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374

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 374 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending the definition of 'alcoholic beverage'
7 'age'; and providing for an effective date."

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

9 * Section 1. AS 04.21.080(b)(1) is amended to read:

10 (1) "alcoholic beverage" means spirituous, vinous, malt or
11 other fermented or distilled liquids, whatever the origin, that are
12 intended for human consumption as a beverage and that contain one-half
13 of one percent or more of alcohol by volume, whether produced commer-
14 cially or privately; however, in an area that has adopted a local-
15 option prohibition under AS 04.11.490 - 04.11.500, "alcoholic beverage"
16 means spirituous, vinous, malt, or other fermented or distilled
17 liquids, whatever the origin, that are intended for human consumption
18 as a beverage and that contain alcohol in any amount, if the liquids
19 are produced privately or that contain one-half of one percent or more
20 of alcohol by volume, if the liquids are produced commercially;

21 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).
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MIKE FORD

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

SENATE BILL NO. 374

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4 SIXTEENTH LEGISLATURE - SECOND SESSION

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13 of one percent or more of alcohol by volume, whether produced commer-
14 cially or privately; however, in an area that has adopted a
15 local-option prohibition under AS 04.11.490 - 04.11.500, "alcoholic
16 beverage" means ^{privately produced} spirituous, vinous, malt, or other fermented or
17 distilled liquids, whatever the origin, that are intended for human
18 consumption as a beverage ^{and} that contain alcohol in any amount,
19 ~~and whether produced commercially or privately;~~

20 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

3-14

January 8, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends the definition of "alcoholic beverage" in AS 04. The bill will resolve a difficulty that has arisen in connection with prosecuting certain local-option law violations.

In 1986, the legislature amended the definition of "alcoholic beverage" to mean fermented or distilled beverages that contained any amount of alcohol. Section 10, ch. 80, SLA 1986. This created an inconvenience with respect to the distribution of so-called "non-alcoholic" beverages which, in reality, contain some trace amounts of alcohol. The 1986 definition had the practical effect of limiting the distribution of "non-alcoholic" beverages to establishments that had liquor licenses issued under AS 04. This difficulty was resolved by CSHB 181(Jud), enacted in 1989, which changed the definition of "alcoholic beverage" to mean fermented or distilled beverages that contain one-half of one percent or more of alcohol by volume, whether produced commercially or privately. Section 2, ch. 88, SLA 1989.

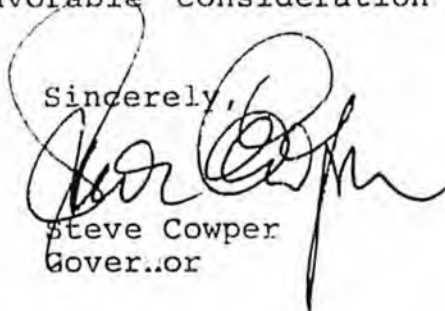
An unintended difficulty was created in that definition amendment. In areas that have voted, under AS 04.11.498, for example, to completely ban the possession of alcoholic beverages, the criminal division of the Department of Law has recognized that practical problems arise in prosecuting individuals who violate the law by producing "homebrew" alcoholic beverages. For example, if law enforcement officers seize a vat of homebrew as evidence and ship a sample to the state crime laboratory for analysis to determine the percentage of alcohol, fermentation of the

beverage would continue during the shipment and until the time of analysis. The rate of fermentation is not constant and varies for each vat of homebrew, and it would be very difficult to determine the percentage of alcohol at the time of seizure. As a result, prosecution of offenders for possession of homebrew in such a local-option area is difficult if the "threshold" level of alcohol in an "alcoholic beverage" is anything other than zero percent. If an "alcoholic beverage" is one that contains any amount of alcohol, "homebrew" prosecutions in such local option areas would be relatively simple because additional fermentation occurring between the time of seizure and the time of laboratory analysis would be irrelevant. It would be sufficient to prove that the homebrew contained alcohol in any amount.

For local-option areas, the attached bill creates an exception to the "general" definition of "alcoholic beverage." In such areas, any fermented or distilled beverage containing alcohol in any amount, whether produced commercially or privately, constitutes an "alcoholic beverage." To be consistent with the apparent intent of AS 04.21.015, relating to private manufacture of alcoholic beverages, this definition will apply in areas that have adopted any of the local-option prohibitions under AS 04.11.490 -- 04.11.500.

