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# ALCOHOLIC BEVERAGES

ALASKA STATUTES (TITLE 4)  
(AS AMENDED THROUGH 1994)

&

REGULATIONS  
(TITLE 15 ALASKA  
ADMINISTRATIVE CODE,  
CHAPTER 104)  
(AS AMENDED THROUGH 6/94)

ALCOHOLIC BEVERAGE CONTROL BOARD  
550 W. Seventh Avenue  
Anchorage, Alaska 99501  
(907) 277-8638

6/94

## 1994 REVISOR'S CHANGES

In 1994, the Legislative Affairs Agency revisor of statutes used his general powers to make minor editing changes throughout AS 04, to move AS 04.11.700, and to reorganize AS 04.11.150, 04.11.400, and 04.11.450. The changes to AS 04.11.400 affect other provisions of statutes and regulations that reference those subsections.<sup>1</sup> For the new designations, refer to the chart below.

OLD	NEW
04.11.150(g)	04.11.150(i)
(h)	(g)
(i)	(h)
04.11.400(d)	04.11.400(k)
(e)	(l)
(f)	(l)
(g)	(d)
(h)	(e)
(i)	(l)
(j)	(g)
(k)	(h)
04.11.450(c)	04.11.450(f)
(d)	(c)
(e)	(d)
(f)	(e)
04.11.700	04.21.055

<sup>1</sup> AS 04.11.330(a)(4) and (9); 04.11.340(10); 04.11.360(11); internal subsection references in 04.11.400; 15 AAC 104.135(e); 15 AAC 104.175(c); 15 AAC 104.325(a), (d), and (e); 15 AAC 104.335(a) and (b); 15 AAC 104.905(c).

03/08/95 15:00:28 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120  
MESSAGE FROM: LIOCBJT IN BARROW JNU

RE TCN: 50370 SCHEDULED FOR:03/08/95 13:30 TO 15:00  
SPONSOR: SENATE COMMUNITY & REGIONAL AFFAIRS PURPOSE: PUBLIC HEARING

MESSAGE TEXT: KAREN HEGYI, BARROWCITYATTORNEYISPRESNT.

03/08/95 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150  
13:31:40 PARTICIPANT LIST (ALL PARTICIPANTS) BY:BAR  
TCN:50370 SCHEDULED FOR:03/08/95 13:30 TO 15:00 FOR:BAR  
PUBLIC HEARING SENATE COMMUNITY & REGIONAL AFFAIRS

LOCATION:BARROW  
SB 37 MAYOR DON LONG CITY OF BARROW TESTIFY

# SENATE COMMITTEE REPORT

## First Committee of Reference

DATE: 2/14/95

FURTHER: Judiciary  
Finance

Date of 5-Day Notice: 3/2/95  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/20/95

CRA Committee considered SENATE BILL NO. 87

Community local options for control of alcoholic beverages; relating to the control of alcoholic beverages; relating to the definition of 'alcoholic beverage'; relating to purchase and sale of alcoholic beverages; relating to alcohol server education courses; efd.

and recommends:

- be replaced with \_\_\_\_\_ CS SENATE BILL 87 (CRA)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill: same title
- new title
- House Bill: technical change
- new: SCR\* \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tim Kelly</i>	X				
<i>John Hill</i>					
<i>(Pete S. Hill)</i>	✓				
CHAIR: <i>John Hill</i>	X				

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
REVENUE	3/3/5		5-0

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

RECEIVED  
MAR 23 1995  
Ans'd.....

TO: The Senate Judiciary Committee

DATE: March 22, 1995

SUBJ: CS For Senate Bill No. 87 "An Act relating to community local options for control of alcoholic beverages

Mr. Chairman and Distinguished Members of the Judiciary Committee,

My name is James Wood. I am a Captain of the North Slope Borough. Department of Public Safety. I reside in Barrow, Alaska.

On March 17th, I presented oral testimony before you urging that the illicit possession of alcoholic beverages in a local option community that has banned possession should be made a crime, and that the penalty for illicit possession should parallel the current mandatory sentencing for the crime of driving while intoxicated. I repeat my plea here, supported by the resolve of the many here in Barrow who have suffered so long and who wholly support these amendments. And, I wish to offer the following points of clarification:

[NEW WORDING APPEARS IN BRACKETS]

Proposed language change to Sec 34, AS 04.16.200(e), beginning at line 19 through line 27 on page 23 of the draft legislation should have read :

"(e) A person who sends, transports, or brings into [, or who possesses an alcoholic beverage within] a municipality or established village in violation of AS 04.11.499 [or AS 04.11.501 or an ordinance adopted under AS 04.11.501] is, upon conviction.

(1) guilty of a class A misdemeanor if the quantity imported [or possessed] is [9 liters or less of distilled spirits, 9 liters or less of wine, or 1.8 gallons or less of malt beverages].

(2) guilty of a class C felony if the quantity imported [or possessed] is [more than 9 liters of distilled spirits, more than 9 liters of wine, or more than 1.8 gallons of malt beverages]."

\*\* The significance of these amounts is that 9 liters or 1.8 gallons each comprise a typical commercially packaged case of beverages. The division, then, is that one case or less of any one or a combination of alcoholic beverages will be a misdemeanor, while more than one case will be a felony. Using the typical commercial sales scheme appears to be the most logical point of division for sanctions.

By adoption of this proposed language, Sec 35, AS 04.16.205(a), beginning at line 28

through line 31 on page 23, and beginning at line 1 through line 6 on page 24 is void and may be deleted.

By adoption of this proposed language, Sec 42, AS04.16.220(a) beginning at line 10 through line 13 should be amended by deleting the language "...except for alcoholic beverages possessed in violation of AS 04.11.501 or an ordinance adopted under AS 04.11.501, property seized under this paragraph may not be held over 48 hours or until and order for forfeiture is issued by the court, whichever is 3 days confinement for the first offense, 10 days of confinement for a second offense, and 30 days of confinement for a third and subsequent offenses. It should be no less for the illicit importation or possession of alcoholic beverages in a local option community.

A mandatory imposition of sentence for importation or possession is recommended for misdemeanor importation or possession. For driving while intoxicated, the mandatory imposition is 3 days confinement for the first offense, 10 days confinement for a second offense, and 30 days confinement for a third and subsequent offenses. It should be no less for the illicit importation or possession of alcoholic beverages in a local option community.

Further, I want to add to my testimony the following suggestions for inclusion in this law:

Delete Sec 2, AS 04.11.010(c), beginning at line 9 through line 15 on page 2 of the draft legislation. This language in the law is useless in fact. The concept applied here is one that is refuted by prosecutors and judges throughout Alaska. Possession of the specified amounts, or of any amount, alone is simply not adequate as a "presumption" of possession for sales by Alaska's jurists. Once the amount of supporting evidence now required by our judicial system is collected by law enforcement sufficient to prove illicit sales of alcohol, the "presumption" of possession for sales is moot.

Assets seized under provisions of this law should be forfeited to the municipality that made the seizure. And, there should be a requirement that forfeited assets or their proceeds can only be used by enforcement agencies to develop and employ drug abuse prevention strategies.

Mail and other forms of distance ordering involving mailed or wire transfer payments for alcoholic beverages should be made illegal under the law. Alcoholic beverages should only be sold in person to the consumer at point of sale. Third party sales (allowing one to buy for another) should also be illegal.

The alcohol related crimes of furnishing liquor to a minor and driving while intoxicated should be made felonies in local option communities.

This law should provide an option for a municipality or community to go from "dry" (ban on possession, importation and sales of alcoholic beverages) to "damp" (ban on only the sales of alcoholic beverages) without having to go from "dry" to "wet" (allowing the possession, importation and sales of alcoholic beverages), then to

"damp".

Thank you for considering these amendments to SB 87.

F A X T R A N S M I S S I O N  
to follow

From: Senator John Torgerson, Alaska State Legislature  
Phone: (907) 465-2828 Fax: (907) 465-4779

To: LEGISLATIVE LEGAL FAX#: 2029

Attn: MIKE FORD

Date: 3-17-95 Pages, including this cover sheet: 4 5

Memoranda: THIS AFTERNOON THE SENATE COMMUNITY & REGIONAL AFFAIRS  
COMMITTEE PASSED OUT SB 87 WITH SEVERAL AMENDMENTS  
I'M FAXING THE AMENDMENTS THAT WERE ADOPTED - HOWEVER  
THE AMENDMENT BY HOFFMAN (9-150673\A.2) WAS  
DRAFTED TO THE ORIGINAL BILL BUT COMMITTEE DID  
ADOPT THE AMENDMENT AND REQUESTED THAT DRAFTER  
(YOU!) MAKE IT CORRESPOND TO DRAFT @S  
(9-150673\C). AMENDMENT @.1 WAS ALSO ADOPTED

A TECHNICAL AMENDMENT WAS MADE TO PAGE 4, LINE 17  
OF DRAFT @S:

AFTER THE WORD "WITH" DELETE ["a"] AND INSERT  
THE WORD "EACH" AND

AFTER THE WORD "LICENSE" DELETE ["EACH"] AND  
REPLACE WITH "a"

TO PAGE 21, LINES 9-10: REPLACE ["ONCE IN A  
12-MONTH PERIOD"] WITH "ONCE IN AN 18 MONTH  
PERIOD"

ANY QUESTIONS, CALL ME MONDAY A.M.

Telephone Contact: 465-4989 SANDY

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR HOFFMAN

TO: SB 87

1 Page 21, after line 24:

2 Insert a new bill section to read:

3 \*\* Sec. 29. AS 04.16.090(a) is amended to read:

4 (a) A person may not maintain a place in which alcohol beverages are  
5 received or kept, or to which alcoholic beverages are brought, for consumption by  
6 members of the public or by members of a club, corporation, or association [,] unless  
7 the person is

8 (1) in an area that has prohibited the sale of an alcoholic beverage  
9 under AS 04.11.490 and the place is a club, corporation, or association that was  
10 in existence at least two years before the prohibition against the sale of an  
11 alcoholic beverage under AS 04.11.490 was adopted; or

12 (2) authorized to do so under this title."

13 Renumber the following bill sections accordingly.

14 Page 33, line 9:

15 Delete "sec. 69"

16 Insert "sec. 70"

17 Page 33, line 17:

18 Delete "sec. 29"

19 Insert "sec. 30"

20 Page 33, line 18:

21 Delete "66 and 68"

1

Insert "67 and 69"

1           Insert "72"

2   Page 34, line 31:

3           Delete "68 and 70"

4           Insert "69 and 71"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 87( ) Work Draft 9-LS0673\C

1 Page 21, after line 10:

2 Insert a new subsection to read:

3 "(g) Notwithstanding AS 29.26.140(a), after a petition has been certified as  
4 sufficient to meet the requirements of (b) or (c) of this section, another petition may  
5 not be filed or certified until after the question presented in the first petition has been  
6 voted on. Only one local option question may be presented in an election."

7 Page 31, lines 3 - 6:

8 Delete "not containing any part of an incorporated city or another established  
9 village, that has a perimeter clearly designated on a map by the local governing body  
10 or the board in the absence of a local governing body"

11 Insert "that does not contain any part of an incorporated city or another  
12 established village"

13 Page 33, after line 28:

14 Insert a new bill section to read:

15 "\* Sec. 65. TRANSITION: EXISTING LOCAL OPTION PETITIONS. A petition to  
16 adopt or remove a local option on file with a municipality or the lieutenant governor on the  
17 effective date of this section that has not been voted on is void and may not be placed on an  
18 election ballot."

19 Renumber the following bill sections accordingly.

20 Page 34, line 22:

21 Delete "71"

**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

March 18, 1995

**SUBJECT:** CSSB 87(CRA)

**TO:** Senator John Torgerson, Chair  
Senate Community & Regional Affairs Committee  
ATTN: Sandy

**FROM:** Pamela Finley *PF*  
Assistant Revisor of Statutes

Enclosed is CSSB 87(CRA), as you requested. I note that bill sec. 73 appears to assume that sec. 70 is an effective date provision. It is not. We could add a bill section making sec. 70 effective immediately, which is what the Department of Law usually prefers for sections giving an agency or board transitional authority to adopt regulations.

Since this bill has passed out, it would probably be simplest to send this memo on to the next committee of referral, which I believe is the Judiciary Committee. Please give me a call if you have any questions.

PF:glc  
95-245.glc

Enclosure

*3/20/95  
Given to sponsor to  
PASS ON TO S JUD  
FOR THEIR CONSIDERATION*

# Alaska State Legislature

Chairman,  
Judiciary Committee

Vice Chairman,  
Transportation Committee

Member  
Resources Committee  
Western Legislative Forestry Task Force



**Senator Robin L. Taylor**

State Capitol  
Juneau, Alaska 99801-1182  
Phone: 907-465-3873  
Fax: 907-465-3922

52 Front Street  
Ketchikan, Alaska 99901  
Phone: 907-225-8088  
Fax: 907-225-0713

## Recommended Changes in Draft CS

### Senate Bill 87



<u>SB 87</u>			<u>Committee Substitute</u>	
deletion appears on:			corrections appears on:	
Page	Line		Page	Line
1	8	delete "if the person is"	1	8
3	4	delete "is being transferred" insert "was issued"	3	27
3	5	delete (f) insert (g)	3	28
11	11	delete "under AS 04.11.395" insert "by the board"	12	3
12	3 & 6	delete "under AS 04.11.395" insert "by the board"	12	26 & 29
28	25	delete "community"	29	17
29	22	delete "No more"	31	4
29	23	delete "than 10 miles in diameter"	31	5

# Alaska State Legislature

Chairman,  
Judiciary Committee  
  
Vice Chairman,  
Transportation Committee  
  
Member,  
Resources Committee  
Western Legislative Forestry Task Force



RECEIVED

FEB 28 1995

Ans'd.....

Senator Robin L. Taylor

State Capitol  
Juneau, Alaska 99801-1182  
Phone: (907) 465-3873  
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352 Front Street  
Ketchikan, Alaska 99901  
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## MEMORANDUM

TO: Senator John Torgerson, Chairman  
Senate Community & Regional Affairs Committee

Attention: Sandy Nusbaum

FROM: Joe Ambrose *JA*

DATE: 2/28/95  
REF: SB 87 Amendment

\*\*\*\*\*

The ABC board has asked that Senator Torgerson consider the attached "housekeeping" changes to SB 87 to correct drafting errors.

Pat Sharrock can explain the changes in detail, but as near as I can tell they make no substantive changes and are in line with the bill the Senate passed last year.

Let me know if you want to do a CS or would prefer to wait and we can do it in JUD.

Thanks!

*ps.....I'd suggest you set aside at least an hour to hear this thing. It takes about that long to walk through it!*

ALCOHOLIC BEVERAGE CONTROL BOARD  
Proposed Corrections to SB 87  
February 23, 1995

Page	Line	
1	8	delete "if the person is" - person does not have to be in the area
3	4	delete "is being transferred" and insert "was issued" - transfer is not the issue here
3	5	delete "(f)" and insert "(g)" - this is former (j) which is now (g)
5	25	delete the first "a" and insert "each"
11	11	delete "under AS 04.11.395" and insert "by the board" - this allows for current conditions imposed to remain in force
12	3&6	delete "under AS 04.11.395" and insert "by the board"
28	25	delete "community" - no more community licenses
29	22	delete "no more"
	23	delete "than 10 miles in diameter" - village boundary may be different than a 5-mile radius

9-LS0673NC  
Ford  
3/1/95

CS FOR SENATE BILL NO. 87( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): THE SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to community local options for control of alcoholic beverages;  
2 relating to the control of alcoholic beverages; relating to the definition of  
3 'alcoholic beverage'; relating to purchase and sale of alcoholic beverages; relating  
4 to alcohol server education courses; and providing for an effective date."

