

C S S B

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# HOUSE COMMITTEE REPORT

(11)

Date referred: 4/28/88

FURTHER REFERRALS:

DATE: 5-3-88

The Finance Committee has considered CSSB 276(Fin)

"An Act relating to brewpub, brewery, and beverage dispensary liquor licenses; and to prohibited financial interests in a licensed liquor business; and providing for an effective date."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published 3/28/88 (Senate)
- zero with analysis

**SIGNING DO PASS:**

Adams *Adams*  
 Paurshot *Kat Paurshot*  
 Larson *Ron Larson*  
 Goll *Pete Goll*  
 Swack *Swack*  
 Boyer *Mark Boyer*  
 Rieger *Rieger*  
 Frank *Frank*  
 Wallis *Wallis*  
 Brown *Brown*  
 Davis *Mike Davis*

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Ad Adams*  
 Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: 2/19/88  
Title: An Act Relating to Issuance of a Brewery License  
Sponsor: Senator Fahrenkamp  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: Alcoholic Beverage Control Board  
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary) Though the bill would establish a license fee of \$250.00 (and require a \$100.00 application fee) it is not possible to estimate its potential revenues. It should be noted that whatever revenues are generated from the new license fee 100% would be shared back to the communities within which the revenues are derived.

Prepared By: Royce Weller Phone: 465-2300  
Division: Commissioner's Office Date: February 19, 1988  
Approved by Commissioner: Hugh Malone Date: February 19, 1988  
Agency: Department of Revenue

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

FEB 24 1988

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: CS SB-276

PUBLISH DATE: 2-3-88

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to brewpub, brewery,  
and beverage dispensary liquor licenses;\*  
Sponsor: Bettye Fahrenkamp  
Requestor: Senate Finance

Agency Affected: Environmental Conservation  
BRU: Environmental Health  
Components: Sanitation

\* and to prohibit financial interest in a  
licensed liquor business.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Passage of this legislation will not have a significant fiscal impact  
on the public facility inspection program.

Prepared by: Douglas C. Donegan  
Division: Environmental Health

Phone: 465-2609  
Date: 2-22-88

Approved by Commissioner: Dennis D. Kelso  
Agency: Environmental Conservation

Date: 2/23/88

Distribution (by preparer):

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

Original sponsor: Fahrenkamp

1 IN THE SENATE BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 276 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to brewpub, brewery, and beverage  
7 dispensary liquor licenses; and to prohibited finan-  
8 cial interests in a licensed liquor business; and  
9 providing for an effective date."

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

11 \* Section 1. AS 04.11.080 is amended by adding a new paragraph to read:  
12 (20) brewpub license.

13 \* Sec. 2. AS 04.11.130(b) is amended to read:

14 (b) A brewery license authorizes the holder to sell beer in  
15 quantities of more than five [WINE] gallons to persons licensed to  
16 sell beer under this title, or in another state or country.

17 \* Sec. 3. AS 04.11 is amended by adding a new section to read:

18 Sec. 04.11.135. BREWPUB LICENSE. (a) A brewpub license author-  
19 izes the holder of a beverage dispensary license to

20 (1) manufacture on premises licensed under the beverage  
21 dispensary license not more than 16,000 gallons of beer in a calendar  
22 year; and

23 (2) sell beer manufactured on premises licensed under the  
24 beverage dispensary license for consumption only on the licensed  
25 premises.

26 (b) Except as provided under AS 04.11.360(12), the brewpub  
27 license is not transferable, shall remain the property of the state,  
28 and is not subject to any form of alienation.

29 (c) The annual brewpub license fee is \$250.

1 \* Sec. 4. AS 04.11.360 is amended by adding a new paragraph to read:

2 (12) the license was issued under AS 04.11.135, unless the  
3 transferor is also applying to transfer the beverage dispensary li-  
4 cense required under AS 04.11.135 to the same transferee.

5 \* Sec. 5. AS 04.11.450(b) is amended to read:

6 (b) A person who is a representative or owner of a wholesale  
7 business, brewery, winery, bottling works, or distillery may not be  
8 issued, solely or together with others, a beverage dispensary license  
9 or package store license. A holder of a beverage dispensary license  
10 may be issued a brewpub license, subject to the provisions of AS 04.-  
11 11.135.