I urge your prompt and favorable consideration of this bill.

Sincerely,



Steve Cowper
Governor

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(j) If the person cited fails to pay the bail amount established under (g) of this section or appear in court as required, the citation is considered a summons for a misdemeanor.

(k) The board or any affected party may institute an action in the superior court to enjoin repeated violations of this section.

(l) Notwithstanding AS 04.11.370, the board is not required to suspend or revoke a license or permit for a violation of this section; however, the board may consider a violation of this section when determining under AS 04.11.370(2) whether continuation of activities authorized under a license or permit would be in the best interests of the public.

Sec. 04.21.070. Enforcement. Peace officers shall investigate and report to the board violations of this title.

Sec. 04.21.080. Definitions. (a) In this title

(1) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person 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 the person is aware that the person's 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 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 the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had the person 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 the person 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 the person would have been aware had the person not been intoxicated acts recklessly with respect to that risk.

(b) In this title

(1) "alcoholic beverage" means spirituous, vinous, malt or other fermented or distilled liquids, whatever the origin, that are intended for human consumption as a beverage and that contain one-half of one percent or more of alcohol by volume, whether produced commercially or privately;

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

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

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

(5) "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;

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

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

(8) "drunken person" means a person whose physical or mental conduct is substantially impaired as a result of the introduction of an alcoholic beverage into the person's 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;

(9) "established village" means

(A) an unincorporated community that is in the unorganized borough and that has 25 or more permanent residents; or

(B) an unincorporated community that is in an organized borough, has 25 or more permanent residents, and

(i) is on a road system and is located more than 50 miles outside the boundary limits of a unified municipality, or

(ii) is not on a road system and is located more than 15 miles outside the boundary limits of a unified municipality;

(10) "licensed 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 in the conduct of business for which the licensee is licensed by the board at the specific address for which the license is issued;

(11) "local governing body" means, as appropriate, a city council, a borough assembly, or a traditional village council, but does not include a corporation established under the Alaska Native Claims Settlement Act.

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protest within 30 days of receipt from the board of notice of filing of the application. The board shall consider a protest and testimony received at a hearing conducted under AS 04.11.510(b)(2) or (b)(4) when it considers the application, and the protest and the record of the hearing conducted under AS 04.11.510(b)(2) or (b)(4) shall be retained as part of the board's permanent record of its review of the application. If an application is protested, the board may not approve the application unless the board finds that the protest is arbitrary, capricious, and unreasonable.

(b) If the permanent residents residing outside of but within two miles of an incorporated city or an established village wish to protest the issuance, renewal, or transfer of a license within the city or village, they shall file with the board a petition meeting the requirements of AS 04.11.510(b)(3) requesting a public hearing within 30 days of the posting of notice required under AS 04.11.310, or by December 31 of the year application is made for renewal of a license. The board shall consider testimony received at a hearing conducted under AS 04.11.510(b)(3) when it considers the application, and the record of a hearing conducted under AS 04.11.510(b)(3) shall be retained as part of the board's permanent record of its review of the application.

Sec. 04.11.490. Prohibition of the sale of alcoholic beverages. (a) The following question, appearing alone, may be placed before the voters of a municipality or an established village in accordance with AS 04.11.502: "Shall the sale of alcoholic beverages in(name of municipality or village) be prohibited? (yes or no)."

(b) If a majority of the voters vote "yes" on the question set out in (a) of this section, the board shall be notified immediately after certification of the results of the election and thereafter the board may not issue, renew, or transfer between holders or locations a license for licensed premises located within the boundaries of a municipality and in unincorporated areas within five miles of the boundaries of the municipality or within the perimeter of an established village. Licenses that may not be renewed because of a local option election held under this section are void 90 days after the results of the election are certified. A license that will expire during the 90 days after the results of a local option election under this section are certified may be extended, until it is void under this subsection, by payment of a prorated portion of the annual license fee.

