

HB

411

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 18, 1993

FURTHER REFERRALS:

Date of Committee Action: 3/19/98

The FINANCE Committee considered:

HB 411

HOUSE BILL NO. 411

LOCAL OPTION FOR WINERY LICENSE

"An Act relating to issuance of a winery license in a local option area."

recommends it be replaced with the following committee substitute CS HB 411 (FIN) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) Revenue 3/18/98

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Thernault</i>	Thernault			X	
<i>Mark Hanley</i>	Hanley			0	
<i>John Mulder</i>	Mulder	X			
<i>Terry Martin</i>	Martin			Y	
<i>Vick Kohring</i>	Kohring			X	
<i>Ben Grussendorf</i>	Grussendorf			X	
<i>Raymond Moses</i>	Moses	X			
<i>John G. Daus</i>	G. Daus	X			
<i>John Kelly</i>	Kelly			X	
<i>John Foster</i>	Foster	X			

CO CHAIR'S SIGNATURE

Gene Thernault *Mark Hanley*
Thernault Hanley

3/19/98

0-LS1583VA.1

Ford

3/19/98

adopted N/O

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 411

1 Page 1, line 14:

2 Delete "or"

3 Page 1, line 15, following "licensee:":

4 Insert "or

5 (F) a winery licensee, except that sales may occur only to

6 a person licensed under this title *OR in another state or country;*

7 Page 2, line 21:

8 Delete "or"

9 Page 2, line 22, following "licensee:":

10 Insert "or

11 (F) a winery licensee, except that sales may occur only to

12 a person licensed under this title *OR in another state or country;*

1998 LEGISLATIVE SESSION

BUDGET NOTE

Revision Date: _____ Dept. Affected: Revenue
 Title: Local Option for Winery License BRU: Alcoholic Beverage Control Board
 Component: Alcoholic Beverage Control Board
 Sponsor: Representative Austerman
 Requestor: (H) L & C COMPONENT SERIAL NO. _____ 100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 GF Match/Receipt						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost \$ _____

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

HB411 allows a community to vote on an additional choice under a local option vote. If this bill is enacted communities would be able to prohibit sales of alcoholic beverages, except by a winery. This option was available prior to 1995. However, when the local option law was clarified and streamlined options not commonly used, like the winery only choice, were deleted. It is not clear why that option was eliminated in 1995.

Prepared by: Douglas B. Griffin
 Division: Alcoholic Beverage Control Board
 Approved by Commissioner: Wilson L. Condon *Ross A. Kinney*
 Agency: Department of Revenue

Phone: 277-8638
 Date: March 4, 1998
 Date: March 4, 1998

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SPONSOR STATEMENT - HB 411

This legislation adds a winery licensee under AS 04.11.491(a)(2) and (b)(2).

By adding this language, an individual could seek a local-option election in any city to ban liquor licenses except a winery, as would be allowed under this amended statute.

When the statute is amended and a local-option election held, the individual would then apply for their winery license and agree to have the Alaska Alcoholic Beverage Control Board (ABC Board) ban retail sales under the license in that particular city. The ABC Board has the authority to impose limitations on licenses as per AS 04.11.395.

The individual would then have the privilege of selling to persons/entities holding a valid Alaska liquor license. This small change will create many business opportunities, while preserving the integrity of alcohol control.

Continued economic development is essential in our village communities if they are to further their goals of self-sufficiency. The State of Alaska needs to persist in expanding opportunities for the establishment of production and marketing cooperatives.

Effect of amendments. — The 1995 amendment, effective July 1, 1995, 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 P.2d 1155 (Alaska 1985).

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 (1954).

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 04.11.505 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. 04.11.495. 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

Collateral references. — 45 Am. Jur. 2d, Intoxicating Liquors, § 148.
48 C.J.S., Intoxicating Liquors, § 106.