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

6 \* Section 1. AS 04.11.010(b) is amended to read:

7 (b) Except as provided in this subsection, a [A] person may not solicit or  
8 receive orders for the delivery of an alcoholic beverage in an area that has adopted  
9 a local option under AS 04.11.491. If the area has adopted a local option under  
10 AS 04.11.491(a)(1), (2), or (3), or (b)(1) or (2), a package store licensee outside of  
11 that local option area may receive orders as provided under AS 04.11.150 but may  
12 not solicit in that area or receive orders through an agent or employee in that  
13 area. This subsection does not apply to a package store licensee who operates a  
14 package store in an area that has adopted a local option under

1 AS 04.11.491(a)(2)(C) or (3)(C) or (b)(2)(C) [WHERE THE RESULTS OF A  
2 LOCAL OPTION ELECTION HAVE, UNDER AS 04.11.490 - 04.11.500,  
3 PROHIBITED THE BOARD FROM ISSUING, RENEWING, OR TRANSFERRING  
4 ONE OR MORE TYPES OF LICENSES OR PERMITS UNDER THIS TITLE,  
5 UNLESS THE PERSON IS LICENSED UNDER THIS TITLE AND THE ORDER  
6 IS ACTUALLY RECEIVED BY THAT PERSON FROM THE PURCHASER OF  
7 THE ALCOHOLIC BEVERAGE]. A person who violates this subsection is  
8 punishable upon conviction as provided under AS 04.16.200(a) or (b).

9 \* Sec. 2. AS 04.11.010(c) is amended to read:

10 (c) In a criminal prosecution for possession of alcoholic beverages for sale in  
11 violation of (a) of this section, the fact that a person possessed more than 12 liters of  
12 distilled spirits, 24 liters or more of wine, or 12 gallons [45 LITERS] or more of malt  
13 beverages in an area where the sale of alcoholic beverages is restricted or prohibited  
14 under AS 04.11.491 [AS 04.11.490, 04.11.492, 04.11.496, OR 04.11.500] creates a  
15 presumption that the person possessed the alcoholic beverages for sale.

16 \* Sec. 3. AS 04.11.080 is amended to read:

17 Sec. 04.11.080. TYPES OF LICENSES AND PERMITS. Licenses and  
18 permits issued under this title are as follows:

- 19 (1) beverage dispensary license;
- 20 (2) duplicate beverage dispensary license for additional rooms;
- 21 (3) restaurant or eating place license;
- 22 (4) club license;
- 23 (5) bottling works license;
- 24 (6) brewery license;
- 25 (7) package store license;
- 26 (8) general wholesale license;
- 27 (9) wholesale malt beverage and wine license;
- 28 (10) distillery license;
- 29 (11) common carrier dispensary license;
- 30 (12) retail stock sale license;
- 31 (13) recreational site license;

- 1 (14) [COMMUNITY LIQUOR LICENSE;  
2 (15)] pub license;  
3 (15) [(16)] winery license;  
4 (16) [(17)] caterer's permit;  
5 (17) [(18)] special events permit;  
6 (18) [(19)] conditional contractor's permit;  
7 (19) [(20)] brewpub license.

8 \* Sec. 4. AS 04.11.100 is amended by adding a new subsection to read:

9 (f) Notwithstanding the provisions of (b) and (e) of this section, upon written  
10 application and approval of the local governing body, the board may issue or reissue  
11 a restaurant or eating place license and exempt the licensee from the requirements of  
12 (b) and (e) of this section. A licensee exempt as provided in this subsection shall  
13 provide food items for sale on the premises as shown on a menu approved by the  
14 board and available to patrons. The board may not

15 (1) issue or reissue a license as provided under this subsection if

16 (A) the issuance or reissuance would result in more than one  
17 exempt restaurant or eating place license for every 10 restaurant or eating place  
18 licenses allowed under the provisions of AS 04.11.400(a)(2) or (3);

19 (B) the premises would be located in a building having a public  
20 entrance within 200 feet of the boundary line of a school or a church  
21 building in which religious services are being regularly conducted; for purposes  
22 of this subparagraph, the 200-foot prohibition is measured from the outer  
23 boundary line of the school or the public entrance of the church building by the  
24 shortest pedestrian route to the nearest public entrance of the restaurant or  
25 eating place;

26 (2) reissue a restaurant or eating place license as exempt as provided  
27 under the provisions of this subsection if the license was issued under the provisions  
28 of AS 04.11.400(g); or

29 (3) transfer an exempt license issued under this subsection to another  
30 person.

31 \* Sec. 5. AS 04.11.135(a) is amended to read:

1 (a) A brewpub license authorizes the holder of a beverage dispensary license  
2 to

3 (1) manufacture on premises licensed under the beverage dispensary  
4 license not more than 75,000 [16,000] gallons of beer in a calendar year; and

5 (2) sell beer manufactured on premises licensed under the beverage  
6 dispensary license for consumption only on the licensed premises.

7 \* Sec. 6. AS 04.11.135(b) is amended to read:

8 (b) Except as provided under AS 04.11.360(10) [AS 04.11.360(12)], the  
9 brewpub license is not transferable, shall remain the property of the state, and is not  
10 subject to any form of alienation.

11 \* Sec. 7. AS 04.11.150(a) is repealed and reenacted to read:

12 (a) Except as provided under (g) of this section, a package store license  
13 authorizes the licensee to sell alcoholic beverages to a person present on the licensed  
14 premises or to a person known to the licensee who makes a written solicitation to that  
15 licensee for shipment. A licensee, agent, or employee may only ship alcoholic  
16 beverages to the purchaser. Before commencing the practice of shipping alcoholic  
17 beverages, and with <sup>each</sup> a subsequent application to renew the license, <sup>(d)</sup> [each] licensee shall  
18 notify the board in writing of the licensee's intention to ship alcoholic beverages in  
19 response to a written solicitation. The package store licensee, agent, or employee shall  
20 include written information on fetal alcohol syndrome and fetal alcohol effects  
21 resulting from a woman consuming alcohol during pregnancy in a shipment of  
22 alcoholic beverages sold in response to a written solicitation.

23 \* Sec. 8. AS 04.11.150(g) is repealed and reenacted to read:

24 (g) If a shipment is to an area that has restricted the sale of alcoholic  
25 beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store  
26 licensee, agent, or employee may not ship to a purchaser more than 12 liters of  
27 distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in  
28 a calendar month.

29 \* Sec. 9. AS 04.11.160 is amended by adding new subsections to read:

30 (f) A person who applies for issuance or renewal of a license under this  
31 section shall file, on forms provided by the board, the following information regarding

1 each brand of alcoholic beverage that the person intends to purchase, offer for sale, or  
2 sell: (1) the full and correct brand or trade name; (2) the nature and type of the brand;  
3 (3) the name of the distiller, brewer, vintner, or importer of the brand; and (4) a  
4 certification by the distiller, brewer, vintner, or importer of the brand that the person  
5 is a primary source of supply for the brand. In addition to the fees imposed under (a)  
6 and (b) of this section, a person filing under this subsection shall pay a biennial filing  
7 fee of \$50 for each brand of alcoholic beverage the person intends to purchase, offer  
8 for sale, or sell. In this subsection, "distiller, brewer, vintner, or importer" includes  
9 an exclusive agent of the distiller, brewer, vintner, or importer if the agent's name  
10 appears on the label of the brand approved by the Federal Bureau of Alcohol, Tobacco  
11 and Firearms.

12 (g) A person licensed under this section shall notify the board within 10 days  
13 of a change in a primary source of supply designation required under (f) of this  
14 section.

15 \* Sec. 10. AS 04.16 is amended by adding a new section to read:

16 Sec. 04.16.172. RESTRICTIONS ON PURCHASE AND SALE OF  
17 ALCOHOLIC BEVERAGES. A person licensed under AS 04.11.090, 04.11.100,  
18 04.11.110, or 04.11.150 may not purchase, sell, or offer for sale an alcoholic beverage  
19 unless the alcoholic beverage being purchased, sold, or offered for sale was obtained  
20 from a person licensed under

21 (1) AS 04.11.160 as a primary source of supply for the alcoholic  
22 beverage being purchased, sold, or offered for sale; or

23 (2) AS 04.11.130, 04.11.140, or 04.11.170.

24 \* Sec. 11. AS 04.11.270(b) is amended to read:

25 (b) A license shall be renewed as follows:

26 (1) on or before November 1 [OF EACH YEAR], the director shall  
27 mail a renewal application to each licensee whose license, unless renewed, will expire  
28 on December 31 of that year; the application shall be mailed to the licensee at the  
29 licensed premises or at a mailing address furnished by the licensee;

30 (2) the licensee shall submit the completed renewal application and the  
31 biennial license fee to the director before January 1 [ON OR BEFORE

1 DECEMBER 31];

2 (3) a renewal application filed after December 31 is delinquent and  
3 must be accompanied by a \$500 [ \$200 ] penalty fee;

4 (4) if December 31 falls on a weekend or a state holiday, the deadline  
5 is extended to the first business day following December 31.

6 \* Sec. 12. AS 04.11.320 is amended to read:

7 Sec. 04.11.320. DENIAL OF NEW LICENSES AND PERMITS. (a) An  
8 application requesting issuance of a new license shall be denied if

9 (1) the board finds, after review of all relevant information, that  
10 issuance of the license would not be in the best interests of the public;

11 (2) issuance of the license is prohibited by AS 04.11.390, relating to  
12 residency, or AS 04.11.410, relating to location of premises near churches and schools;

13 (3) the application has not been completed in accordance with  
14 AS 04.11.260;

15 (4) issuance of the license would violate the restrictions pertaining to  
16 the particular license imposed under this title;

17 (5) issuance of the license is prohibited under this title as a result of  
18 an election conducted under AS 04.11.507 [IN ACCORDANCE WITH  
19 AS 04.11.502];

20 (6) the requirements of AS 04.11.420 - 04.11.450 relating to zoning,  
21 ownership and location of the license, and the identity and financing of a licensee have  
22 not been met;

23 (7) [THE LICENSED PREMISES ARE TO BE LOCATED IN A  
24 MUNICIPALITY, THE TYPE OF LICENSE SOUGHT IS A BEVERAGE  
25 DISPENSARY OR PACKAGE STORE LICENSE, AND THAT TYPE OF LICENSE  
26 IS ALREADY IN EFFECT IN THE MUNICIPALITY UNDER A COMMUNITY  
27 LIQUOR LICENSE, UNLESS THE NEW LICENSE IS TO BECOME EFFECTIVE  
28 AFTER THE COMMUNITY LIQUOR LICENSE IS NO LONGER EFFECTIVE,  
29 WHETHER AS THE RESULT OF A LOCAL OPTION ELECTION OR  
30 OTHERWISE;

31 (8) THE AUTHORITY SOUGHT IS AUTHORITY TO OPERATE A

1 BEVERAGE DISPENSARY OR PACKAGE STORE UNDER A COMMUNITY  
2 LIQUOR LICENSE FOR PREMISES TO BE LOCATED IN A MUNICIPALITY  
3 WHERE THE AUTHORITY SOUGHT IS ALREADY HELD BY A PRIVATE  
4 LICENSEE UNDER A BEVERAGE DISPENSARY OR PACKAGE STORE  
5 LICENSE, UNLESS THE COMMUNITY LIQUOR LICENSE IS TO BECOME  
6 EFFECTIVE AFTER THE PRIVATELY HELD LICENSE IS NO LONGER  
7 EFFECTIVE, WHETHER AS THE RESULT OF A LOCAL OPTION ELECTION OR  
8 OTHERWISE:

9 (9)] issuance of the license is prohibited under AS 04.11.400(a) or  
10 prohibition of issuance of the license is found necessary under AS 04.11.400(b);

11 (8) [(10)] the application contains false statements of material fact;

12 (9) [(11)] the license is sought for the sale of alcoholic beverages in a  
13 first or second class city where [IN WHICH] there are no licensed premises at the  
14 time of application unless a majority of the voters have voted not to approve [IN] a  
15 local option to restrict or prohibit the sale of alcoholic beverages under  
16 AS 04.11.491, have voted to approve a local option to allow the type of premises  
17 under AS 04.11.491(a)(2) or (3), or have voted to remove a restriction or  
18 prohibition on the sale of alcoholic beverages under AS 04.11.495 [ELECTION  
19 CONDUCTED IN ACCORDANCE WITH AS 04.11.502 HAVE VOTED "NO" ON  
20 THE QUESTION SET OUT IN AS 04.11.490, OR HAVE VOTED "YES" ON A  
21 QUESTION SET OUT IN AS 04.11.492 OR 04.11.500]; or

22 (10) [(12)] the license is sought for the sale of alcoholic beverages in  
23 an established village where [IN WHICH] there are no licensed premises at the time  
24 of application unless a majority of the voters have voted not to approve [IN] a local  
25 option to restrict or prohibit the sale of alcoholic beverages under AS 04.11.491,  
26 have voted to approve a local option to allow the type of premises under  
27 AS 04.11.491(b)(2), or have voted to remove a restriction or prohibition on the  
28 sale of alcoholic beverages under AS 04.11.495 [ELECTION CONDUCTED IN  
29 ACCORDANCE WITH AS 04.11.502 HAVE VOTED "NO" ON THE QUESTION  
30 SET OUT IN AS 04.11.490 OR HAVE VOTED "YES" ON THE QUESTION SET  
31 OUT IN AS 04.11.500].

1 (b) An application requesting issuance of a new permit shall be denied if

2 (1) the board finds, after review of all relevant information, that  
3 issuance of the permit would not be in the best interests of the public;

4 (2) the board finds that any of the statements made in the application  
5 are untrue;

6 (3) the application has not been completed in accordance with  
7 AS 04.11.260; or

8 (4) the permit is sought for the sale of alcoholic beverages in a first or  
9 second class city or established village where [IN WHICH] there are no licensed  
10 premises at the time of application unless a majority of the voters have voted not to  
11 approve [IN] a local option to restrict or prohibit the sale of alcoholic beverages  
12 under AS 04.11.491. have voted to approve a local option to allow the type of  
13 permit under AS 04.11.491(a)(2) or (b)(2), or have voted to remove a restriction  
14 or prohibition on the sale of alcoholic beverages under AS 04.11.495 [ELECTION  
15 CONDUCTED IN ACCORDANCE WITH AS 04.11.502 HAVE VOTED "NO" ON  
16 THE QUESTION SET OUT IN AS 04.11.490].

17 \* Sec. 13. AS 04.11.330(a) is amended to read:

18 (a) An application requesting renewal of a license shall be denied if

19 (1) the board finds, after review of all relevant information, that  
20 renewal of the license would not be in the best interests of the public;

21 (2) the license has been revoked for any cause;

22 (3) the applicant has not operated the licensed premises for at least 30  
23 eight-hour days during each of the two preceding calendar years, unless the board  
24 determines that the licensed premises are under construction or cannot be operated  
25 through no fault of the applicant;

26 (4) the board finds that issuance of an existing license under  
27 AS 04.11.400(d) has not encouraged tourist trade;

28 (5) the requirements of AS 04.11.420 - 04.11.450 relating to zoning,  
29 ownership of the license, and financing of the licensee have not been met;

30 (6) renewal of the license would violate the restrictions pertaining to  
31 the particular license under this title or the license has been operated in violation of

1 a condition or restriction imposed by the board;

2 (7) renewal of the license is prohibited under this title as a result of an  
3 election conducted under AS 04.11.507 [IN ACCORDANCE WITH AS 04.11.502];

4 (8) the application has not been completed in accordance with  
5 AS 04.11.270; or

6 (9) the license was issued under AS 04.11.400(g), and the board finds  
7 that the public convenience does not require renewal.

