election and thereafter may not issue, renew, or transfer between
18 holders or locations a license for licensed premises located within
19 the perimeter of the established village. Licenses that may not be
20 renewed because of a local option election held under this section are
21 void on the first day of the month following certification of the
22 election.

23 (c) If a majority of the voters of a municipality vote "yes" on
24 the question set out in (a) of this section, an ordinance is adopted
25 that becomes effective beginning on the first day of the month follow-
26 ing certification of the results of the election, and a person may not
27 knowingly possess an alcoholic beverage in the municipality, unless
28 the alcoholic beverage is sacramental wine to be used for bona fide
29 religious purposes based on tenets or teachings of a church or

1 religious body, is limited in quantity to the amount necessary for
2 religious purposes, and is dispensed only for religious purposes by a
3 person authorized by the church or religious body to dispense the
4 sacramental wine. The board shall be notified immediately after the
5 adoption of the ordinance and thereafter may not issue, renew, or
6 transfer between holders or locations a license for licensed premises
7 located within the boundaries of the municipality and within unincor-
8 porated areas within five miles of the boundaries of the municipality.
9 Licenses that may not be renewed because of a local option election
10 held under this section are void on the first day of the month follow-
11 ing certification of the election.

12 (d) If a majority of the voters vote "no" on the question set
13 out in (a) of this section or vote "yes" on the questions set out in
14 AS 04.11.492 or 04.11.500 in an election conducted in accordance with
15 AS 04.11.502 after an election in which the voters voted "yes" on the
16 question set out in (a) of this section, the prohibition on the pos-
17 session of alcoholic beverages is removed effective 90 days after the
18 results of the election are certified except as those prohibitions
19 continue to be imposed in accordance with the results of the subse-
20 quent election.

21 (e) For the purposes of this section, "possession" means having
22 physical possession of or exercising dominion or control over alco-
23 holic beverages, but does not include having alcoholic beverages
24 within the digestive system of a person.

25 * Sec. 3. AS 04.11.502 is amended by adding a new subsection to read:

26 (c) A petition filed with the local governing body of a munic-
27 ipality in accordance with (a) of this section, which places on the
28 ballot the question set out in AS 04.11.498, shall constitute a pro-
29 posed ordinance of the municipality.

1 * Sec. 4. AS 04.16 is amended by adding a new section to read:

2 Sec. 04.16.205. PENALTY FOR VIOLATING BAN ON POSSESSION OF
3 ALCOHOLIC BEVERAGES. (a) A person who possesses alcoholic beverages
4 in a municipality or established village in violation of AS 04.11.498
5 or an ordinance adopted under AS 04.11.498 may, upon conviction, be
6 punished by a fine not to exceed \$1,000. When a peace officer stops
7 or contacts a person concerning a violation of AS 04.11.498 or an
8 ordinance enacted under AS 04.11.498, the peace officer may, in the
9 officer's discretion, issue a citation to the person as provided in
10 AS 12.25.180.

11 (b) A person cited for a violation of AS 04.11.498 or an ordi-
12 nance adopted under AS 04.11.498 for which a bail amount has been
13 established under (c) of this section may, within 30 days after the
14 date of the citation

15 (1) mail or personally deliver to the clerk of the court in
16 which the citation is filed by the peace officer the amount of bail
17 indicated on the citation and a copy of the citation indicating that
18 the right to an appearance is waived, a plea of no contest is entered
19 and the bail and all alcoholic beverages seized are forfeited; or

20 (2) perform community work in lieu of payment of the fine
21 or a portion of the fine as provided in (d) of this section.

22 (c) The supreme court shall establish by rule or order a sched-
23 ule of bail amounts that may be forfeited without a court appearance
24 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
25 11.498. In establishing the bail schedule the supreme court may
26 consider the quantity of alcoholic beverages possessed and the number
27 of prior violations of the person cited. The maximum bail amount may
28 not exceed \$1,000, and if a citation is issued that may be disposed of
29 without court appearance, the issuing officer shall write on the

1 citation the amount of bail applicable to the violation.

2 (d) Community work shall be performed at the direction of the
3 governing body of the municipality or the village council of the
4 established village. The value of community work in lieu of a fine is
5 \$5.00 per hour. When the community work is completed, the person
6 cited for the violation shall mail or personally deliver to the clerk
7 of the court in which the citation is filed by the peace officer

8 (1) a form, prescribed by the board, indicating completion
9 of the community work; and

10 (2) a copy of the citation, indicating that the right to an
11 appearance is waived, a plea of no contest is entered, and that the
12 bail is forfeited or community work has been performed and that all
13 alcoholic beverages seized are forfeited.

14 (e) When bail has been forfeited or community work performed
15 under this section, a judgment of conviction shall be entered. For-
16 feiture of bail or performance of community work and forfeiture of all
17 seized items is a complete satisfaction for the violation. The clerk
18 of court accepting the bail or the form indicating performance of
19 community work shall provide the offender with a receipt stating that
20 fact.

21 (f) If the person fails to pay the bail amount established under
22 (c) of this section or to perform community work as provided in (d) of
23 this section, the citation is considered a summons.

24 (g) Notwithstanding other provisions of law, if a person cited
25 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
26 11.498 for which a bail amount has been established under (c) of this
27 section appears in court and is found guilty, the penalty that is
28 imposed for the offense may not exceed the bail amount for that
29 offense established under (c) of this section.