12 \* Sec. 6. AS 04.11.450(c) is amended to read:

13 (c) In this section, "direct or indirect financial interest"  
14 means holding a legal or equitable interest in the operation of a  
15 business licensed under this title. However, credit extended by a  
16 distiller, a brewery, or a winery to a wholesaler, or credit extended  
17 by a wholesaler to persons licensed under this title, or a consulting  
18 fee received from a person licensed under this title, is not consid-  
19 ered a financial interest in a business licensed under this title.

20 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

# Alaska State Legislature

SENATOR BETTYE FAHRENKAMP  
CHAIRMAN, LEGISLATIVE COUNCIL  
CHAIRMAN, OIL AND GAS COMMITTEE  
515 7TH AVENUE, SUITE 130  
FAIRBANKS, ALASKA 99701  
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## Senate

### MEMORANDUM

TO: House Judiciary Committee

FROM: Senator Bettye Fahrenkamp

DATE: April 22, 1988

RE: CSSB 276 (Fin) An Act relating to the brewpub, brewery, and beverage dispensary liquor licenses; and to prohibited financial interests in a licensed liquor business; and providing for an effective date.

### INTRODUCTION

If this bill passes, a new industry would be fostered in Alaska, i.e. brewpubs which are growing in number in other states. A brewpub is the industry term for an establishment that consists of a bar and/or restaurant and a brewery.

### WHAT THE BILL DOES

There is an interest by holders of beverage dispensary licenses to be able to brew their own beer on the premises for sale to their patrons to be consumed on the premises only.

This bill would create a new type of license to provide clear authority to the ABC and give them specific conditions under which they would be able to issue these new "brewpub" licenses. Production is limited to 16,000 gallons per year, which is 516 barrels, or 1032 kegs.

The bill would also fix an ambiguity in the current statutes which unintentionally limits to whom a brewer can sell its products. Under current law, an Alaskan brewer can only sell to a wholesaler licensed by the state. Inadvertently, this would prohibit an Alaska brewer from selling beer in Washington or Japan, for example. It also makes a change in the section of the law dealing with prohibited financial interests to allow a brewer to receive a consulting fee from other license holders.

A brewpub license would not be transferable by itself, only in conjunction with a beverage dispensary license.

The CS has the support of the ABC and zero fiscal notes from the Departments of Revenue and Environmental Conservation.

Sectional Analysis of CSSB 276 (Fin)

Section 1. AS 04.11.080 Types of Licenses and Permits

Amended to include brewpub license.

Section 2. AS 04.11.130(b) Brewery License

Deletes archaic language, i.e. changes "wine gallons" to "gallons". Amended to allow a brewer to sell beer to persons licensed to sell beer in other states and countries.

Section 3. AS 04.11.135 Brewpub License

Describes what is authorized under a brewpub license.

(a)(1) the manufacture of not more than 16,000 gallons (516 barrels or 1032 kegs) in a year. Must be brewed on the premises.

(a)(2) must be consumed on the premises.

(b) states that the brewpub license is not transferable except under the provisions of AS04.11.360(12) as amended under this bill.

(c) sets a annual fee of \$250.

Section 4. AS 04.11.360 Denial of Transfer of a license to another person.

Prohibits the transfer of a brewpub license unless it is being transferred with a beverage dispensary license.

Sections 5 and 6. AS 04.11.450 Prohibited Financial Interest

(b) Amended to authorize the holder of beverage dispensary license to obtain a brewpub license, subject to AS 04.11.135.

(c) Amends the definition of "direct or indirect financial interest" to exclude a consulting fee received from persons licensed under the alcohol beverage statutes. In this manner, the holder of a brewery license could assist the holder of a brewpub license in the start up of a brewpub, for example.

Section 7. Makes the bill effective immediatly.

Provided by Senator Fahrenkamp's office 4/22/88

Questions and Answers:

\*Will passage of this bill increase alcohol consumption?

No. The issue is product displacement. Beer consumers will have a choice, and hopefully they will choose to drink an Alaskan made brew instead of one shipped from the lower 48 or elsewhere.

\*Can the holder of a restaurant and eating license obtain a brewpub license under this bill?