8 \* Sec. 14. AS 04.11.340 is amended to read:

9 Sec. 04.11.340. DENIAL OF REQUEST FOR RELOCATION. An application  
10 requesting approval for the relocation of licensed premises shall be denied if

11 (1) the board finds, after review of all relevant information, that  
12 relocation of the license would not be in the best interests of the public;

13 (2) the relocation is prohibited under AS 04.11.400(a) or (b);

14 (3) the license would be relocated out of the established village,  
15 incorporated city, unified municipality, or population area established under  
16 AS 04.11.400(a) within which it is located;

17 (4) transfer of ownership is to be made concurrently with the relocation  
18 of the licensed premises and a ground for denial of the transfer of ownership under  
19 AS 04.11.360 is presented;

20 (5) the application has not been completed in accordance with  
21 AS 04.11.290;

22 (6) relocation of the license would result in violation of a local zoning  
23 law;

24 (7) relocation of the license would violate the restrictions pertaining to  
25 the particular license imposed by this title;

26 (8) relocation of the license is prohibited under this title as a result of  
27 an election conducted under AS 04.11.507 [IN ACCORDANCE WITH  
28 AS 04.11.502]; or

29 (9) [THE LICENSED PREMISES ARE TO BE LOCATED IN A  
30 MUNICIPALITY, THE TYPE OF LICENSE SOUGHT TO BE RELOCATED IS A  
31 BEVERAGE DISPENSARY OR PACKAGE STORE LICENSE, AND THAT TYPE

1 OF LICENSE IS ALREADY IN EFFECT IN THE MUNICIPALITY UNDER A  
2 COMMUNITY LIQUOR LICENSE, UNLESS THE RELOCATION IS TO BECOME  
3 EFFECTIVE AFTER THE COMMUNITY LIQUOR LICENSE IS NO LONGER  
4 EFFECTIVE, WHETHER AS THE RESULT OF A LOCAL OPTION ELECTION OR  
5 OTHERWISE;

6 (10)] the license was issued under AS 04.11.400(d), (e), or (g).

7 \* Sec. 15. AS 04.11.360 is amended to read:

8 Sec. 04.11.360. DENIAL OF TRANSFER OF A LICENSE TO ANOTHER  
9 PERSON. An application requesting approval of a transfer of a license to another  
10 person under this title shall be denied if

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

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

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

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

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

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

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

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

29 (7) transfer of the license to another person is prohibited under the  
30 provisions of this title as a result of an election conducted under AS 04.11.507 [IN  
31 ACCORDANCE WITH AS 04.11.502];

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

3 (9) [THE LICENSED PREMISES ARE LOCATED IN A  
4 MUNICIPALITY, THE TYPE OF LICENSE SOUGHT TO BE TRANSFERRED IS  
5 A BEVERAGE DISPENSARY OR PACKAGE STORE LICENSE, AND THAT TYPE  
6 OF LICENSE IS ALREADY IN EFFECT IN THE MUNICIPALITY UNDER A  
7 COMMUNITY LIQUOR LICENSE, UNLESS THE TRANSFER IS TO BECOME  
8 EFFECTIVE AFTER THE COMMUNITY LIQUOR LICENSE IS NO LONGER  
9 EFFECTIVE, WHETHER AS THE RESULT OF A LOCAL OPTION ELECTION OR  
10 OTHERWISE;

11 (10) THE AUTHORITY SOUGHT IS AUTHORITY TO OPERATE  
12 A BEVERAGE DISPENSARY OR PACKAGE STORE UNDER A COMMUNITY  
13 LIQUOR LICENSE FOR PREMISES TO BE LOCATED IN A MUNICIPALITY  
14 WHERE THE AUTHORITY SOUGHT IS ALREADY HELD BY A PRIVATE  
15 LICENSEE UNDER A BEVERAGE DISPENSARY OR PACKAGE STORE  
16 LICENSE, UNLESS THE TRANSFER IS TO BECOME EFFECTIVE AFTER THE  
17 PRIVATELY HELD LICENSE IS NO LONGER EFFECTIVE, WHETHER AS THE  
18 RESULT OF A LOCAL OPTION ELECTION OR OTHERWISE;

19 (11) the license was issued under AS 04.11.100(f) or 04.11.400(e); or

20 (10) [AS 04.11.400(g); (12)] the license was issued under  
21 AS 04.11.135, unless the transferor is also applying to transfer the beverage dispensary  
22 license required under AS 04.11.135 to the same transferee.

23 \* Sec. 16. AS 04.11.370 is amended to read:

24 Sec. 04.11.370. SUSPENSION AND REVOCATION OF LICENSES AND  
25 PERMITS. A license or permit shall be suspended or revoked if the board finds  
26 [THAT ONE OR MORE OF THE FOLLOWING GROUNDS EXISTS:]

27 (1) misrepresentation of a material fact on an application made under  
28 this title or a regulation adopted under this title [FOR A LICENSE OR PERMIT];

29 (2) continuation of the manufacture, sale, or service of alcoholic  
30 beverages by the licensee or permittee [ACTIVITIES AUTHORIZED UNDER A  
31 LICENSE OR PERMIT] would be contrary to the best interests of the public;

1 (3) failure on the part of the licensee to correct a defect [DEFECTS]  
2 that constitutes a violation [CONSTITUTE VIOLATIONS] of this title, a condition  
3 or restriction imposed by the board, a regulation [REGULATIONS] adopted under  
4 this title, or other laws [WITHIN A PRESCRIBED TIME] after receipt of notice  
5 issued by the board or its agent;

6 (4) conviction of a licensee of a violation of [A PROVISION OF] this  
7 title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

8 (5) conviction of an [THE] agent or employee of a licensee of a  
9 violation of this title, a regulation adopted under this title, or an ordinance adopted  
10 under AS 04.21.010, if the licensee is found by the board to have either knowingly  
11 allowed the violation or to have recklessly or with criminal negligence failed to act in  
12 accordance with the duty prescribed under AS 04.21.030 with the result that the [AN]  
13 agent or employee violates a law, regulation, or ordinance;

14 (6) failure of the licensee to comply with the public health, fire, or  
15 safety laws and regulations [PERTAINING TO PUBLIC HEALTH] in the state;

16 (7) use of the licensed premises as a resort for illegal possessors or  
17 users of narcotics, prostitutes, or promoters of prostitution; in addition to any other  
18 legally competent evidence, the character of the premises may be proved by the  
19 general reputation of the premises in the community as a resort for illegal possessors  
20 or users of narcotics, prostitutes, or promoters of prostitution;

21 (8) occurrence of illegal gambling within the limits of the licensed  
22 premises;

23 (9) the licensee permitted a [PERMITTING ANY] public offense  
24 involving moral turpitude to occur on the licensed premises;

25 (10) violation by a licensee of this title, a condition or restriction  
26 imposed by the board, a regulation adopted under this title, or an ordinance adopted  
27 under AS 04.21.010; or

28 (11) violation by an agent or employee of a licensee of a provision of  
29 this title, a condition or restriction imposed by the board, a regulation adopted  
30 under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found  
31 by the board to have either knowingly allowed the violation or to have recklessly or

1 with criminal negligence failed to act in accordance with the duty prescribed under  
2 AS 04.21.030 with the result that the agent or employee violates the law, condition  
3 or restriction, regulation, or ordinance.

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

5 Sec. 04.11.395. BOARD IMPOSED CONDITIONS OR RESTRICTIONS.

6 The board may, in the best interests of the public, impose conditions or restrictions on  
7 a license or permit issued under this chapter.

8 \* Sec. 18. AS 04.11.400(a) is amended to read:

9 (a) Except as provided in (d) - (h) of this section, a new license may not be  
10 issued and the board may prohibit relocation of an existing license

11 (1) outside an established village, incorporated city, unified  
12 municipality, or organized borough if after the issuance or relocation there would be  
13 (A) more than one restaurant or eating place license for each 1,500 population or  
14 fraction of that [1,500] population, or (B) more than one license of each other type,  
15 including licenses that have been issued under (d) or (e) of this section, for each 3,000  
16 population or fraction of that [3,000] population, in a radius of five miles of the  
17 licensed premises [OR LOCATION OF PREMISES SOUGHT TO BE LICENSED],  
18 excluding the populations of established villages, incorporated cities, unified  
19 municipalities, and organized boroughs that are wholly or partly included within the  
20 radius;

21 (2) inside an established village, incorporated city, or unified  
22 municipality if after the issuance or relocation there would be inside the established  
23 village, incorporated city, or unified municipality

24 (A) more than one restaurant or eating place license for each  
25 1,500 population or fraction of that [1,500] population; or

26 (B) more than one license of each other type, including licenses  
27 that have been issued under (d) or (e) of this section, for each 3,000 population  
28 or fraction of that [3,000] population [INSIDE THE ESTABLISHED  
29 VILLAGE, INCORPORATED CITY, OR UNIFIED MUNICIPALITY];

30 (3) inside an organized borough but outside an established village or  
31 incorporated city located within the borough, if after the issuance or relocation there

1 would be inside the borough, but outside the established villages and incorporated  
2 cities located within the borough,

3 (A) more than one restaurant or eating place license for each  
4 1,500 population or fraction of that [1,500] population; or

5 (B) more than one license of each other type, including licenses  
6 that have been issued under (d) or (e) of this section, for each 3,000 population  
7 or fraction of that [3,000] population [INSIDE THE BOROUGH,] excluding  
8 the population of those established villages that have adopted a local option  
9 under AS 04.11.491(b)(1), (3), or (4) [CONDUCTED AN ELECTION ON A  
10 QUESTION SET OUT IN AS 04.11.490, 04.11.496, OR 04.11.500], and  
11 excluding the population of incorporated cities located within the organized  
12 borough.

13 \* Sec. 19. AS 04.11.480(a) is amended to read:

14 (a) A [IF A] local governing body may [WISHES TO] protest the issuance,  
15 renewal, relocation, [TRANSFER OF LOCATION,] or transfer to another person of  
16 a license by sending [, IT SHALL FURNISH] the board and the applicant [WITH] a  
17 protest and the reasons for the protest within 30 days of receipt from the board of  
18 notice of filing of the application. The local governing body may protest the  
19 continued operation of a license during the second year of the biennial license  
20 period by sending the board and the licensee a protest and the reasons for the  
21 protest by January 31 of the second year of the license. The procedures for  
22 action on a protest of continued operation of a license are the same as the  
23 procedures for action on a protest of a renewal application. The board shall  
24 consider a protest and testimony received at a hearing conducted under  
25 AS 04.11.510(b)(2) or (4) when it considers the application or continued operation,  
26 and the protest and the record of the hearing conducted under AS 04.11.510(b)(2) or  
27 (4) shall be kept [RETAINED] as part of the board's permanent record of its review  
28 [OF THE APPLICATION]. If an application or continued operation is protested, the  
29 board shall deny [MAY NOT APPROVE] the application or continued operation  
30 unless the board finds that the protest is arbitrary, capricious, and unreasonable.

31 \* Sec. 20. AS 04.11 is amended by adding a new section to read:

1           Sec. 04.11.491. LOCAL OPTIONS. (a) If a majority of the persons voting  
2 on the question vote to approve the option, a municipality shall adopt a local option  
3 to prohibit

4                   (1) the sale of alcoholic beverages;

5                   (2) the sale of alcoholic beverages except by one or more of the  
6 following listed on the ballot:

7                           (A) a restaurant or eating place licensee;

8                           (B) a beverage dispensary licensee;

9                           (C) a package store licensee; or

10                          (D) a caterer holding a permit under AS 04.11.230 to sell  
11 alcoholic beverages at a site within the municipality who is also licensed under  
12 a beverage dispensary license for premises outside of the municipality;

13                   (3) the sale of alcoholic beverages except on premises operated by the  
14 municipality and under a type of licensed premises listed on the ballot, that may  
15 include one or more of the following:

16                           (A) a restaurant or eating place license;

17                           (B) a beverage dispensary license; or

18                           (C) a package store license;

19                          (4) the sale and importation of alcoholic beverages; or

20                          (5) the sale, importation, and possession of alcoholic beverages.

21           (b) If a majority of the persons voting on the question vote to approve the  
22 option, an established village shall exercise a local option to prohibit

23                   (1) the sale of alcoholic beverages;

24                   (2) the sale of alcoholic beverages except by one or more of the  
25 following listed on the ballot:

26                           (A) a restaurant or eating place licensee;

27                           (B) a beverage dispensary licensee;

28                           (C) a package store licensee; or

29                          (D) a caterer holding a permit under AS 04.11.230 to sell  
30 alcoholic beverages at a site within the established village who is also licensed  
31 under a beverage dispensary license for premises outside of the established

1 village;

2 (3) the sale and importation of alcoholic beverages; or

3 (4) the sale, importation, and possession of alcoholic beverages.

4 (c) A ballot question to adopt a local option under this section must at least  
5 contain language substantially similar to: "Shall (name of municipality or village)  
6 adopt a local option to prohibit (local option under (a) or (b) of this section)? (yes or  
7 no)."

8 (d) The ballot for an election on the option set out in (a)(2)(A), (a)(3)(A), or  
9 (b)(2)(A) of this section must include an explanation of the authority to sell alcoholic  
10 beverages given to a restaurant or eating place. The ballot for an election on the  
11 option set out in (a)(2)(B) or (D), (a)(3)(B), or (b)(2)(B) or (D) of this section must  
12 include a statement that a beverage dispensary license is commonly known as a "bar"  
13 and an explanation of the authority to sell alcoholic beverages given to a beverage  
14 dispensary licensee. The ballot for an election on the option set out in (a)(2)(C),  
15 (a)(3)(C), or (b)(2)(C) of this section must include a statement that a package store  
16 license is commonly known as a "liquor store" and an explanation of the authority to  
17 sell alcoholic beverages given to a package store licensee.

18 (e) If a municipality dissolves under AS 29.06.450(a) or (b), a local option  
19 adopted by the municipality under (a) of this section shall continue in effect as the  
20 corresponding local option under (b) of this section for an established village having  
21 the same perimeter as the previous boundaries of the municipality. A license for  
22 premises operated by the municipality under AS 04.11.505 expires when the  
23 municipality dissolves.

24 (f) A municipality or established village that has adopted a local option under  
25 (a)(1), (2), or (3) or (b)(1) or (2) of this section may designate a site for the delivery  
26 of alcoholic beverages to individuals in the area or a site for a person to bring  
27 alcoholic beverages if the alcoholic beverages are imported into the area. This  
28 subsection does not apply to the delivery or importation of

29 (1) one liter or less of distilled spirits, two liters or less of wine, or one  
30 gallon or less of malt beverages; or

31 (2) alcoholic beverages to a premises licensed under (a)(2) - (3) or

1 (b)(2) of this section.

2 \* Sec. 21. AS 04.11 is amended by adding new sections to read:

3 Sec. 04.11.493. CHANGE OF LOCAL OPTION. (a) If a majority of persons  
4 voting on the question vote to approve a different local option, a municipality or  
5 established village shall change a local option previously adopted under AS 04.11.491  
6 to the different approved option.

7 (b) A ballot question to change a local option under this section must at least  
8 contain language substantially similar to: "Shall (name of municipality or village)  
9 change the local option currently in effect, that prohibits (current local option under  
10 AS 04.11.491), and adopt in its place a local option to prohibit (proposed local option  
11 under AS 04.11.491)? (yes or no)."

12 Sec. 04.11.495. REMOVAL OF LOCAL OPTION. (a) If a majority of the  
13 persons voting on the question vote to remove the option, a municipality or established  
14 village shall remove a local option previously adopted under AS 04.11.491. The  
15 option is repealed effective the first day of the month following certification of the  
16 results of the election.

17 (b) A ballot question to remove a local option under this section must at least  
18 contain language substantially similar to: "Shall (name of municipality or village)  
19 remove the local option currently in effect, that prohibits (current local option under  
20 AS 04.11.491), so that there is no longer any local option in effect? (yes or no)."

21 (c) When issuing a license in the area that has removed a local option, the  
22 board shall give priority to an applicant who was formerly licensed and whose license  
23 was not renewed because of the results of the previous local option election. However,  
24 an applicant described in this subsection does not have a legal right to a license and  
25 the board is not required to approve the application.

26 \* Sec. 22. AS 04.11 is amended by adding a new section to read:

27 Sec. 04.11.497. EFFECT ON LICENSES OF PROHIBITION OF SALE. If  
28 a majority of voters vote to prohibit the sale of alcoholic beverages under  
29 AS 04.11.491(a)(1), (a)(4) or (5), (b)(1), or (b)(3) or (4), the board may not issue,  
30 renew, or transfer, between persons or locations, a license for premises located within  
31 the boundaries of the municipality and in unincorporated areas within five miles of the

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

\* Sec. 23. AS 04.11 is amended by adding a new section to read:

Sec. 04.11.499. PROHIBITION OF IMPORTATION AFTER ELECTION. If a majority of the voters vote to prohibit the importation of alcoholic beverages under AS 04.11.491(a)(4) or (5) or (b)(3) or (4), 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.