1 (h) A violation of AS 04.11.498 or an ordinance adopted under
2 AS 04.11.498 may not be considered a criminal offense and may not
3 result in imprisonment, nor is a fine imposed for a violation con-
4 sidered criminal punishment. A person cited for a violation does not
5 have a right to a jury trial or court appointed counsel.

6 * Sec. 5. AS 04.16.220(a) is amended to read:

7 (a) The following are subject to forfeiture:

8 (1) alcoholic beverages manufactured, sold, offered for
9 sale or possessed for sale, bartered or exchanged for goods and ser-
10 vices in this state in violation of AS 04.11.010; alcoholic beverages
11 stocked, warehoused, or otherwise stored in violation of AS 04.21.060;
12 alcoholic beverages possessed, sold or offered for sale in an area
13 where the results of a local option election have, under AS 04.11.-
14 490 - 04.11.500, prohibited the possession of alcoholic beverages or
15 prohibited the board from issuing, renewing, or transferring one or
16 more licenses or permits under this title in the area; alcoholic
17 beverages transported into the state and sold to persons not licensed
18 under this chapter in violation of AS 04.16.170(b);

19 (2) materials and equipment used in the manufacture, sale,
20 offering for sale, possession for sale, barter or exchange of alco-
21 holic beverages for goods and services in this state in violation of
22 AS 04.11.010; materials and equipment used in the stocking, warehous-
23 ing, or storage of alcoholic beverages in violation of AS 04.21.060;
24 materials and equipment used in the sale or offering for sale of an
25 alcoholic beverage in an area where the results of a local option
26 election have, under AS 04.11.490 - 04.11.500, prohibited the board
27 from issuing, renewing, or transferring one or more licenses or per-
28 mits under this title in the area;

29 (3) aircraft, vehicles, or vessels used to transport, or

1 facilitate the transportation of

2 (A) alcoholic beverages manufactured, sold, offered
3 for sale or possessed for sale, bartered or exchanged for goods
4 and services in this state in violation of AS 04.11.010;

5 (B) property stocked, warehoused, or otherwise stored
6 in violation of AS 04.21.060;

7 (C) alcoholic beverages imported into a municipality
8 or established village in violation of AS 04.11.496;

9 (D) alcoholic beverages possessed in violation of
10 AS 04.11.498 or an ordinance adopted under AS 04.11.498;

11 (4) alcoholic beverages found on licensed premises that
12 [WHICH] do not bear federal excise stamps if excise stamps are re-
13 quired under federal law;

14 (5) alcoholic beverages, materials, or equipment used in
15 violation of AS 04.16.175.

16 * Sec. 6. AS 04.16.220(d) is amended to read:

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

19 (1) upon conviction of a person under AS 04.11.010, 04.11.-
20 496(b), 04.11.498, or AS 04.21.060;

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

24 * Sec. 7. AS 04.16.220(h) is amended to read:

25 (h) Alcoholic beverages forfeited under (d) of this section
26 shall be placed in the custody of a peace officer of the state and
27 destroyed not later than 30 days after forfeiture. All other property
28 [PROPERTY] forfeited under this section shall be placed in the custody
29 of the commissioner of public safety for disposition according to an

1 order entered by the court. The court shall order destroyed any
2 property forfeited under this section that [WHICH] is harmful to the
3 public. Other property shall be ordered sold and the proceeds used
4 for payment of expenses of the proceedings for forfeiture and sale,
5 including expenses of seizure, custody and court costs. The remainder
6 of the proceeds shall be deposited in the general fund.

7 * Sec. 8. AS 04.21.010(a) is amended to read:

8 (a) A municipality may adopt ordinances governing the barter,
9 sale, and consumption of alcoholic beverages within the municipality
10 as necessary for the orderly conduct of the business of selling alco-
11 holic beverages within the municipality and may ban possession of
12 alcoholic beverages under AS 04.11.498(c). An ordinance adopted under
13 this section may not be inconsistent with this title or regulations
14 adopted under this title.

15 * Sec. 9. AS 04.21.080(b)(1) is repealed and reenacted to read:

16 (1) "alcoholic beverage" means spirituous, vinous, malt or
17 other fermented or distilled liquids, whatever the origin, that are
18 intended for human consumption and that contain more than one percent
19 alcohol by volume, whether produced commercially or privately;

20 * Sec. 10. AS 29.10.200 is amended by adding a new paragraph to read:

21 (47) AS 29.20.270(e) (ordinance veto by mayor).

22 * Sec. 11. AS 29.20.270(a) is amended to read:

23 (a) Except as provided in (c), [AND] (d) and (e) of this sec-
24 tion, the mayor may veto an ordinance, resolution, motion, or other
25 action of the governing body and may strike or reduce appropriation
26 items.

27 * Sec. 12. AS 29.20.270 is amended by adding a new subsection to read:

28 (e) The veto does not extend to an ordinance adopted under
29 AS 04.11.498. This subsection applies to home rule and general law

1 municipalities.

2 * Sec. 13. AS 29.25.020 is amended by adding a new subsection to read:

3 (d) This section does not apply to an ordinance proposed under
4 AS 04.11.502(c).

5 * Sec. 14. AS 29.25.070 is amended by adding a new subsection to read:

6 (d) This section does not apply to an ordinance adopted under
7 AS 04.11.498(c).

8 * Sec. 15. AS 29.35.080(a) is amended to read:

9 (a) A municipality may regulate the possession, barter, sale,
10 importation, and consumption of alcoholic beverages in accordance with
11 AS 04.11.480 - 04.11.506 and AS 04.21.010.