

COMMITTEE REPORT
SENATE

FURTHER:

4/29/86

Date 5/9/86

Mr. President

The Committee on FINANCE considered CSSSHB 700(Fin)am relating to regulation of alcoholic beverages and enactment of municipal ordinances.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
19.9 Courts
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS

Paul Fisher NKen

[Signature]
Chairman

co [Signature]
Chairman recommendation

Offered: 4/24/86
For Today's Calendar

Original sponsor: Rules Committee by request

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700 (Finance) am
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;
28 (8) the economic cost of alcohol abuse is high, and cannot be
29 afforded by the state or small rural communities; and

1 (9) a fine in the amount of \$1,000 or 200 hours of community
2 work, is not so severe a penalty as to indicate criminality in either rural
3 or urban Alaska communities.

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

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

11 (b) If a majority of the voters of an established village vote
12 "yes" on the question set out in (a) of this section, and the sale of
13 alcoholic beverages, or the sale and importation of alcoholic bever-
14 ages, has been previously prohibited in the established village in
15 accordance with AS 04.11.490 or 04.11.494, a person, beginning on the
16 first day of the month following certification of the results of the
17 election, may not knowingly possess an alcoholic beverage in the
18 established village, unless the alcoholic beverage is wine to be used
19 for bona fide religious purposes based on tenets or teachings of a
20 church or religious body, is limited in quantity to the amount neces-
21 sary for religious purposes, and is dispensed only for religious
22 purposes, by a person recognized by the church or religious body as
23 authorized to dispense the wine. The board shall be notified immedi-
24 ately after certification of the results of the election and there-
25 after may not issue, renew, or transfer between holders or locations a
26 license for licensed premises located within the perimeter of the
27 established village as defined in AS 04.21.080(b)(8).

28 (c) If a majority of the voters of an established village vote
29 "yes" on the question set out in (a) of this section and the sale of

1 alcoholic beverages, or the sale and importation of alcoholic beverages,
2 alcoholic beverages, has not been previously prohibited in the established village in
3 accordance with AS 04.11.490 or 04.11.494, a person, beginning 90 days
4 after certification of the results of the election, may not knowingly
5 possess an alcoholic beverage in the established village, unless the
6 person is licensed by the board or the alcoholic beverage is wine to
7 be used for bona fide religious purposes based on tenets or teachings
8 of a church or religious body, is limited in quantity to the amount
9 necessary for religious purposes, and is dispensed only for religious
10 purposes by a person by the church or religious body as authorized to
11 dispense the wine. The board shall be notified immediately after
12 certification of the results of the election and thereafter may not
13 issue, renew, or transfer between holders or locations a license for
14 licensed premises located within the perimeter of the established
15 village as defined in AS 04.21.080(b)(8). Licenses that may not be
16 renewed because of a local option election held under this section are
17 void 90 days after the results of the election are certified. A
18 license that will expire during the 90 days after the results of a
19 local option election under this section are certified may be extended
20 until it is void under this section, by payment of a prorated portion
21 of the annual license fee.

22 (d) If a majority of the voters of a municipality vote "yes" on
23 the question set out in (a) of this section, and the sale of alcoholic
24 beverages, or the sale and importation of alcoholic beverages, has
25 been previously prohibited in the municipality in accordance with
26 AS 04.11.490 or 04.11.494, an ordinance is adopted that becomes effective
27 beginning on the first day of the month following certification
28 of the results of the election, and a person may not knowingly possess
29 an alcoholic beverage in the municipality, unless the alcoholic

1 beverage is wine to be used for bona fide religious purposes based on
2 tenets or teachings of a church or religious body, is limited in
3 quantity to the amount necessary for religious purposes, and is dis-
4 pensed only for religious purposes, by a person recognized by the
5 church or religious body as authorized to dispense the wine. The
6 board shall be notified immediately after certification of the results
7 of the election and thereafter may not issue, renew, or transfer
8 between holders or locations a license for licensed premises located
9 within the boundaries of the municipality and within unincorporated
10 areas within five miles of the boundaries of the municipality.

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

1 results of the election are certified. A license that will expire
2 during the 90 days after the results of a local option election under
3 this section are certified may be extended, until it is void under
4 this section, by payment of a prorated portion of the annual fee.

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

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

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

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

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

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

1 ordinance enacted under AS 04.11.498, the peace officer may, in the
2 officer's discretion, issue a citation to the person as provided in
3 AS 12.25.180.