\* Sec. 24. AS 04.11 is amended by adding a new section to read:

Sec. 04.11.501. PROHIBITION OF POSSESSION AFTER ELECTION. (a) If a majority of the voters vote to prohibit the possession of alcoholic beverages under AS 04.11.491(a)(5) or (b)(4), a person may not knowingly possess an alcoholic beverage in 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 recognized by the church or religious body as authorized to dispense the wine.

(b) If there are licensed premises within the municipality or established village, the prohibition on possession is effective beginning 90 days after the results of the election are certified. If there are no licensed premises within the municipality or established village, the prohibition on possession is effective beginning 60 days after the results of the election are certified.

1 (c) Upon the adoption by a municipality of a local option under  
2 AS 04.11.491(a)(5), an ordinance is adopted containing the provisions of this section.

3 (d) In this section, "possession" means having physical possession of or  
4 exercising dominion or control over an alcoholic beverage, but does not include having  
5 an alcoholic beverage within the digestive system of a person.

6 \* Sec. 25. AS 04.11 is amended by adding a new section to read:

7 Sec. 04.11.503. EFFECT ON LICENSES OF RESTRICTION ON SALE. If  
8 a majority of the voters vote under AS 04.11.491(a)(2) or (b)(2) to prohibit sale of  
9 alcoholic beverages except by the type or types of licensees or permit holders listed  
10 on the ballot, the board may not issue, renew, or transfer between persons or locations  
11 a license for premises located within the boundaries of the municipality and in  
12 unincorporated areas within five miles of the boundaries of the municipality or within  
13 the perimeter of the established village, except the type or types of licenses listed on  
14 the ballot. A license in effect within the boundaries of the municipality or perimeter  
15 of the established village, and in unincorporated areas within five miles of the  
16 boundaries of the municipality, except the type of license listed on the ballot, is void  
17 90 days after the results of the election are certified. A license that expires during the  
18 90 days after the results of a local option election are certified may be extended, until  
19 it is void under this section, by payment of a prorated portion of the biennial license  
20 fee.

21 \* Sec. 26. AS 04.11 is amended by adding a new section to read:

22 Sec. 04.11.505. LICENSING AFTER PROHIBITION ON SALE EXCEPT IN  
23 PREMISES OPERATED BY MUNICIPALITY. (a) If a majority of the voters vote  
24 under AS 04.11.491(a)(3) to prohibit the sale of alcoholic beverages except on  
25 premises operated by the municipality, the board may not issue, renew, or transfer  
26 between persons or locations a license for premises located within the boundaries of  
27 a municipality and in unincorporated areas within five miles of the boundaries of the  
28 municipality, with the exception of the type of license listed on the ballot and operated  
29 under a license held by the municipality. A license in effect is void 90 days after the  
30 results of the election are certified. A license that expires during the 90 days after the  
31 results of a local option election are certified may be extended, until it is void under

1 this subsection, by payment of a prorated portion of the biennial license fee.

2 (b) The local governing body of a municipality shall apply for a license to  
3 operate the type of licensed premises listed on the ballot under AS 04.11.491(a)(3) and  
4 approved by a majority of the voters. The municipality shall operate the premises  
5 subject to the conditions and fees applicable to the type of license. Nothing in this  
6 section precludes a municipality from applying to be a licensee under other provisions  
7 of this title.

8 \* Sec. 27. AS 04.11 is amended by adding new sections to read:

9 Sec. 04.11.507. PROCEDURE FOR LOCAL OPTION ELECTIONS. (a)  
10 Elections to adopt a local option under AS 04.11.491, change a local option under  
11 AS 04.11.493, or remove a local option under AS 04.11.495, shall be conducted as  
12 required in this section.

13 (b) Upon receipt of a petition of a number of registered voters equal to 35  
14 percent or more of the number of votes cast at the last regular municipal election, the  
15 local governing body of a municipality shall place upon a separate ballot at the next  
16 regular election, or at a special election, whichever local option, change in local option,  
17 or removal of local option constitutes the subject of the petition. The local governing  
18 body shall conduct the election under the election ordinance of the municipality.

19 (c) Upon receipt of a petition of 35 percent or more of the registered voters  
20 residing within an established village, the lieutenant governor shall place upon a  
21 separate ballot at a special election the local option, change in local option, or removal  
22 of local option that constitutes the subject of the petition. The lieutenant governor  
23 shall conduct the election under AS 15.

24 (d) A petition filed with the local governing body of a municipality under (b)  
25 of this section, that places on the ballot the option set out in AS 04.11.491(a)(5),  
26 constitutes a proposed ordinance of the municipality.

27 (e) AS 29.26.110 - 29.26.160 apply to a petition under (b) of this section in  
28 a general law municipality except the

29 (1) number of required signatures is determined under (b) of this  
30 section rather than under AS 29.26.130;

31 (2) application filed under AS 29.26.110 must at least contain language

1 substantially similar to the questions set out under AS 04.11.491 - 04.11.495 rather  
2 than containing an ordinance or resolution;

3 (3) petition must at least contain language substantially similar to the  
4 questions set out under AS 04.11.491 - 04.11.495 rather than material required under  
5 AS 29.26.120(a)(1) and (2).

6 (f) Notwithstanding any other provisions of law, an election under (b) or (c)  
7 of this section to remove a local option or to change to a less restrictive option than  
8 the local option previously adopted under AS 04.11.491 may not be conducted during  
9 the first 12 months after the local option was adopted or more than once in a 12-month  
10 period.

11 Sec. 04.11.509. NOTICE OF THE RESULTS OF A LOCAL OPTION  
12 ELECTION. (a) If a majority of the voters vote to prohibit, change, or remove a  
13 local option under AS 04.11.491 - 04.11.495, the clerk of the municipality, or, if the  
14 election is in an established village, the lieutenant governor shall notify the board of  
15 the results of the election immediately after the results are certified. The board shall  
16 immediately notify the Department of Law and the Department of Public Safety of the  
17 results of the election.

18 (b) If a majority of the voters vote to prohibit the importation or possession  
19 of alcoholic beverages under AS 04.11.491(a)(4) or (5) or (b)(3) or (4), the following  
20 actions in addition to those prescribed in (a) of this section shall be taken before the  
21 date the prohibition becomes effective:

22 (1) the board shall notify, by certified mail, all package store licensees  
23 who sell alcoholic beverages in response to a written solicitation of the local option;  
24 and

25 (2) the municipality or established village shall post public notice of  
26 the prohibition in a central location in the municipality or village.

27 \* Sec. 28. AS 04.11.540 is amended to read:

28 Sec. 04.11.540. LICENSE RENEWAL AND EXPIRATION. Notwithstanding  
29 AS 04.11.680, an application for renewal of a license issued for the two calendar years  
30 [YEAR] ending December 31 or of a seasonal license issued for parts of those  
31 calendar years [A SIX-MONTH PERIOD ENDING IN THE PREVIOUS YEAR] may

1 be submitted up until the next February 28 [, BUT THE AUTHORITY GRANTED  
2 UNDER THE LICENSE MAY NOT BE EXERCISED UNTIL THE LICENSE IS  
3 RENEWED]. If a complete [THE] application for renewal has [AND APPLICABLE  
4 AFFIDAVITS HAVE] not been filed by February 28 or the required fees and the  
5 penalty fees have not been paid by that date, the license expires at 12:00 midnight  
6 February 28. A new license may not be issued to the holder of an expired license for  
7 the same premises except on proof satisfactory to the board of good cause for the  
8 failure to file and pay.

9 \* Sec. 29. AS 04.11.680(a) is amended to read:

10 (a) Upon application and payment of one-half [ONE-QUARTER] of the  
11 biennial fee, the board may issue a seasonal license under this title that is [WILL BE]  
12 effective for the intervals stated on the license. A seasonal license may not be  
13 effective for more than 12 months in a two-year period [A CONTINUOUS SIX-  
14 MONTH PERIOD]. Otherwise, all licenses issued under this title other than a retail  
15 stock sale license are effective for the two calendar years ending December 31, unless  
16 a shorter period is prescribed by the board or by law.

17 \* Sec. 30. AS 04.16.110 is repealed and reenacted to read:

18 Sec. 04.16.110. SALE OF CERTAIN ALCOHOLIC BEVERAGES  
19 PROHIBITED. A person may not sell an alcoholic beverage if it

- 20 (1) is intended for human consumption and is in powdered form; or  
21 (2) contains more than 76 percent alcohol by volume.

22 \* Sec. 31. AS 04.16.125(a) is amended to read:

23 (a) A person may not use a common carrier to transport alcoholic beverages  
24 into an area that has restricted the sale of alcoholic beverages under  
25 AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2) [AS 04.11.490, 04.11.492, OR  
26 04.11.500] unless

27 (1) the shipping container holding the alcoholic beverages is clearly  
28 labeled as containing alcoholic beverages with letters that contrast in color to the  
29 shipping container and that are at least two inches in height; and

30 (2) an itemized invoice showing the quantity and purchase value of  
31 distilled spirits, of wine, and of malt [THE ALCOHOLIC] beverages is attached to



1 fine not to exceed \$1,000 and shall forfeit the seized alcoholic beverages. When a  
2 peace officer stops or contacts a person concerning a violation of AS 04.11.501  
3 [AS 04.11.498] or an ordinance adopted [ENACTED] under AS 04.11.501  
4 [AS 04.11.498], the peace officer shall seize the alcoholic beverages and may [, IN  
5 THE OFFICER'S DISCRETION,] issue a citation to the person as provided in  
6 AS 12.25.180.

7 \* Sec. 36. AS 04.16.205(b) is amended to read:

8 (b) A person cited for a violation of AS 04.11.501 [AS 04.11.498] or an  
9 ordinance adopted under AS 04.11.501 [AS 04.11.498] for which a bail amount has  
10 been established under (c) of this section may, within 30 days after the date the  
11 citation is issued,

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

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

18 \* Sec. 37. AS 04.16.205(c) is amended to read:

19 (c) The supreme court shall establish by rule or order a schedule of bail  
20 amounts that may be forfeited without a court appearance for a violation of  
21 AS 04.11.501 [AS 04.11.498] or an ordinance adopted under AS 04.11.501  
22 [AS 04.11.498]. In establishing the bail schedule the supreme court may consider the  
23 quantity of alcoholic beverages possessed and the number of prior violations of the  
24 person cited. Before establishing or amending the schedule of bail amounts required  
25 by this subsection, the supreme court shall appoint and consult with an advisory  
26 committee consisting of the following seven persons: one superior court judge, one  
27 magistrate from each judicial district in the state, a representative of the Department  
28 of Law, and a representative of the Public Defender Agency. The maximum bail  
29 amount may not exceed \$1,000, and the issuing officer shall write on the citation the  
30 amount of bail applicable to the violation.

31 \* Sec. 38. AS 04.16.205(d) is amended to read:

1 (d) Community work shall be performed at the direction of the local governing  
2 body of the municipality or the local governing body of the established village. In the  
3 absence of a local governing body for an established village, community work  
4 shall be performed at the direction of the body that has traditionally performed  
5 public functions on behalf of the entire community. The value of community work  
6 in lieu of a fine is \$5.00 per hour. When the community work is completed, the  
7 person cited for the violation shall mail or personally deliver to the clerk of the court  
8 in which the citation is filed by the peace officer

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

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

14 \* Sec. 39. AS 04.16.205(g) is amended to read:

15 (g) Notwithstanding other provisions of law, if a person cited for a violation  
16 of AS 04.11.501 [AS 04.11.498] or an ordinance adopted under AS 04.11.501  
17 [AS 04.11.498] for which a bail amount has been established under (c) of this section  
18 appears in court and is found guilty, the penalty that is imposed for the offense may  
19 not exceed the bail amount for that offense established under (c) of this section.

20 \* Sec. 40. AS 04.16.205(h) is amended to read:

21 (h) A violation of AS 04.11.501 [AS 04.11.498] or an ordinance adopted under  
22 AS 04.11.501 [AS 04.11.498] may not be considered a criminal offense and may not  
23 result in imprisonment, nor is a fine imposed for a violation considered criminal  
24 punishment. A person cited for a violation does not have a right to a jury trial or  
25 court appointed counsel.

26 \* Sec. 41. AS 04.16.220(a) is amended to read:

27 (a) The following are subject to forfeiture:

28 (1) alcoholic beverages manufactured, sold, offered for sale or  
29 possessed for sale, bartered or exchanged for goods and services in this state in  
30 violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or  
31 otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for

1 sale in violation [IN AN AREA WHERE THE RESULTS] of a local option adopted  
2 under AS 04.11.491 [ELECTION HAVE, UNDER AS 04.11.490 - 04.11.500,  
3 PROHIBITED THE POSSESSION OF ALCOHOLIC BEVERAGES OR  
4 PROHIBITED THE BOARD FROM ISSUING, RENEWING, OR TRANSFERRING  
5 ONE OR MORE LICENSES OR PERMITS UNDER THIS TITLE IN THE AREA];  
6 alcoholic beverages transported into the state and sold to persons not licensed under  
7 this chapter in violation of AS 04.16.170(b);

8 (2) materials and equipment used in the manufacture, sale, offering for  
9 sale, possession for sale, barter or exchange of alcoholic beverages for goods and  
10 services in this state in violation of AS 04.11.010; materials and equipment used in the  
11 stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;  
12 materials and equipment used in the sale or offering for sale of an alcoholic beverage  
13 in an area in violation [WHERE THE RESULTS] of a local option adopted under  
14 AS 04.11.491 [ELECTION HAVE, UNDER AS 04.11.490 - 04.11.500, PROHIBITED  
15 THE BOARD FROM ISSUING, RENEWING, OR TRANSFERRING ONE OR  
16 MORE LICENSES OR PERMITS UNDER THIS TITLE IN THE AREA];

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

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

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

24 (C) alcoholic beverages imported into a municipality or  
25 established village in violation of AS 04.11.499 [AS 04.11.496];

26 (4) alcoholic beverages found on licensed premises that do not bear  
27 federal excise stamps if excise stamps are required under federal law;

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

30 \* Sec. 42. AS 04.16.220(b) is amended to read:

31 (b) Property subject to forfeiture under this section may be actually or

1 constructively seized under an order issued by the superior court upon a showing of  
2 probable cause that the property is subject to forfeiture under this section. Constructive  
3 seizure is effected upon posting a signed notice of seizure on the item to be forfeited,  
4 stating the violation and the date and place of seizure. Seizure without a court order  
5 may be made if

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

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

9 (3) there is probable cause to believe that the property is subject to  
10 forfeiture under (a) of this section; except for alcoholic beverages possessed on  
11 violation of AS 04.11.501 [AS 04.11.498] or an ordinance adopted under AS 04.11.501  
12 [AS 04.11.498], property seized under this paragraph may not be held over 48 hours  
13 or until an order of forfeiture is issued by the court, whichever is earlier.

14 \* Sec. 43. AS 04.16.220(d) is amended to read:

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

16 (1) upon conviction of a person for a violation of [UNDER]  
17 AS 04.11.010, 04.11.499, [04.11.496(b), OR] AS 04.21.060, or AS 04.11.501 [UPON  
18 ENTRY OF JUDGMENT UNDER AS 04.11.498] or an ordinance adopted under  
19 AS 04.11.501 [AS 04.11.498]; or

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

22 \* Sec. 44. AS 04.16.220(g) is amended to read:

23 (g) It is no defense in an in rem forfeiture proceeding brought under (d)(2) of  
24 this section that a criminal proceeding is pending or has resulted in conviction or  
25 acquittal of a person charged with violating AS 04.11.010, 04.11.499 [04.11.496(b)],  
26 or AS 04.21.060.

