

Offered: 4/16/86
Referred: Judiciary and Finance

Original sponsor: Rules Committee

1 IN THE HOUSE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700 (C&RA)
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, iso-
23 lated, 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, and the sale of
10 alcoholic beverages, or the sale and importation of alcoholic bever-
11 ages, has been previously prohibited in the established village in
12 accordance with AS 04.11.490 or 04.11.494, a person, beginning on the
13 first day of the month following certification of the results of the
14 election, may not knowingly possess an alcoholic beverage in the
15 established village, unless the alcoholic beverage is wine to be used
16 for bona fide religious purposes based on tenets or teachings of a
17 church or religious body, is limited in quantity to the amount neces-
18 sary for religious purposes, and is dispensed only for religious
19 purposes, by a person recognized by the church or religious body as
20 authorized to dispense the wine. The board shall be notified immedi-
21 ately after certification of the results of the election and there-
22 after may not issue, renew, or transfer between holders or locations a
23 license for licensed premises located within the perimeter of the
24 established village as defined in AS 04.21.080(b)(8).

25 (c) If a majority of the voters of an established village vote
26 "yes" on the question set out in (a) of this section and the sale of
27 alcoholic beverages, or the sale and importation of alcoholic bever-
28 ages, has not been previously prohibited in the established village in
29 accordance with AS 04.11.490 or 04.11.494, and a person, beginning 90

1 days after certification of the results of the election, may not
2 knowingly possess an alcoholic beverage in the established village,
3 unless the person is licensed by the board or the alcoholic beverage
4 is wine to be used for bona fide religious purposes based on tenets or
5 teachings of a church or religious body, is limited in quantity to the
6 amount necessary for religious purposes, and is dispensed only for
7 religious purposes by a person by the church or religious body as
8 authorized to dispense the wine. The board shall be notified immedi-
9 ately after certification of the results of the election and there-
10 after may not issue, renew, or transfer between holders or locations a
11 license for licensed premises located within the perimeter of the
12 established village as defined in AS 04.21.080(b)(8). Licenses that
13 may not be renewed because of a local option election held under this
14 section are void 90 days after the results of the election are cer-
15 tified. A license that will expire during the 90 days after the
16 results of a local option election under this section are certified
17 may be extended until it is void under this section, by payment of a
18 prorated portion of the annual license fee.

19 (d) If a majority of the voters of a municipality vote "yes" on
20 the question set out in (a) of this section, and the sale of alcoholic
21 beverages, or the sale and importation of alcoholic beverages, has
22 been previously prohibited in the municipality in accordance with
23 AS 04.11.490 or 04.11.494, an ordinance is adopted that becomes effec-
24 tive beginning on the first day of the month following certification
25 of the results of the election, and a person may not knowingly possess
26 an alcoholic beverage in the municipality, unless the alcoholic bever-
27 age is wine to be used for bona fide religious purposes based on
28 tenets or teachings of a church or religious body, is limited in
29 quantity to the amount necessary for religious purposes, and is

1 dispensed only for religious purposes, by a person recognized by the
2 church or religious body as authorized to dispense the wine. The
3 board shall be notified immediately after certification of the results
4 of the election and thereafter may not issue, renew, or transfer
5 between holders or locations a license for licensed premises located
6 within the boundaries of the municipality and within unincorporated
7 areas within five miles of the boundaries of the municipality.

8 (e) If the majority of the voters of a municipality vote "yes"
9 on the question set out in (a) of this section and the sale of alco-
10 holic beverages, or the sale and importation of alcoholic beverages,
11 has not been previously prohibited in the municipality in accordance
12 with AS 04.11.490 or 04.11.494, and an ordinance is adopted that
13 becomes effective beginning 90 days after certification of the results
14 of the election, and a person may not knowingly possess an alcoholic
15 beverage in the municipality, unless the alcoholic beverage is wine to
16 be used for bona fide religious purposes based on tenets or teachings
17 of a church or religious body, is limited in quantity to the amount
18 necessary for religious purposes, and is dispensed only for religious
19 purposes by a person recognized by the church or religious body as
20 authorized to dispense the wine. The board shall be notified immedi-
21 ately after the adoption of the ordinance and thereafter may not
22 issue, renew, or transfer between holders or locations a license for
23 licensed premises located within the boundaries of the municipality
24 and within unincorporated areas within five miles of the boundaries of
25 the municipality. Licenses that may not be renewed because of a local
26 option election held under this section are void 90 days after the
27 results of the election are certified. A license that will expire
28 during the 90 days after the results of a local option election under
29 this section are certified may be extended, until it is void under

1 this section, by payment of a prorated portion of the annual fee.

2 (f) If a majority of the voters vote "no" on the question set
3 out in (a) of this section or vote "yes" on the questions set out in
4 AS 04.11.492 or 04.11.500 in an election conducted in accordance with
5 AS 04.11.502 after an election in which the voters voted "yes" on the
6 question set out in (a) of this section, the prohibition on the pos-
7 session of alcoholic beverages is removed effective 90 days after the
8 results of the election are certified except as those prohibitions
9 continue to be imposed in accordance with the results of the subse-
10 quent election.

11 (g) For the purposes of this section, "possession" means having
12 physical possession of or exercising dominion or control over alco-
13 holic beverages, but does not include having alcoholic beverages
14 within the digestive system of a person.

