

HB

132

Alaska State Legislature

Interim:

145 Main Street Loop #223
Kenai, Alaska 99611
(907) 283-7095
(907) 283-3075 (fax)
(907) 262-7574 (h)



Session:

State Capitol
Juneau, Alaska 99801
(907) 465-2693
(fax) (907) 465-3835

Representative Gary L. Davis

SPONSOR STATEMENT

HB 132

"An Act relating to municipal taxation of alcoholic beverages."

HB 132 removes the restrictions on municipalities related to the sales tax imposed on alcoholic beverages. Current statutes are interpreted to allow municipalities to impose only the general sales tax amount on alcohol. This bill allows municipalities to impose a sales tax which may be equal to, lower, or higher than the general sales tax.

State laws are continually passed that have a direct financial impact on municipalities. Municipalities are required by state law to care for and protect public inebriates. Currently, the State does not provide sufficient funding for such activities. This is not a new tax. HB 132 merely allows municipalities to tax alcohol according to their local alcohol related costs.

This legislation will enable municipalities to address budgeting problems created through the consumption of alcoholic beverages. HB 132 will enable municipalities to address their local expenses. Such costly services include public safety, care for inebriates, and alcohol related social and health problems.

Representing House District 8
Soldotna, Sterling, Funny River, Cooper Landing, Hope, Moose Pass, Seward



Alaska Conference of Mayors

Support HB 132

**Remove Special Restrictions and
Allow Local Voters to Decide on Alcohol Sales Tax**

Here's why. . .

1. Under state statutes adopted years ago, a special exemption on alcohol sales was granted which prohibited local voters from establishing a higher level of sales tax on alcohol in their community. It is time to remove the exemption and let local voters decide for their own community.
2. This is **not a new state tax**. It is an optional tool for municipalities to balance local tax burdens and provide critical public services.
3. Instead of creating a new municipal taxing power, HB 132 removes an inappropriate restriction on an existing municipal tax.
4. Alcohol abuse is the number one health and public safety problem in Alaska. Alcohol sales should not receive a special exemption. Municipalities must be able to defray some of the costs they incur coping with alcohol-related problems.
5. With growing pressure on property taxpayers, local voters should be allowed to vote on whether or not to tax alcohol to pay a larger share of the costs directly related to alcohol use in their community. Alcohol related costs to local taxpayers include:

- ➔ Unfunded state mandated police costs to transport public inebriates
- ➔ Unfunded state mandated emergency medical services
- ➔ Unfunded state mandated hospital emergency care costs
- ➔ Police costs for alcohol related felonies and misdemeanors
- ➔ Unfunded prosecutions
- ➔ Unfunded direct treatment and rehabilitation of alcohol abusers
- ➔ Increase in costs of youth and family services related to alcohol use, provided by schools and local governments
- ➔ Unfunded local medical services and hospitalization
- ➔ Unfunded repair of property damage to public facilities
- ➔ Health insurance costs paid by local governments and school districts to treat alcohol and alcohol-related health problems.

For more information, call the Alaska Municipal League at 586-1325.

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Representative Gary L. Davis

SECTIONAL ANALYSIS OF HB 132 A BILL FOR AN ACT ENTITLED

"An Act relating to a municipal taxation of alcoholic beverages."

Section 1 AS 04.21.010(c) (2). Is an addition the current exceptions regulating the municipalities ability to tax alcohol. It states that municipalities will have the ability to impose a sales tax on alcohol that is equal to, higher, or lower than an existing sales tax. This section removes the existing requirement that a general sales tax be in place before a sales tax can be placed on alcohol.

Section 1 AS 04.21.010 (c) (3) Was a "grandfather" clause that allowed municipalities that had an existing sales tax in effect prior to July 1, 1985 to tax alcohol. This section will be deleted, as this legislation will allow all municipalities to place a sales tax on alcohol.

Section 2 AS 29.45.650 (a) This section states that a borough may levy and collect taxes within the borough's jurisdiction with three exceptions, AS 04.21.010 (c) and AS 29.45.650 (f) and (h). Since AS 04.21.010 (c) This bill no longer restricts municipalities ability to place a sales tax on alcohol, the presence of AS 04.21.010 (c) will be deleted.

