

SB

239

COMMITTEE REPORT
SENATE

FURTHER: Finance

1/14/80

Date: 4/1/80

Mr. President:

The Committee on JUDICIARY has had SSSB 239
relating to alcoholic beverages

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SSSB 239 same title
 new title
- and recommends CS-SSSB 239
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN



POUCH V

JUNEAU, ALASKA 99811

TELEPHONE 465-4922

Alaska State Legislature

Senate

February 12, 1980

SENATOR

Bill Ray

CHAIRMAN

COMMITTEE ON TRANSPORTATION

COMMITTEE ON TITLE IV CODE REVISION

BLUE RIBBON COMMISSION
ON THE STATE PERSONNEL ACT

TO: Senator Robert Ziegler
Chairman, Judiciary Committee

FROM: Senator Bill Ray *BR*

I have gone over each of the recommendations in regard to the letter of February 4th from CHAR and offer the following explanations:

- Page 1: 04.06.020 - If the word "persons" was deleted and the words "a licensee" substituted, it would not give employees working in the alcoholic beverage industry an opportunity to serve on the board. By having the word "persons," it includes both licensees and employees.
- Page 2: 04.06.060 - Deletion of this section and keeping the old language changes balance. Three members (two from Liquor) could make decisions. New way avoids that.
- Page 3: 04.06.090 - In order for regulations to have the full force and effect of law they must be legally adopted by the Board. Most boards have the authority to adopt regulations instead of waiting for legislative action. They must go through Administrative Procedures hearings.
- 04.06.090(c) - Does not restrict free enterprise; having control over the size of a licensed area is necessary for proper protection of both licensee and general public.
- 04.06.090(d) - This section gives the board a wider scope in selecting qualified enforcement agents.
- Page 5: 04.06.100(14) - To add the word "filing" before fees makes no sense. This section is for the establishment and collection of fees to be paid for a license or permit, not the establishment and collection of a filing fee, which is a registration fee for the processing of an application.
- Page 9: 04.11.090(b) - The beverage dispensary license fee has not been raised in over 20 years.
- 04.11.090(c) - The requirement of a bond works very well as a deterrent and keeps out unbondable applicants.

- Page 11: 04.11.110(c) - Making the annual fee for a club license at \$600 does have some merit.
- Page 12: 04.11.150(b) - Retail license fees have not been raised in over 20 years.
- 04.11.150(e) & (f) - The basic tenet of the entire control law is that the sale must be from the "premises" only.
- Page 13: 04.11.150(g) - This subsection defines premises for subsection (e).
- Page 16: 04.11.190(a) - Subsection (b) takes care of the problem in regard to first class or home rule cities.
- Page 20: 04.11.260 - Why shouldn't all of the authorized officers sign the application?
- Page 21: 04.11.270(2) - The addition of the words "which has occurred within the past year" is agreeable with me.
- Page 22: 04.11.300 - Substituting the word "may" for "shall" is not satisfactory especially in outlying areas. The State Police has access to information on applicants that is necessary to enable the board to make their decisions.
- 04.11.310 (line 17) - I think the board should make the determination where notices should be posted for public inspection.
- 04.11.310 (line 22) - The bush legislators are adamant about the provision being in the law. Many people in the bush areas do not speak or write English.
- 04.11.320(a) (line 28) - These are mandatory provisions which are scattered throughout the act and as such not only NECESSARY, but informative to a possible applicant. It tells him what the board cannot do!
- Page 23: 04.11.320(a)(5) & (10) - Local Option.
- Page 24: 04.11.320(b)(4) - Local Option is a cornerstone in any democratic society and should be recognized as the "people's right" to have some regulation within their respective areas.
- 04.11.330 (line 14) - Here again these provisions are statutory requirement.
- 04.11.330(a)(5) - This subsection is local option petition.
- Page 25: 04.11.330(a)(9) - Local Option.
- Page 26: 04.11.340 - This again is local option elections.

04.11.360 (line 21) - Again these are mandatory requirements presently appearing in the statutes.

Page 27: 04.11.360(7) - Local Option.

Page 28: 04.11.370(4) & (5) - Municipalities have the right of adopting ordinances as long as such ordinances are consistent with the act; i.e., opening and closing hours.

04.11.370(9) - OK to delete this subsection as this is language which appears in the regulations which have the full force and effect of law.

04.11.370(10) - This is language that currently appears in the regulations which have full force and effect of law.

Page 29: 04.11.400(2) - How does this need clarification? It is clear to me as written.

Page 30: 04.11.400(g)(1)(B) - Why would you want this portion of the sentence deleted? These licenses are nontransferable as to other persons, not locations. A licensed premises may want to (or be forced to) move within a one-mile radius of his premises. CHAR's change would deny this.

Page 33: 04.11.460(a) (lines 17 & 18) - I can see no problem in deleting the words "unless specifically required by the board."

04.11.460(b) - This language clearly defines license procedure for premises to be located more than 50 miles from an incorporated area.

04.11.460(b)(2) - This language clearly defines licenses outside municipalities within 50 miles of an organized area.

Page 34: 04.11.470 - I can see no reason to make this change. This section provides for public input which is often beneficial regardless of residency status.

04.11.480(b) - Local Option.

Page 35: 04.11.490 - Local Option.

Page 38: 04.11.500 - Local Option.

Page 39: 04.11.510(b)(2) - Why should "on its own initiative" be deleted? A hearing may be beneficial for all concerned.

04.11.510(3) - Local Option.

Page 40: 04.11.520 (line 28) - The addition of the words "within 10 days" is fine with me.

- Page 44: 04.11.660(a) - In regard to a license being a property right, I am unaware of the court test referred to.
- 04.11.670 (lines 18 & 19) - Supreme Court cases state that the board has the authority to determine who has the license.
- 04.11.690 - It would be nonsense to delete this section. It certainly would not be in the public's interest to have monopolies take over in the industry.
- Page 45: 04.16.010(d) - Local Option.
- Page 46: 04.16.030 - Deletion of the words "or with criminal negligence" takes the authority out of the section.
- 04.16.030(3) - Deletion of this subsection takes the authority out of the entire title.
- Page 47: 04.16.049(2) - Fine with me to delete the words "and punning" but the general public may disagree.
- Page 48: 04.16.052 (line 16) - The addition of the word "knowingly" changes the section so that the language has the assumption then the licensee and employees would have to "know" to "allow" disposition of alcoholic beverages to persons under the age of 19.
- Page 49: 04.16.060(d) (line 13) - The law is Title IV.
- Page 50: 04 16.080 - The "pub" at the University of Alaska is not in the gymnasium, so there is no conflict.
- Page 51: 04.16.140 - This cite is for storage places other than the licensed premises.
- Page 52: 04.16.180(b)(1) & (2) - Doesn't make sense; first and second conviction could receive the same number of days for a closure. The second conviction should be stronger than the first.
- 04.16.180(3) - Why should a licensee be issued an operating certificate once his license has been revoked?
- 04.16.180(d) - Local Option. Undermines power of board and local option.
- Page 53: 04.16.200(2) - Why should an unlicensed person not be fined or punished for selling or trafficking in alcoholic beverages without a license?
- Page 57: 04.21.020 - This section clarifies "legally" as meaning only drunks and minors.