Sec. 04.11.396. Board imposed conditions or restrictions. The board may, in the best interests of the public, impose conditions or restrictions on a license or permit issued under this chapter. (§ 18 ch 101 SLA 1995)

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

Sec. 04.11.400. Population limitations. (a) Except as provided in (d) — (h) of this section, a new license may not be issued and the board may prohibit relocation of an existing license

(1) outside an established village, incorporated city, unified municipality, or organized borough if after the issuance or relocation there would be (A) more than one restaurant or eating place license for each 1,500 population or fraction of that population, or (B) more than one license of each other type, including licenses that have been issued under (d) or (e) of this section, for each 3,000 population or fraction of that population, in a radius of five miles of the licensed premises, excluding the populations of established villages, incorporated cities, unified municipalities, and organized boroughs that are wholly or partly included within the radius;

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

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

(B) more than one license of each other type, including licenses that have been issued under (d) or (e) of this section, for each 3,000 population or fraction of that population;

(3) inside an organized borough but outside an established village or incorporated city located within the borough, if after the issuance or relocation there would be inside the borough, but outside the established villages and incorporated cities located within the borough,

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

(B) more than one license of each other type, including licenses that have been issued under (d) or (e) of this section, for each 3,000 population or fraction of that population excluding the population of those established villages that have adopted a local option under AS 04.11.491(b)(1), (3), or (4), and excluding the population of incorporated cities located within the organized borough.

(b) If the radius described in (a)(1) of this section encompasses all of an established village, incorporated city, or unified municipality and the population resident inside and outside the established village, incorporated city, or unified municipality but inside the radius described in (a)(1) of the section is less than 3,000, the board may deny the issuance or relocation of the license.

(c) *[Repealed, § 88 ch 74 SLA 1985.]*

(d) The board may approve the issuance or transfer of ownership of a beverage dispensary or restaurant or eating place license without regard to (a) of this section if it appears that the issuance or transfer will encourage the tourist trade by encouraging the construction or improvement of

(1) a hotel, motel, resort, or similar business relating to the tourist trade with a dining facility or having kitchen facilities in a majority of its rental rooms and at least a minimum number of rental rooms required according to the population of the established village, incorporated city, unified municipality, or population area established under (a) of this section in which the facility will be located, as follows:

(A) 10 rental rooms if the population is less than 1,501;

on or ordinance has
or ordinances that
SLA 1980)

limitations Queen of N.,
Alaska 1978, decided

of intoxicating liquors,
5.

issued to a specific
partnership, or to a
registered agent of the

on a common carrier,
licensed premises, the
permit. The mailing
the registered office
of the board. (§ 2 ch

her than a licensee
which a license is

brewery, winery,
others, a beverage
license. A holder
se, subject to the
restaurant or eating
place license issued
on or before

corporation.
ated or percentage
does not hold a

malt beverage and
of the holder of a

holding a legal or
e. However, credit
credit extended by a
owed from a person
business licensed
am § 4 ch 136 SLA

Revisor's notes. — Subsection (f) was formerly (g) and subsections (c)-(e) were formerly (d)-(f) Relettered in 1994.
Effect of amendments. — The 1996 amendment.

effective October 1, 1996, in subsection b, inserted ", a restaurant or eating place license." in the first sentence and added the last sentence.

NOTES TO DECISIONS

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

The purpose of financial interest statutes and regulations through the creation of hidden financial interests in liquor businesses unknown to the regulatory authorities or to the public. It helped insure that all persons with any financial interest in such businesses were answerable to the ABC Board. Barton v. Lund, 563 P.2d 875 (Alaska 1977).

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

Application to clubs. — The provisions of former section applied to clubs as well as to all other persons who might have or apply for any of the numerous types of licenses authorized to be issued by law. In re Alaska Labor Trades Ass'n, 10 Alaska 472 (1945).

Interest of manager in business prohibited. — Where the business affairs of the club, including the purchase and keeping and sale to members of liquor,

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

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

Statement of financial interest required. — A statement regarding financial interest of any other person in the business was required to be made by former AS 04.10.190, concerning the filing, form, and contents of an application, under the doctrine of "contemporaneous construction of the law" In re Martin's Retail Liquor License No. 1517, 15 Alaska 171 (1954).