Representing House District 8

Soldotna, Stirling, Funny River, Cooper Landing, Hope, Moose Pass, Seward

- Sectional Analysis -



Alaska Municipal League & Alaska Conference of Mayors 1997 Legislative Platform

1. Approval of the "Safe Communities" bill and maintain current funding for municipal revenue sharing to avoid further state generated local property tax increases. The "four legs" of the Safe Communities bill are:
 - Directs the funds to be used primarily for public safety and health services
 - Establishes a minimum sharing of \$40,000 for small municipalities
 - Removes the "hold harmless" to allow equal treatment to all municipalities
 - Distributes municipal funds on July 31 each year
2. Provide for the long term construction, operation, and maintenance of state and municipal airports, roads, and harbors, including revenue sharing programs for maintenance. Bring state harbors up to an adequate maintenance level through a statewide bond issue, or other funds, to prepare them for possible negotiated transfer to municipalities.
3. Approval of a Long Range Financial Plan that prohibits unfunded mandates and unfunded service responsibilities, adequately funds schools and maintenance of public infrastructure, reasonably reduces state expenses, protects the Permanent Fund, and phases in new tax revenue sources.
4. Actively encourage the construction of a natural gas pipeline with an emphasis on jobs for Alaskans.
5. Restore funding for Municipal Capital Matching Grant Program to \$20 million because local communities can most efficiently determine and meet local capital needs.
6. Create a permanent State/Local Government Partnership Council to negotiate methods to most efficiently provide public services at the lowest possible cost to taxpayers.
7. Provide long term funding of public safety and health services through the equitable sharing of increased statewide alcohol and tobacco taxes, and removing the current prohibition against municipalities voting for local special taxes on the sale or use of alcohol.
8. Reduce the state unfunded mandate for the Senior Citizen Property Tax exemption.
9. Adequately fund a program to construct efficient sanitation systems throughout Alaska.
10. Give communities more tools to reduce youth crime by limiting confidentiality of youth crime information to protect the community, allow municipalities the option of assuming greater jurisdiction over juvenile justice, and limit liability for providing recreational opportunities for youth, such as skateboard parks.

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

February 14, 1997

Representative Gary Davis
Room 513, Capitol Building
Juneau, Ak 99801-1182

Dear Representative Davis:

Members of the Alaska State Hospital & Nursing Home Association strongly support House Bill 132 "An Act relating to municipal taxation of alcoholic beverages."

The challenge of caring for the public inebriate, along with the cost of providing that care is of serious concern to community hospital administrators throughout Alaska. Attached is a "discussion paper" on this issue written by Ed Myers, former Administrator of Kodiak Island Hospital. Ed is also a former chairman of the board of directors of ASHNHA. His paper is about Kodiak but the problems apply to nearly every community in Alaska, if not all of them.

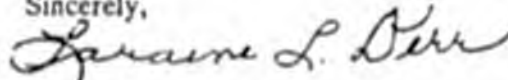
State statutes require that police protect public inebriates from harm by bringing them to the hospital for a medical screening required by state law. The costs of those services to public inebriates go unpaid and, as with other costs that are shifted to communities in Alaska, property tax payers foot the bill. If this problem needs to be taken care of locally (and we believe it does) then the state should stop prohibiting the communities from raising money to pay for it.

Under state statutes adopted many years ago, alcohol is granted a special exemption intended to prohibit local voters from voting on a special sales tax on alcohol sales in their community. House Bill 132 would provide a tool for municipalities to use to pay for the costs of local police departments, hospitals and other impacts related to alcohol abuse.

This is not a new state tax. It is a needed optional tool for municipalities to balance local tax burdens.

Thank you for introducing House Bill 132. ASHNHA will be working hard this session to seek passage of this important legislation.

Sincerely,



Laraine L. Derr
President / CEO

- Support Letters -

March 19, 1995

DISCUSSION PAPER HOSPITAL EXAMINATION OF PUBLIC INEBRIATES

By:

Edmon Myers, Administrator
Kodiak Island Hospital / Care Center

Examination of public inebriates in the Emergency Room at Kodiak Island Hospital and Care Center has been an ongoing problem for several years, and to date, there has been no resolution to this problem. The basic problem in Kodiak lies in the fact that the Police Department believes that under the current law, they are required to pick up and transport any public inebriate to the Hospital for examination prior to incarceration or other disposition. An often cited case is several years ago in Anchorage, where an individual died without being examined for other injuries.

The following facts and issues characterize the situation at Kodiak Island Hospital and Care Center.