Section 1

Sec. 04.06.010. ESTABLISHMENT OF BOARD. This section establishes the Alcoholic Beverage Control Board, as a regulatory and quasi-judicial agency which is among the agencies that under the terms at Article III, sec. 22 of the Alaska Constitution need not be allocated within a principal department.

Sec. 04.06.020. APPOINTMENT AND QUALIFICATIONS. This section establishes the number and qualifications of members of the board. The section also provides that the members of the board shall be appointed by the governor and confirmed by the legislature, in accordance with Article III, sec. 26 of the Alaska Constitution.

Sec. 04.06.030. TERMS OF OFFICE. This section prescribes the terms of office of the board members, and provides for the filling of vacancies.

Sec. 04.06.040. PER DIEM AND EXPENSES. This section provides payment of travel expenses and per diem of board members as authorized by law for other boards and commissions. This authorization for the payment of travel and per diem appears at AS 39.20.180.

Sec. 04.06.050. MEETINGS. The intent of this section is that the board meet at least four times a year, one time each in the four judicial districts in the state.

Sec. 04.06.060. QUORUM AND MAJORITY. It is the intent of this section that three members of the board are necessary to establish a quorum for routine business. It is further the intent that a majority of the whole membership of the board, or three members all voting the same way, are necessary to approve or deny an application for a new license, a renewal, transfer, suspension or revocation of an existing license. This section does not preclude less than a majority of the board from holding hearings; or appeals from action taken by the board or director; upon the direction of the majority.

Sec. 04.06.070. APPOINTMENT AND REMOVAL OF DIRECTOR. It is the purpose of this section to provide a continuity in the directorship of this agency freeing the position from possible

political patronage during a change of administration. It is also the purpose of this section to provide a check and balance between the governor and the board in the same manner. The intent of this section is to allow the governor to remove the director only for misconduct, misfeasance or malfeasance requiring notice of the charges and hearing on those charges while allowing summary removal by the board for any reasons the board considers appropriate.

Sec. 04.06.075. AUTHORITY OF DIRECTOR. This section gives the director power to enforce this title and regulations adopted by the board.

Sec. 04.06.080. DELEGATION OF AUTHORITY. It is the intent of this section that the board is solely responsible for its actions and for the policies vested within its powers and duties necessary for the control of alcoholic beverages. The board may delegate all of its responsibilities to the director except its power to adopt regulations. The delegation of authority to the director is discretionary to the board and in no manner does it free them from the responsibility of errors in judgment or law committed in their name by the director.

Sec. 04.06.090. POWERS AND DUTIES. This section enumerates the powers and responsibilities of the board. The board is granted power to employ enforcement agents directly or through contracts with other departments and agencies of the state. This section states that the salaries of personnel of the board in the exempt service shall be set by the Department of Administration. Finally, the board is charged with notifying licensees and municipalities of major changes to this title.

Sec. 04.06.100. REGULATIONS. This section authorizes the board to adopt regulations to carry out the purposes of Title 4. This section enumerates a number of the subjects which may be addressed but this list is specifically stated not to be all inclusive. Among those subjects particularly authorized are the creation of classifications of licenses and permits not provided for in this title and the establishment and collection of fees to be paid on application for a license or permit.

Sec. 04.06.110. PEACE OFFICER POWERS. It is the intent of this section that the board may delegate limited peace officer powers to the director or any of its employees. The limitation on these limited peace officer powers is that they may apply only when necessary for the enforcement of the criminally punishable provisions of this title, regulations of the board, other criminally punishable laws and regulations governing the manufacture, barter, sale, consumption, and possession of alcoholic beverages in the state. Because of the strict limitation of peace officer powers provided in this section, the director or board employees are not included within the definition of peace officer or fireman contained in AS 39.-35.680(27) and may not qualify for peace officer or fireman benefits under AS 39.35. State troopers and certified peace officers under contractual agreements to the board are not affected by this section.

Section 2

Sec. 04.11.010. LICENSE OR PERMIT REQUIRED. Under this section, all manufacturing, selling, offering for sale, possessing for sale, trafficking in, bartering or exchanging for goods and services of alcoholic beverages is prohibited unless authorized under a license or permit issued under this title. It also limits orders for delivery of alcoholic beverages in areas where, by local option, alcoholic beverages may not be sold.

Sec. 04.11.020. EXCEPTIONS: LICENSE OR PERMIT NOT REQUIRED. Subsection (a) of this section makes an exception to the general requirement that a license or permit be obtained in those circumstances when sales are made by order of a court, whether as a result of foreclosure, bankruptcy, or forfeiture. Subsection (b) excepts from the requirement of obtaining a license or permit persons who solicit equal contributions from persons attending a private gathering of co-workers or of a professional, social, or fraternal organization, but only if the amount required to purchase the alcoholic beverages is collected and used for the purchase of the same.

Sec. 04.11.030. DEATH OF A LICENSEE. This section excepts from the general requirement that a license or permit need be obtained by an executor or administrator of the estate of a person holding a license as a sole licensee until the administrator has a reasonable opportunity to obtain board

approval for the transfer of the license to himself or somebody else. Subsections (c) and (d) prohibit transfer of the license into the name of the deceased's estate.

Sec. 04.11.040. BOARD APPROVAL OF TRANSFERS. The intent of this section is to require a licenseholder to obtain the consent of the board before transferring his license between persons or locations.

Sec. 04.10.050. REPORTS REQUIRED OF CORPORATIONS. This section requires a corporation holding a license to report to the board any change in its corporate officers or directors, and report to the board when 10 percent or more of its corporate stock is transferred regardless of whether the transfer of stock is required to have board approval under the preceding section. Only corporations encompassed by subsection (c) are excepted from this reporting requirement.

Sec. 04.11.060. NONRESIDENT DISTILLER, BREWER, WINERY OR WHOLESALER. This section sets out the requirements which must be fulfilled before a distiller, brewer, winery or wholesaler whose plant or principal place of business is outside the state may sell products inside the state.

Sec. 04.11.070. POWER LIMITED TO THE BOARD. This section codifies the principle recognized by the superior court in CY Inc. v. Linda Brown, Alcoholic Beverage Control Board, No. 1569 and the Supreme Court in Queen of the North, Inc. v. Henry C. Legue, No. 1670, that court ordered transfers of licenses are subject to the approval of the Alcoholic Beverage Control Board.

Sec. 04.11.080. TYPES OF LICENSES AND PERMITS. This section lists the licenses and permits authorized under this title.

Sec. 04.11.090. BEVERAGE DISPENSARY LICENSE. This section enumerates those fees and bonding requirements particularly relating to the beverage dispensary license, and describes the extent of the authority granted by the license, specifically in relation to hotels, motels, resorts or similar businesses, bowling alleys, and duplicate licenses issuance when more than one service bar is maintained. It is the intent of that portion of this section dealing with duplicate licenses that issuance of duplicates is entirely discretionary by the board and is limited to beverage dispensary licenses.

Sec. 04.11.100. RESTAURANT OR EATING PLACE LICENSE. This section addresses the requirements particularly relating to the restaurant license, including the requirements relating to the service of food and requires control by licensee of both the liquor and food ends of the business.