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

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

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

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

29 (d) Community work shall be performed at the direction of the

1 governing body of the municipality or the governing body of the estab-
2 lished village. The value of community work in lieu of a fine is
3 \$5.00 per hour. When the community work is completed, the person
4 cited for the violation shall mail or personally deliver to the clerk
5 of the court in which the citation is filed by the peace officer

6 (1) a form, prescribed by the administrative director of
7 the Alaska Court System, indicating completion of the community work;
8 and

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

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

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

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

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

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

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

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

13 (a) The following are subject to forfeiture:

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

25 (2) materials and equipment used in the manufacture, sale,
26 offering for sale, possession for sale, barter or exchange of alco-
27 holic beverages for goods and services in this state in violation of
28 AS 04.11.010; materials and equipment used in the stocking, warehous-
29 ing, or storage of alcoholic beverages in violation of AS 04.21.060;

1 materials and equipment used in the sale or offering for sale of an
2 alcoholic beverage in an area where the results of a local option
3 election have, under AS 04.11.490 - 04.11.500, prohibited the board
4 from issuing, renewing, or transferring one or more licenses or per-
5 mits under this title in the area;

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

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

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

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

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

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

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

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

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

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; except for alcoholic
4 beverages possessed in violation of AS 04.11.498 or an ordinance
5 adopted under AS 04.11.498, property seized under this paragraph may
6 not be held over 48 hours or until an order of forfeiture is issued by
7 the court, whichever is earlier.

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

9 (d) Property subject to forfeiture under (a) of this section may
10 be forfeited

11 (1) upon conviction of a person under AS 04.11.010, 04.11.-
12 496(b), or AS 04.21.060 or upon entry of judgment under AS 04.11.498
13 or an ordinance adopted under AS 04.11.498;

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

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

18 (h) Alcoholic beverages forfeited under (d) of this section
19 shall be placed in the custody of a peace officer of the state and
20 destroyed no earlier than 30 days after forfeiture. All other prop-
21 erty [PROPERTY] forfeited under this section shall be placed in the
22 custody of the commissioner of public safety for disposition according
23 to an order entered by the court. The court shall order destroyed any
24 property forfeited under this section that [WHICH] is harmful to the
25 public. Other property shall be ordered sold and the proceeds used
26 for payment of expenses of the proceedings for forfeiture and sale,
27 including expenses of seizure, custody and court costs. The remainder
28 of the proceeds shall be deposited in the general fund.

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

1 (a) A municipality may adopt ordinances governing the barter,
2 sale, and consumption of alcoholic beverages within the municipality
3 as necessary for the orderly conduct of the business of selling alco-
4 holic beverages within the municipality and may ban possession of
5 alcoholic beverages under AS 04.11.498(d) or (e). An ordinance adopt-
6 ed under this section may not be inconsistent with this title or
7 regulations adopted under this title.

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

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

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

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

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

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

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

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

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

29 (e) The veto does not extend to an ordinance adopted under

1 AS 04.11.498. This subsection applies to home rule and general law
2 municipalities.

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

4

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

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

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

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

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

A/B

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

REQUEST Page 1 of 3

Bill/Resolution No. : CSSSHB 700 (C&RA)
 Title : An Act Relating to Possession
of Alcohol

Sponsor : _____
 Requestor : _____
 Date of Request : _____

Revision Date : _____

FISCAL DETAIL

Agency Affected : Alaska Court System
 BRU : Trial Courts

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		19.9				
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		19.9				

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		19.9				
FEDERAL FUNDS						
OTHER						
TOTAL		19.9				

POSITIONS :

FULL TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attachments

Prepared by : Robert G. Fisher
 Division : Alaska Court System

Phone : 264-8215
 Date : 4/11/86

Approved by Commissioner : Arthur H. Snowden, II *AHS II*
 Agency : Alaska Court System

Date : 4/11/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA COURT SYSTEM
 SCHEDULE OF MAGISTRATE TRAINING CONFERENCE COSTS
~~CSSHB 700~~ - ALCOHOL POSSESSION
 FY 87

CSSSHB 700(C&RA)

ESTIMATED

Page 2 of 3

FROM	TO	ESTIMATED AIR FARE COST	---	PER DIEM	---	ESTIMATED TOTAL COST
			\$/DAYS	RATE	COST	

First District Magistrates:

Angoon	Anchorage	\$366	3	\$80	\$240	\$606
Craig	Anchorage	366	3	80	240	606
Haines	Anchorage	366	3	80	240	606
Hoonah	Anchorage	366	3	80	240	606
Kake	Anchorage	452	3	80	240	692
Pelican	Anchorage	366	3	80	240	606
Skagway	Anchorage	366	3	80	240	606
Yakutat	Anchorage	268	3	80	240	508

Bethel Area Magistrates:

Aniak	Anchorage	328	3	80	240	568
Emmonak	Anchorage	328	3	80	240	568
Hooper Bay	Anchorage	328	3	80	240	568
Mekoryuk	Anchorage	428	3	80	240	668
Quinhagak	Anchorage	328	3	80	240	568
St. Marys	Anchorage	328	3	80	240	568

Second District Magistrates:

Gambell	Anchorage	428	3	80	240	668
Kiana	Anchorage	428	3	80	240	668
Noorvik	Anchorage	428	3	80	240	668
Point Hope	Anchorage	428	3	80	240	668
Savoonga	Anchorage	428	3	80	240	668
Selawik	Anchorage	428	3	80	240	668
Shungnak	Anchorage	428	3	80	240	668
Unalakleet	Anchorage	428	3	80	240	668

Third District Magistrates:

Cordova	Anchorage	130	3	80	240	370
Dillingham	Anchorage	320	3	80	240	560
Glennallen	Anchorage	94	3	80	240	334
Naknek	Anchorage	292	3	80	240	532
Seward	Anchorage	63	3	80	240	303
Unalaska	Anchorage	594	3	80	240	834
Whittier	Anchorage	37	3	80	240	277

Fourth District Magistrates:

Delta Junction	Anchorage	272	3	80	240	512
Ft. Yukon	Anchorage	322	3	80	240	562
Galena	Anchorage	358	3	80	240	598
Healy	Anchorage	130	3	80	240	370
Tanana	Anchorage	272	3	80	240	512
Tok	Anchorage	165	3	80	240	405

Total Cost

 \$19,857
 =====

This bill establishes a mail-in bail forfeiture procedure as the means of enforcing local ordinances which may be adopted to ban the possession of alcohol. The bill impacts the court system by requiring courts to accept and process citations and bail payments for these new offenses.

Accurate processing and accounting procedures will be critical to successful implementation of this bill. For example, if the court issues a bench warrant because its records erroneously indicate a defendant has failed to pay the bail amount or to perform community work, the defendant is likely to sue the state for false arrest.

Although courts in urban areas are familiar with mail-in bail for traffic offenses, outlying magistrate courts have far less experience with these procedures. This fiscal note sets out the costs of a one-time meeting for magistrates to explain the law and the details of the processing and accounting procedures which each affected court will be required to establish.

Sectional Analysis

Committee Substitute for Sponsor Substitute Bill for House Bill 700

"An Act relating to regulation of alcoholic beverages and enactment of municipal ordinances."

SECTION 1: Sets forth in Legislative Findings the specific reasons for amending the existing local option law.

SECTION 2: Provides established villages and municipalities the authority to hold elections to ban possession of alcohol, as an addition to the options for regulating alcohol allowed under current law. Following an election, alcoholic beverages would be banned by city ordinance in municipalities and by state statute in established villages. Excludes from the definition of possession "alcoholic beverages within the digestive system of a person."

SECTION 3: Specifies that a petition for local option election constitutes a proposed ordinance of a municipality.

SECTION 4: Sets penalty for possession of alcohol in violation of law as a maximum \$1,000 fine, for which community work, supervised by the governing body of the community, may be substituted at the option of the offender. Authorizes the Supreme Court to set a bail forfeiture schedule after consultation with an advisory committee. Mandates that the Commissioner of the Department of Public Safety develop a uniform citation form, which must be adopted by municipalities. Allows appearance on a citation to be waived, a plea of no contest to be entered, and bail and all alcoholic beverages seized to be forfeited. Specifies that possession of alcohol in violation of the law is not a criminal offense, and does not give rise to the right to jury trial or to court-appointed counsel.

SECTION 5: Provides that alcoholic beverages possessed in violation of a ban is subject to forfeiture.