1. Police either bring public inebriates or call an ambulance to transport public inebriates to the Hospital for examination. The use of the public ambulance service has arisen because of the legal issues for payment surrounding protective custody. KIH/CC has sought legal determination regarding responsibility for payment when police bring inebriates to the Hospital. The legal determination received was that the Police Department is acting in the same capacity as a guardian of a minor in those cases, and therefore, would be responsible for payment. To circumvent this, the Police Department has resorted to calling an ambulance to bring public inebriates to the Hospital on the theory that the Hospital must then take care of examining the inebriates, the same as any other patient arriving by ambulance, and the protective custody issue is thereby avoided.
2. In other cases when the Police pick up inebriates and bring them to the Hospital, the Police usually release them "on their own recognizance" at the Emergency Room door and after examination, rearrest them as they leave the Hospital. Again, the City has indicated this then removes the protective custody issue, and does not have to pay for the examination of the patient.
3. In those cases where prisoners are brought in from the jail, the Police again usually release prisoners on their own recognizance and rearrest them after they are released from the Hospital, requiring the Hospital to call them prior to release so they may await them at the door when they leave. This has occurred, even in the case of "dangerous" patients, in which the Hospital is required to provide its own security to protect the staff.
4. KIH/CC has written off several hundred thousand dollars over the past few years in providing care and treatment of patients brought to the Hospital as a result of inebriation. In most of these cases, treatment is not required, but merely an evaluation of whether there is any medical condition which would prohibit incarceration or other disposition by the Police Department.

This is a serious financial problem to the Hospital, and I suspect it is in other communities, based upon my discussion with other Hospitals. I have offered on several occasions to enter into a contract with the City for examinations providing "deep discounts". This is an area which I would like to see improved, as I believe it is unreasonable to expect Hospitals to provide examinations which are not requested by the patient without reimbursement.



Alaska Native Health Board

4201 Tudor Centre Dr., Suite 105
Anchorage, Alaska 99508

Phone: (907) 562-6006
FAX: (907) 563-2001

February 21, 1997

Representative Gary Davis
Alaska Legislature
State Capitol
Juneau, AK 99801

Dear Representative Davis:

I am writing to let you know how much we appreciated the chance to meet with you in Juneau this week and hear of your commitment to provide communities with another tool to reduce alcohol abuse.

I want to let you know that the Alaska Native Health Board voted to support HB 132. At the same time, I also want to take this opportunity to ask again for your support of HB 1, the tobacco tax increase, which will be heard in House Finance Committee next week.

You mentioned that you think local governments should have the opportunity to levy alcohol and tobacco taxes. We agree, but we don't think this should preclude the state from doing so as well. If the Alaska Legislature acts this year to pass a major tobacco tax increase, every community in the state will benefit and thousands of lives will ultimately be saved.

Representative Davis, we feel that your support of the tobacco tax legislation is as critical as our mutual goal to reduce alcohol abuse. The tobacco industry is making an all-out effort to stop the tax, and we are counting on you not to let this happen. From our conversation, I believe you do care about the health and well-being of all Alaskans. We look forward to working with you to address the two biggest health problems in our state—tobacco and alcohol abuse.

I would welcome the chance to discuss this with you further.

Sincerely,

Anne M. Walker
Executive Director

ALEUTIANS OF ISLANDS ASSOCIATION
BESSIE BAY AREA HEALTH CORPORATION
CHULIACHMUT
COOPERATIVE ASSOCIATION
EASTERN ALEUTIAN TRIBES
KODIAK AREA NATIVE ASSOCIATION
KUSILIAZ ASSOCIATION

METLAKATLA INDIAN COMMUNITY
OF SANFORD TRIBAL GOVERNMENT
NATIVE VILLAGE OF ELLIOTTA
NATIVE VILLAGE OF TITAN
NUPURIK TRADITIONAL COUNCIL
NORTH SLOPE COUNCIL

NORTON SOUND HEALTH CORPORATION
SALDOVA VILLAGE TRIBE
SOUTHCENTRAL FOUNDATION
SOUTHEAST ALASKA REGIONAL HEALTH CORPORATION
TANANA CHIEFS CONFERENCE
TUPON RUSHOKATIM HEALTH CORPORATION
VALDEZ NATIVE TRIBE

III. TITLE 47 REIMBURSEMENT FOR HEALTH CARE FACILITIES

Alaska Native health organizations that operate hospitals and health centers throughout rural Alaska have been inappropriately bearing a heavy financial burden for services provided to intoxicated persons.

Title 47 of Alaska State Statutes provides financial support to local governments for public safety services provided to intoxicated and incapacitated individuals. Under certain circumstances such individuals are referred to local health care facilities for medical screening prior to being released, returned to police custody, or transferred to treatment facilities.