27 \* Sec. 45. AS 04.21.010(a) is amended to read:

28 (a) A municipality may adopt ordinances governing the importation, barter,  
29 sale, and consumption of alcoholic beverages within the municipality and may ban  
30 possession of alcoholic beverages under AS 04.11.491(a)(5) [AS 04.11.498(d) OR (e)].  
31 An ordinance adopted under this section may not be inconsistent with this title or

1 regulations adopted under this title. In a municipality that has adopted a local  
2 option under AS 04.11.491(a)(1), (2), or (3), an ordinance is not inconsistent with  
3 this title if it limits

4 (1) the monthly amounts of alcoholic beverages a person may  
5 import into the municipality;

6 (2) the percent of alcohol by volume that an alcoholic beverage may  
7 contain; a limit imposed under this paragraph may not be less than 40 nor more  
8 than 76 percent alcohol by volume; or

9 (3) the type of alcoholic beverage container that may be possessed  
10 in the municipality.

11 \* Sec. 46. AS 04.21.010(b) is amended to read:

12 (b) After the adoption of a local option under AS 04.11.491(a), a [IF, AS A  
13 RESULT OF AN ELECTION HELD IN ACCORDANCE WITH AS 04.11.502 IN A  
14 MUNICIPALITY, THE BOARD IS PROHIBITED FROM ISSUING, RENEWING,  
15 OR TRANSFERRING A LICENSE BETWEEN HOLDERS OR LOCATIONS OR IF  
16 THE IMPORTATION OF ALCOHOLIC BEVERAGES IS PROHIBITED IN THE  
17 MUNICIPALITY, THE] municipality may adopt an ordinance making the sale, [OR]  
18 importation, or possession of alcoholic beverages a misdemeanor to the extent  
19 prohibited under the local option. The ordinance may not be inconsistent with this  
20 title or the regulations adopted under this title.

21 \* Sec. 47. AS 04.21.010(c) is amended to read:

22 (c) A municipality may not impose taxes on alcoholic beverages except a

23 (1) property tax on alcoholic beverage inventories;

24 (2) sales tax on alcoholic beverage sales if sales taxes are imposed on  
25 other sales within the municipality;

26 (3) sales tax on alcoholic beverage sales that was in effect before  
27 July 1, 1985; and

28 (4) sales and use tax on alcoholic beverages if the sale of alcoholic  
29 beverages within the municipality has been prohibited under AS 04.11.491(a)(1), (4),  
30 or (5) [AS 04.11.490].

31 \* Sec. 48. AS 04.21.015(b) is amended to read:

1 (b) This section does not apply to AS 04.16.050, 04.16.051, 04.16.080;  
2 AS 04.21.010, 04.21.020; alcoholic beverages manufactured in a quantity that exceeds  
3 the limit imposed on private manufacture under federal law; or an area that has  
4 adopted a local option law under AS 04.11.491 [AS 04.11.490 - 04.11.500].

5 \* Sec. 49. AS 04.21.025(a) is amended to read:

6 (a) As a condition of issuance or renewal of a license and selling alcoholic  
7 beverages under a license, the board shall require a licensee who sells or serves  
8 alcoholic beverages and a licensee's agents and employees who sell or serve alcoholic  
9 beverages or check the identification of a patron to complete an alcohol server  
10 education course approved by the board, if the license is for a

11 (1) beverage dispensary;

12 (2) restaurant or eating place;

13 (3) club;

14 (4) package store;

15 (5) [COMMON CARRIER DISPENSARY;

16 (6)] recreational site;

17 (6) [(7) COMMUNITY;

18 (8)] pub;

19 (7) [(9)] conditional contractor.

20 \* Sec. 50. AS 04.21.025 is amended by adding a new subsection to read:

21 (e) A person licensed as a common carrier dispensary shall train agents and  
22 employees who sell or serve alcoholic beverages or who check the identification of a  
23 patron on provisions of state law regarding sale of alcoholic beverages, including  
24 AS 04.16.015, 04.16.020, 04.16.030, 04.16.051, 04.16.052, 04.16.120, 04.16.125,  
25 AS 04.21.030, and 04.21.050. The training must include the subjects of the effects of  
26 alcohol consumption, identifying a drunken person, determining valid identification,  
27 intervention to prevent unlawful alcohol consumption, and penalties for unlawful acts  
28 by agents and employees of licensees. A common carrier licensee shall, once every  
29 three years, provide the board with a description of its training program including the  
30 subjects taught, teaching method, and testing required.

31 \* Sec. 51. AS 04.21.065(a) is amended to read:

1 (a) A holder of one of the following types of licenses or permits shall post on  
2 the licensed or designated premises two separate warning signs as described in (b) of  
3 this section:

- 4 (1) beverage dispensary license;  
5 (2) restaurant or eating place license;  
6 (3) club license;  
7 (4) brewery license: this paragraph applies only to a brewery that  
8 permits a person to sample portions of the brewery's product;  
9 (5) package store license;  
10 (6) common carrier dispensary license;  
11 (7) recreational site license;  
12 (8) [COMMUNITY LIQUOR LICENSE;  
13 (9)] pub license;  
14 (9) [(10)] winery license: this paragraph applies only to a winery that  
15 permits a person to sample portions of the winery's product;  
16 (10) [(11)] caterer's permit;  
17 (11) [(12)] special events permit;  
18 (12) [(13)] conditional contractor's permit;  
19 (13) [(14)] another license or permit issued by the board authorizing  
20 consumption of alcoholic beverages.

21 \* Sec. 52. AS 04.21.080(b)(1) is amended to read:

22 (1) "alcoholic beverage" means a spirituous, vinous, malt, or other  
23 fermented or distilled liquid, whatever the origin, that is intended for human  
24 consumption as a beverage and that contains one-half of one percent or more of  
25 alcohol by volume, whether produced commercially or privately; however, in an area  
26 that has adopted a local option under AS 04.11.491 [LOCAL-OPTION  
27 PROHIBITION UNDER AS 04.11.490 - 04.11.500], "alcoholic beverage" means a  
28 spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that  
29 is intended for human consumption as a beverage by the person who possesses or  
30 attempts to possess it and that contains alcohol in any amount if the liquid is  
31 produced privately, or that contains one-half of one percent or more of alcohol by

1 volume, if the liquid is produced commercially;

2 \* Sec. 53. AS 04.21.080(b)(9) is amended to read:

3 (9) "established village" means an area not containing any part of  
 4 an incorporated city or another established village ~~that has a perimeter clearly~~  
 5 designated on a map by the local governing body or the board in the absence of  
 6 a local governing body ~~and~~ that is

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

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

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

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

15 \* Sec. 54. AS 15.07.064(g) is amended to read:

16 (g) In this section, "established village" means an unincorporated  
 17 community that is in

18 (A) the unorganized borough and that has 25 or more  
 19 permanent residents; or

20 (B) an organized borough, has 25 or more permanent  
 21 residents, and

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

24 (ii) is not on a road system and is located more than  
 25 15 miles outside the boundary limits of a unified municipality

26 [HAS THE MEANING GIVEN IN AS 04.21.080].

27 \* Sec. 55. AS 18.65.085(a) is amended to read:

28 (a) There is established in the Department of Public Safety, division of state  
 29 troopers, a narcotic drugs and alcohol enforcement unit for the purpose of investigating  
 30 and combating the illicit sale and distribution of narcotic drugs and alcoholic beverages  
 31 in the state. Enforcement of the alcoholic beverage control laws shall focus primarily

1 on the investigation, apprehension, and conviction of persons who violate  
2 AS 04.11.010 by selling, importing, or possessing alcoholic beverages in violation of  
3 a local option [AN ORDINANCE] adopted by a municipality or established village  
4 under AS 04.11.491 [AS 04.11.490 - 04.11.500].

5 \* Sec. 56. AS 18.65.085(c) is amended to read:

6 (c) The Department of Public Safety may establish and administer a reward  
7 program, and provide grants to municipalities, established villages, and, at the request  
8 of a municipality or established village, to a nonprofit association that administers a  
9 village public safety officer program, for reward programs leading to the apprehension  
10 and conviction of persons who violate AS 04.11.010 by selling, importing, or  
11 possessing alcoholic beverages in violation of a local option [AN ORDINANCE]  
12 adopted by a municipality or established village under AS 04.11.491 [AS 04.11.490  
13 - 04.11.500].

14 \* Sec. 57. AS 29.20.270(e) is amended to read:

15 (e) The veto does not extend to an ordinance adopted under AS 04.11.501  
16 [AS 04.11.498]. This subsection applies to home rule and general law municipalities.

17 \* Sec. 58. AS 29.25.020(d) is amended to read:

18 (d) This section does not apply to an ordinance proposed under  
19 AS 04.11.507(d) [AS 04.11.502(c)].

20 \* Sec. 59. AS 29.25.070(d) is amended to read:

21 (d) This section does not apply to an ordinance adopted under AS 04.11.501(c)  
22 [AS 04.11.498(d) OR (e)].

23 \* Sec. 60. AS 29.35.080(a) is amended to read:

24 (a) A municipality may regulate the possession, barter, sale, importation, and  
25 consumption of alcoholic beverages under AS 04.11.480 - 04.11.509 [IN  
26 ACCORDANCE WITH AS 04.11.480 - 04.11.506] and AS 04.21.010.

27 \* Sec. 61. AS 34.03.360(6) is amended to read:

28 (6) "illegal activity involving alcoholic beverages" means a person's  
29 delivery of an alcoholic beverage in violation of AS 04.11.010(b) in an area where the  
30 results of a local option election have, under AS 04.11.491 [AS 04.11.490 -  
31 04.11.500], prohibited the Alcoholic Beverage Control Board from issuing, renewing,

1 or transferring a liquor license or permit under AS 04;

2 \* Sec. 62. AS 47.37.045(e) is amended to read:

3 (e) In this section,

4 (1) "established village" means an unincorporated community that  
5 is in

6 (A) the unorganized borough and that has 25 or more  
7 permanent residents; or

8 (B) an organized borough, has 25 or more permanent  
9 residents, and

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

12 (ii) is not on a road system and is located more than  
13 15 miles outside the boundary limits of a unified municipality

14 [HAS THE MEANING GIVEN IN AS 04.21.080(b)];

15 (2) "local governing body" has the meaning given in AS 04.21.080(b);

16 (3) "nonprofit organization" means an organization that qualifies for  
17 exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code).

18 \* Sec. 63. AS 04.11.090(c), 04.11.190, 04.11.490, 04.11.492, 04.11.496, 04.11.498,  
19 04.11.500, 04.11.502, 04.11.504, 04.11.506, and 04.11.510(d) are repealed.

20 \* Sec. 64. TRANSITION: LOCAL OPTIONS EARLIER ADOPTED. Notwithstanding  
21 the provisions of this Act, local options adopted by an area under AS 04.11.490, 04.11.492,  
22 04.11.496, 04.11.498, or 04.11.500 or previous local option laws before the effective date of  
23 this Act shall continue in effect until changed under AS 04.11.493 or removed under  
24 AS 04.11.495. References in this Act to local option elections conducted under AS 04.11.491,  
25 04.11.493, 04.11.495, 04.11.497, 04.11.499, 04.11.501, 04.11.503, 04.11.505, and 04.11.507  
26 are to be interpreted to include local option elections conducted under AS 04.11.490,  
27 04.11.492, 04.11.496, 04.11.498, 04.11.500, or 04.11.502 or previous local option laws in  
28 effect before the effective date of this Act.

29 \* Sec. 65. TRANSITION: COMMUNITY LIQUOR LICENSES. A community liquor  
30 license issued under AS 04.11.190 before the effective date of this Act to operate a beverage  
31 dispensary shall continue as a beverage dispensary license under AS 04.11.090. A community

1 liquor license issued under AS 04.11.190 before the effective date of this Act to operate a  
2 package store shall continue as a package store license under AS 04.11.150.

3 \* Sec. 66. TRANSITION. A person licensed under AS 04.11.160 on the effective date of  
4 this section shall submit the information required under AS 04.11.160(F), added by sec. 9 of  
5 this Act, by September 30, 1995.

6 \* Sec. 67. TRANSITION: IMPLEMENTATION OF BIENNIAL SEASONAL LICENSES.

7 (a) Approximately one-half of the applicants for 1996 renewal of a seasonal license issued  
8 by the Alcoholic Beverage Control Board, as determined by the director of the Alcoholic  
9 Beverage Control Board, shall be eligible for a one-year seasonal license. These licenses  
10 expire, unless renewed, on December 31, 1996, and may be renewed biennially in even-  
11 numbered years after that. The 1996 renewal fee for these licenses is one-half of the seasonal  
12 biennial license fee.

13 (b) Applicants whose licenses are not renewed under (a) of this section shall be  
14 eligible for a two-year seasonal license. These licenses expire, unless renewed, on  
15 December 31, 1997, and may be renewed biennially in odd-numbered years.

16 (c) The director shall notify each licensee in writing as to whether the licensee shall  
17 apply for renewal under (a) or (b) of this section, and of the actual amount of the renewal fee.  
18 The notice must be given not later than December 1, 1995. However, the failure of the  
19 director to provide the notice required in this subsection does not prevent a license from  
20 expiring on February 28, 1996, under AS 04.11.540, if the renewal application is not filed on  
21 or before that date.

22 \* Sec. 68. TRANSITION: REGULATIONS. Notwithstanding sec. 71 of this Act, the  
23 Alcoholic Beverage Control Board may proceed to adopt regulations necessary to implement  
24 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not  
25 before July 1, 1995.

26 \* Sec. 69. PROHIBITION ON PURCHASE OR CERTAIN ALCOHOLIC BEVERAGES.  
27 Beginning July 1, 1995, and ending June 30, 1996, a person licensed as a wholesaler under  
28 AS 04.11.160 may not purchase an alcoholic beverage that contains more than 76 percent  
29 alcohol by volume.

30 \* Sec. 70. AS 04.16.110(2), enacted in sec. 30 of this Act, takes effect July 1, 1996.

31 \* Sec. 71. Except as provided in secs. 68 and 70 of this Act, this Act takes effect July 1,

1 1995.

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB 87

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Alcoholic Beverages: Local BRU: Alcoholic Beverage Control Board  
 Option and Misc. \_\_\_\_\_ Component: \_\_\_\_\_  
 Sponsor: Senate Judiciary  
 Requester: Senate C & RA COMPONENT SERIAL NO. 0100

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts (approx.)	5.0	5.0	5.0	5.0	5.0	5.0
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Possible increase in revenue from 1) increase to penalty for filing late applications for renewal of license in Section 10, Page 5 and 2) fee collected from wholesale licensees for registration of brands in Section 8, Page 4.

Prepared by: Patrick L. Sharrock, Director Phone: 277-8638  
 Division: Alcoholic Beverage Control Board Date: 3/1/95  
 Approved by: \_\_\_\_\_  
 Commissioner: Deborah Voigt Date: 3/2/95  
 Agency: Revenue

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# Alaska State Legislature

*Rec'd.  
2/27/95  
MAY*

Chairman,  
Judiciary Committee

Vice Chairman,  
Transportation Committee

Member,  
Resources Committee  
Western Legislative Forestry Task Force



**Senator Robin L. Taylor**

State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-3873  
Fax: (907) 465-3922

352 Front Street  
Ketchikan, Alaska 99901  
(907) 225-8088  
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## MEMORANDUM

**TO: Senator John Torgerson, Chairman  
Senate Community & Regional Affairs Committee**

**FROM: Senator Robin L. Taylor *RLT***

**DATE: 2/27/95**

**REF: Hearing Request - SB 87**

\*\*\*\*\*

Please consider this as my formal request for a hearing on Senate Bill 87, "An Act relating to community local options for control of alcoholic beverages", etc., at your earliest convenience.

SB 87 was introduced at the recommendation of the Alcoholic Beverage Control Board. May I suggest you contact Pat Sharrock, ABC executive director, at 277-8638. He acted as our main witness on nearly identical legislation which passed the Senate last year and almost made it through the House despite starting late in the session.

This is primarily a housekeeping measure and with Pat's concise testimony the bill should be able to move from committee in fairly short order.