SECTION 6: Provides an exception to the requirement that a court hearing be held within 48 hours of seizure of property subject to forfeiture for alcoholic beverages possessed in violation of a community ban on alcohol. This section does not change Alaska law

relating to search and seizure, rather it recognizes that alcohol possessed in violation of a ban is contraband and that a court hearing to consider the propriety of its seizure would have no purpose.

SECTION 7: Specifies that forfeiture may occur at the point when judgment has been entered on a citation.

SECTION 8: Requires that alcoholic beverages forfeited under the law be destroyed no earlier than 30 days after forfeiture.

SECTION 9: Authorizes municipalities to adopt ordinances banning possession of alcohol as set forth in Section 2 of CSSSHB700.

SECTION 10: Clarifies that the definition of alcoholic beverage includes privately produced beverages containing alcohol.

SECTION 11: Conforms Title 29 with Sections 2 and 9.

SECTION 12: Conforms Title 29 with Sections 2 and 9.

SECTION 13: Conforms Title 29 with Sections 2 and 9.

SECTION 14: Conforms Title 29 with Sections 2 and 9.

SECTION 15: Conforms Title 29 with Sections 2 and 9.

SECTION 16: Conforms Title 29 with Sections 2 and 9.

Highway
Users Federation



of special interest **RECEIVED**

5FC-86
5/9/86
MAY 05 1986
Contact: Charles F. Livingston
202/857-1243

DOT/PF
COMMISSIONER'S OFFICE

May 6, 1986

DRINKING AGE STATUS REPORT

Public Law 98-363 (23 U.S.C. 158) establishes a National Minimum Drinking Age of 21 years old. Ten states and the District of Columbia allow people under 21 years of age to drink alcoholic beverages, in clear non-compliance with that law. Federal law requires the U.S. Secretary of Transportation to withhold a portion of federal-aid highway funds from any state whose laws permit the purchase or public possession of any alcoholic beverage by a person who is less than 21 years of age. If a state does not enact a new law or amend its existing laws to make age 21 the legal minimum drinking age by October 1, 1986, five percent of its federal-aid highway apportionment under 23 U.S.C. 104(b)(1) primary system, 104(b)(2) secondary system, 104(b)(5) Interstate and Interstate 4R, and 104(b)(6) urban system funds, shall be withheld.

If by October 1, 1987, no such law is adopted or amendments made, ten percent of a state's fiscal year 1988 federal-aid highway apportionment under the above sections will be withheld. Withheld funds will be returned to the state upon enactment of legislation.

The administrators of the National Highway Traffic Safety Administration and the Federal Highway Administration on March 26, 1986 sent letters to all governors and the Mayor of the District of Columbia informing them of their initial determination regarding compliance with the National Minimum Drinking Age and the implementing rule (23CFR 1208).

Of the 40 states that currently have the 21 year age drinking law, 18 received letters stating that they were in compliance with the law and the federal rule. But 22 states with a 21-year old drinking law received letters stating that the initial determination was one of non-compliance.

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The complying and non-complying states are:

<u>Complying</u>	<u>Non-Complying</u>
1. Arizona	1. Alabama
2. California	2. Alaska
3. Delaware	3. Arkansas
4. Georgia	4. Connecticut
5. Illinois	5. Florida
6. Indiana	6. Kansas
7. Maine	7. Kentucky
8. Maryland	8. Michigan
9. Massachusetts	9. Mississippi
10. Minnesota	10. Missouri
11. New Jersey	11. Nebraska
12. New Mexico	12. New Hampshire
13. North Carolina	13. New York
14. North Dakota	14. Nevada
15. Pennsylvania	15. Oklahoma
16. Oregon	16. Rhode Island
17. Texas	17. South Carolina
18. Virginia	18. Tennessee
	19. Utah
	20. Vermont
	21. Washington
	22. West Virginia

The reason for the determination of non-compliance for each of the 22 states that currently have a 21-year old drinking law is based upon definitions in the rule (23 CFR Part 1208) implementing the statute.

Following is a classification of non-complying determinations:

Failure to Define Alcoholic Beverages as "Not less than one half of one percent" by volume.

Alaska
 Arkansas
 * Florida
 * Kentucky
 Missouri
 New Hampshire
 * New York
 Oklahoma

Rhode Island
 South Carolina
 * Utah
 Washington

Failure to Prohibit Public Possession

- Connecticut - only in a motor vehicle
 * Kentucky - only when for person's own use
 * New York
 Nevada
 Vermont - only when for person's own use or another
 minor.