Sec. 04.11.110. CLUB LICENSE. This section enumerates the extent of authority granted under a club license, specifies the kinds of organizations which may be issued a club license, who may purchase liquor from a premises licensed under a club license, and the uses to which liquor purchased by an organization licensed under this license may be put.

Sec. 04.11.120. BOTTLING WORKS LICENSE. This section outlines the authority granted under a bottling works license.

Sec. 04.11.130. BREWERY LICENSE. This section outlines the authority granted under a brewery license. Subsection (c) allows the brewery to permit a person to sample the brew free of charge; otherwise it states the same restrictions on sales as the bottling works license.

Sec. 04.11.140. WINERY LICENSE. This section outlines the authority granted under a winery license. Subsection (c) allows the winery to permit a person to sample the wine free of charge, otherwise it states the same restrictions on sales as the bottling works license.

Sec. 04.11.150. PACKAGE STORE LICENSE. This section describes the extent of authority granted under a package store license; among the limitations contained in this section is a prohibition on the consumption of alcoholic beverages on the premises and a prohibition on access from the licensed premises to a retail business not licensed under this title. It includes language granting authority to the board to require licenseholder to install additional entrances to a package store. The legislature has determined there is no enforceable provision limiting individual sales in any one day short of ration cards or some other cumbersome procedure. However, this determination should not deter enforcement agents from investigating excessively large or particularly unusual purchases to determine their ultimate use. Example: "particularly unusual" would be the purchase of case lots of half pints or pints by individuals.

This section does not allow "over the bar" sales in a beverage dispensary which is adjacent or connected to a package store even though both licenses are issued to the same person or corporation.

This section also limits sales to persons present at the premises or by written order where the purchaser is personally known to the licensee and the beverage purchased must be delivered to the purchaser.

Sec. 04.11.160. WHOLESALE LICENSES. This section sets forth the limits of the authority granted under the general wholesale license and the wholesale malt beverage and wine license. Among other things, this section requires that wholesalers obtain either a general wholesale license or a wholesale malt beverage and wine license for each location where alcohol is distributed from a warehouse. The reference to AS 04.24.-040 exempts sales to federal instrumentalities from the requirements that wholesalers licensed under this section sell only to persons licensed under this title.

Sec. 04.11.180. COMMON CARRIER DISPENSARY LICENSE. This section outlines the authority granted under a common carrier dispensary license. It is the intent of this section that the board need not conform to or distinguish its decision from any action it has taken in the past on applications presenting similar facts, but may, instead, base its decision on the particular facts before it. (See comment on sec. 04.11.437)

Sec. 04.11.190. COMMUNITY LIQUOR LICENSE. The intent of this section is to authorize the licensure of a city to operate a beverage dispensary or package store, so long as the city has had no privately owned beverage dispensaries or package stores which are in operation and have been in continuous operation prior to June 1, 1970; however, if a beverage dispensary or package store has had a privately owned beverage dispensary or package store in continuous operation beginning after June 1, 1970, the city may be issued a community liquor license only if no other license of the same type is in effect within the city. Subsection (d) requires a city council to apply for a community liquor license if approved by a majority of the people at a local option election. Also the city council may apply on its own initiative for a license.

Sec. 04.11.200. RETAIL STOCK SALE LICENSE. The intent of this section is to provide a means for the owner of a package store business who has lost his package store license through expiration or forfeiture to liquidate his remaining stock. As subsection (d) indicates, this type of license may not be issued to a person whose package store license was suspended or revoked. It is the intent of this section that only the owner of the package store business may receive such a license and that liquidators, insurance companies, banks, etc., do not qualify unless they were the licensee.

Sec. 04.11.210. RECREATIONAL SITE LICENSE. The intent of this section is to authorize the licensure of persons to sell beer and wine at the site of recreational events. This license may not be used at a school event but may use school grounds or fields or other property when approved by the board.

Sec. 04.11.220. PUB LICENSE. The intent of this section is to authorize licensure of premises on the campus of a college or university to sell beer and wine. It is intended that beer and wine be sold at only one location on campus under this license.

Sec. 04.11.230. CATERER'S PERMIT. This section prescribes the conditions whereby a caterer's permit may be obtained and used. The intent of this section is to provide a means whereby the holder of a beverage dispensary license can secure legal authority to sell alcoholic beverages off his licensed premises for specific occasions. Subsection (b) requires the written approval of the law enforcement agency having jurisdiction over the site of the occasion for which the permit is sought which must be obtained and accompany the application.

Sec. 04.11.240. SPECIAL EVENTS PERMIT. The intent of this section is to provide a means whereby nonprofit fraternal, civic, or patriotic organizations may secure legal authority to sell alcoholic beverages without a license. This section prescribes how a special events permit may be obtained and used. Like the caterer's permit, the written approval of the law enforcement agency having jurisdiction over the designated premises of the occasion for which the special events permit is sought must accompany the application.

Sec. 04.11.250. **CONDITIONAL CONTRACTORS PERMIT.** The intent of this section is to provide a means whereby alcoholic beverages can be sold without a license at a construction site located within the boundaries of a military or naval reservation. This section prescribes how a conditional contractor permit may be obtained and used. It provides for the revocation or suspension of this permit at the discretion of the commanding officer or the prime contractor.

Sec. 04.11.260. **APPLICATION FOR A NEW LICENSE OR PERMIT.** This section prescribes what information must be supplied in an application for a license or permit. Subsection (c) specifies what additional documentation must be filed with the application in order to substantiate that requirements imposed by other sections have been met. Subsection (b) requires that the names and addresses of stockholders who own 10 percent or more of the stock in a corporation holding a license be listed. Subsection (b) relates to the reporting requirements of sec. 04.11.050 and the required board approval of transfers of stock required under sec. 04.11.040.

Sec. 04.11.270. **APPLICATION FOR RENEWAL OF LICENSE OR PERMIT.** This section prescribes what information must be supplied in an application for renewal of a license or permit, as well as the procedure by which licenses and permits are renewed. If the procedure prescribed in paragraph (b)(2) is not adhered to, a license expires in accordance with sec. 04.11.540.

Sec. 04.11.280. **APPLICATION FOR TRANSFER OF A LICENSE TO ANOTHER PERSON.** This section prescribes what information must be supplied in an application for transfer of a license to another person. The applicant is required to execute a statement listing all debts and taxes owed by the business so that the board can determine whether the application must be denied under sec. 04.11.360(4). It allows the board to require other information be furnished.

Sec. 04.11.290. **APPLICATION FOR TRANSFER OF LICENSE LOCATION.** This section addresses what information must be supplied in an application for transfer of the location of licensed premises. While generally delegating to the board specification of information required, specific mention is made of documentation which must be filed with the application in order to substantiate that the requirements imposed by other sections have been met.

Sec. 04.11.300. STATE TROOPER INVESTIGATION. This section is a directive to the state troopers to assist the director in his investigation of applicants.

Sec. 04.11.310. NOTICE OF APPLICATION. It is the intent of this section that all applicants for original issuance of licenses, as well as a transfer of license between persons or location, be required to post a copy of the application at the proposed licensed premises. The making of the additional notice provided in paragraphs (1) and (2) is required of applicants at the board's discretion.