No, the ABC does not support such a proposition. The board feels that the restaurant and eating licenses now issued are subject to abuse. The Board intends to examine the problems of this category of licenses, and until then, prefers no new privileges be granted to holders of restaurant and eating place licenses.

\*How often will brewpubs be inspected?

DEC will inspect them once per year, or upon complaint, on a "Best Management Practice", the industry standard they use for all Food Processing and Storage Facilities, and the same standard used by other state when inspecting brewing facilities.

\*Can a holder of a brewing license obtain a beverage dispensary license?

No, current law prohibits such.

\*Can a holder of a brewing license obtain a restaurant and eating place license?

Yes, current law does not prohibit such.

\*Does our one Alaskan brewery support the bill?

Yes. The bill fixes two problems in current brewery statutes. They also feel that if more Alaskan made beer is available, as long as it a quality product, will benefit all brewers, large or small. At least one potential brewpub owner plans to stock Chinook as well as sell his own brew.

\*How can there be a zero fiscal note, when there is a \$250 license fee established in the bill and under existing regs, there is a \$100 application fee?

It's likely that there will be only a handful of brewpub licenses issued in the near future, resulting in revenue barely in the thousands. Revenue derived from the fee, under existing law, will be shared back with 100% municipalities. This is done to pay the costs associated with, for example, local police having to respond to a violation of drinking age requirements. The application fee of \$100 would go towards processing paperwork.

\*What is a wine gallon?

It's an archaic industry term for a standard U.S. gallon. The Revisor of Statutes recommended it be changed to gallon.

Prepared by Senator Fahrenkamp's Office.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### ALCOHOLIC BEVERAGE CONTROL BOARD

STEVE COWPER, GOVERNOR

550 W. 7TH AVE  
ANCHORAGE, ALASKA 99501-6698

JAN 28 1988

January 26, 1988

The Honorable Jay Kerttula, Chairman  
Senate Judiciary Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Kerttula:

At its meeting of January 20, the Alcoholic Beverage Control Board reviewed and discussed SB 276 and proposed changes. The board approves of the legislation.

If I can answer any questions from your committee, please do not hesitate to let me know.

Sincerely,



Patrick L. Sharrock  
Director  
(907) 277-8638

PLS:cr

cc: Senator Bettye M. Fahrenkamp

88-23



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
**BILL ANALYSIS**

FEB 26 1988

DEPARTMENT Environmental Conservation	DIVISION Environmental Health	BILL NUMBER CS SB 276	SPONSOR Fahrenkamp
SHORT TITLE OF BILL "An Act relating to brewpub, brewery, and beverage dispensary licenses."			
DEPARTMENT POSITION The Department believes this bill may provide opportunities for economic growth and presents no regulatory difficulties.			
PREPARED BY Douglas Donegan	DATE 2/23/88	COMMISSIONER'S SIGNATURE	DATE

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL Department of Revenue.	CONSTITUENT GROUPS AFFECTED BY BILL Bar and brewery operators, consumers.
ORGANIZATIONAL SUPPORT FOR BILL We assume bar and brewery operators may support this bill.	ORGANIZATIONAL OPPOSITION TO BILL We know of no opposition to this bill.

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Bill would allow the licensing of "brewpubs" which are a combination of a bar and a brewery.

ANALYSIS OF BILL/PROGRAM EFFECTS

This bill would have little to no effect on the Department of Environmental Conservation. The department currently inspects bars and breweries. The creation of "brewpubs" would mean that these inspection duties would be required in some circumstances.

AMENDMENTS PROPOSED

None.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

**Sec. 04.11.060. Nonresident distiller, brewer, winery or wholesaler.** A distiller, brewer, winery or wholesaler whose plant or principal place of business is outside the state may not sell products directly to licensees in the state without

- (1) obtaining a general wholesale license under AS 04.11.160(a) for each wholesale distributing point in the state;
- (2) appointing an agent upon whom process can be served; and
- (3) obtaining other applicable licenses under the provisions of this title. (§ 2 ch 131 SLA 1980)

**Sec. 04.11.070. Power limited to the board.** Only the board may issue, renew, transfer, relocate, suspend, or revoke a license under this title. (§ 2 ch 131 SLA 1980; am § 1 ch 37 SLA 1986)