Even though local protocols may be developed to limit the number of such referrals, as many as one-third of the individuals entering the public safety system in some areas are screened by medical professionals at a significant cost in terms of time and resources.

The problem faced by the Alaska Native Health Board's member organizations throughout rural Alaska is that their hospitals and health centers are not reimbursed for these services. Very few of these individuals have Medicaid coverage or other private insurance. Local city governments have disclaimed responsibility for payment for these services, and have made provisions in some locations to release those in custody at the hospital door and then re-arrest upon discharge to avoid liability.

Kanakanak Hospital in Dillingham estimates that the uncompensated care provided for such individuals is valued at least \$100,000 per year. Other hospitals are reporting similar losses.

It is our understanding that this problem is significant for other hospitals outside of the Alaska Native health care system as well. The Alaska State Hospitals and Nursing Homes Association has raised this as a legislative concern as well, recommending that state law concerning municipal taxation of alcoholic beverages be revised to generate a revenue stream.

The Alaska Native Health Board urges the Alaska State Legislature to recognize the financial hardship being faced by small rural hospitals due to the demands of medical screening for intoxicated persons, to work with the Department of Health and Social Services and local governments to develop a strategy to address these concerns, and to ensure that sufficient financial support is provided to meet governmental obligations to provide these services.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH 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

February 25, 1997

SUBJECT: Dedication of funds by a municipality (Work Order No. 20-LS0681)

TO: Representative Gary Lee Davis
Attn: Andy Peterson

FROM: Tamara Brandt Cook *TBC*
Director

You have asked whether a municipality may dedicate funds. There is no statute that prohibits a municipality from dedicating funds, although an initiative may not be used to propose an ordinance that would create a dedication. Article XI, sec. 7 of the state constitution does not allow an initiative to be used to dedicate revenues, and that prohibition has been applied to municipalities under AS 29.10.030(c) and AS 29.26.100.

It is unclear whether the constitutional prohibition against dedicated state funds contained in Art. IX, sec. 7 applies also to municipalities. Attorney general opinions have not been consistent on this point. I have found two opinions that conclude that Art. IX, sec. 7 applies only to state and not to municipal funds. (1960 Inf. Op. Att'y Gen., December 5, Havelock; Att'y Gen. Op. No. 660-88-0525, July 29, 1988, Odland) On the other hand, another opinion warns that receipts of a municipal liquor tax could not be dedicated to "costs created by abuse of alcohol" without violating Art. IX, sec. 7. (Memorandum to the Honorable Jay S. Hammond, Oct. 8, 1976, Peter) At this point the Alaska Supreme Court has noted that the issue exists and has declined to express an opinion on it. (Fairbanks v. Convention and Visitors Bureau, 818 P.2d 1153 (Alaska 1991) footnote 7)

TBC:glc
97-121.glc

Legal Clarification

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH 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

February 21, 1997

SUBJECT: Municipal taxation of alcohol - (SSHB 132)

TO: Representative Gary Davis
Attn: Andy

FROM: Michael F. Ford *M. F.*
Legislative Counsel

You have asked if the above referenced bill will have any effect on the existing ability of a damp or dry municipality to impose a sales and use tax on alcoholic beverages. As explained in this memo, I do not believe that SSHB 132 will change existing law as to this issue.

A damp or dry municipality has the ability to impose a sales and use tax on alcoholic beverages under AS 04.21.010(c)(4). This provision of law is unchanged under SSHB 132. As a practical matter, the ability to impose a sales and use tax would only seem of value in a damp municipality or one that prohibits sale under AS 04.11.491(a)(1), but not importation or possession of alcohol. In dry municipalities, or a place that prohibits sale and importation, or sale, importation and possession, there would be no legal activities to tax. Therefore the ability to impose a use tax would seem of questionable value in a dry community. Regardless of the value of the taxing authority granted under AS 04.21.010(c)(4), SSHB 132 does not change this provision of law.

If you have further questions please contact me.

MFF:jdr
97-113.jdr

Section
60. Warehousing of alcoholic beverages
65. Posting of warning signs

Section
70. Enforcement
80. Definitions

Sec. 04.21.010. Municipal regulation. (a) 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 04.11.491(a)(5). An ordinance adopted under this section may not be inconsistent with this title or regulations adopted under this title. In a municipality that has adopted a local option under AS 04.11.491(a)(1), (2), or (3), an ordinance is not inconsistent with this title if it limits

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

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

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

(b) After the adoption of a local option under AS 04.11.491(a), a municipality may adopt an ordinance making the sale, importation, or possession of alcoholic beverages a misdemeanor to the extent prohibited under the local option. The ordinance may not be inconsistent with this title or the regulations adopted under this title.