Sec. 04.11.320. DENIAL OF NEW LICENSES AND PERMITS. This section lists grounds upon which an application for a license or permit shall be denied, in not in their entirety, then by reference to another place in the statutes where the prohibition is spelled out. It is not intended that these grounds be the exclusive grounds upon which an application for a license or permit be denied. Paragraph (a)(1) and (b)(1), by providing for denial if issuance is not in the best interests of the public, would authorize broad discretion in denial for any reason found incompatible with the public interest. The purpose of this listing is to indicate those grounds which compel denial of an application. Incorporated cities which did not have licensed premises before June 19, 1970 must have approval by local option election before a license may be issued.

Sec. 04.11.330. DENIAL OF LICENSE OR PERMIT RENEWAL. Subsections (a) and (c) of this section list grounds upon which an application for renewal of a license or permit shall be denied, if not in their entirety, then by reference to another place in the statutes where the prohibition is spelled out. It is not intended that these grounds be the exclusive grounds upon which an application for a license or conditional contractor's permit be denied. Paragraphs (a) and (c)(1), by providing for denial if renewal is not in the best interest of the public, would authorize broad discretion in denial for any reason found incompatible with the public interest. Instead, the purpose of this listing is to indicate those grounds which compel denial of an application. Subsection (b) of this section leaves the decision to deny renewal of a license because of nonpayment of taxes to the discretion of the board.

Sec. 04.11.340. DENIAL OF TRANSFER OF LOCATION. This section lists grounds upon which an application for transfer of location of a license or permit shall be denied, if not in their entirety, then by reference to another place in the statutes where the prohibition is spelled out. It is not intended that these grounds be the exclusive grounds upon which an application for a license or conditional contractor's permit be denied. Paragraph (1), by providing for denial if transfer is not in the best interests of the public, would authorize broad discretion in denial for any reason found incompatible with the public interest. Instead, the purpose of this listing is to indicate those grounds which compel denial of an application.

Sec. 04.11.360. DENIAL OF TRANSFER OF A LICENSE TO ANOTHER PERSON. This section lists grounds upon which an application for transfer of a license to another person shall be denied, if not in their entirety, then by reference to another place in the statutes where the prohibition is spelled out. It is not intended that these grounds be the exclusive grounds upon which a license or conditional contractor's permit be denied. Paragraph (1), by providing for denial if a transfer is not in the best interests of the public would authorize broad discretion in denial for any reason found incompatible with the public interest. Instead, the purpose of this listing is to indicate those grounds which compel denial of an application. Noteworthy, perhaps, is the difference between paragraph (4) and sec. 04.11.330(b), the former requiring denial of a transfer between persons if debts and taxes are not paid while the latter providing that denial on this ground is at the board's discretion.

Sec. 04.11.370. SUSPENSION AND REVOCATION OF LICENSES AND PERMITS. Like the foregoing four sections, this listing of grounds is not exhaustive; like them, paragraph (2) authorizes suspension or revocation of a license if continuation of activities would not be in the best interests of the public. The intent behind listing the grounds for suspension of a license or permit is to foreclose any argument that suspension or revocation on any of the grounds listed is in excess of the jurisdiction of the board.

Sec. 04.11.390. RESIDENCE. It is the intent of this section that all applicants for licenses be resident at least one year in the state. In the matter of corporations, a certificate of authority allowing transaction of business by a

foreign corporation under AS 10.05.598 - 10.05.696 at least a year previous to applying for a license or permit is acceptable.

Sec. 04.11.400. POPULATION LIMITATIONS. This section expresses the legislature's intention with regard to the ratio of licenses to population. The basic formula is set forth in subsection (a); subsection (b) grants the board specific authority to deny an application for a license just outside of a town where the population inside and within the immediate vicinity of the town is not equal to the required minimum. Subsections (e) and (f) define the term "population" by reference to a specific date, thereby eliminating any uncertainty in this regard. Finally, the legislature intends subsections (g), (h) and (i) to delineate exceptions to the general rule enunciated in (a) of this section.

Sec. 04.11.410. RESTRICTION OF LOCATION NEAR CHURCHES AND SCHOOLS. This section places restrictions on the board with regard to the issuance, renewal, and transfer of location of premises of a license when the premises are located within 200 feet of a school ground or church building.

Sec. 04.11.420. ZONING LIMITATIONS. The intent of this section is to require the board to determine whether issuance of a license would violate a zoning ordinance and moreover to compel denial of issuance if a zoning ordinance is found to be contrary to the issuance. It is the intent of this section that a municipality notify the board if the issuance of a license would be in violation of said municipality's zoning ordinances in existence prior to the application for license.

This section deals with applications for new licenses and transfer of location only. It does not allow a municipality to zone an existing license out of its present location except in accordance with usual zoning principles applying to any uses including provisions for continuation as non-conforming uses. (See Sec. 8 of this Act)

Sec. 04.11.430. PERSON AND LOCATION. The intent of this section is to keep the name and address of a licensee accurate and current by requiring the name and address of the licensee. The term "individual" is used in this section to contrast with corporation instead of the term "person" since by general

definition and as the term is otherwise used in this Act the term "person" also includes corporations.

Sec. 04.11.450. PROHIBITED FINANCIAL INTEREST. By prohibiting persons other than the licensee from holding direct or indirect financial interests in licensed premises, this section is aimed at prohibiting hidden financial interests in licensed premises. The intent of this section is also to prohibit wholesalers, brewers, vintners, bottlers and distillers from having any ownership interest in beverage dispensaries or package stores licenses or premises.

Credit sales of stock are not prohibited but do not give the creditor any right, title, or interest in or to the license. (See sec. 04.11.070)

Credit sales of stock are given at the creditor's risk and are of no particular interest to the board except under the provisions of sec. 04.11.360(4).

Sec. 04.11.460. PRIOR PUBLIC APPROVAL. This section requires applicants for issuance of new licenses to be located outside municipalities as well as applicants for transfers of location of existing licenses to be located within 50 miles of municipalities to secure the signature of the local residents. Note that that proportion of permanent residents whose signature is required to be secured, as well as the geographical limits within which signatures must be secured differs depending on whether the premises are to be within or without 50 miles of the municipality.

Sec. 04.11.470. OBJECTION. The intent of this section is to establish a process whereby objections to applications by individual members of the public are received and reviewed in a regularized fashion.

Sec. 04.11.480. PROTEST. This section provides for special handling of objections made by local governing bodies, or permanent residents residing outside of but within two miles of an incorporated city or established village. Sec. 04.-11.520 of this revision requires the board to notify the local governing body of the receipt of an application for a premises within the boundaries of the area of the governing body's jurisdiction while sec. 04.11.510 of this revision requires the board to withhold action on an application for

30 days to give a local governing body time to protest; subsection (a) requires a local governing body which wishes to protest an application to submit to the board a protest within 30 days of receipt from the board of notice of filing the application. It is the intent of this section in conjunction with sec. 04.11.520 to provide a municipality sufficient time and process to formally protest an application coming from within their boundaries. Subsection (c), together with AS 04.11.510(b)(3) provides that if the permanent residents residing outside of but within two miles of an incorporated city or an established village submit the signatures of 35 percent of their number on a petition, then the board is required to hold a public hearing on the protest. Public hearings may be held at the board's discretion in response to objections and protests made by individuals and local governing bodies, whereas a hearing is required to be held if a petition filed with the board presents a question of law or contains the signatures of 35 percent of the adult residents having a permanent place of abode outside of but within two miles of an incorporated city or an established village.