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

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

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

21 Sec. 04.16.205. PENALTY FOR VIOLATING BAN ON POSSESSION OF
22 ALCOHOLIC BEVERAGES. (a) A person who possesses alcoholic beverages
23 in a municipality or established village in violation of AS 04.11.498
24 or an ordinance adopted under AS 04.11.498 may, upon conviction, be
25 punished by a fine not to exceed \$1,000. When a peace officer stops
26 or contacts a person concerning a violation of AS 04.11.498 or an
27 ordinance enacted under AS 04.11.498, the peace officer may, in the
28 officer's discretion, issue a citation to the person as provided in
29 AS 12.25.180.

1 (b) A person cited for a violation of AS 04.11.498 or an ordi-
2 nance adopted under AS 04.11.498 for which a bail amount has been
3 established under (c) of this section may, within 30 days after the
4 date the citation is issued

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

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

12 (c) The supreme court shall establish by rule or order a sched-
13 ular of bail amounts that may be forfeited without a court appearance
14 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
15 11.498. In establishing the bail schedule the supreme court may
16 consider the quantity of alcoholic beverages possessed and the number
17 of prior violations of the person cited. Before establishing or
18 amending the schedule of bail amounts required by this subsection, the
19 supreme court shall appoint and consult with an advisory committee
20 consisting of the following seven persons: one superior court judge,
21 one magistrate from each judicial district in the state, a representa-
22 tive of the Department of Law, and a representative of the Public
23 Defender Agency. The maximum bail amount may not exceed \$1,000, and
24 the issuing officer shall write on the citation the amount of bail
25 applicable to the violation.

26 (d) Community work shall be performed at the direction of the
27 governing body of the municipality or the governing body of the estab-
28 lished village. The value of community work in lieu of a fine is
29 \$5.00 per hour. When the community work is completed, the person

1 cited for the violation shall mail or personally deliver to the clerk
2 of the court in which the citation is filed by the peace officer

3 (1) a form, prescribed by the administrative director of
4 the Alaska Court System, indicating completion of the community work;
5 and

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

10 (e) When bail has been forfeited or proof of performance of
11 community work under this section has been filed with the court, a
12 judgment shall be entered. Forfeiture of bail or filing proof of
13 performance of community work and forfeiture of all seized items is a
14 complete satisfaction for the violation. The clerk of court accepting
15 the bail or the form indicating performance of community work shall
16 provide the offender with a receipt stating that fact, if requested.

17 (f) If the person fails to pay the bail amount established under
18 (c) of this section, or fails to provide proof of performance as spec-
19 ified in (d)(1) of this section to the court, the citation is con-
20 sidered a summons.

21 (g) Notwithstanding other provisions of law, if a person cited
22 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
23 11.498 for which a bail amount has been established under (c) of this
24 section appears in court and is found guilty, the penalty that is
25 imposed for the offense may not exceed the bail amount for that of-
26 fense established under (c) of this section.

27 (h) A violation of AS 04.11.498 or an ordinance adopted under
28 AS 04.11.498 may not be considered a criminal offense and may not
29 result in imprisonment, nor is a fine imposed for a violation

1 considered criminal punishment. A person cited for a violation does
2 not have a right to a jury trial or court appointed counsel.

3 (i) The commissioner of public safety shall prescribe and pro-
4 vide a suitable standard citation form that is in a form necessary to
5 identify the offender, to identify the offense, and to meet the needs
6 of public safety and administration of justice.

7 (j) A municipality shall adopt a citation form that is equiva-
8 lent to that prescribed by the commissioner under (i) of this section.

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

10 (a) The following are subject to forfeiture:

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

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

1 from issuing, renewing, or transferring one or more licenses or per-
2 mits under this title in the area;

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

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

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

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

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

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

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

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

25 (1) the seizure is incident to a valid arrest or search;

26 (2) the property subject to seizure is the subject of a
27 prior judgment in favor of the state; or

28 (3) there is probable cause to believe that the property is
29 subject to forfeiture under (a) of this section; except for alcoholic

1 beverages possessed in violation of AS 04.11.498 or an ordinance
2 adopted under AS 04.11.498, property seized under this paragraph may
3 not be held over 48 hours or until an order of forfeiture is issued by
4 the court, whichever is earlier.

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

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

8 (1) upon conviction of a person under AS 04.11.010, 04.11.-
9 496(b), or AS 04.21.060 or upon entry of judgment under AS 04.11.498
10 or an ordinance adopted under AS 04.11.498;

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 no earlier than 30 days after forfeiture. All other prop-
18 erty [PROPERTY] forfeited under this section shall be placed in the
19 custody of the commissioner of public safety for disposition according
20 to an 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(d) or (e). An ordinance adopt-
3 ed under this section may not be inconsistent with this title or
4 regulations 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 as a beverage and that contain alcohol,
9 whether produced commercially or privately;

10 * Sec. 11. AS 04.21.080(b) is amended by adding a new paragraph to
11 read:

12 (12) "community work" means and is limited to work on
13 projects designed to reduce or eliminate environmental damage, protect
14 the public health, or improve public land, forests, parks, roads,
15 highways, facilities, or education; community work may not confer a
16 private benefit on a person except as may be incidental to the public
17 benefit.

18 * Sec. 12. AS 29.10.200 is amended by adding a new paragraph to read:

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

20 * Sec. 13. AS 29.20.270(a) is amended to read:

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

25 * Sec. 14. AS 29.20.270 is amended by adding a new subsection to read:

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

29 * Sec. 15. AS 29.25.020 is amended by adding a new subsection to read:

1 (d) This section does not apply to an ordinance proposed under
2 ALS 04.11.502(c).

3 * Sec. 16. AS 29.25.070 is amended by adding a new subsection to read:

4 (d) This section does not apply to an ordinance adopted under
5 AS 04.11.498(d) or (e).

6 * Sec. 17. AS 29.35.080(a) is amended to read:

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