**Effect of amendments.** — The 1986 amendment inserted "relocate."

## Article 2. Licenses and Permits.

Section	Section
80. Types of licenses and permits	170. Distillery license
90. Beverage dispensary license	180. Common carrier dispensary license
100. Restaurant or eating place license	190. Community liquor license
110. Club license	200. Retail stock sale license
120. Bottling works license	210. Recreational site license
130. Brewery license	220. Pub license
140. Winery license	230. Caterer's permit
150. Package store license	240. Special events permit
160. Wholesale licenses	250. Conditional contractor's permit

**Sec. 04.11.080. Types of licenses and permits.** Licenses and permits issued under this title are as follows:

- (1) beverage dispensary license;
- (2) duplicate beverage dispensary license for additional rooms;
- (3) restaurant or eating place license;
- (4) club license;
- (5) bottling works license;
- (6) brewery license;
- (7) package store license;
- (8) general wholesale license;
- (9) wholesale malt beverage and wine license;
- (10) distillery license;
- (11) common carrier dispensary license;
- (12) retail stock sale license;
- (13) recreational site license;
- (14) community liquor license;
- (15) pub license;
- (16) winery license;

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§ 04.11.090

- (17) caterer's permit;
- (18) special events permit;
- (19) conditional contractor's permit. (§ 2 ch 131 SLA 1980)

**Cross references.** — For statute providing that a license is a personal privilege, see AS 04.11.660. 48 C.J.S., Intoxicating Liquors §§ 99-101.

**Collateral references.** — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 124-133.

**Sec. 04.11.090. Beverage dispensary license.** (a) A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

(b) The annual beverage dispensary license fee is \$1,250.

(c) An applicant for a beverage dispensary license must file with the application a cash bond or a surety bond executed by a surety company approved by the board. The bond must be in the sum of \$2,500. Upon revocation of the license under AS 04.11.370(4), the bond shall be forfeited and the amount deposited in the general fund of the state.

(d) The area designated as the licensed premises under a beverage dispensary license issued to a hotel, motel, resort or similar business that caters to the traveling public as a substantial part of its business may include the dining room, banquet room, guests' rooms, and other public areas approved by the board.

(e) A holder of a beverage dispensary license may not maintain upon the licensed premises more than one room in which there is regularly maintained a fixed counter or service bar at which alcoholic beverages are sold or served to members of the public for consumption unless the licensee is issued by the board, after investigation, a duplicate of the original license for each of the rooms. The holder of the beverage dispensary license shall pay to the board with each application for a duplicate license an amount equal to the fee payable for the original beverage dispensary license under (b) of this section. If the licensed premises are located within a municipality, a duplicate beverage dispensary license may not be issued unless approved by the council or assembly, as appropriate.

(f) The area designated as the licensed premises under a beverage dispensary license issued to a bowling alley may include the concourse or lane areas of the bowling alley. Notwithstanding AS 04.16.049, the board may, upon application, authorize access by persons under 21 years of age to the concourse or lane areas designated part of the bowling alley's licensed premises during hours when no alcoholic beverages are being sold, served, or consumed. (§ 2 ch 131 SLA 1980; am § 1 ch 109 SLA 1983)

club. — Where the business affairs of a club, including the purchase and keeping and sale to members of liquor, are so inextricably intermingled with those of

the manager of the club, the manager has an interest in the business and a license may not be lawfully issued. In re Alaska Labor Trades Ass'n, 10 Alaska 472 (1945).

**Collateral references.** — 48 C.J.S., Intoxicating Liquors, § 229.

Criminal responsibility of club, authorized generally to sell intoxicating liquors, for particular illegal sale thereof by employee or agent. 139 ALR 306.

Knowledge and intent as elements determining responsibility for illegal sale by employee or agent. 139 ALR 313.

Sale of liquor by club or bar as within statute or ordinance imposing tax on sales at retail. 139 ALR 391.

**Sec. 04.11.120. Bottling works license.** (a) A bottling works license authorizes the holder to operate a bottling works where beer and wine may be bottled and sold.

(b) A sale under a bottling works license may be made only to a person licensed under this title and only in quantities of more than five wine gallons.

(c) The annual bottling works license fee is \$250. (§ 2 ch 131 SLA 1980)

**Sec. 04.11.130. Brewery license.** (a) A brewery license authorizes the holder to operate a brewery where beer is manufactured and bottled or barreled for sale.