Sec. 04.11.490. LOCAL OPTION ELECTION. This section authorizes municipalities to conduct local option elections on the following questions:

- (1) whether alcohol should be prohibited entirely in a community;
- (2) whether alcohol should be prohibited entirely except if sold through either a package store or beverage dispensary operated under a community liquor license;
- (3) whether a municipality which has previously banned the sale of alcohol through a local option election should apply for a community liquor license enabling it to sell through a package store or beverage dispensary;
- (4) whether beverage dispensary or package store licenses in effect in the community should be banned, and a community liquor license sought in order to enable the city to sell liquor through a beverage dispensary or package store; and

(5) whether the sale of alcoholic beverages should be banned in a community unless sold under a restaurant or eating place license.

While subsection (a) allows the local governing body to place one or more of these questions on a separate ballot at the next municipal election, subsection (b) requires the lieutenant governor to conduct the election, canvass the ballots, and publish the results.

The intent of subsections (d), (e), (f), (g) and (h) of this section is to specify the results should the voters vote favorably on one or more of the questions appearing on the separate ballot.

The intent of subsection (i) is to provide that licenses and permits which are not renewed as a result of a local option election expire at midnight on December 31, and do not continue in effect through February 28, as sec. 04.11.540 would otherwise authorize.

Subsection (k) continues in effect the substance of provisions in current law providing for issuance of licenses if a majority of the voters at a subsequent election reverse the results of an earlier election on the same question. It also provides that if more licenses than would be allowed under the population limits of AS 04.11.040 would be authorized but the council requests that the population limit apply no more licenses than are allowable under the population limit may be issued.

Sec. 04.11.500. LOCAL OPTION ELECTION IN UNINCORPORATED AREAS. The intent of this section is to authorize local option type elections for unincorporated areas. It provides for an election in unincorporated areas on whether a license should be issued, renewed, or transferred into an established village, if 35 percent of the residents of the village and those residing within a two-mile radius so petition.

Sec. 04.11.510. PROCEDURE FOR ACTION ON LICENSE APPLICATIONS, SUSPENSIONS, AND REVOCATIONS. This section specifies procedures to be followed by the board when reviewing applications for issuance, renewal, transfer of location, and transfer of ownership of licenses, as well as when suspending and revoking licenses. It is the intent of this section that when an application is denied, the applicant may request

an informal hearing with either the director or board where he will be informed of the reason for denial. If he is not satisfied, he is then entitled to a hearing under the Administrative Procedures Act.

It is further the intent of this section that when the board believes a violation has occurred, they will inform the licensee by accusation of their proposed action against the licensee. The licensee is then afforded an informal hearing with either the board or the director. If he is not satisfied he may file a notice of defense and be provided a formal hearing under the Administrative Procedures Act.

Further, it is the intent of this section upon the conviction of a licensee, his agent or employee (AS 04.11.370(4)(5)), the board shall afford the licensee notice and hearing which meet minimal due process requirements. Paragraphs (b)(1) and (b)(2) are addressed to the conduct of hearings to receive public comment on an application. As mentioned earlier public hearings may be held at the board's discretion in response to objections and protests made by individuals and local governing bodies, whereas a hearing is required to be held if a petition filed with the board presents a question of law or contains the signatures of 35 percent of the adult residents having a permanent place of abode outside of but within two miles of an incorporated city or an established village.

Sec. 04.11.520. NOTICE. By requiring the board to notify local governing bodies of its receipt of application for issuance, renewal, transfer of location or transfer of ownership for licenses in or into the area of its geographical location, this section, together with 04.11.480(a) and 04.11.510(a), allows local governing bodies 30 days to protest before any action is taken on an application. It requires the board to give notice to the local governing body within 10 days of the receipt of the application.

Sec. 04.11.530. CONSIDERATION OF SENTENCING REPORT. The intent of this section is to require the board, before revoking or suspending a license on grounds that the licensee, or his agent or employee was convicted of violating any provision of law, regulation, or ordinance, to take into consideration the sentencing report prepared by the court under AS 12.55.025 which sec. 7 of this bill requires to be sent to the board. Under AS 12.55.025, this sentencing report includes

- (1) a verbatim record of the sentencing hearing and any other court procedures;
- (2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;
- (3) a clear statement of the terms of the sentence imposed; and
- (4) recommendations as to the place of confinement or the manner of treatment.

Sec. 04.11.535. IMPUTED LIABILITY. It is the intent of this section to provide a licensee a minimal protection from illegal acts committed by his agents or employees deriving from the agent's or employee's negligence, conspiracy with others, or direct disobedience of the licensee's instructions, etc.

It is further the intent of this section that the burden of proof shall be upon the licensee that the violations occurred without his consent, or knowledge, or in a manner in which he had no direct control.

Sec. 04.11.537. APPLICATION OF PRECEDENT. The intent of this section is that the board need not follow its own precedent in carrying out its administrative adjudication functions, i.e. ruling on applications for issuance, renewal, transfer, or suspension or revocation of a license or permit.

Sec. 04.11.540. LICENSE RENEWAL AND EXPIRATION. This section provides for the expiration of licenses only after a two-month grace period, during which the license may be renewed, has elapsed. It is the intent of this section that the license may not be exercised during the grace period unless and until it is renewed.

Sec. 04.11.550. NOTICE OF EXPIRATION. The intent of this section is that the board assist licensees by warning them of the impending expiration of their licenses; however, the responsibility for renewal is a responsibility of the licensee and failure on the part of the board to mail a warning does not constitute a defense to expiration of the license on grounds of failure to file for renewal within the prescribed time.

Sec. 04.11.560. APPEALS. The intent of subsection (a) of this section is to oblige the board to hear appeals taken from the action of its officers, employees, or agents. The intent of subsection (b) of this section is to provide authorization, required under the terms of AS 22.10.020, for appeals to the superior court from the action of the board.

Sec. 04.11.570. REFUND AND FORFEITURE OF FEES. The intent of this section is to specify those conditions under which the license fee paid at the time of filing the application is returnable. Notice that mention is made of "application fees." Such fees are to be established by the board by regulation adopted under sec. 04.06.100(b)(14).

Sec. 04.11.580. SURRENDER OR DESTRUCTION OF LICENSE. The intent of this section is to specify those conditions under which the license must be surrendered to the board. Moreover, subsection (c) instructs the licensee what to do if the license is destroyed.

Sec. 04.11.590. DISPOSITION OF FUNDS. This section requires all program receipts collected by the board, whether under the provisions of this title or regulations adopted under the provisions of this title, to be deposited in the general fund.

Sec. 04.11.610. REFUND TO MUNICIPALITIES. The purpose of this section is to provide an incentive to municipalities to actively enforce liquor laws, and the authority to grant, deny and recover refunds of license fees is intended to further that purpose.

