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Amended

26-GS1009AS
Luckhaupt
3/25/09

CS FOR SENATE BILL NO. 85()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for violations of limitations on possessing, sending,
2 shipping, transporting, or bringing alcoholic beverages to, soliciting or receiving orders
3 for delivery of alcoholic beverages to, and the manufacture, sale, offer for sale, barter,
4 traffic, or possession of alcoholic beverages in, a local option area; relating to minor
5 consuming or in possession or control of alcoholic beverages; relating to civil penalties
6 for liquor licensees whose agents or employees furnish alcoholic beverages to a person
7 under 21 years of age; and providing for an effective date."

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

9 * **Section 1.** AS 04.11.575 is amended by adding a new subsection to read:

10 (d) In addition to other penalties imposed by law, if an agent or employee of a
11 licensee is convicted of a violation of AS 04.16.052(5) occurring on the licensed
12 premises of the licensee, the board shall, for a first conviction, issue a ^{written} warning to the
13 licensee. The warning must include a description of civil fines for second and



1 subsequent convictions. The board shall impose a civil fine of \$1,000 on the licensee
2 for the second and subsequent conviction of an agent or employee of the licensee for
3 violation of AS 04.16.052(5) occurring on the licensed premises of the licensee. In
4 imposing a civil fine under this subsection, second and subsequent convictions include
5 the cumulative number of convictions of all agents or employees of a licensee that are
6 committed on the premises of the licensee that occur within 10 years after the first
7 conviction. A conviction occurs on the date that sentence is imposed for the offense. A
8 hearing under AS 44.62.330 - 44.62.630 (Administrative Procedure Act) to issue a
9 warning or impose a fine under this section shall be limited to the following questions:

10 (1) was an agent or employee of the licensee convicted by plea or
11 judicial finding of a violation of AS 04.16.052(5);

12 (2) did the violation of AS 04.16.052(5) by the agent or employee of
13 the licensee occur on the licensed premises of the licensee; and

14 (3) if the hearing is to consider imposition of a fine, did the violation
15 of AS 04.16.052(5) occur within 10 years after a conviction for a prior violation of
16 AS 04.16.052(5).

17 * Sec. 2. AS 04.16.050(c) is amended to read:

18 (c) A person is guilty of repeat minor consuming or in possession or control if
19 the person was previously granted a suspended imposition of sentence [PLACED
20 ON PROBATION] under (b)(1) of this section, has a prior conviction under (b)(2)
21 of this section, or has been previously convicted once, and the person violates (a) of
22 this section. Upon conviction in the district court, the court shall

23 (1) impose a fine of \$1,000 and require at least 48 hours of community
24 work;

25 (2) revoke the person's driver's license for three months;

26 (3) take possession of the person's driver's license; and

27 (4) suspend up to \$500 of the fine and place the person on probation
28 for up to one year under (e) of this section.

29 * Sec. 3. AS 04.16.050(d) is amended to read:

30 (d) A person is guilty of habitual minor consuming or in possession or control
31 if the person has a prior conviction [WAS PLACED ON PROBATION] under (c) of

1 this section, or has been previously convicted two or more times [TWICE], and the
 2 person violates (a) of this section. Habitual minor consuming or in possession or
 3 control is a class B misdemeanor. Upon conviction, the court may impose an
 4 appropriate period of imprisonment and fine and place the person on probation under
 5 (e) of this section for one year, or until the person is 21 years of age, whichever is
 6 later, and shall

- 7 (1) impose at least 96 hours of community work;
- 8 (2) revoke the person's driver's license for six months;
- 9 (3) within five working days, notify the agency responsible for the
 10 administration of motor vehicle laws of the revocation; and
- 11 (4) take possession of the person's driver's license.

12 * Sec. 4. AS 04.16.200(h) is amended to read:

13 (h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this
 14 section, the court

15 (1) shall impose a fine of not less than \$10,000 and a minimum
 16 sentence of imprisonment of

17 (A) 120 days if the person has not been previously convicted
 18 [ONCE];

19 (B) 240 days if the person has been previously convicted once
 20 [TWO TIMES];

21 (C) 360 days if the person has been previously convicted two
 22 [THREE] or more times;

23 (2) may not

24 (A) suspend execution of sentence or grant probation except on
 25 the condition that the person

26 (i) serve the minimum imprisonment under (1) of this
 27 subsection; and

28 (ii) pay the minimum fine required under (1) of this
 29 subsection; or

30 (B) suspend imposition of sentence.

31 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPLICABILITY. (a) AS 04.11.575(d), added by sec. 1 of this Act, applies to
3 offenses committed on or after the effective date of this Act.

4 (b) AS 04.16.050(c), as amended by sec. 2 of this Act, and AS 04.16.050(d), as
5 amended by sec. 3 of this Act, apply to probation ordered for offenses occurring before, on, or
6 after the effective date of this Act. References to prior or previous suspended impositions of
7 sentences or convictions include suspended impositions of sentences and convictions
8 occurring before, on, or after the effective date of this Act.

9 (c) AS 04.16.200(h), as amended by sec. 4 of this Act, applies to an offense occurring
10 on or after the effective date of this Act. References to previous convictions in sec. 4 of this
11 Act apply to convictions occurring before, on, or after the effective date of this Act.

12 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax



Pages (including cover sheet):

Date: March 24, 2009

To: Leg. Legal

From: Cindy Smith

RE: CS for SB85

I'd like to get a CS for SB85 (GS1009\E) with the attached language (which was provided by the Department of Law).

Because it eliminates the local option provision in \E, there will also need to be a title change.

The other major change to the existing bill adds language regarding hearings.

Please call me if you have any questions! We'd like the CS for discussion next week.