Provides for Exemption for Purchase and Possession

- Kansas - exemption for personal use, family & guests.
 Michigan - exemption for educational use.
 Nebraska - exemption for personal use, family & guests.
 * Utah - exemption for educational purposes.
 * Vermont - exemption for bulk cider, for educational
 purpose and for personal use.
 Alabama - exemption for military personnel.
 * Florida - exemption for military personnel.
 Tennessee - exemption for military personnel.

Unique

West Virginia - law was signed the day before letter
 was sent

Mississippi - Amendment to definition of alcoholic
 beverages had not been reviewed.

- * More than one non-complying provision.

Federal agencies have provided the non-complying states
 30 days to explain how their laws do not affect the National
 Minimum Drinking Age Statute.

The following 10 states and the District of Columbia
 have been notified that they are in non-compliance, because
 they allow individuals under 21 years of age to purchase or
 possess alcoholic beverages:

<u>State</u>	<u>Age</u>
1. Colorado	18 - 3.2 beer only
2. District of Columbia	18 - beer and table wine only
3. Hawaii	18
4. Idaho	19
5. Iowa	19
6. Louisiana	18
7. Montana	19
8. Ohio	19 - beer only
9. South Dakota	19 - beer only
10. Wisconsin	19
11. Wyoming	19

The estimated penalties for non-compliance with the
 minimum Drinking Age of 21 years based on FY1987 Interstate
 and Interstate 4R and FY 1986 primary, secondary and urban
 apportionments are reflected in the following chart:

STATE	TOTAL AFFECTED APPORTIONMENTS	5 PERCENT PENALTY	10 PERCENT PENALTY
ALABAMA	217,122,817	10,856,142	21,712,284
ALASKA	163,433,220	8,171,661	16,343,322
ARIZONA	178,220,625	8,911,031	17,822,062
ARKANSAS	97,829,710	4,891,485	9,782,971
CALIFORNIA	931,062,604	46,551,330	93,102,660
COLORADO	182,665,883	9,133,294	18,266,588
CONNECTICUT	161,091,464	8,054,573	16,109,146
DELAWARE	52,924,013	2,646,200	5,292,401
FLORIDA	529,623,663	26,481,183	52,962,366
GEORGIA	307,891,571	15,394,578	30,789,157
HAWAII	125,712,595	6,285,629	12,571,259
IDAHO	90,156,087	4,507,804	9,015,608
ILLINOIS	286,744,831	14,337,241	28,674,483
INDIANA	175,146,376	8,757,318	17,514,637
IOWA	120,564,399	6,028,219	12,056,439
KANSAS	118,899,227	5,944,961	11,889,922
KENTUCKY	204,452,512	10,222,625	20,445,251
LOUISIANA	312,966,912	15,468,345	31,296,391
MAINE	58,644,894	2,932,244	5,864,489
MARYLAND	195,430,144	9,771,507	19,543,014
MASSACHUSETTS	259,222,077	12,961,103	25,922,207
MICHIGAN	311,141,217	15,557,060	31,114,121
MINNESOTA	227,860,779	11,393,038	22,786,077
MISSISSIPPI	108,423,323	5,421,166	10,842,332
MISSOURI	191,652,950	9,562,647	19,165,295
MONTANA	111,209,208	5,594,960	11,189,920
NEBRASKA	87,540,532	4,377,026	8,754,053
NEVADA	77,435,147	3,871,757	7,743,514
NEW HAMPSHIRE	52,924,013	2,646,200	5,292,401
NEW JERSEY	260,202,109	13,010,105	26,020,210
NEW MEXICO	112,185,371	5,609,268	11,218,537
NEW YORK	661,698,221	33,084,911	66,169,822
NORTH CAROLINA	207,427,814	10,371,390	20,742,781
NORTH DAKOTA	74,870,612	3,743,530	7,487,061
OHIO	320,668,696	16,033,434	32,066,869
OKLAHOMA	122,924,846	6,146,242	12,292,484
OREGON	124,816,447	6,240,822	12,481,644
PENNSYLVANIA	434,720,903	21,736,045	43,472,090
RHODE ISLAND	52,924,013	2,646,200	5,292,401
SOUTH CAROLINA	146,548,683	7,327,434	14,654,868
SOUTH DAKOTA	83,030,661	4,151,533	5,303,066
TENNESSEE	173,331,591	8,666,579	17,333,159
TEXAS	668,449,781	33,422,489	66,844,978
UTAH	148,846,702	7,442,335	14,884,670
VERMONT	53,248,819	2,662,440	5,324,881
VIRGINIA	321,621,868	16,081,093	32,162,186
WASHINGTON	298,339,411	14,916,970	29,833,941
WEST VIRGINIA	78,966,601	3,948,330	7,896,660
WISCONSIN	139,319,327	6,965,966	13,931,932
WYOMING	59,876,961	4,493,848	8,987,696
DIST. OF COL.	52,954,406	2,647,720	5,295,440
PUERTO RICO	61,186,692	3,059,334	6,118,669