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

(1) property tax on alcoholic beverage inventories;

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

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

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

(d) At least 10 days before the date set for municipal action on an application for the issuance, renewal, relocation, or transfer of ownership of a proposed license, the municipality shall provide written notice of the proposed action and the time and place for a hearing to a community council that

(1) is established by municipal charter or ordinance to advise the municipal governing body; and

(2) has jurisdiction over the area affected by the proposed action. (§ 4 ch 131 SLA 1980; am § 20 ch 74 SLA 1985; am § 19 ch 93 SLA 1985; am § 9 ch 80 SLA 1986; am §§ 11, 12 ch 156 SLA 1988; am §§ 50 — 52 ch 101 SLA 1995)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, made section reference substitutions in subsections (a) and (c); in subsection (a), added the last sentence in the introductory language and added paragraphs (1)-(3); and rewrote subsection (b).

Legislative history reports. — For sectional analysis of CS SSSB 239, the predecessor of FCCSSB 239 (ch. 131, SLA 1980), see 1980 Senate Journal Supplement No. 23, April 1, 1980.

For Senate letter of intent relating to the amendments to (a) and (c) of this section by secs. 11 and 12,

ch. 156, SLA 1988 (HCS CSSB 371 (Jud) am H), see 1988 Senate Journal 2939.

Opinions of attorney general. — Anchorage Municipal Code 10.50.030 and 10.50.035, which established guidelines for when the Assembly will exercise its protest authority under AS 04.11.480, are not inconsistent with this title, are not in excess of the municipality's authority, and are not unreasonable. February 25, 1986, Op. Att'y Gen.

Ordinance regulating where licenses may be located did not exceed the borough's authority. October 23, 1991, Op. Att'y Gen.

NOTES TO DECISIONS

Sales tax. — Paragraphs (c)(2) and (c)(3) of this section, when read together, bar a municipality from taxing only the sale of alcoholic beverages and further require that if sales taxes are imposed on other commodities, then the rate of taxation on the sale of alcoholic beverages may not exceed the rate of taxa-

tion imposed upon such other commodities sales. *Lago v. City & Borough of Sitka*, 823 P.2d 641 (Alaska 1991).

A Sitka ordinance which taxed the sales of alcoholic beverages at a four percent higher rate than sales made on other commodities within the city and bor-

ough of Sitka violated this section. *Lagos v. City & Borough of Sitka*, 823 P.2d 641 (Alaska 1991).

Collateral references. — 45 Am. Jur. 2d, Intoxicating Liquors, § 27.

48 C.J.S., Intoxicating Liquors, § 213.

Provision as to sale of liquor to women as affecting validity of regulatory statute. 9 ALR2d 541.

Validity and construction of measure prohibiting retail alcoholic beverage seller from furnishing free food or drink. 66 ALR2d 758.

Validity and construction of statute or ordinance requiring or prohibiting posting or other publication of price by liquor dealer. 89 ALR2d 901.

Validity and construction of statute or ordinance

respecting employment of women in places where intoxicating liquors are sold. 46 ALR3d 369.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR4th 600.

Validity and construction of statute or ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place. 39 ALR4th 668.

Sec. 04.21.015. Private manufacture of alcoholic beverages. (a) Except as provided in (b) of this section, the provisions of this title do not apply to the private manufacture of alcoholic beverages.

(b) This section does not apply to AS 04.16.050, 04.16.051, 04.16.080; AS 04.21.010, 04.21.020; alcoholic beverages manufactured in a quantity that exceeds the limit imposed on private manufacture under federal law; or an area that has adopted a local option law under AS 04.11.491. (§ 1 ch 88 SLA 1989; am § 53 ch 101 SLA 1995)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, made a section reference substitution in subsection (b).

Sec. 04.21.020. Civil liability of persons providing alcoholic beverages. A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080 — 04.11.220, or is an agent or employee of such a licensee and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, liquor identification card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030. (§ 5 ch 131 SLA 1980; am § 14 ch 109 SLA 1983)

Revisor's notes. — In 1980, this section was rearranged for clarity.

Cross references. — For responsibility of licensee

for violations, see AS 04.16.150, for responsibility of licensees, agents and employees, see AS 04.21.030.

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 04.10.150 and 04.15.020.

