

Introduced: 4/4/86  
Referred: Community & Regional  
Affairs, Judiciary and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE

2

SPONSOR SUBSTITUTE FOR 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 vio-  
20 lence, 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;

26 (7) in communities that have chosen to ban the sale and importa-  
27 tion of alcohol, most drinking takes place in private homes; and

28 (8) the economic cost of alcohol abuse is high, and cannot be  
29 afforded by the state or small rural communities.

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

2 Sec. 04.11.498. PROHIBITION OF POSSESSION OF ALCOHOLIC BEVER-  
3 AGES. (a) The following question, appearing alone, may be placed  
4 before the voters of a municipality or an established village in  
5 accordance with AS 04.11.502: "Shall the possession of alcoholic  
6 beverages be prohibited in . . . . (name of municipality or vil-  
7 lage)? (yes or no)."

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

25 (c) If a majority of the voters of a municipality vote "yes" on  
26 the question set out in (a) of this section, an ordinance is adopted  
27 that becomes effective beginning on the first day of the month follow-  
28 ing certification of the results of the election, and a person may not  
29 knowingly possess an alcoholic beverage in the municipality, unless

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

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

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

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

28 (c) A petition filed with the local governing body of a munic-  
29 ipality in accordance with (a) of this section, which places on the

1 ballot the question set out in AS 04.11.498, shall constitute a pro-  
2 posed ordinance of the municipality.

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

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

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

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

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

24 (c) The supreme court shall establish by rule or order a sched-  
25 ule of bail amounts that may be forfeited without a court appearance  
26 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-  
27 11.498. In establishing the bail schedule the supreme court may  
28 consider the quantity of alcoholic beverages possessed and the number  
29 of prior violations of the person cited. The maximum bail amount may

1 not exceed \$1,000, and if a citation is issued that may be disposed of  
2 without court appearance, the issuing officer shall write on the  
3 citation the amount of bail applicable to the violation.

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

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

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

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

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

26 (g) Notwithstanding other provisions of law, if a person cited  
27 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-  
28 11.498 for which a bail amount has been established under (c) of this  
29 section appears in court and is found guilty, the penalty that is

1 imposed for the offense may not exceed the bail amount for that  
2 offense established under (c) of this section.

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

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

9 (a) The following are subject to forfeiture:

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

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

1 permits under this title in the area;

2 (3) aircraft, vehicles, or vessels used to transport, or  
3 facilitate the transportation of

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

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

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

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

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

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

18 \* Sec. 6. AS 04.16.220(b) is amended to read:

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

26 (1) the seizure is incident to a valid arrest, [OR] search,  
27 or a citation issued under AS 04.11.498 or an ordinance adopted under  
28 AS 04.11.498;

29 (2) the property subject to seizure is the subject of a

1 prior judgment in favor of the state; or

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

6 \* Sec. 7. AS 04.16.220(d) is amended to read:

7 (d) Property subject to forfeiture under (a) of this section may  
8 be forfeited

9 (1) upon conviction of a person under AS 04.11.010, 04.11.-  
10 496(b), 04.11.498, or AS 04.21.060;

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

14 \* Sec. 8. AS 04.16.220(h) is amended to read:

15 (h) Alcoholic beverages forfeited under (d) of this section  
16 shall be placed in the custody of a peace officer of the state and  
17 destroyed not later than 30 days after forfeiture. All other property  
18 [PROPERTY] forfeited under this section shall be placed in the custody  
19 of the commissioner of public safety for disposition according to an  
20 order entered by the court. The court shall order destroyed any  
21 property forfeited under this section that [WHICH] is harmful to the  
22 public. Other property shall be ordered sold and the proceeds used  
23 for payment of expenses of the proceedings for forfeiture and sale,  
24 including expenses of seizure, custody and court costs. The remainder  
25 of the proceeds shall be deposited in the general fund.

26 \* Sec. 9. AS 04.21.010(a) is amended to read:

27 (a) A municipality may adopt ordinances governing the barter,  
28 sale, and consumption of alcoholic beverages within the municipality  
29 as necessary for the orderly conduct of the business of selling

1       alcoholic beverages within the municipality and may ban possession of  
2       alcoholic beverages under AS 04.11.498(c). An ordinance adopted under  
3       this section may not be inconsistent with this title or regulations  
4       adopted under this title.

5       \* Sec. 10. AS 04.21.080(b)(1) is repealed and reenacted to read:

6               (1) "alcoholic beverage" means spirituous, vinous, malt or  
7       other fermented or distilled liquids, whatever the origin, that are  
8       intended for human consumption and that contain alcohol, whether  
9       produced commercially or privately;

10       \* Sec. 11. AS 29.10.200 is amended by adding a new paragraph to read:

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

12       \* Sec. 12. AS 29.20.270(a) is amended to read:

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

17       \* Sec. 13. AS 29.20.270 is amended by adding a new subsection to read:

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

21       \* Sec. 14. AS 29.25.020 is amended by adding a new subsection to read:

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

24       \* Sec. 15. AS 29.25.070 is amended by adding a new subsection to read:

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

27       \* Sec. 16. AS 29.35.080(a) is amended to read:               •

28               (a) A municipality may regulate the possession, barter, sale,  
29       importation, and consumption of alcoholic beverages in accordance with

1 AS 04.11.480 - 04.11.506 and AS 04.21.010.