(c) If a majority of the voters vote "no" on the question set out in (a) of this section or vote "yes" on a question set out in AS 04.11.492 or 04.11.500 in an election conducted in accordance with AS 04.11.502 after an election in which the voters voted "yes" on the question set out in (a) of this section, the board shall be notified immediately after certification of the results of the election. Thereafter, the prohibitions imposed under (b) of this section on the issuance, renewal, or transfer of licenses between holders and location as a result of the earlier election are removed except insofar as those prohibitions are imposed in accordance with the results of the subsequent election.

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Sec. 04.11.492. Community liquor license; complete prohibition on sales. (a) The following question, appearing alone, may be placed before the voters of a municipality in accordance with AS 04.11.502: "Shall the sale of alcoholic beverages be prohibited in(name of municipality) unless sold by a ... (either a beverage dispensary or package store, or both, operated under a community liquor license)? (yes or no)."

(b) If a majority of the voters vote "yes" on the question set out in (a) of this section, the board shall be notified immediately after certification of the results of the election and thereafter may not issue, renew, or transfer between holders or locations a license for licensed premises located within the boundaries of a municipality and in unincorporated areas within five miles of the boundaries of the municipality, with the exception of a beverage dispensary or package store operated under a community liquor license held by the municipality. Licenses in effect are void 90 days after the results of the election are certified. A license that will expire during the 90 days after the results of a local option election under this section are certified may be extended, until it is void under this subsection, by payment of a prorated portion of the annual license fee.

(c) If a majority of the voters vote "no" on the question set out in (a) of this section or vote "yes" on a question set out in AS 04.11.490, 04.11.496, or 04.11.500 in an election conducted in accordance with AS 04.11.502 after an election in which the voters voted "yes" on the question set out in (a) of this section, the board shall be notified immediately after a certification of the results of the election. The prohibitions imposed under (b) of this section on the issuance, renewal, or transfer of licenses between holders and locations as a result of the earlier election are removed 90 days after the results of the election are certified except insofar as those prohibitions are imposed in accordance with the results of the subsequent election.

Sec. 04.11.496. Prohibition of sale and importation of alcoholic beverages. (a) The following question, appearing alone, may be placed before the voters of a municipality or an established village in accordance with AS 04.11.502: "Shall the sale and importation of alcoholic beverages be prohibited in(name of municipality or village)? (yes or no)."

(b) If a majority of the voters vote "yes" on the question set out in (a) of this section, a person, beginning on the first day of the month following certification of the results of the election, may not knowingly send, transport, or bring an alcoholic beverage into the municipality or established village, unless the alcoholic beverage is sacramental wine to be used for bona fide religious purposes based on tenets or teachings of a church or religious body, is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes by a person authorized by the church or religious body to dispense the sacramental wine. The board shall be notified immediately after certification of the results of the election and thereafter may not issue, renew, or transfer between holders or locations a license for licensed premises located within the boundaries of the municipality and within unincorporated areas within five miles of the

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boundaries of the municipality or within the perimeter of the established village. Licenses that may not be renewed because of a local option election held under this section are void 90 days after the results of the election are certified. A license that will expire during the 90 days after the results of a local option election under this section are certified may be extended, until it is void under this subsection, by payment of a prorated portion of the annual license fee.

(c) If a majority of the voters vote "no" on the question set out in (a) of this section or vote "yes" on the questions set out in AS 04.11.492 or 04.11.500 in an election conducted in accordance with AS 04.11.502 after an election in which the voters voted "yes" on the question set out in (a) of this section, the prohibition on the importation of alcoholic beverages and the prohibition on the issuance, renewal, or transfers of licenses between holders and locations, imposed as a result of the earlier election in which the voters voted "yes" on the question set out in (a) of this section are removed effective on the first day of the month following certification of the results of the election except as those prohibitions continue to be imposed in accordance with the results of the subsequent election.

Sec. 04.11.498. Prohibition of possession of alcoholic beverages. (a) The following question, appearing alone, may be placed before the voters of a municipality or an established village in accordance with AS 04.11.502: "Shall the possession of alcoholic beverages be prohibited in(name of municipality or village)? (yes or no)."