# Alaska State Legislature

Chairman,  
Judiciary Committee

Vice Chairman,  
Transportation Committee

Member,  
Resources Committee  
Western Legislative Forestry Task Force



*Senator Robin L. Taylor*

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352 Front Street  
Ketchikan, Alaska 99901  
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## Sponsor Statement

### Senate Bill 87

Before the Senate CRA Committee  
March 8, 1995

Last year the Alcoholic Beverage Control Board, prompted by concerns over a lack of clarity in how local option elections are to be conducted, asked for legislation to simplify the process. The board also asked that the same vehicle be used to address long needed technical and common sense amendments to Title 4.

The result was Senate Bill 372, which passed the Senate and moved through the committee process in the House, only to die in the Rules Committee in the hectic final days of the 18th State Legislature.

Senate Bill 87 is substantially the same as last year's legislation.

The bill addresses the shortcoming in the current statute dealing with local option elections, for which no provision is made for moving from one type of option to another. Under current law, a community must first vote to remove all restrictions on the sale and importation of alcoholic beverages and then conduct another vote on a new option. This burdensome process can cause confusion for municipalities and unincorporated villages alike.

The complete intent of this lengthy bill is better explained by those who will be charged with its' enforcement. However, it should be pointed out that it is mainly a housekeeping measure with little potential for controversy.

District A

Hyder • Ketchikan • Kupreanof • Meiners Chuck • Petersburg • Sarman • Sitka • Wrangell

# Alaska State Legislature

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**Senator Robin L. Taylor**

## Sponsor Sectional Analysis

**CS SB 87**

This legislation basically consists of two parts:

1. Local option clarification and simplification.
2. Technical amendments/improvements.

### 1. Local Option

<u>Section</u>	<u>Page</u>	
20	14-15	a. Menu of local options
21	17	b. Change a local option
21	17	c. Remove a local option
22-26	17-19	d. Description of options

### 2. Technical Amendments

<u>Section</u>	<u>Page</u>	
1	1	Tech. package store may not solicit or receive orders from an agent in a local option area.
4	3	New semi-tavern license - 1 in 10 of restaurant or eating licenses- non-transferable.
5	4	Tech. increases brew-pub gallonage from 16,000 to 75,000 per year.

District A

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

Sectional Analysis - CSSB 87  
Page Two

<u>Section</u>	<u>Page</u>		
7	4	Tech.	package store licensee can only ship to purchaser
9	4 - 5	New	register brands by wholesale licensees.
10	5	New	club, package store, restaurant and beverage dispensary licensee must purchase for resale from a wholesale licensee.
11	5	New	if license is not renewed by 12/31 the business may stay open but late filing penalty increases from \$200 to \$500.
17	13	New	board may impose restriction on a license
19	14	Tech	local governing body may protest annually although renewals are biennial
27	21	Tech	local options to change to less restrictive option may not be conducted for 12 months
27	21	Tech	notice of elections to package stores by certified mail
28	21	Tech	makes half-year licenses biennial to agree with current law
30	22	New	prohibits Everclear.

**Sectional Analysis -CSSB 87**  
**Page Three**

<b><u>Section</u></b>	<b><u>Page</u></b>		
4 5	2 7	New	municipality may limit importation amount by ordinance under certain options
5 0	2 9	Tech	simplified server training for common carrier licensees
5 2	3 0	Tech	expands definition of alcohol to include any alcohol intended for consumption.
5 3	3 1	Tech	clarifies definition of established village
6 3	3 3	New	repeals requirement for beverage dispensary bond
6 5-7 1	3 2	New	transition provisions to include half-year licenses regarding section 28
4 5	2 7	New	A municipality may limit importation amount by ordinance under certain option

POSITION PAPER  
ALCOHOLIC BEVERAGE CONTROL BOARD  
SB 87  
March 1, 1995

This bill is substantially identical to SB 372 that passed the senate and all house committees last year but did not get to a floor vote in the house on the last day of the legislative session.

The bill clarifies and simplifies provisions that allow unincorporated villages and incorporated municipalities to hold local option elections to restrict or prohibit alcoholic beverages within those communities. The board's assistant attorney general has noted that

"When the local option scheme was adopted, no provision was made for moving from one type of option to another. The problems primarily arise when a proposal is made to move to a less restrictive option. Under the limited ballot language permitted, the community must first vote to remove all restrictions, and then conduct another vote to reinstate the desired option. The local option law is also ambiguous as to when a community may first conduct an election to remove an option it has adopted. (Subsequent elections must be at least 12 months later.)"

The attached recent newspaper editorial provides an example of the dilemma.

Along with a few insignificant new items, the bill contains several long overdue common sense technical amendments. An abbreviated sectional analysis describing these amendments is also attached.

Except for potential average annual revenue of approximately \$5,000 from registration of "brands" by wholesale licensees provided in Section 8, the bill does not create any fiscal impact on board operations.

The Alcoholic Beverage Control Board is in complete support of this bill. Additionally, this legislation has been supported by Tanana Chiefs, North Slope Borough, Division of Elections, Department of Community and Regional Affairs, Department of Law, and Senator Al Adams.

ALCOHOLIC BEVERAGE CONTROL BOARD  
Sectional Analysis  
SB 87

The legislation basically consists of two parts:

1. local option clarification and simplification
2. technical amendments/improvements

1. LOCAL OPTION

<u>Section</u>	<u>Page</u>	
19	14	a. menu of local options
20	16	b. "change" a local option
20	16	c. "remove" a local option
21-25		d. description of options
		e. cater's permit

2. TECHNICAL AMENDMENTS

<u>Section</u>	<u>Page</u>	
1	1	Tech - package store may not solicit in or receive orders from an agent in a local option area
3	2	New - semi-tavern license - 1 in 10 of restaurant or eating place licenses - non transferable
4	3	Tech - increases brew-pub gallonage from 16,000 to 75,000 gallons per year
6	3	Tech - package store licensee can only ship to the purchaser
8	4	New - register brands by wholesale licensees
9	4	New - club, package store, restaurant, and beverage dispensary licensees must purchase alcoholic beverages for resale from a wholesale licensee

10	5	New -	if a license is not renewed by December 31 the business may stay open but late filing penalty increases from \$200 to \$500
16	12	New/Tech -	board may impose restrictions on a license
18	13	Tech -	local governing body may protest annually even though applications for license renewals are filed biennially
26	20	Tech -	local options to change to a less restrictive option may not be conducted for 12 months
26	20	line 30 Tech -	notice of elections to package stores by certified, not "registered" mail
27	21	Tech -	makes half-year licenses biennial to agree with current law
29	21	New -	prohibits Everclear
44	27	New -	a municipality may limit importation amount by ordinance under certain options
48	28	Tech -	simplified server training for common carrier licensees
50	29	Tech -	expands definition of alcohol to include any alcohol intended for consumption
51	29	Tech -	clarifies definition of established village
61	32	New -	repeals requirement for beverage dispensary bond
65	32	New -	transition for half-year licenses regarding section 27

# Barrow vote

*Anchorage  
News  
1/2/95*

## Give ban a chance

The news from Barrow about the positive effects of prohibition approved in a close fall election are heartening. Public safety has improved in the town and in outlying villages, hospital emergency room personnel aren't swamped with alcohol-related cases, and detoxification beds are in less demand.

Most tellingly, Inupiaq elder Morgan Solomon says "Our children are much happier."

Local option laws, like the one Barrow employed, allow communities to vote on banning the sale, importation and possession of alcohol — and to repeal those laws through the petition and ballot process. "Damp" status allows importation and possession of alcohol, whereas "dry" bans the sale, importation and possession of alcohol by anyone in the city. (The seven outlying villages already banned importation, but villagers were smuggling in booze from Barrow, creating local problems.)

But the heated wrangling in Barrow between supporters and critics of alcohol prohibition demonstrates that there is work ahead for Alaska's legislators as well as the community.

After the dry side won by seven votes, an anti-prohibition group hastily gathered enough signatures to hold another vote on Feb 21. Just days ago, the city council wisely upheld a mayoral veto of the election date, thus delaying it until fall.

State law ought to be clear enough so that community debate about local alcohol option centers on the pros and cons rather than what state law may or may not say. When even Alcoholic Beverage Control Board director Pat Sharrock is unsure about when a repeal election can be held, then it is the job of the legislature to make the laws clear.

The city council and Mayor Long have the right idea in giving the new policy a chance to work.

Prohibition is an extreme measure, and not one to be taken lightly. But given its troubled past, Barrow is on the right track in going dry to battle the devastating effects of alcohol. That's what local option laws are all about. But state law ought not to have gray areas so big as to allow bowhead whales to swim through unimpeded.

# The Almanac

## The Slope and alcohol

The month and year Barrow went dry: November 1994.

Number of calls North Slope Borough Department of Public Safety officials compiled in November 1994 in the seven Slope villages, excluding Barrow: 175.

Number of village calls in November 1994: 103.

Number of November 1993 village calls that were substance-abuse related: 38.

Number of November 1994 village calls that were substance-abuse related: 19.

Number of intoxicated persons removed by public safety officials from premises in Barrow in November 1993: 63.

Number of Barrow drunks removed from premises in November 1994: 18.

Number of Barrow drunks brought to detoxification by safety officials in November 1993: 29.

Number of Barrow drunks brought to detox in November 1994: 3.

Number of calls logged by public safety officials related to Barrow minors consuming alcohol from Sept. 1 through Nov. 1, 1994: 23.

Number of such calls from November 1994 through Dec. 21, 1994: 3.

□ Sources: Daily News and North Slope Borough reports.

SENATE BILL 87  
(S. Judiciary)

Alcoholic Beverages: Local Option & Misc.  
In: 2/14/95           Out:  
Further referrals: Judiciary, Finance  
Request for hearing: 2/27/95  
Hearing date: 3/8/95

Remarks: This bill is similar to legislation introduced by the sponsor during the 18th legislature

Bill (SB 372) was introduced late in session in 1994  
Senate Judiciary Committee replaced with CS  
Senate Finance Committee replaced with CS  
5 amendments offered and adopted by full Senate  
Passed Senate 20-0  
House State Affairs replaced with CS 6DP/1NR (G. Davis)  
last day of session  
Died in House Rules



# CITY OF BARROW

*"farthest north incorporated city"*

---

## TESTIMONY OF MAYOR DON LONG OF THE CITY OF BARROW CONCERNING SB87 MARCH 8, 1995

I would like to direct my comments to those sections of SB 87 which affect local option elections and the importation of alcoholic beverages into communities such as Barrow and I will not mention specific language changes.

First, I would like to thank Pat Sharrock from the ABC Board and Teresa Williams from the Attorney General's office for all the work they have done on this bill and for their recent comments.

I understand that much of this bill was before the legislature during the last session and unfortunately it failed to pass.

I say unfortunately, because all of the problems that the community of Barrow has encountered with the local option process in the last six months were all addressed and would have been cleared up by the predecessor to SB87.

For example, before the October 4, 1994 municipal election, petition sponsors wanted to place before the voters the question of prohibiting the importation and possession of alcoholic beverages. Instead of one question the petitioners had to circulate two petitions and voters had to vote on two questions because that is how the options are presently set up.

Immediately after a majority of voters approved banning the importation and possession of alcoholic beverages, opponents to the ban began the process to hold an election to repeal the alcohol ban. Myself and the City Clerk are named as defendants in a lawsuit that is in Superior Court right now over when the City of Barrow has to hold an election on a vote to repeal the ban which was just approved on October 4, 1994.

SB87 makes it clear that no election to repeal an option may be held within 12 months of the option's adoption.

Additionally, in order to go back to the damp status that existed in Barrow prior to October 4, 1994, under the present statutes, voters must first vote to go completely wet and then a new petition must be circulated and another election held on prohibiting the sale of alcoholic beverages in Barrow. SB87 would make this option a one step - one election - process instead of requiring two separate petitions and elections.

SB87 also clarifies what the intent of the petition is. I heard from numerous people in Barrow who signed the most recent petitions which seek to repeal the alcohol ban. They told me that while they

wouldn't mind having a new election on going back to being damp they did not want to have Barrow go wet. They were very upset when they learned that the petitions they had signed would make Barrow go wet. They told me that they signed the petitions because they were told by the sponsor that it was for having Barrow go "damp" and that no one had mentioned "wet". The language in SB87 will clear up the confusion that now exists.

I have two questions that do not seem to be addressed in the present SB87:

First: What happens when competing petitions are submitted, one to impose a restriction and one to repeal a restriction? My understanding is that the first petition submitted is voted on first. If the vote is in favor of imposing a restriction, what happens to the petition to repeal a restriction that was submitted before the election? Does this petition become void since no election to repeal may be held for 12 months, or is it simply deferred for twelve months?

Second: What happens to petitions that are out there right now with the questions under the present statutes? My hope is that this committee will add a Transition Section that clearly states that a new petition with the new language must be submitted for any election that will be conducted after the effective date of this statute. I also hope that the effective date will be set as soon as possible to avoid confusion during the October municipal elections.

Finally, I would like to ask this committee to extend the waiting period before an election to repeal a prohibition may be held. I would like to see a two year waiting period instead of a twelve month wait - at least when it comes to the possession of alcoholic beverages. AS 29.26.190(a) prohibits the repeal of an ordinance created through the initiative process. Since the prohibition on possession of alcoholic beverages creates an ordinance of the municipality it should be clear that AS 29.26.190(a) applies to the ordinance prohibiting the possession of alcoholic beverages.

Again, thanks to Pat Sharrock and Teresa Williams for all their work and to this committee and the legislature for their continued recognition of the harmful effects alcohol can have on a community and their support of local communities having the power to deal with their problems in their own way.

TO: <sup>CRA</sup> The Senate Judiciary Committee

SUBJ: CS For Senate Bill No. 87 "An Act relating to community local options for control of alcoholic beverages; et h.c.

ORAL PRESENTATION BY TELECONFERENCE ON MARCH 17, 1995

Mr. Chairman and Distinguished Members of the Judiciary Committee:

"My name is James Wood. I am a Captain of the North Slope Borough, Department of Public Safety. I reside in Barrow, Alaska. It is my pleasure to comment this afternoon on SB87 relating to the control of alcoholic beverages.

Many communities throughout Alaska have banned the importation, sale and possession of alcoholic beverages. Unfortunately, language in neither the law as written nor the law as proposed is sufficient to convey public condemnation, to positively deter violators, or to facilitate positive enforcement or timely justice.

A major impediment is the manner in which the POSSESSION of alcoholic beverages in local option communities is treated. Although importation or sales of alcoholic beverages in local option communities are crimes, possession of alcoholic beverages in local option communities is a non-crime. It is relegated to a simple violation for which the violator may only be ticketed, but not arrested. Much the same as a parking violator. And, although the maximum admonishment is a \$1000.00 fine, the Alaska Supreme Court, by its' bail schedule, has restricted lower courts to assessing possession violators a simple \$100.00 fine for the first TWO offenses. Enforcement resources simply are not available that allow concerted effort to catch a possession violator three different times before anything more significant than a \$100.00 fine occurs. \$100.00, or even \$1000.00, is not much of a penalty for someone caught only in possession, but who really may be making large profits on importation and sales. There simply is not reason for ANYONE to have illicit possession of an alcoholic beverage in a local option area. This weakness in the law does fairly little to convey public condemnation, to protect innocent citizens, to amend violator behavior, or to keep alcoholic beverages controlled or out of communities that have labored mightily to enact local options that promote health, safety and healing among them.

Possession of alcoholic beverages in a local option community is a crime, and it should be written as such into the law. The actual and potential harm caused by a possession violator to the health, safety and welfare of a local option community must not be minimized. It is the behavior of the illicit possessor of alcoholic beverages that must be targeted and amended to comply with the local option mandates of a community.

Therefore, I encourage you to amend Sec 34, AS 04 16.200 (e), beginning at Line 19 on page 23 of the draft legislation, to include the following parenthetical:

"(e) A person who sends, transports, or brings alcoholic beverages into [, or who possesses an alcoholic beverage within] a municipality or established village in violation of AS 04 11.499 is, upon conviction guilty of...."