(b) A brewery license authorizes the holder to sell beer in quantities of more than five wine gallons to persons licensed to sell beer under this title.

(c) The holder of a brewery license may permit a person to sample small portions of the brewery's product free of charge unless prohibited by AS 04.16.030.

(d) The annual brewery license fee is \$500. (§ 2 ch 131 SLA 1980)

**Sec. 04.11.140. Winery license.** (a) A winery license authorizes the holder to operate a winery where wine is manufactured and bottled or barreled for sale.

(b) A winery license authorizes the holder to sell wine to persons licensed under this title in quantities of more than five wine gallons.

(c) The holder of a winery license may permit a person to sample small portions of the wine on the premises free of charge unless prohibited by AS 04.16.030.

(d) The annual winery license fee is \$250. (§ 2 ch 131 SLA 1980)

**Cross references.** — For board approval of transfers, see AS 04.11.040. For application for transfer of license location, see AS 04.11.290.

**Effect of amendments.** — The 1985 amendment in the catchline substituted "request for relocation" for "transfer of location," in the introductory language substituted "for the relocation" for "of a transfer of location," in paragraph (1) substituted "relocation" for "transfer of location," in paragraph (2), substituted "relocation" for "transfer of location of the li-

cence" and "AS 04.11.400(a) or (b)" for "AS 04.11.400(a) or prohibition of transfer is found necessary under AS 04.11.400(b), rewrote paragraph (3), in paragraph (4) substituted "relocation" for "transfer of the location," substituted "relocation" for "transfer of location" in paragraphs (6) through (8), in paragraph (9) substituted "relocated" for "transferred" and "relocation" for "transfer," and in paragraph (10) substituted "AS 04.11.400(g), (h), or (j)" for "AS 04.11.400(j)."

**Sec. 04.11.360. Denial of transfer of a license to another person.** An application requesting approval of a transfer of a license to another person under this title shall be denied if

(1) the board finds, after review of all relevant information, that transfer of a license to another person would not be in the best interests of the public;

(2) the application has not been completed in accordance with AS 04.11.280;

(3) the application contains false statements of material fact;

(4) the transferor has not paid all debts or taxes arising from the conduct of the business licensed under this title unless

(A) the transferor gives security for the payment of the debts or taxes satisfactory to the creditor or taxing authority; or

(B) the transfer is pursuant to a promise given as collateral by the transferor to the transferee in the course of an earlier transfer of the license under which promise the transferor is obliged to transfer the license back to the transferee in the event of default in payment for property conveyed as part of the earlier transfer of the license;

(5) transfer of the license to another person would result in violation of the provisions of this title relating to identity of licensees and financing of licensees;

(6) transfer of the license to another person would violate the restrictions pertaining to the particular license under this title;

(7) transfer of the license to another person is prohibited under the provisions of this title as a result of an election conducted in accordance with AS 04.11.502;

(8) the prospective transferee does not have the qualifications required under this title of an original applicant;

(9) the licensed premises are located in a municipality, the type of license sought to be transferred is a beverage dispensary or package store license, and that type of license is already in effect in the municipality under a community liquor license, unless the transfer is to become effective after the community liquor license is no longer effective, whether as the result of a local option election or otherwise;

(10) the authority sought is authority to operate a beverage dispensary or package store under a community liquor license for premises to be located in a municipality where the authority sought is already held by a private licensee under a beverage dispensary or package store license, unless the transfer is to become effective after the privately held license is no longer effective, whether as the result of a local option election or otherwise;

(11) the license was issued under AS 04.11.400(j). (§ 2 ch 131 SLA 1980)

**Cross references.** — For board approval of transfers, see AS 04.11.040. For application for transfer of a license to another person, see AS 04.11.280.

#### NOTES TO DECISIONS

This section makes no declaration of application to pre-enactment transactions. — A plain reading of this section makes it applicable to all license transfer requests made after its enactment; this section does not, however, expressly declare that the license transfer exception noted in paragraph (4) (B) is to be applicable to debts incurred before enactment of the section in 1980. *Norton v. ABC Bd.*, Sup. Ct. Op. No. 2915 (File No. 7363), 695 P.2d 1090 (1985).