(b) If a majority of the voters of an established village vote "yes" on the question set out in (a) of this section, and the sale of alcoholic beverages, or the sale and importation of alcoholic beverages, has been previously prohibited in the established village in accordance with AS 04.11.490 or 04.11.496, a person, beginning on the first day of the month following certification of the results of the election, may not knowingly possess an alcoholic beverage in the established village, unless the alcoholic beverage is wine to be used for bona fide religious purposes based on tenets or teachings of a church or religious body, is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes, by a person recognized by the church or religious body as authorized to dispense the wine. The board shall be notified immediately after certification of the results of the election and thereafter may not issue, renew, or transfer between holders or locations a license for licensed premises located within the perimeter of the established village as defined in AS 04.21.080(b)(8).

(c) If a majority of the voters of an established village vote "yes" on the question set out in (a) of this section and the sale of alcoholic beverages, or the sale and importation of alcoholic beverages, has not been previously prohibited in the established village in accordance with AS 04.11.490 or 04.11.496, a person, beginning 90 days after certification of the results of the election, may not knowingly possess an alcoholic beverage in the established village, unless the person is licensed by the board or the alcoholic beverage is wine to be used for bona fide religious purposes based on tenets or teaching, of a church or religious body, is limited in quantity to the amount necessary for religious purposes, and is

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dispensed only for religious purposes by a person recognized by the church or religious body as authorized to dispense the wine. The board shall be notified immediately after certification of the results of the election and thereafter may not issue, renew, or transfer between holders or locations a license for licensed premises located within the perimeter of the established village as defined in AS 04.21.080(b)(8). Licenses that may not be renewed because of a local option election held under this section are void 90 days after the results of the election are certified. A license that will expire during the 90 days after the results of a local option election under this section are certified may be extended until it is void under the section, by payment of a prorated portion of the annual license fee.

(d) If a majority of the voters of a municipality vote "yes" on the question set out in (a) of this section, and the sale of alcoholic beverages, or the sale and importation of alcoholic beverages, has been previously prohibited in the municipality in accordance with AS 04.11.490 or 04.11.496, an ordinance is adopted that becomes effective beginning on the first day of the month following certification of the results of the election, and a person may not knowingly possess an alcoholic beverage in the municipality, unless the alcoholic beverage is wine to be used for bona fide religious purposes based on tenets or teachings of a church or religious body, is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes, by a person recognized by the church or religious body as authorized to dispense the wine. The board shall be notified immediately after certification of the results of the election and thereafter may not issue, renew, or transfer between holders or locations a license for licensed premises located within the boundaries of the municipality and within unincorporated areas within five miles of the boundaries of the municipality.

(e) If the majority of the voters of a municipality vote "yes" on the question set out in (a) of this section and the sale of alcoholic beverages, or the sale and importation of alcoholic beverages, has not been previously prohibited in the municipality in accordance with AS 04.11.490 or 04.11.496, an ordinance is adopted that becomes effective beginning 90 days after certification of the results of the election, and a person may not knowingly possess an alcoholic beverage in the municipality, unless the alcoholic beverage is wine to be used for bona fide religious purposes based on tenets or teachings of a church or religious body, is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes by a person recognized by the church or religious body as authorized to dispense the wine. The board shall be notified immediately after the adoption of the ordinance and thereafter may not issue, renew, or transfer between holders or locations a license for licensed premises located within the boundaries of the municipality and within unincorporated areas within five miles of the boundaries of the municipality. Licenses that may not be renewed because of a local option election held under this section are void 90 days after the results of the election are certified. A license that will expire during the 90 days after the results of a local option election under this section are certified may be extended, until it is void under this section, by payment of a prorated portion of the annual fee.

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(f) If a majority of the voters vote "no" on the question set out in (a) of this section or vote "yes" on the questions set out in AS 04.11.492 or 04.11.500 in an election conducted in accordance with AS 04.11.502 after an election in which the voters voted "yes" on the question set out in (a) of this section, the prohibition on the possession of alcoholic beverages is removed effective 90 days after the results of the election are certified except as those prohibitions continue to be imposed in accordance with the results of the subsequent election.

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

Sec. 04.11.500. Prohibition of the sale of alcoholic beverages except by selected licenses. (a) The following question, appearing alone, may be placed before the voters of a municipality or an established village in accordance with AS 04.11.502: "Shall the sale of alcoholic beverages be prohibited in(name of municipality or village) except by(listing of the types of licenses which premises would be exempted from the prohibition on the sale of alcoholic beverages if the measure passes)? (yes or no)."