Source: U.S. Department of Transportation
Federal Highway Administration

when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when he is aware that his conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless he actually believes it does not exist; a person who is unaware of conduct or a circumstance of which he would have been aware had he not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which he would have been aware had he not been intoxicated acts recklessly with respect to that risk.

(b) In this title

(1) "alcoholic beverage" includes, but is not limited to, whiskey, brandy, rum, gin, wine, ale, porter, beer, and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption and containing more than one percent alcohol by volume;

(2) "board" means the Alcoholic Beverage Control Board;

(3) "bottling" means to put into a bottle, can, or other container;

(4) "designated premises" means any or all designated portions of a building or structure, rooms or enclosures in the building or structure, or real estate leased, used, controlled, or operated by a licensee for the purpose for which the permit is issued by the board at the location of the site for which the permit is issued;

(5) "director" means the director of the Alcoholic Beverage Control Board;

(6) "distributing point" means a location where alcoholic beverages are distributed from a warehouse;

(7) "drunken person" means a person whose physical or mental conduct is substantially impaired as a result of the introduction of an alcoholic beverage into his body and who exhibits those plain and easily observed or discovered outward manifestations of behavior commonly known to be produced by the overconsumption of alcoholic beverages;



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

The Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

MAR 26 1986

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MAR 28 1986

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

The Honorable William J. Sheffield
Governor of Alaska
State Capitol
Juneau, AK 99811

Dear Governor Sheffield:

On July 17, 1984, President Reagan signed legislation which strongly encourages States to have laws prohibiting the purchase and public possession of alcoholic beverages by anyone under 21 years of age by withholding a portion of Federal-aid highway funds from States without such laws (23 U.S.C. 158). In enacting this legislation, both Congress and the President recognized that raising the drinking age results in a decrease in both the number of traffic crashes and in the number of fatalities.

The National Highway Traffic Safety Administration and the Federal Highway Administration ("the Agencies") have issued a final rule (copy enclosed) which implements and clarifies the statute. That rule provides that the Agencies notify each State by March 28, 1986 of their preliminary review of the State's statutes for compliance or non-compliance with the statute for fiscal year 1987. Our review of Alaska's laws reveals that although the State has established 21 as the minimum age for the purchase and public possession of alcoholic beverages, the State's laws do not conform with the Federal statute which defines an alcoholic beverage as having an alcoholic content of "not less than one-half of one percent" by volume.

Based on the above, it appears that Alaska is not in compliance with the statute and its implementing regulation and is, therefore, subject to a withholding of five percent of its apportionment under sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of Title 23 of the United States Code on October 1, 1986.

~~AS 28~~

AS.04.21.080 (b) (1)

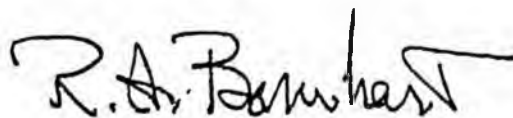
\$ 7,650,000



If you disagree with this preliminary finding, you may, within 30 days of your receipt of this letter, submit documentation which demonstrates that Alaska is in compliance with the Federal statute. The Agencies' final determination of compliance or non-compliance will be sent to you by May 30, 1986. Additionally, if at any time Alaska comes into compliance with the Federal statute, you may submit a copy of the applicable State laws and any funds that have not lapsed will be returned.

If we can be of any assistance, please do not hesitate to contact us.

Sincerely,



R.A. Barnhart
Administrator, Federal
Highway Administration



Diane K. Steed
Administrator, National Highway
Traffic Safety Administration

Enclosure