Constitutionality. — This section is not so completely lacking in rationality or legitimacy of purpose as to be unconstitutional. Immunizing social hosts from liability caused by their guests' conduct can rationally be based on a view that it is an undesirable interference with normal hospitality to require a social host to monitor guests' alcohol consumption. Further, the primary actor responsible for harm caused by a drunken person is the drunken person. *Chokwah v. Worley*, 912 P.2d 1248 (Alaska 1996).

Legislative intent. — The intent of the legislature

in enacting this section was to limit vendor liability in cases where the vendor has provided alcohol in a statutorily permissible manner. *Williford v. L.J. Carr Inv., Inc.*, 783 P.2d 235 (Alaska 1989).

"Provide" alcohol. — A vendor may "provide" alcohol even unwittingly to third parties. *Williford v. L.J. Carr Inv., Inc.*, 783 P.2d 235 (Alaska 1989).

This section does not immunize vendors who violate AS 04.16.030, which prohibits certain conduct relating to drunken persons. *Williford v. L.J. Carr Inv., Inc.*, 783 P.2d 235 (Alaska 1989).

Proximate cause. — AS 04.16.030 and this section require for purposes of liability only that the defendant's intoxication, and not the particular sale of

Effect of amendments. — The 1996 amendment, effective July 1, 1996, rewrote subsection (a).

NOTES TO DECISIONS

Protest upheld. — City's protest that a proposed liquor store location was too close to a senior citizens housing complex and was in an area which already contained a high concentration of bars was not arbitrary, capricious, and unreasonable. *Stoltz v. City of Fairbanks*, 703 P2d 1155 (Alaska 1986).

Former law construed. — See *In re Alaska Labor Trades Ass'n*, 10 Alaska 472 (1945); *In re Wakefield*, 10 Alaska 599 (1945); *In re Kaye*, 11 Alaska 556 (1948); *In re Martin's Retail Liquor License No. 1517*, 15 Alaska 225 (1964).

Sec. 04.11.490. Prohibition of the sale of alcoholic beverages. [Repealed, § 69 ch 101 SLA 1995.]

Sec. 04.11.491. Local options. (a) If a majority of the persons voting on the question vote to approve the option, a municipality shall adopt a local option to prohibit

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

(A) a restaurant or eating place licensee;
 (B) a beverage dispensary licensee;
 (C) a package store licensee; or
 (D) 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;

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

(A) a restaurant or eating place license;
 (B) a beverage dispensary license; or
 (C) a package store license;
 (4) the sale and importation of alcoholic beverages; or
 (5) the sale, importation, and possession of alcoholic beverages.

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

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

(A) a restaurant or eating place licensee;
 (B) a beverage dispensary licensee;
 (C) a package store licensee; or
 (D) 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;

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

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

(d) The ballot for an election on the option set out in (a)(2)(A), (a)(3)(A), or (b)(2)(A) of this section must include a summary explanation of the authority to sell alcoholic beverages given to a restaurant or eating place under AS 04.11.100(a). The ballot for an election on the option set out in (a)(2)(B) or (D), (a)(3)(B), or (b)(2)(B) or (D) of this section must include a statement that a beverage dispensary license is commonly known as a

"bar" and a summary explanation of the authority to sell alcoholic beverages given to a beverage dispensary licensee under AS 04.11.090(a). The ballot for an election on the option set out in (a)(2)(C), (a)(3)(C), or (b)(2)(C) of this section must include a statement that a package store license is commonly known as a "liquor store" and a summary explanation of the authority to sell alcoholic beverages given to a package store licensee under AS 04.11.150(a).

(e) If a municipality dissolves under AS 29.06.450(a) or (b), a local option adopted by the municipality under (a) of this section shall continue in effect as the corresponding local option under (b) of this section for an established village having the same perimeter as the previous boundaries of the municipality. A license for premises operated by the municipality under AS 04.11.506 expires when the municipality dissolves.

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

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

(2) alcoholic beverages to a premises licensed under (a)(2) — (3) or (b)(2) of this section. (§ 21 ch 101 SLA 1995)

Cross references. — For provisions relating to the continuation of local options adopted under former AS 04.11.490, 04.11.492, 04.11.496, 04.11.498, and 04.11.500, see § 70, ch 101, SLA 1995 in the Temporary and Special Acts; for provisions relating to local

option petitions on file on July 1, 1995, see § 71, ch 101, SLA 1995 in the Temporary and Special Acts.

Effective dates. — Section 79, ch. 101, SLA 1995 makes this section effective July 1, 1995.

Sec. 04.11.492. Community liquor license; complete prohibition on sales. [Repealed. § 69 ch 101 SLA 1995.]