Sec. 04.11.630. ACCESSIBILITY OF LICENSED PREMISES TO INSPECTION. This section would allow officers charged with enforcement of this title to inspect licensed premises without a search warrant. The intent of subsection (b) is that the license be posted on the premises in such a place and manner that it may be easily taken down and presented for a close personal inspection.

Sec. 04.11.660. LICENSE A PRIVILEGE. The purpose of this section is to limit the rights incident to holding a license for dealing in alcoholic beverages to those powers specified by statute and those rights arising from the U.S. and Alaska Constitutions concomitant to holding such statutorily granted

powers. Therefore, the normal incidents of ownership only apply to the extent specified by statute and insofar as rights are accorded to persons in the position of such licensees by the U.S. and Alaska Constitutions.

Sec. 04.11.670. FORECLOSURE. The intent of this section is to prohibit use of the license as collateral for debts, except that if a licensed premises is sold on a contract, the transferor may secure payment for real and personal property conveyed to the transferee upon the promise of the transferee to transfer the license back to the transferor upon default in payment. (Under Queen of the North, Inc. v. Henry C. Legue, No. 1670, what is collateralized is not the license itself, only a right to petition the Alcoholic Beverage Control Board for transfer of the license and there is no intent to change that holding.)

Sec. 04.11.680. DURATION OF LICENSES AND PERMITS. This section indicates that a license is issued for a term ending the immediately subsequent December 31, unless the board prescribes a term ending earlier for that particular license. Note that this section is addressed to the question of the term of the license, whereas sec. 04.11.540 is addressed to the expiration of the license -- two separate questions. Also note that permits are valid for that duration specifically prescribed by the board.

Sec. 04.11.690. DISCOURAGEMENT OF MONOPOLIES. It is the intent of this section that the board discourage the creation of monopolies and submit their proposals on the matter, if any, to the governor and the legislature for their consideration.

Section 3

Sec. 04.16.010. HOURS OF SALE AND PRESENCE ON LICENSED PREMISES. This section specifies the times between which persons may not sell, offer for sale, give, furnish or consume an alcoholic beverage on licensed premises, or enter licensed premises, as well as the times between which a licensee, his agent, or employee may not permit a person to consume liquor or enter licensed premises, delineating exceptions to these requirements.

Sec. 04.16.020. SOLICITATION OF ALCOHOLIC BEVERAGES. The intent of this section is prohibition of B-Girl type of activity as well as the prohibition of the employment or sufferance

of the presence of such persons on the premises by licensees, their agents, or employees.

Sec. 04.16.030. SALE OR DISPOSITION OF ALCOHOLIC BEVERAGES TO DRUNKEN PERSONS. This section enumerates the prohibitions on licensees, their agents, or employees with regard to selling, giving, bartering of alcohol to drunken persons, permitting other persons to sell, give, or barter alcohol to drunken persons on licensed premises or permitting drunken persons to enter licensed premises or sell alcohol. It is the intent of this section that a licensee, his agent, or employee be subjected to more than an ordinary degree of responsibility in making sales, serving or giving of intoxicating beverages to take care that he or she does not sell, serve, or give intoxicating beverages to a drunken person.

This section places a duty upon the seller, server, or giver of intoxicating beverages before he or she sells, serves or gives intoxicating beverages to a person to use their powers of observation to see that which can easily be seen, and hear that which can easily be heard, under the existing conditions and circumstances and to determine whether the person is so far under the influence of intoxicating beverages that his conduct and demeanor are drunken and such drunken conduct or demeanor should be reasonably discernible to a person of ordinary experience in dispensing alcoholic beverages who has a duty to observe persons to whom alcoholic beverages are dispensed.

The use of intoxicating liquor by the average person in such quantity to produce drunkenness causes many commonly known outward manifestations which are "plain" and "easily seen or discovered" and when such manifestations exist and a licensee, his agent, or employee still sells, serves, or gives to a person so affected, he has violated this section whether this was because he failed to observe what was plain or easily seen or discovered, or because, having observed, he ignored that which was apparent.

On the charge of selling, serving or giving intoxicating liquor to a drunken person, the facts constituting the alleged outward manifestations should be presented, and it is ordinarily the province of a jury to determine whether or not they were such as to be observable and recognizable as the usual indications of a drunken or overly intoxicated person.

Sec. 04.16.040. ACCESS OF DRUNKEN PERSONS TO LICENSED PREMISES. The intent of this section is to make it unlawful for a drunken person to enter a licensed premises, or for a person to remain on the premises after becoming drunken.

Sec. 04.16.041. OBLIGATION TO ENFORCE RESTRICTIONS IN LICENSED PREMISES. The intent of this section is to prohibit on-the-premises consumption of alcoholic beverages except when it is specifically permitted by the terms of the license.

Sec. 04.16.049. ACCESS OF PERSONS UNDER THE AGE OF 19 TO LICENSED PREMISES. This section enumerates the conditions upon which minors may enter and remain on licensed premises. The intent of subsection (b) is to authorize licensees, their agents, or employees to refuse entry, refuse service, or eject minors who otherwise meet the requirement specified in subsection (a). In subsection (c), board designation of a hotel, restaurant or eating place as suitable for the employment of minors is intended to be separate and apart from licensure of those premises.

Sec. 04.16.050. POSSESSION OR CONSUMPTION BY PERSONS UNDER THE AGE OF 19. This section is the prohibition on "minors consuming."

Sec. 04.16.051. FURNISHING OF ALCOHOLIC BEVERAGES TO PERSONS UNDER THE AGE OF 19. This section is the prohibition on furnishing liquor to minors. Subsection (c) carves out exceptions to the prohibition in (a) whereby liquor can be furnished by persons who stand in relation to the minor in one of a number of defined relationships. Subsection (c) provides, however, that subsection (b) does not make acts constituting contributing to the delinquency of a minor under AS 11.51.130 lawful.

Sec. 04.16.052. FURNISHING OF ALCOHOLIC BEVERAGES TO PERSONS UNDER THE AGE OF 19 BY LICENSEES. This section enumerates the prohibition on licensees, their agents, and employees with regard to allowing other persons to sell, barter, or give alcohol to a minor within licensed premises, allowing minors to enter licensed premises unlawfully, allowing a minor to consume alcohol within a licensed premises, or allowing a person under the age of 19 to sell or serve alcohol.

Sec. 04.16.060. PURCHASE BY PERSONS UNDER THE AGE OF 19. This section prohibits actions leading to the acquisition of alcohol by minors, to wit: direct purchase, solicitation of purchase by others for the minor's benefit; misrepresentation by others of the age of a minor seeking the acquisition of alcohol; misrepresentation of his age by a minor seeking to acquire alcohol, whether or not a false ID is used; or misrepresenting having obtained the consent required under 04.16.049 of a parent or guardian to the presence of a minor on licensed premises. It is the intent of this section that persons under 19 who unlawfully procure or attempt to procure alcoholic beverages be legally responsible for their actions.

Sec. 04.16.070. SALES ON ELECTION DAY. It is the intent of this section that the sale, barter, gift, consumption, or disposal of alcoholic beverages be prohibited on the days elections for candidates to office are held at the statewide or local level. Under this section elections solely concerned with ballot propositions would not activate this prohibition unless on "local option" propositions. Notice that under subsection (c) municipalities may exempt themselves from the application of this section.