Further, please consider including in the law the same mandatory penalties, perhaps coupled with substance abuse treatment and counseling programs, as are provided for the crime of driving while intoxicated. The serious implications of the illicit possession of alcoholic beverages in defiance of local option poses the same unjustifiable, unpredictable risks of death or serious injury as do drunk drivers. And, more, the risks include a greater likelihood of other infamous crimes such as sexual assault, domestic violence, and other morbid crimes. Please, do not forget that these are the reasons why the possession of alcoholic beverages was banned in the first place. Thank you for allowing me to speak before you at this hearing. I trust that you will weight my words carefully during your deliberations and actions on SB87. Thank you.



# CITY OF BARROW

*"farthest north incorporated city"*

## FAX TRANSMITTAL

DATE: March 17, 1995

TO: Senate Committee on Community & Regional Affairs

LOCATION: \_\_\_\_\_

PHONE: BUSINESS

FAX 465-4779

FROM: DON LONG, MAYOR

LOCATION: CITY OF BARROW

PHONE: BUSINESS (907) 852-5211

FAX (907) 852-5871

NUMBER OF PAGES INCLUDING COVER: 3

PLEASE MAKE COPIES FOR: \_\_\_\_\_

ADDITIONAL COMMENTS: \_\_\_\_\_

written comments on SB 87



# CITY OF BARROW

*"farthest north incorporated city"*

---

TESTIMONY OF MAYOR DON LONG OF THE CITY OF BARROW  
CONCERNING SB87  
MARCH 17, 1995

---

I would like to thank this committee for listening to the concerns expressed last week and incorporated into new language in SB87.

The addition of a new subsection (g) to AS 4.11.507 would clarify the procedures to follow when competing petitions are being circulated. I feel that this new subsection which is being added to page 21 after line 10 will help communities deal with these competing interests in an organized and orderly manner.

As this committee noted last week, the community of Bethel was subjected to weekly elections on competing petitions. AS 4.11.507 (g) would allow a community to assess the result of the first local option election before proceeding with the petition and election process of subsequent options.

The addition of Section 65 TRANSITION: EXISTING LOCAL OPTION PETITIONS is necessary to make sure that the ballot language of all future elections meets the requirements of this bill. As I mentioned last week, SB87 will streamline the procedures for going between the various community options. Communities should be able to benefit from this streamlining immediately.

Without this transition section, Barrow could still be required to conduct an election on petitions containing the obsolete questions "Shall the possession of alcoholic beverages be prohibited in Barrow?" and "Shall the sale and importation of alcoholic beverages be prohibited in Barrow?".

With this new transition section, the outstanding petitions would be void. Sponsors could circulate new petitions with the new language, and when sufficient signatures are collected, Barrow

could vote on the question "Shall the city of Barrow change the local option currently in effect that prohibits the sale, importation and possession of alcoholic beverages, and adopt in its place a local option to prohibit the sale of alcoholic beverages?".

The addition of the transition language in Section 65 is in keeping with the other changes in SB87 and I hope that this committee will adopt them.

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

November 12, 1982

Ms. Carole A. Baekey  
Statewide Alcohol Coordinator  
Alaska Legal Services Corp.  
615 'H' Street, Suite 100  
Anchorage, AK 99501

Re: Potential problems re local  
option election law

Dear Ms. Baekey:

You requested our opinion on potential problems with Alaska's local option election law, AS 04.11.480 -- 04.11.504. First, how is the conflict between AS 04.11.490 -- 04.11.500 ("appearing alone"), on the one hand, and AS 04.11.502 ("combination of questions"), on the other hand, to be resolved? Second, if more than one local option proposition may be presented to the voters in a single election, and if the voters approve both propositions, which one controls?

AS 04.11.490 and the three succeeding sections begin "The following question, appearing alone, may be placed before the voters of a municipality . . . ." (emphasis added). However, AS 04.11.502 provides: "The local governing body of a municipality . . . shall place upon a separate ballot . . . whichever question or combination of questions set out in AS 04.11.490 - 04.11.500 constitutes the subject of the petition." (Emphasis added.) In a memorandum of advice dated May 20, 1981 (copy attached), we noted that separate ballot requirements have two purposes: First, by requiring separate ballots that are distributed only locally, they insure that voters outside the local precincts do not vote on local ballot questions. Second, they minimize confusion that might result were compound questions or related propositions presented on a single ballot.

We cannot harmonize AS 04.11.490 and AS 04.11.502. The latter clearly contemplates the presentation of more than one proposition at a single election. However, the legislature could not have intended the confusion and uncertainty that would inevitably result were two options presented and both approved by the

1317

Ms. Carole A. Baekey  
AK Legal Services Corp.

November 12, 1995  
Page 1

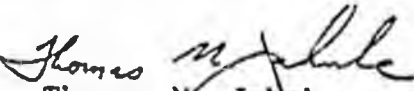
voters. Were two options approved, 1/ it is conceivable that there would be three majorities: one majority might favor option one; another majority might favor option two; and a third majority (composed of some voters who opposed option one, some voters who opposed option two, and some voters who opposed both options) might prefer no change over the disfavored option(s). 2/

It is our recommendation to the municipalities and the Division of Elections that they present only one local option question per election, and that that question be the one first presented to the governing body or the lieutenant governor with the requisite number of valid petition signatures. If another group wishes to present a different question to the voters, they may do so at a special election soon after the first election. AS 04.11.502.

We hasten to add that, were multiple questions presented and confusing election results obtained, we will decline to prosecute persons charged under the community's local option ordinance.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
Thomas M. Jahnke  
Assistant Attorney General

TMJ/pjg

cc: Daniel W. Hickey, Chief Prosecutor  
Department of Law -- Criminal

Patty Ann Polley, Director  
Division of Elections

---

1/ AS 04.11.490 - 04.11.500 clearly imply that every voter may vote yes or no on every option presented; thus, the same voter could vote in favor of all options presented.

2/ Petitions with multiple questions suffer the same defect: election officials might not be able to tell which of two options the petitioners favored for placement on the ballot. See AS 04.11.502.

## MEMORANDUM

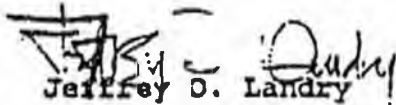
State of Alaska  
Department of LawTO Charlot Thickstun, Director  
Division of Elections

DATE. October 23, 1991

FILE NO. 663-92-0070

TEL. NO. 465-3600

SUBJECT Local option elections


FROM Jeffrey D. Landry  
Assistant Attorney General  
Governmental Affairs - Juneau

This memorandum is in response to your August 5, 1991, opinion request regarding AS 04.11.502. The section establishes the procedures to be used by municipalities and established villages in conducting elections on the various alcoholic beverage options under AS 04.11.490 -- 04.11.500.

Section 04.11.502(d) provides:

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.

(Emphasis added.)

The 12-month limitation established under subsection (d) applies specifically to elections "to remove a restriction." The language is clear and unambiguous. It does not apply to elections to impose a restriction under AS 04.11.490 -- 04.11.500. Therefore, this office concludes that an election to impose restrictions on the sale, importation or possession of alcoholic beverages may be held by a municipality or established village more than once every 12-months.

In addition, subsection (d) is prefaced with the phrase "[n]otwithstanding any other provisions of law." This means that only the 12-month time period established under AS 04.11.502(d) applies to elections to remove an alcoholic beverage restriction. Consequently, the time periods established under AS 29.26.190 do not apply to elections to remove a restriction. 1/

1/ As discussed, elections to impose a restriction may be conducted more than once every twelve months. This conclusion  
(continued...)

Charlot Thickett, Director  
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Finally, with respect to subsection (d), the Department of Community and Regional Affairs' handbook titled "Local Option Law, Controlling Alcohol in Alaska's Cities and Villages" (March 1990) provides that a new petition to choose a more restrictive option than the one voted in can be started 31 days after the previous election was certified. I can find no statutory or regulatory authority for this 31-day restriction on the ability of a sponsor to petition for a more restrictive option.

AS 04.11.502(e) provides:

~~AS 29.26.110--29.26.160~~ applies to a petition under (a) of this section in a general law municipality except the

(1) number of required signatures is determined under (a) of this section rather than under AS 29.26.130;

(2) application filed under AS 29.26.110 shall contain the question or combination of questions set out under AS 04.11.490 -- 04.11.500 rather than containing an ordinance or resolution;

(3) petition shall contain the question or combination of questions set out under AS 04.11.490 -- 04.11.500 rather than material required under AS 29.26.120(a)(1) and (2).

Subsection (e) means that in a general law municipality only, the provisions of AS 29.26.110--29.26.160, with certain exceptions set out in paragraphs (1), (2), and (3), apply to a petition submitted under AS 04.11.502(a). 2/ For example, under AS 29.26.150, if the municipal clerk certifies that a petition is insufficient, a protest may be filed within 7 days. In addition,

1/ (...continued)

follows implicitly from the wording of the subsection. This implied rule is also governed by the preface "[n]otwithstanding any other provision of law." Consequently, subsection (d) alone, and not AS 29.26.190, also applies to elections to impose an alcoholic beverage restriction.

2/ Subsection (e) applies only to an election in a general law municipality. It does not apply to an election held under AS 04.11.502(a) in a home rule municipality or under AS 04.11.502(b) within an established village. So, for example, AS 29.26.110, requiring the filing of an application, does not apply to an election in a home rule municipality or an established village.

Chariot Thakstun, Director  
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under AS 29.26.160, if sufficient signatures are not secured, a new petition may not be filed sooner than six months after the petition is rejected as insufficient.

Finally, the fact that only AS 29.26.110 -- 29.26.160 apply to certain petitions under AS 04.11.502(a) bolsters our previous conclusion that AS 29.26.190 does not apply to local option elections. 1/

I hope this information proves helpful to you. If I can be of further assistance, please don't hesitate to contact me.

JDL:ck

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1/ Except for the applicability of AS 29.26.110 -- 29.26.160 to an AS 04.11.502(a) petition in a general law municipality, it appears that the legislature intended the Title 4 petition process to operate independently from the AS 29.26 petition process. AS 29.26.190 was enacted in 1985. AS 04.11.502(d) and (e) were added in 1988 and 1989, respectively. In 1989, the legislature made specific provisions of the Title 29 petition process applicable to certain local option elections. AS 29.26.190 is not one of those provisions. A letter of intent relating to the enactment of subsection (d) by sec. 5, ch. 156, SLA 1988 (HCS CSSB 371 (Jud) am H) provides in part: "It is the intent of the legislature, through this piece of legislation, to assist those communities which have elected to adopt one or more of the local option provisions authorized under AS 04.11.490 -- [04.11.]500 by allowing for more local control once the option is adopted . . . ." See 1988 Senate Journal 2939.

BILL SHEFFIELD, GOVERNOR

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## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

August 29, 1984

Honorable John C. Sackett  
Senator  
Alaska State Legislature  
Box 11  
Ruby, Alaska 99768

Re: Changing a municipality's  
existing local liquor option  
Our file: 366-101-85

Dear Senator Sackett:

You have requested an opinion concerning the necessity of conducting a separate election to repeal a municipality's existing local liquor option before conducting an election on a different option under AS 04.11.470 -- 04.11.506. This question arises from instructions in the pamphlet "Alcohol and the Law," which was prepared by the Alcohol Project for the Alaska Legal Services Corporation. Those instructions state that an existing option must be repealed "before a different option question can be voted on at a third election." In our view, these instructions are incorrect.

State law provides a procedure for a municipality's local option election as follows:

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. [1/]

1/ We have previously advised that this section must be read with AS 04.11.490 -- 04.11.500 to allow only one option on the

Senator John Sackett  
Alaska State Senate  
366-101-85

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AS 04.11.502(a). This section requires the governing body of a municipality to place a local option question before the voters whenever it is validly petitioned to do so. Nothing in the language of this section suggests that, before complying with a petition, the local governing body of the municipality is required to conduct an election repealing an existing option. 2/

Language in AS 04.11.490(c), 04.11.492(c); 04.11.496(c), and 04.11.500(c) indicates that the legislature contemplated that a municipality might conduct an election to select a new option to replace an existing option. 3/ This language, d

1/ Cont ...

Ballot at each election; that the first option presented with the requisite number of valid petition signatures should be the option presented to the voters; and that, if another group wishes to present a different option to the voters, it could do so at a special election soon after the first election. 1982 Inf. Op. Att'y Gen. (Nov. 12; 366-264-83).

2/ It may be that the Alcohol Project construed the statute requiring an intermediate election to repeal the existing option in order to avoid confusion that might result if voters are presented with multiple local option elections. However, requiring voters to repeal a previously selected option before selecting another option could be equally confusing and would leave a municipality that has chosen to control the sale of alcoholic beverages with no option in force at all until a new election is held and until the new option becomes effective.

3/ For example, AS 04.11.490(c) provides:

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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Alaska State Senate  
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scribing the effect that an election selecting a new option would have on an existing option, would be rendered meaningless by an interpretation of the statute requiring that an existing option be repealed in a separate election before a new option may be voted on. These provisions also provide for continuity in a municipality's choice to control sale and distribution of alcoholic beverages. That continuity would be broken if a municipality were required to repeal its local option before conducting an election to select a new option.

It is our recommendation that, whenever the local governing body is presented with a valid petition to place a local option question before the voters, it should do so without first conducting an election to repeal the existing option.

Very truly yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By: *Virginia B. Ragle*  
Virginia B. Ragle  
Assistant Attorney General

VBR/pjg

cc: Robert Charles  
Department of Community & Regional Affairs  
Municipal & Regional Assistance Division  
Bethel

3/ Cont ...

This provision applies when the voters of a municipality have elected to select the option provided by AS 04.11.490(a) to prohibit the sale of alcoholic beverages in the municipality. If the voters of the municipality subsequently elect to select the option provided by AS 04.11.492 prohibiting sale of alcoholic beverages unless sold by a specified licensee, the prohibitions of the first option are removed with respect to sale of alcoholic beverages by the specified licensee.

THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

JAN PHILLIPS, SCOTT OWNBEY,  
TOM D. NICOLOS, SALLY A.  
LEHEN, KATHLEEN A. KRUG,  
ROBERT MYRES, JIM BROOKS,  
MARK J. HAMLIN, TERRY P.  
BURROWS, and NANCY NICOLOS,  
  
Plaintiffs,

vs.

DONALD LONG IN HIS CAPACITY  
AS THE MAYOR OF THE CITY OF  
BARROW, and CAROLYN EDWARDS,  
CITY CLERK FOR THE CITY OF  
BARROW,  
  
Defendants.

FILED in the Trial Courts  
State of Alaska, Fourth District

MAR 10 1995

By: \_\_\_\_\_ Deputy

2BA-95-9 Civil

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

Before the court is a very complex web of legal issues involving the interpretation of numerous state and local statutes. A detailed analysis of these statutes and the legislative history suggests that legislative clarification may well be helpful.

The court has considered the briefs of the respective parties as well as the amicus curiae brief filed by the firm of Rice, Volland, Gleason & Taylor on behalf of their clients. Additionally, the court has independently researched the legal issues raised.

For the reasons set forth below the court concludes that the veto by Mayor Long was legal and that the next election on the

MEMORANDUM DECISION AND ORDER - 1  
2BA-95-9 Civil

I certify that on 3/10/95  
copies of this document were sent to  
CLASS

*Heqvi Pearce Johnson  
Taylor (RWSCT)*

issue of alcohol possession within the City of Barrow may not be held sooner than 12 months from the date of the last municipal election.

## II. FACTS

The sale of alcoholic beverages in the City of Barrow has been prohibited for several years pursuant to AS 04.11.490. On October 4, 1994, a majority of the voters of Barrow voted "yes" to the question "Shall the sale and importation of alcoholic beverages be prohibited in Barrow?" as set forth in AS 04.11.496, and "yes" to the question "Shall the possession of alcoholic beverages be prohibited in Barrow?" as set forth in AS 04.11.498. The affirmative vote on the question in AS 04.11.198 created an ordinance of the City of Barrow prohibiting the possession of alcoholic beverages within the city, AS 4.11.502(n), which became effective on November 1, 1994. AS 04.11.496(h); AS 04.11.498(d).