Revocation of license for false statement. — A false statement in an application for a liquor license that the applicant was the only person interested was held so material to its issuance as to warrant revocation. In re Martin's Retail Liquor License No. 1517, 15 Alaska 171 (1954).

Collateral references. — 45 Am. Jur. 2d, Intoxicating Liquors, § 123.

Sec. 04.11.460. Prior public approval. (a) A new license or the transfer of location of an existing license may not be approved by the board in an area outside but within 50 miles of the boundaries of a municipality unless a petition asking that the license be issued or transferred within the area containing signatures of a majority of the permanent residents residing within one mile of the proposed premises is filed with the board.

(b) A license may not be issued in an area that is 50 miles or more from the boundaries of a municipality unless a petition asking that the license be issued within the area containing the signatures of two-thirds of the permanent residents residing within a radius of five miles of the United States post office station nearest to the proposed licensed premises, is filed with the board. If there are two or more United States post office stations in the vicinity of the proposed licensed premises, the nearest to the premises constitutes the point of beginning under this subsection. If there is no United States post office station within a radius of five miles of the proposed licensed premises, the applicant must obtain the signatures of two-thirds of the permanent residents residing within a five mile radius of the proposed licensed premises. A petition is not required for the renewal of a license issued in accordance with this subsection unless specifically required by the board.

(c) In this section, "permanent resident" means a person 21 years of age or older who has established a permanent place of abode. (§ 2 ch 131 SLA 1980; am § 3 ch 109 SLA 1983)

Revisor's notes. — In 1980, (b) of this section was reorganized for clarity.

Collateral references. — 45 Am. Jur. 2d, Intoxicating Liquors, § 155.

Author: SLTHOMSEN@aol.com at CC2MHS1
Date: 2/13/98 6:36 AM
Priority: Normal
TO: Representative Alan Austerman at LAA_TRANS
CC: Cliff Stone at LAA_TRANS
Subject: Re: Winery License-AS04.11.491
Dear Representative Austerman,

As you know, my wife and I want to start a winery, Alaskan Wilderness Wines, here in Port Lions. Our goal is to create employment for ourselves and income opportunities for others. With low salmon prices, a depressed timber market, and limited alternate job opportunities within the community, new economic development is needed. We propose to produce both berry and agricultural wines using raw materials purchased from local pickers and growers. Developing an organic berry supply has great potential, as Seldovia Tribal Cache has shown. Utilizing renewable natural resources makes good sense.

All of the businesses we've contacted in Kodiak and the mainland are eager to retail the product when it becomes available. Interested establishments include: Alyeska Prince Hotel, O'Malley's on the Green, Kodiak Inn, Buskin River Inn, and the Shelikoff Lodge, just to name a few. We believe that the tourist industry here in Alaska would benefit from such a product. A "bush" facility would also fulfill the "Alaskan mystique" tourists are looking for.

In order to produce the wine here in Port Lions, as well as other similar communities, the proposed addition to Alaska Statutes is needed. Out of concern for our community, we have requested that the State Alcohol Board limit our winery license, if granted, to sale of alcoholic beverages to licensed holders only. We want to provide economic support without liquor sales, which would alleviate the concerns of some community members.

Thank you for your continued support and consideration.

Sincerely,

Steve & Lisa Thomsen



House Finance Committee

DATE: March 19, 98

PLACE: Cap 519

SUBJECT OF MEETING:
HB 317

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Byron McCall John Kelly	ADFC				2047	(Y) N	HB 317
① CLIFF STONE	Rep AUSTIN					Y N	411
R. Austman						Y N	
Mary Gore staff	minimum					Y N	
Doug Griffin (3194)						Y N	
277-8638						Y N	
3pm Alcohol						Y N	
Bw						Y N	
Cm Bone						Y N	

Director of
Commerce

WR

ESTD