Sec. 04.16.080. SALES AT SCHOOL EVENTS. Prohibits the sale or consumption of alcohol at school events.

Sec. 04.16.090. PROHIBITION OF BOTTLE CLUBS. The intent of this section is the prohibition of the operation of unlicensed premises where, for consideration (1) alcoholic beverages are kept for the consumption of the public at large, or (2) where alcoholic beverages may be brought and consumed. Note that subsection (c) defines consideration broadly, including not only cover charges but also sale of food, ice, mixers, and the furnishing of glassware. It is the intent that indirect consideration, as well as direct consideration, for providing alcoholic beverages be prohibited to restrict evasion of the policy of this title.

Sec. 04.16.100. RESTRICTION ON SIZE OF CONTAINERS. This section prohibits sales of alcohol in sizes of containers deceptively similar in appearance to containers of a different volume. The intent is to protect the public from deceptive trade practices.

Sec. 04.16.110. SALE OF POWDERED ALCOHOL PROHIBITED. No substance having alcoholic content and intended for human consumption may be sold in the state unless in liquid form.

Sec. 04.16.120. REMOVAL OR INTRODUCTION OF ALCOHOLIC BEVERAGES. This section prohibits persons from carrying alcohol on or off premises on which alcohol purchased on the premises only may be consumed, except for licensees, agents, or employees as provided in subsection (b).

Sec. 04.16.130. STOCK CONFINED TO LICENSED PREMISES. This section prohibits storing alcoholic beverages off the licensed premises in any premises other than premises authorized for storage under sec. 04.21.060. The latter section requires that (1) the premises to be used for storage are inspected and approved by the board before their use (2) the use of the premises is authorized by local zoning ordinances (3) the premises are accessible for inspection as provided in AS 04.11.630. Subsection (b) exempts delivery trucks from the coverage of (a).

Sec. 04.16.140. SALE OR CONSUMPTION OF ALCOHOLIC BEVERAGES IN A WAREHOUSE. Prohibits sale or consumption of alcoholic beverages on premises approved for storage under 04.21.060 (described in the preceding section).

Sec. 04.16.150. LICENSEE RESPONSIBLE FOR VIOLATIONS. It is the intent of this section that the licensee is responsible for violations of this title, and its regulations, by his agent or employees if he failed to observe what was plain and easily seen or discovered, or because, having observed, he ignored that which was apparent. This sanction is in addition to the administrative sanctions which may be imposed under sec. 04.11.370(5) against a licensee who allows his agents or employees to violate this title. Also note that under sec. 04.11.535(b) if the board finds that a licensee knowingly, recklessly, or with criminal negligence "allowed" the unlawful action of an agent or employee, the board is obliged to file a criminal complaint charging the licensee with violation of this section.

Sec. 04.16.170. SOURCE OF ALCOHOLIC BEVERAGES. This section prohibits licensees engaged in sales to consumers from buying from unlicensed persons, and persons transporting alcohol into the state from selling to unlicensed persons, except where used for specified purposes.

Sec. 04.16.175. FURNISHING ALCOHOLIC BEVERAGES IN AID OF GAMBLING ENTERPRISE. This section prohibits an agent or employee of a gambling enterprise from furnishing alcoholic beverages to a player. The definitions are identical to those in the criminal code section AS 11.66.280.

Sec. 04.16.180. PENALTIES FOR VIOLATION. This section prescribes both the criminal and administrative sanctions (suspensions and revocations) for violation of this title, except as regards those sections of this title specifically referenced. Subsection (b) limits the period of time a license may be suspended for violations by a licensee, his agents or employees for violations of laws, regulations, or ordinances and permits revocation only upon a third conviction. Under (c) of this section a licensee can have three convictions charged against him solely on the basis of convictions of his agents or employees of laws, regulations, or ordinances if the licensee is found to have allowed or to have acted recklessly or with criminal negligence that he is responsible for the violation. Subsection (d) of this section expresses the legislature's intent that the limitations in subsection (c) on suspension and revocation do not apply if the board determines that continuance of a license is in the best interest of the public.

Sec. 04.16.200. UNLICENSED PERSONS. This section prescribes a separate penalty, different from the general penalty prescribed in sec. 04.16.180, for sale by unlicensed persons. Under this section, bootlegging is a Class A misdemeanor unless the illegal sales are made to a minor or the violation is a second offense, in which case the violation is a felony. A mandatory jail sentence is required if the offense is committed in an area where, by local option, sale is forbidden.

Sec. 04.16.210. PENALTY FOR MAKING FALSE STATEMENT. This section prescribes a separate penalty, different from the general penalty prescribed in sec. 04.16.180, for making a false statement on an application.

Sec. 04.16.220. FORFEITURES. This section provides for the forfeiture of alcoholic beverages, as well as materials, equipment, and conveyances involved in violations of liquor laws. Procedures for the seizure of the property are specified, and notice to the owner of the impending forfeiture provided. This section authorizes forfeitures of property either as part of a criminal action leading to forfeiture, or in an

independent civil action. Relief from forfeiture is provided owners of property forfeited or holders of interest in property forfeited who can show they were neither involved in the violation subjecting the property to forfeiture nor knew of the violation. Subsection (g) provides that property can be forfeited in an in rem proceeding regardless of whether criminal proceeding has resulted in a conviction or acquittal. Finally, destruction or sale of forfeited property is provided for.

Section 4

Sec. 04.21.010. MUNICIPAL REGULATION. The purpose of this section is to describe with particularity the regulatory and taxing powers granted municipalities in regard to alcoholic beverages by Title 29 (see AS 29.48.010(7) and AS 29.48.035). Authorization is provided for municipalities to adopt ordinances "necessary to the orderly conduct of the business of selling alcoholic beverages" but the ordinances must be consistent with this title and regulations. Moreover, subsection (b) limits the circumstances in which taxes may be levied on alcoholic beverages inventories and sales.

Sec. 04.21.020. LIMITATION ON CIVIL LIABILITY. It is the intent of this section that a licensee, his agent, or employee who lawfully furnishes an alcoholic beverage to a person who is 19 years of age or older, or a person who is not drunken, may not be held civilly liable for injuries resulting from the consumption of said alcoholic beverage by the above described persons or a third party.

"Lawfully" in this section concerns itself only with the age and physical condition of the person furnished the alcoholic beverage.

Sec. 04.21.030. RESPONSIBILITY OF LICENSEES, AGENTS AND EMPLOYEES. This section requires that a licensee shall make every effort a prudent person would in the operation and management of his licensed business.

It is the intent of this section that it present a standard whereby it may be determined whether a licensee who has no actual knowledge of the violation of a liquor law by an agent or employee has nonetheless acted without the reasonable care that the manager of a business should exercise may be

held to be responsible for the violation. The standards in this section are applied by the board in making the finding required under sec. 04.11.535 before a license may be revoked or suspended on grounds of violation of a liquor law by an agent or employee. It is further the intent of this section that the burden is on the licensee to take reasonable preventive measures to insure violations do not occur on the licensed premises.