And retrospective application violates AS 01.10.090. — Applying this section to credit transactions before enactment of the section in 1980 is a retrospective application of the section which vio-

lates both the literal terms of and the reasons for AS 01.10.090. *Norton v. ABC Bd.*, Sup. Ct. Op. No. 2915 (File No. 7363), 695 P.2d 1090 (1985).

Statute not preempted by federal bankruptcy law. — Subparagraph (4)(A) of this section requiring payment of creditors of a liquor establishment before transfer of a liquor license was not preempted by the Bankruptcy Act of 1898, codified as amended at 11 U.S.C. § 1-1103 (1976) and repealed by the Bankruptcy Reform Act of 1978, codified at 11 U.S.C. § 101-1330 (Supp. V. 1981). *Artus v. Alaska Dep't of Labor*, 718 F.2d 1446 (9th Cir. 1983).

**Sec. 04.11.370. Suspension and revocation of licenses and permits.** A license or permit shall be suspended or revoked if the board finds that one or more of the following grounds exists:

(1) misrepresentation of a material fact on an application for a license or permit;

(2) continuation of activities authorized under a license or permit would be contrary to the best interests of the public;

(3) failure on the part of the licensee to correct defects that constitute violations of this title, regulations adopted under this title, or other laws within a prescribed time after receipt of notice issued by the board or its agent;

(4) conviction of a licensee of a violation of a provision of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

(5) conviction of the agent or employee of a licensee of a violation of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the board to

**Effect of amendments.** — The 1985 amendment inserted ", to a partnership, including a limited partnership," in the first sentence of subsection (a).

**Collateral references.** — Transfer of retail liquor license or permit from one location to another. 98 ALR2d 1123.

**Sec. 04.11.450. Prohibited financial interest.** (a) A person other than a licensee may not have a direct or indirect financial interest in the business for which a license is issued.

(b) A person who is a representative or owner of a wholesale business, brewery, winery, bottling works, or distillery may not be issued, solely or together with others, a beverage dispensary license or package store license.

(c) In this section, "direct or indirect financial interest" means holding a legal or equitable interest in the operation of a business licensed under this title. However, credit extended by a distiller, a brewery or a winery to a wholesaler, or credit extended by a wholesaler to persons licensed under this title, is not considered a financial interest in a business licensed under this title.

(d) A license may not be leased by a licensee to another person or corporation.

(e) For the purposes of this section, a lessor under a graduated or percentage lease-rent agreement involving premises licensed under this title does not hold a financial interest in the business.

(f) A holder of either a general wholesale license or a wholesale malt beverage and wine license may not be employed by or act as the agent or employee of the holder of a beverage dispensary or package store license. (§ 2 ch 131 SLA 1980)

#### NOTES TO DECISIONS

**Editor's notes.** — The cases cited in the notes below were decided under former AS 04.10.180 and earlier statutes.

**The purpose of financial interest statute** was to prevent evasion of the liquor control statutes and regulations through the creation of hidden financial interests in liquor businesses unknown to the regulatory authorities or to the public. It helped insure that all persons with any financial interest in such businesses were answerable to the ABC Board. *Barton v. Lund*, Sup. Ct. Op. No. 1423 (File No. 2726), 563 P.2d 875 (1977).

**Interest, "direct or indirect,"** in a thing is held to embrace a legal or equitable interest. In re *Martin's Retail Liquor License No. 1517*, 15 Alaska 225 (1954).

**Application to clubs.** — The provisions of former section applied to clubs as well as to all other persons who might have or apply for any of the numerous

types of licenses authorized to be issued by law. In re *Alaska Labor Trades Ass'n*, 10 Alaska 472 (1945).

**Interest of manager in business prohibited.** — Where the business affairs of the club, including the purchase and keeping and sale to members of liquor, are so inextricably intermingled with those of the manager of the club, the manager has an interest in the business and a license may not be lawfully issued. In re *Alaska Labor Trades Ass'n*, 10 Alaska 472 (1945).

**This section was not controlling** where the party had a security interest, as opposed to a financial interest, in the license. *Gibson v. Alaska ABC Control Bd.*, 377 F. Supp. 151 (D. Alaska 1974).