(b) If a majority of the voters vote "yes" on the question set out in (a) of this section, the board shall be notified immediately after certification of the results of the election and thereafter may not issue, renew, or transfer between holders or locations a license for licensed premises located within the boundaries of the municipality and in unincorporated areas within five miles of the boundaries of the municipality or within the perimeter of the established village, except those types of licenses listed on the ballot. Licenses in effect within the boundaries of the municipality or perimeter of the established village, and in an unincorporated area outside of but within five miles of the boundaries of the municipality, except those types of licenses listed on the ballot, are void 90 days after the results of the election are certified. A license that will expire during the 90 days after the results of a local option election under this section are certified may be extended, until it is void under this subsection, by payment of a prorated portion of the annual license fee.

(c) If the majority of the voters vote "no" on the question set out in (a) of this section or vote "yes" on the questions set out in AS 04.11.490, 04.11.492, 04.11.496, or this section if different types of licenses are listed on the ballot in an election conducted in accordance with AS 04.11.502 after an election in which the voters voted "yes" on the question set out in (a) of this section, the board shall be notified immediately after certification of the results of the election. Licenses in effect in the municipality, in the unincorporated area outside of but within five miles of the boundaries of the municipality or established village that were excepted from the prohibition on sale in accordance with the results of the earlier election are void 90 days after the results of the election are certified. Thereafter the board may not issue, renew, or transfer between holders or locations a license for licensed premises located within the boundaries of the municipality or within the perimeter of an established village, or in an unincorporated area within five

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miles of the boundaries of the municipality, except a license that may be issued to a municipality or to one of the types of licenses listed on the ballot as a result of a majority of the voters voting "yes" on the question set out in AS 04.11.492 or this section, respectively. A license that will expire during the 90 days after the results of a local option election under this section are certified may be extended, until it is void under this subsection, by payment of a prorated portion of the annual license fee.

Sec. 04.11.502. Procedure for local option elections. (a) The local governing body of a municipality, whenever a number of registered voters equal to at least 35 percent of the number of votes cast at the last regular municipal election petition the local governing body to do so, shall place upon a separate ballot at the next regular election or at a special election whichever question or combination of questions set out in AS 04.11.490 - 04.11.500 constitutes the subject of the petition. The local governing body shall conduct the election in accordance with the election ordinance of the municipality.

(b) The lieutenant governor, whenever 35 percent of the registered voters residing within an established village petition the lieutenant governor to do so, shall place upon a separate ballot at a special election that question or combination of questions set out in AS 04.11.490 - 04.11.500 that constitutes the subject of the petition. The lieutenant governor shall conduct the election in the general manner prescribed by the Alaska Election Code (AS 15).

(c) A petition filed with the local governing body of a municipality in accordance with (a) of this section, which places on the ballot the question set out in AS 04.11.498, shall constitute a proposed ordinance of the municipality.

(d) Notwithstanding any other provisions of law, an election under (a) or (b) of this section to remove a restriction on the sale, importation, or possession of alcoholic beverages previously imposed under AS 04.11.490 - 04.11.500 may not be conducted more than once every 12 months.

Sec. 04.11.504. Reinstatement of licenses. (a) If a prohibition imposed on the issuance, renewal, transfer, or relocation of licenses between holders and locations under AS 04.11.490 - 04.11.500 is removed by a vote of "no" on a question for which the majority of the people voted "yes" in an earlier election, the board shall, upon application, issue the same number and type of licenses that were in effect in the municipality or established village on the date of certification of the earlier election. If the prohibition imposed on issuance, renewal, transfer, or relocation of licenses between holders and locations is removed by a "yes" vote on a question set out in AS 04.11.492 and 04.11.500, the board may issue the types of licenses specified in the question presented to the voters in the subsequent election. Licenses may be issued for the same or other premises within the municipality or established village that were licensed on the date of certification of the earlier election. However, if the local governing body requests that fewer licenses of a particular type be issued than would otherwise be issued if the provisions prescribing the ratio of population to licensed premises in AS 04.11.400(a)