It shall be the duty of the board to determine whether the licensee knowingly or negligently allowed violations by his agent or employee.

Sec. 04.21.040. SALES ON FEDERAL RESERVATIONS. This section establishes, and delineates the parameters of, an exception to the requirement appearing in sec. 04.11.160 that holders of general wholesale and wholesale malt beverage and wine licenses sell only to other licensees. It does so by permitting wholesalers of alcoholic beverages to sell to non-licensees when the non-licensee has a "fixed place of business or residence on territory within the state which is maintained by the U.S. government as a military or naval reservation, a national park, or other federal reservation, but only if the purchaser is a ship's service store, officer's club, officer's mess, post exchange, or similar organization."

Sec. 04.21.050. PROOF OF AGE. This section requires licensees, their agents, or employees to secure proof of the age of customers or alternatively, to furnish a signed statement of age. Subsection (b) specifies what is acceptable proof of age. The language in subsection (c) expresses the legislature's intent that the omission prohibited in (a) is the failure to secure proof of age, if and when a valid driver's license or identification card is not forthcoming by a good faith effort to secure a signed statement.

Sec. 04.21.060. WAREHOUSING OF ALCOHOLIC BEVERAGES. This section specifies those conditions under which licensees may warehouse alcoholic beverages off licensed premises.

Sec. 04.21.070. ENFORCEMENT. Requires peace officers to investigate and report to the board violations of this title.

Sec. 04.21.080. DEFINITIONS. This section defines the terms "alcoholic beverage," "board," "criminal negligence," "designated premises," "director," "drunken person," "established

village," "knowingly," "licensed premises," "local governing body," "municipality," "recklessly," and "distributing point."

Section 5

This section amends AS 09.35.087 to exempt liquor licenses not only from execution but also attachment and garnishment.

Section 6

This section amends AS 12.55.025(a) to require the court to prepare a sentencing report whenever the court is imposing sentence upon conviction of a liquor law, thereby adding to the current requirement that the court prepare such a report whenever imposing sentence of over 180 days.

Section 7

This section requires the sentencing report prepared under the amendments in the foregoing section to be sent to the Alcoholic Beverage Control Board, inter alia.

Section 8

This prohibits a local governing body from adopting zoning ordinances which would make illegal the conduct of activities authorized under a license issued before the adoption of the ordinance. (See comment to sec. 04.11.420)

Section 9

This section adds the officers, agents, and employees of the Alcoholic Beverage Control Board to the ranks of the exempt service.

Section 10

This section repeals the law this revision replaces.

Section 11

This section continues in office the present members of the Alcoholic Beverage Control Board until the expiration of their terms.

Sections 12 and 13

These sections establish the effective dates of these amendments.

April 16, 1980

Mr. James Elkins
Fo'c'sle Bar and Liquor Store
312 Front Street
Ketchikan, Alaska 99901

Dear Jim:

The enclosue is the revision of Title 4 in the version in which it passed the Senate the other day. We are also enclosing a copy of the only amendment which was adopted.

After you've read it, you might see that it's circulated among the other dealers in town.

Also, if any changes, amendments, or what-have-you, are in order, your comments and suggestions should be sent to Representative Charles H. Parr, who chairs the House Judiciary Committee.

Best regards,

Robert H. Ziegler, Sr.

RHZ:lk

Enclosure

February 15, 1980

Cabaret, Hotel and Restaurant
Owners Association of Alaska
Mil: 22.5 Old Seward Highway
Anchorage, Alaska

Attention: Executive Director

Dear Sir:

Senator Ray, who serves with me on the Senate Judiciary Committee, has worked laboriously on the recodification of Title 4. You are, of course, familiar with that legislation.

At my request, he researched the comments and proposed changes that you set forth in your recent communication.

His reply thereto is enclosed.

We'll be having a public meeting on the 21st. Thereafter a committee substitute will be prepared and disseminated throughout the state for additional public criticism and comment, if any. I anticipate bringing the bill before the Senate for a floor vote no later than March 15.

Very truly yours,

Robert H. Ziegler, Sr.

Enclosure

RHZ:lk

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

February 21, 1980

The Honorable Bill Ray
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811.

Re: SSSB 239 (revision of alcoholic
beverage control laws -- AS 04)

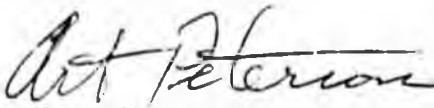
Dear Senator Ray:

Yesterday your staff assistant notified this office that this bill will be coming up for discussion in the Senate Judiciary Committee today. We are interested in the bill and would like to offer some comments on it. However, it is a lengthy bill and we will not be able to complete our analysis of it by this afternoon's meeting and would appreciate being given another opportunity to testify. Our analysis would include a comparison of this bill with the governor's alcohol legislation and the comprehensive revision of AS 04 prepared last year by the Alaska Code Revision Commission (under AS 24.20.075).

Thank you.

Yours truly,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc: The Honorable Robert Ziegler, Chairman ✓
Senate Judiciary Committee

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

420 "L" STREET, SUITE 100
ANCHORAGE, ALASKA 99501

March 4, 1980

The Honorable Robert Ziegler
Chairman, Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SSSB 239 (Revision
of Alcoholic Beverage
Control Laws - AS 04)

Dear Senator Ziegler:

This letter is a follow-up to our letter of February 26, 1980, commenting on SSSB 239. The purpose of this letter is to withdraw the former letter. We are making this request because the views expressed in the February 26 letter, particularly in its appendix, refer to a version of SSSB 239 dated October 8, 1979, when in fact a revised version of SSSB 239 was introduced on January 14, 1980.

The views expressed in the February 26 letter were formulated in a memorandum to my file on December 27, 1979, which was distributed within the Department of Law and Department of Revenue at that time. When instructed to comment on behalf of the Department of Law on February 26, it was my understanding that the views which I was called upon to express at this time were those which I had previously formulated. I was not aware that a revised version of SSSB 239 had been introduced. The Executive Director of the Alcoholic Beverage Control Board brought the oversight to my attention on the 29th of February. I accept the responsibility for this error. Therefore, please disregard the letter of February 26, 1980.

A brief word about the tenor of the remarks in the appendix to the February 26 letter may be in order. In the brief time available, a complete section-by-section

March 4, 1980

analysis of SSSB 239 was impossible. The appendix to the February 26 letter was therefore reproduced from the December 27 internal memorandum. Maybe mistakenly, I thought that even a very informal, impressionistic working paper, which was intended to highlight areas of concern for further thinking, was better than no specifics whatsoever. Had time allowed a more formal critique, I would have been more constructive, and doubtless upon reflection and discussion, my views in some areas could be expected to change. Unfortunately, the instruction that I quickly, on short notice, respond to the Judiciary Committee's request for comments prevented this.

I am reviewing the revised SSSB 239, and will reflect upon the areas of my initial concern. I would like to be helpful and would be happy to assist in any way that I can. My intention is to be responsive to your needs, not to be merely critical.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:


David T. LeBlond
Assistant Attorney General

DTL:dr

cc: The Honorable Bill Ray
Senator, Alaska State Legislature

Wilson L. Condon
Deputy Attorney General

Arthur Peterson
Assistant Attorney General
Juneau - AGO