Sec. 04.11.493. Change of local option. (a) If a majority of persons voting on the question vote to approve a different local option, a municipality or established village shall change a local option previously adopted under AS 04.11.491 to the different approved option.

(b) A ballot question to change a local option under this section must at least contain language substantially similar to: "Shall (name of municipality or village) change the local option currently in effect, that prohibits (current local option under AS 04.11.491), and adopt in its place a local option to prohibit (proposed local option under AS 04.11.491)? (yes or no)." (§ 22 ch 101 SLA 1995)

Effective dates. — Section 79, ch. 101, SLA 1995 makes this section effective July 1, 1995.

Sec. 04.11.496. Removal of local option. (a) If a majority of the persons voting on the question vote to remove the option, a municipality or established village shall remove a local option previously adopted under AS 04.11.491. The option is repealed effective the first day of the month following certification of the results of the election.

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

(c) When issuing a license in the area that has removed a local option, the board shall give priority to an applicant who was formerly licensed and whose license was not renewed because of the results of the previous local option election. However, an

Article 4. Borough Sales and Use Tax.

Section
 650. Sales and use tax
 660. Notice of sales and use tax
 670. Referendum, adoption, and modification

Section
 680. Combining sales and use tax with incorporation
 of a borough

Sec. 29.45.650. Sales and use tax. (a) Except as provided in AS 04.21.010(c) and in (f) and (h) of this section, a borough may levy and collect a sales tax on sales, rents, and on services provided in the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use, or consumption of tangible personal property in the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only on buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that the person has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether inside or outside the state.

(d) If the assembly charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year on the delinquent taxes and shall be charged from the due date until paid in full. This subsection applies to home rule and general law municipalities.

(e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales and use tax, and the interest, penalties, and administration costs in the event of delinquency. When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special assessments; (2) liens that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien; (3) mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the sales tax lien. This subsection applies to home rule and general law municipalities.

(f) A borough may not levy and collect a sales tax on a purchase made with (1) food coupons, food stamps, or other type of certificate issued under 7 U.S.C. 2011 — 2025 (Food Stamp Act); or (2) food instruments, food vouchers, or other type of certificate issued under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and Children). This subsection applies to home rule and general law municipalities.

(g) *[Repealed, § 2 ch 159 SLA 1990.]*

(h) A borough may not levy or collect a sales tax on sales, rents, and services, or a use tax on the storage, use, or consumption of personal property on the following activities:

(1) the sale, lease, rental, storage, consumption, or distribution in this state of or the provision of services relating to an orbital space facility, space propulsion system, or space vehicle, satellite, or station of any kind possessing space flight capacity, including the components of them;

(2) the sale, lease, rental, storage, consumption, or use of tangible personal property placed on or used aboard an orbital space facility, space propulsion system, or space vehicle, satellite, or station of any kind, regardless of whether the tangible personal property is returned to this state for subsequent use, storage, or consumption; an exemption under this paragraph is not affected by the failure of a launch to occur, or the destruction of a launch vehicle or a component of a launch vehicle. (§ 12 ch 74 SLA 1985; am §§ 3, 4 ch 38 SLA 1986; am § 1 ch 20 SLA 1987; am § 2 ch 30 SLA 1988; am §§ 1, 2 ch 96 SLA 1989; am §§ 1, 2 ch 159 SLA 1990; am §§ 4, 5 ch 88 SLA 1991)

NOTES TO DECISIONS

Annotator's notes. — The cases cited in the note below were decided under former, similar provisions.

Evolutionary development of present language of subsection (a). — See *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

Subsection (a) of this section permits a selective sales tax. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

This section states no limits on what may be exempted. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

And there is nothing in the statute which expressly requires a general tax. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

The term "sales tax" carries no connotation of generality. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

The city of Homer bed tax, based upon the actual

rental of a room, and imposed, computed and collected according to traditional sales tax methods, is a sales tax within the meaning of this section. *City of Homer v. Gangl*, 650 P.2d 396 (Alaska 1982).

A real property lien is beyond the scope of what may be "necessary" or fairly implied in or incident to" the authority to collect a sales tax. *Fairbanks N. Star Borough v. Howard*, 608 P.2d 32 (Alaska 1980).

Successor liability. — Subsection (e) of this section does not provide for successor liability, unless done through a lien on the real and personal property of a "seller," i.e. the business; municipalities' attempt by ordinance to hold successor owners personally liable for delinquent sales taxes would effectively eliminate paragraph (e)(2) of this section lien priority and was, therefore, invalid. *Kenai Peninsula Borough v. Associated Grocers*, 689 P.2d 604 (Alaska 1995).