**Statement of financial interest required.** — A statement regarding financial interest of any other person in the business was required to be made by former AS 04.10.190, concerning the filing,

# Alaska State Legislature

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## Senate

### MEMORANDUM

TO: Senate Judiciary Committee  
FROM: Senator Bettye Fahrenkamp  
DATE: January 29, 1988  
RE: Sanitary Inspections of Breweries and Brewpubs

### CALIFORNIA

In California, brewpubs and breweries are treated the same, receiving sanitary inspections from the Department of Health Services on the same "Good Management Practices" basis as used in Alaska. These "GMP's" were developed by the federal Food and Drug Administration and apply to all food manufacturing operations exclusive of meat, poultry, and dairy.

The frequency of inspection in California is not set in statute or by regulation. By department policy, they inspect breweries of all sizes annually and upon complaint. However, due to budget cuts, some breweries will not be inspected for as long as ten years, as they are considered low priority since they have a low likelihood of causing a public health problem, according to California officials.

### ILLINOIS

In Illinois, breweries receive sanitary inspections, like any other beverage manufacturer, from the Illinois Department of Public Health; Food, Drug, and Dairy Division, on the "Good Management Practices" basis once per year or upon complaint. The frequency is not set by statute or regulation.

The city of Chicago exerts municipal control over health and sanitation in the city. The Chicago Health Department, Food Protection Division inspects all food dispensers twice per year as per municipal ordinances. They treat a brewpub the same as any other food retailer.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

INFORMATION ON "BREW PUBS"

JANUARY, 1988

Bar operations are regulated as food service establishments under 18 AAC 31. Breweries are regulated under 18 AAC 30.220-290, regulations governing Food Processing and Storage Facilities.

Both bars and breweries must be in compliance with water, wastewater and solid waste regulations. A plan review and a pre-opening inspection are required prior to operation. A permit is required for bars.

Breweries are inspected as food processing facilities to ensure that Good Manufacturing Practices are used during the production process.

A brew pub would be inspected as a bar and a brewery. The risks of disease transmission associated with breweries or bars are substantially less than those associated with restaurants or other kinds of food manufacturing plants because potentially hazardous foods are not used in the brewing process. Hazardous foods are those that, if mishandled, can pose a health hazard to the public. The primary concern during an inspection of a brewery is to ensure that the product is not subject to contamination. This requires particular attention to the manufacturing process. General sanitation, chemical and raw product storage, utensil washing and sanitizing, employee hygiene, product labeling, rodent and insect control, facility construction and water supply and plumbing would be items of public health concern in a food processing and bar operation.

Inspections of bars and breweries are conducted annually with followup inspections conducted as necessary. This represents an adequate inspection frequency for bars considering the relatively low public health significance of such facilities. Breweries would likely be inspected twice a year if resources for the public facilities inspection program were adequate.

The proposed "brew pub" legislation will not have a significant impact on the environmental sanitation program in itself because the number of "brew pub" facilities will almost certainly be small compared to the overall number of public facilities. There are more than 6,200 public facilities in Alaska, and the number of brew pubs likely to be built is in the tens. However, the Department has requested an increment in its proposed FY 89 operating budget to bring inspection levels for all public facilities back up to acceptable levels. Due to budget reductions, inspection levels are currently substantially below the frequency necessary to protect public health.

# GOLD DREDGE NUMBER 8

## NATIONAL HISTORIC DISTRICT

P.O. Box 81941  
Fairbanks, Alaska 99708  
457-6038

1-14-88

Senator Jay Kerttula  
Chairman  
Judiciary Committee  
Alaska State Senate  
Juneau, Alaska

Greetings Senator Kerttula and members of the Judiciary Committee

I have just been informed that you will be accepting testimony on Senate Bill 276 this afternoon.

I would like to speak in favor of passage that bill. I am licensed to buy and dispense alcoholic beverages and I would like to be able to brew some of the beer I sell in the restaurant and bar myself. These are called brewpubs but for a better understanding you should think of them as a micro-micro brewery.