On December 2, 1994, the City Clerk certified petitions with the identical questions that had been approved by the Barrow voters on October 4, 1994. Ordinance 94-25, setting a special election date for the two petition questions, was introduced on December 9, 1994, and approved by the City Council on December 15, 1994. Ordinance 94-25 was passed by the Council and set a special election on the petition questions for February 21, 1995.

On December 30, 1994, the Mayor of the City of Barrow, Donald Long, vetoed Ordinance 94-25. The City Council held a special meeting on January 10, 1995, to discuss Mayor Long's veto. The Council did not override the Mayor's veto of Ordinance 94-25.

On January 26, 1995, Plaintiffs filed this action seeking declaratory and injunctive relief in the nature of mandamus. Specifically, Plaintiffs request the Court to: (1) declare that Mayor Long's veto of Ordinance 94-25 was illegal and therefore null and void; and (2) issue a mandatory injunction in the nature of mandamus directing the Barrow City Clerk to comply with AS 29.26.100 -- AS 29.26.180 and schedule a special election on the two petitions previously certified. With the complaint, Plaintiffs filed a motion for preliminary injunction to bar enforcement of Mayor Long's veto and require the special election scheduled for February 21, 1995, to be held. On February 16, 1995, this Court consolidated the hearing on the motion for preliminary injunction with the trial on the merits.

### III. DISCUSSION

AS 04.11.502 governs the procedure for conducting elections on the various alcoholic beverage options under AS 04.11.490 -- 04.11.500. AS 04.11.502(a) provides:

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.

This section mandates that an election be held after a sufficient petition is placed before the City Council, subject to the other

restrictions in AS 04.11.502. It does not, however, mandate that the question or questions in the petition be placed before the voters at a special, rather than the next general, election. Whether to hold a special election or to wait until the next general election is left to the discretion of the local governing body under a plain reading of the statute.

The Barrow City Council initially chose to set a special election by passing Ordinance 94-25. However, Mayor Long vetoed the Ordinance. The City of Barrow Code of Ordinances § 2.04.050 states that "the Mayor may veto any ordinance, resolution or motion or other action of the council . . . ." Similarly, AS 29.20.270 provides:

- (a) Except as provided in (c) - (e) of this section, the mayor may veto an ordinance, resolution, motion, or other action of the governing body and may strike or reduce appropriation items.
- (b) A veto must be exercised before the next regular meeting of the governing body and must be accompanied by a written explanation of the reasons for the veto. A veto may be overridden by vote of two-thirds of the authorized membership of the governing body within 21 days following exercise of the veto, or at the next regular meeting, whichever is later.
- (c) The veto does not extend to
  - (1) appropriation items in a school budget ordinance;
  - (2) actions of the governing body sitting as the board of equalization or the board of adjustment;
  - (3) adoption or repeal of a manager plan of government.
- (d) The mayor of a second class city has no veto power.

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

Under both the Barrow Code and AS 29.20.270, Mayor Long was legally empowered to veto Ordinance 94-25; the veto did not extend to the specific prohibitions of AS 29.20.270(c) nor to an ordinance adopted under AS 04.11.498. The legislature specifically addressed local option elections when drafting AS 29.20.270, see AS 29.20.270(e), and did not prohibit the type of veto utilized here by Mayor Long.

Nevertheless, the Plaintiffs argue that the law requires a special election to be held under these circumstances. The linchpin of Plaintiffs' argument is that local option elections are processes of initiative and referendum. The provisions of the Alaska Statutes governing the initiative and referendum require that an election must be held on an issue of initiative or referendum no sooner than 45 days and no later than 75 days after certification of the petition. AS 28.26.170 -- 180. The election ordinance of Barrow incorporates the state law governing the initiative and referendum by reference. It is therefore the Plaintiffs' position that because AS 04.11.502(a) requires Barrow to conduct the election in accordance with Barrow's election ordinance, an election must be held within the 45 -- 75 day confines of state law. The Plaintiffs argue that Mayor Long's veto was therefore unlawful.

However, a local option election under Title 4 is not a process of initiative or referendum. An initiative is where voters create new substantive law. A referendum is where voters repeal existing substantive law. A local option election, by contrast, is a method whereby local voters simply choose which alcohol restriction, if any, will take effect within their community. The available options are the prohibition of sale of alcohol, the prohibition of use of alcohol, the prohibition of importation of alcohol, and the prohibition of possession of alcohol. These options are provided under state statute and are not created by local ordinance. See Shetters v. State, 832 P.2d 181 (Alaska App. 1992).

Moreover, the legislature clearly intended the procedures governing local option elections to operate independently of the procedures governing the initiative and referendum. Certain provisions of the statute governing the initiative and referendum, AS 29.26.110 -- 160, are incorporated into AS 04.00.502(e), the local option election procedure section, with specified exceptions. By exclusion, AS 04.11.502(e) provides that AS 29.26.170 -- 190 do not apply to local option elections.<sup>1</sup> The

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<sup>1</sup> The Court recognizes that this conclusion is based on the maxim expressio unius est exclusio alterius ("expression of one thing is the exclusion of another"), and that this maxim has limited application in Alaska. Chayron U.S.A., Inc. v. LeResche, 663 P.2d 923, 930 (Alaska 1983). It is appropriate, however, to rely on the maxim here, because it is clear from the legislative history that the legislature considered incorporating AS 29.26.110 -- 190 into AS 04.11.502, but in the end only incorporated AS 29.110 -- 160. See e.g. Letter from Senator Al Adams, Sponsor of SB 173, to Senate Community and Regional Affairs Committee

45 -- 75 day time limitation argued for by Plaintiffs is found under AS 29.26.170 and AS 29.26.180 -- sections excluded from AS 04.11.502(e). This selective incorporation by the legislature demonstrates that local option elections were not to be considered processes of initiative or referendum. Accord Op. Att'y Gen. File No. 663-92-0070, October 23, 1991, n.3 ("Except for the applicability of AS 29.26.110 -- 29.26.160 to an AS 04.11.502(a) petition in a general law municipality, it appears that the legislature intended the Title 4 petition process to operate independently from the AS 29.26 petition process."). Based on the foregoing the veto in question was valid.<sup>2</sup>

Members (February 28, 1989) (SB 173 "makes local option petitions . . . subject to the same requirements as municipal initiative and referendum petitions"). Further, interpreting AS 04.11.502 to exclude the 45 -- 75 day requirement is not inconsistent with the purpose of the statute.

<sup>2</sup> AS 04.21.010(a) also demonstrates that local option elections are not initiatives or referenda. AS 04.21.010(a) states:

A municipality may adopt ordinances governing the importation, barter, sale, and consumption of alcoholic beverages within the municipality and may ban possession of alcoholic beverages under AS 04.11.498(d) or (e). An ordinance adopted under this section may not be inconsistent with this title or regulations adopted under this title.

According to this section, the Barrow City Council could pass an ordinance prohibiting the importation, barter, sale, or consumption of alcohol as long as the ordinance was not "inconsistent" with Title IV. However, it appears that the Council could not pass an ordinance prohibiting possession, for a municipality can prohibit possession only via a local option election (AS 04.11.498(d) or (e)). Local residents cannot pass a law by initiative or call a law into question if the local governing body could not do the same. Municipality of Anchorage v. Frohne, 568 P.2d 3 (Alaska 1977). Therefore, the local residents are not empowered to hold an initiative or referendum on possession of alcohol, but must go

The Court finds, in the alternative, that even if local option elections are processes of initiative and referendum, a special election may not occur within the time frame argued by the Plaintiffs. Article XI, § 6 of the Alaska Constitution, states that ". . . (a)n initiated law . . . may not be repealed by the legislature within two years of its effective date." This constitutional two-year restriction on repeal applies to local actions of initiative as well as initiatives at the state level. See Cons. Political Action Com. v. Anchorage, 745 P.2d 936, 937-38 (Alaska 1987) (applying the Art. XI, § 7 prohibition against appropriations by initiative against the City of Anchorage); see also McQuillan, Municipal Corporations § 16.50 (3d ed.). Recognizing this constitutional limitation, the legislature included it in Title 29 when it preserved the power of initiative and referendum to residents of municipalities. See AS 29.26.190.<sup>3</sup>

Further, even if the constitutional limitation did not apply, the statutory two-year moratorium on elections would apply. Plaintiffs argue that AS 04.11.502(d) excludes AS 29.26.190(a) because the two directly conflict. However, there is no conflict between the two statutes. AS 04.11.502(d) states:

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through the procedures outlined in Title IV, the local option election.

<sup>3</sup> Sec. 29.26.190. Effect. (a) The effect of an ordinance or resolution may not be modified or negated within two years after its effective date if adopted in an initiative election or if adopted after a petition that contains substantially the same measure has been filed.

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.

The two-year prohibition elections under AS 29.26.190 does not conflict with AS 04.11.502(d) for it does not permit an election to remove a restriction "more than once every 12 months." Taken together, AS 29.26.190 and AS 04.11.502(d) simply mean that once a restriction has been imposed, that restriction stays in effect for two years, after which an election to remove the restriction cannot occur more than once every 12 months.<sup>4</sup>

Finally, even if the Court were to accept Plaintiffs' contentions that AS 04.11.502(d) does, in fact, exclude AS 29.26.190, the one-year moratorium of AS 04.11.502(d) would apply. Plaintiffs argue that the moratorium does not apply because their proposed election would be the first election held to remove a restriction previously imposed. In essence, Plaintiffs argue that once a restriction has been passed by local option election, AS 04.11.502(d) permits an immediate election to remove that restriction, and only thereafter will the opportunity to remove the restriction be limited to elections once every 12 months. While this may be a literal interpretation of the section, it flies in

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<sup>4</sup> AS 04.11.502(d) has a direct effect on -- and was probably aimed at -- AS 29.26.190(c), which permits new petition applications for measures that have failed to receive voter support to be filed every six months. New petitions can only be filed every 12 months under AS 04.11.502(d).

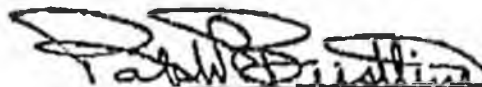
the face of common sense and produces "an absurd and unjust result [that] would clearly be inconsistent with the purposes and policies of the act . . . ." 2A Singer, Southerland Statutory Construction § 45.12 (5th Ed.); see also Alaska Public Emp. v. City of Fairbanks, 753 P.2d 725, 727 (Alaska 1988); Municipality of Anchorage v. Sisters of Providence, 628 P.2d 22, 27 & n.7 (Alaska 1981); LaFever v. State, 877 P.2d 1298, 1299 (Alaska App. 1994) ("Alaska does not adhere to a 'plain meaning rule' of statutory construction . . . we must avoid construing a statute so as to yield patently absurd results or to defeat the obvious legislative purpose of the statute"). When the legislature drafted AS 04.11.498, the provision allowing a local option election on whether possession of alcohol should be prohibited, it found, inter alia, that the abuse of alcohol seriously interfered with the rights and privileges of the people of the state and that the prohibition of alcohol was an effective tool for controlling that abuse. An Act Relating to Regulation of Alcoholic Beverages and Enactment of Municipal Ordinances, ch. 80, § 1, SIA 1986. The letter of intent accompanying the Senate version of the bill adding section (d) with its 12-month prohibition to AS 04.11.502 stated that the purpose of the bill was to "assist those communities which have elected to adopt one or more of the local option provisions . . . by allowing for more local control once the option is adopted . . ." Interpreting AS 04.11.502(d) in such a manner as to allow the voice of the people to be questioned immediately after the vote

is tallied would go against the stated legislative purpose and common sense.

**IV. CONCLUSION**

Based on the above analysis, Plaintiffs' complaint for declaratory judgment and injunctive relief in the nature of mandamus is **DISMISSED** with prejudice. The veto by Mayor Long was legal. The next election on the issue of alcohol possession within the City of Barrow may not be held sooner than 12 months from the date of the last municipal election.

ENTERED at Fairbanks, Alaska, this 10<sup>th</sup> day of March, 1995.



RALPH R. BEISTLINE  
SUPERIOR COURT JUDGE

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

STATE OF ALASKA

Authority: A restaurant or eating place license authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises.

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except by a restaurant or eating place licensee?

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A restaurant or eating place license authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises.

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except on premises operated by the municipality and under a restaurant or eating place license?

YES	
NO	

**END OF BALLOT**

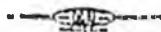
FRONT



TOP

STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A restaurant or eating place license authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises.

Shall [Village] adopt a local option to prohibit the sale of alcoholic beverages except by a restaurant or eating place licensee?

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

A "beverage dispensary license" is commonly known as a "bar."

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except by a beverage dispensary licensee?

YES	
NO	

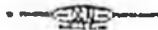
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STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

A "beverage dispensary license" is commonly known as a "bar."

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except by a caterer holding a permit under AS 04.11.230 to sell alcoholic beverages at a site within the municipality who is also licensed under a beverage dispensary license for premises outside of the municipality?

YES

NO

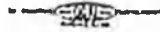
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STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

A "beverage dispensary license" is commonly known as a "bar."

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except on premises operated by the municipality and under a beverage dispensary license?

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

A "beverage dispensary license" is commonly known as a "bar."

Shall [Village] adopt a local option to prohibit the sale of alcoholic beverages except by a beverage dispensary licensee?

YES	
NO	

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

A "beverage dispensary license" is commonly known as a "bar."

Shall [Village] adopt a local option to prohibit the sale of alcoholic beverages except by a caterer holding a permit under AS 04.11.230 to sell alcoholic beverages at a site within the established village who is also licensed under a beverage dispensary license for premises outside of the established village?

YES	
NO	

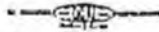
END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: AS 04.11.150(a)  
Except as provided under (g) of this section, a package store license authorizes the licensee to sell alcoholic beverages to a person present on the licensed premises or to a person known to the licensee who makes a written solicitation to that licensee for shipment. A licensee, agent, or employee may only ship alcoholic beverages to the purchase. Before commencing the practice of shipping alcoholic beverages, and with a subsequent application to renew the license, a licensee shall notify the board in writing of the licensee's intention to ship alcoholic beverages in response to a written solicitation. The package store licensee, agent, or employee shall include written information on fetal alcohol syndrome and fetal alcohol effects resulting from a woman consuming alcohol during pregnancy in a shipment of alcoholic beverages sold in response to a written solicitation.

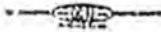
TURN BALLOT OVER

FRONT



STATE OF ALASKA  
OFFICIAL BALLOT

ELECTION



THIS STUB TO BE REMOVED BY ELECTION BOARD

STATE OF ALASKA

AS 04.11.150(g): If a shipment is to an area that has restricted the sale of alcoholic beverages under AS 04.11.491 (a)(1), (2), or (3) or (b)(1) or (2), a package store licensee, agent, or employee may not ship to a purchaser more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in a calendar month.

A "package store license" is commonly known as a "liquor store."

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except by a package store licensee?

YES	
NO	

*2nd ballot will be needed if needs to be on the ballot for clarification for the voter.*

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: AS 04.11.150(a)  
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TURN BALLOT OVER

FRONT



TOP

STATE OF ALASKA  
OFFICIAL BALLOT

ELECTION



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STATE OF ALASKA

AS 04.11.150(g): If a shipment is to an area that has restricted the sale of alcoholic beverages under AS 04.11.491 (a)(1), (2), or (3) or (b)(1) or (2), a package store licensee, agent, or employee may not ship to a purchaser more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in a calendar month.

A "package store license" is commonly known as a "liquor store."

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except on premises operated by the municipality and under a package store license?

YES	
NO	

*2nd ballot will be needed if needs to be on the ballot for clarification for the voter.*

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



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**STATE OF ALASKA**

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TURN BALLOT OVER

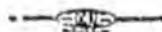
FRONT



TOP

STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



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STATE OF ALASKA

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A "package store license" is commonly known as a "liquor store."

Shall [Village] adopt a local option to prohibit the sale of alcoholic beverages except by a package store licensee?

YES	
NO	

*2nd ballot will be needed if ) needs to be on the ballot for clarification for the voter.*

END OF BALLOT