Collateral references. — 68 Am. Jur. 2d, Sales and Use Taxes, § 1 et seq.

Sec. 29.45.680. Notice of sales and use tax. (a) If the borough levies and collects only a sales tax and use tax, the assembly shall provide a notice substantially in the form set out in AS 29.45.020. In providing notice under this subsection, the assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in AS 29.45.020. Notice shall be provided

(1) by publishing in a newspaper of general circulation in the borough a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the borough's budget; or

(2) if there is no newspaper of general circulation in the borough, by posting a copy of the notice for at least 20 days in at least two public places in the borough, with posting to occur not later than 45 days after the final adoption of the borough's budget.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.60.010 — 29.60.080 and state aid for miscellaneous municipal services under AS 29.60.100 — 29.60.180. The department shall withhold annual allocations under those sections until municipal officials demonstrate that the requirements of this section have been met. (§ 12 ch 74 SLA 1985)

Sec. 29.45.670. Referendum, adoption, and modification. A new sales and use tax or an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters at an election. (§ 12 ch 74 SLA 1985)

Sec. 29.45.680. Combining sales and use tax with incorporation of a borough. A petition for incorporation of a borough may request that a sales and use tax proposition be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent on the passage of the tax proposition; if so, the incorporation proposition fails if the tax proposition fails. (§ 1 ch 3 SLA 1989)

Editor's notes. — Section 2, ch. 3, SLA 1989 provides that this section is retroactive to January 1, 1987.

Legislative history reports. — For governor's transmittal letter, see 1989 Senate Journal 46.

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to municipal taxation BRU: none
of alcoholic beverages Component none
 Sponsor: Rep. Davis
 Requestor: House C&RA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE: _____

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current (FY97) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 3/4/97
 Approved by Commissioner: Mike Pura Date: 3/4/97
 Agency: Community & Regional Affairs

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Revision Date: _____ Dept. Affected: Revenue
 Title: Municipal Taxation of Alcohol BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Rep. Davis
 Requestor: (HI) CRA COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
CHANGE IN REVENUE (decrease)	(850.0 - 8200.0)	(850.0 - 8200.0)	(850.0 - 8200.0)	(850.0 - 8200.0)	(850.0 - 8200.0)	(850.0 - 8200.0)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Department of Revenue determined the proposed legislation may cause the state to lose a small amount of state alcohol tax revenues. This revenue loss would be due to a factor called "elasticity". Elasticity means that when price of a commodity goes up the consumption goes down. If we assume that some municipalities that currently have no sales tax on alcohol enact one, prices would go up. Our economist located two sources for elasticity of alcohol which indicated that for every 1% increase in price, consumption would decrease 1/3 of 1%. There are numerous variables to consider in estimating the potential revenue loss. We reviewed the consumption factors for Anchorage, Kenai and the Aleutians. A three or five percent sales tax in these locations would result in a \$90,000 to \$150,000 loss in revenue. These cities have no current sales tax, others do. Our overall potential loss is a rough estimate assuming that on a statewide basis some municipalities would enact or raise sales taxes on alcohol.

Prepared by: Brett Field, Economist
 Division: Income & Excise Audit
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-3882
 Date: March 3, 1997
 Date: March 3, 1997

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March 4, 1997

Representative Gary Davis
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Davis,

Thank you for introducing House Bill 132. This is a top legislative priority of the Alaska Municipal League and the Alaska Conference of Mayors.

As pressure increases on local sales and property taxes, municipalities must have more tools to make sure that local taxes are fair and do not hinder the growth of the local economy. It is important to note that this bill does not create a new state tax. HB 132 creates an optional revenue tool for municipalities by removing a state restriction on an existing local tax.

The costs to taxpayers related to the use of alcohol are stunning. A significant portion of alcohol costs are for the unfunded state mandate to treat public inebriates. Other local costs related to alcohol use include police services, hospital services, emergency medical services, repair of property damage, fire services, health insurance premiums, youth and family services, school services, etc. The voters of a community should be free to decide if they wish to re-allocate the tax burden, or improve local services, through an increase in sales or use taxes on alcohol.

Alaska can no longer afford to prohibit local voters from deciding on an appropriate level of alcohol sales and use taxes for their community. If there is any additional information we can provide, we will be happy to do so.

Sincerely,

Kevin Ritchie
Executive Director

cc: AML Board of Directors and Legislative Committee
Alaska Conference of Mayors

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