Brewpubs are becoming increasingly popular as are micro breweries in the U.S.. They are an emerging industry that have resulted from the success and failures of microbreweries catering to regional tastes. Brewpubs stem from a high level of technology applied to peoples desire to enjoy locally produced brew. (ie. Chinook Beer is a good example of this)

This bill if passed will also create new jobs and this industry is also a new growth industry in Alaska. I am sure I am not the only entrepreneur around the State that would foster the development of the industry. Please pardon the pun. If I am to sell ten draft beers to my customers for instance or ten Beers brewed and bottled in St. Louis I would much rather sell the drafts brewed on premises. I believe my customers would also prefer the locally brewed product as long as it's good. Because of the small scale I can afford to spare no expense on insuring nothing but the highest quality beverage will be served.

I also understand this bill may be amended to allow brewers in this state to act as consultants to people such as myself. I understand it is illegal for them to do so now. I support passage of that amendment. I see no reason why I should have to hire an out of state consultant if the talent is available in State. (ie. Juneau)

Thank you for the opportunity to submit this testimony. Please pass SB 276 so I can get my show on the road.

Sincerely,



John Reeves

Original sponsor: Fahrenkamp

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
2 CS FOR SENATE BILL NO. 276 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL  
6 For an Act entitled: "An Act relating to brewpub, brewery, and beverage  
7 dispensary liquor licenses; and to prohibited finan-  
8 cial interests in a licensed liquor business."  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
10 \* Section 1. AS 04.11.080 is amended by adding a new paragraph to read:  
11 (20) brewpub license.  
12 \* Sec. 2. AS 04.11.130(b) is amended to read:  
13 (b) A brewery license authorizes the holder to sell beer in  
14 quantities of more than five [WINE] gallons to persons licensed to  
15 sell beer under this title, or in another state or country.  
16 \* Sec. 3. AS 04.11 is amended by adding a new section to read:  
17 Sec. 04.11.135. BREWPUB LICENSE. (a) A brewpub license author-  
18 izes the holder of a beverage dispensary license to  
19 (1) manufacture on premises licensed under the beverage  
20 dispensary license not more than 16,000 gallons of beer in a calendar  
21 year; and  
22 (2) sell beer manufactured on premises licensed under the  
23 beverage dispensary license for consumption only on the licensed  
24 premises.  
25 (b) Except as provided under AS 04.11.360(12), the brewpub  
26 license is not transferable, shall remain the property of the state,  
27 and is not subject to any form of alienation.  
28 (c) The annual brewpub license fee is \$250.  
29 \* Sec. 4. AS 04.11.360 is amended by adding a new paragraph to read:

1           (12) the license was issued under AS 04.11.135, unless the  
2 transferor is also applying to transfer the beverage dispensary li-  
3 cense required under AS 04.11.135 to the same transferee.

4 \* Sec. 5. AS 04.11.450(b) is amended to read:

5           (b) A person who is a representative or owner of a wholesale  
6 business, brewery, winery, bottling works, or distillery may not be  
7 issued, solely or together with others, a beverage dispensary license  
8 or package store license. A holder of a beverage dispensary license  
9 may be issued a brewpub license, subject to the provisions of AS 04.-  
10 11.135.

11 \* Sec. 6. AS 04.11.450(c) is amended to read:

12           (c) In this section, "direct or indirect financial interest"  
13 means holding a legal or equitable interest in the operation of a  
14 business licensed under this title. However, credit extended by a  
15 distiller, a brewery, or a winery to a wholesaler, or credit extended  
16 by a wholesaler to persons licensed under this title, or a consulting  
17 fee received from a person licensed under this title, is not consid-  
18 ered a financial interest in a business licensed under this title.

1 IN THE SENATE

BY FAHRENKAMP

2

SENATE BILL NO. 276

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to issuance of a brewery license."

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

8 \* Section 1. AS 04.11.130 is amended by adding a new subsection to  
9 read:

10 (e) If the holder of a brewery license is also the holder of a  
11 beverage dispensary license

12 (1) beer may be sold in quantities of less than five wine  
13 gallons on premises licensed under the beverage dispensary license;  
14 and

15 (2) not more than 16,000 wine gallons of beer may be  
16 manufactured in a calendar year.

17 \* Sec. 2. AS 04.11.450(b) is amended to read:

18 (b) A person who is a representative or owner of a wholesale  
19 business, brewery, winery, bottling works, or distillery may not be  
20 issued, solely or together with others, a beverage dispensary license  
21 or package store license. A holder of a beverage dispensary license  
22 may be issued a brewery license, subject to the provisions of AS 04.-  
23 11.130.