DRAFT

CS FOR SENATE BILL 85

“An Act relating to civil penalties for liquor licensees whose agents or employees furnish alcoholic beverages to a person under 21 years of age; relating to minor consuming; relating to penalties for violations of limitations on possessing, sending shipping, transporting, or bringing alcohol to a local option area; and providing for an effective date.”

*** Section 1.** AS 04.11.575 is amended by adding a new subsection to read:

(d) In addition to other penalties imposed by law, if an agent or employee of a licensee is convicted of a violation of AS 04.16.052(5) occurring on the licensed premises of the licensee, the board shall, for a first conviction, issue a warning to the licensee. The warning shall include a description of civil fines for second and subsequent convictions. The board shall impose a civil fine of \$1,000 on the licensee for the second and subsequent conviction of an agent or employee of the licensee for violation of AS 04.16.052(5) occurring on the licensed premises of the licensee. In imposing a civil fine under this subsection, second and subsequent convictions include the cumulative number of convictions of all agents or employees of a licensee that are committed on the premises of the licensee that occur within 10 years of the first conviction. A conviction occurs on

the date that sentence is imposed for the offense. A hearing under AS 44.62.330 – 44.62.630 to issue a warning or impose a fine under this section shall be limited to the following questions:

(1) was an agent or employee of the licensee convicted by plea or judicial finding of a violation of AS 04.16.052(5);

(2) did the violation of AS 04.16.052(5) by the agent or employee of the licensee occur on the licensed premises of the licensee;

(3) if the hearing is to consider imposition of a fine, did the violation of AS 04.16.052(5) occur within ten years of the conviction of a prior violation of AS 04.16.052(5).

* **Sec. 2.** AS 04.16.050(c) is amended to read:

(c) A person is guilty of repeat minor consuming or in possession or control if the person was **previously granted a suspended imposition of sentence** [PLACED ON PROBATION] under (b)(1) of this section, **has a prior conviction under (b)(2) of this section**, or has been previously convicted once, and the person violates (a) of this section.

Upon conviction in the district court, the court shall

(1) impose a fine of \$1,000 and require at least 48 hours of community work;

(2) revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4) suspend up to \$500 of the fine and place the person on probation for up to one year under (e) of this section.

* **Sec. 3.** AS 04.16.050(d) is amended to read:

(d) A person is guilty of habitual minor consuming or in possession or control if the person has a prior conviction [WAS PLACED ON PROBATION] under (c) of this section, or has been previously convicted two or more times [TWICE], and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (e) of this section for one year, or until the person is 21 years of age, whichever is later, and shall

(1) impose at least 96 hours of community work;

(2) revoke the person's driver's license for six months;

(3) within five working days, notify the agency responsible for the administration of motor vehicle laws of the revocation; and

(4) take possession of the person's driver's license.

* **Sec. 4.** AS 04.16.200(h) is amended to read:

(h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this section, the court

(1) shall impose a fine of not less than \$10,000 and a minimum sentence of imprisonment of

(A) 120 days if the person has not been previously convicted [ONCE];

(B) 240 days if the person has been previously convicted once [TWO TIMES];

(C) 360 days if the person has been previously convicted two
[THREE] or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on the
condition that the person

(i) serve the minimum imprisonment under (1) of this
subsection; and

(ii) pay the minimum fine required under (1) of this
subsection; or

(B) suspend imposition of sentence.

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new
section to read:

APPLICABILITY. (a) Section 1 of this Act applies to offenses committed
on or after the effective date of this Act.

(b) Sections 2 and 3 of this Act apply to probation ordered for offenses
occurring before, on, or after the effective date of this Act.

(c) Section 4 of this Act applies to an offense occurring on or after the
effective date of the applicable section of this Act. References to previous convictions
apply to convictions occurring before, on, or after the effective date of this Act.

* **Sec. 6.** This Act takes effect immediately in accordance with AS 01.10.070(c).

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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February 17, 2009

Honorable Sarah Palin
State of Alaska
PO Box 110001
Juneau, AK 99811-0001

Dear Governor Palin:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for facilitating the introduction of House Bill 91 and Senate Bill 85, relating to bringing alcoholic beverages to a local option area and minor consuming.

The APOA State Board and Legislative Committee reviewed this proposed legislation and unanimously support these bills.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

GOVERNOR

10.5 liters distilled
24 liters wine
12 gallons malt

44.1 1 liter = 4.1 cups
98.4 1 liter = 4.1 cups
192 1 Gallon = 16 cups

44 Cups of whiskey
98.5 Cups of wine
192 Cups of beer

334.5 Cups per Month of Alcohol

11.15 8 oz. Cups per Day

from / Sen. Therman

Introduced by: Mayor Zulkosky
Vice-Mayor Leinberger
Date: February 10, 2009
Action: Passed
Vote: 5-0

CITY OF BETHEL, ALASKA

Resolution # 09-11

**OPPOSING THE COMMITTEE SUBSTITUTE FOR SENATE BILL 85
(CRA) "AN ACT RELATING TO LIMITATION ON POSSESSING,
SENDING, SHOPPING, TRANSPORTING, OR BRINGING ALCOHOLIC
BEVERAGES TO A LOCAL OPTION AREA AND TO PENALTIES FOR
VIOLATION OF HOSE LIMITATIONS; RELATING TO PROBATION FOR
MINOR CONSUMING OR IN POSSESSION OR CONTROL OF
ALCOHOLIC BEVERAGES; RELATING TO CIVIL FINES FOR LIQUOR
LICENSEES WHOSE AGENTS OR EMPLOYEES FURNISH ALCOHOLIC
BEVERAGES TO A PERSON UNDER 21 YEARS OF AGE; AND
PROVIDING FOR AN EFFECTIVE DATE" AS THEY ARE CURRENTLY
WRITTEN**

WHEREAS, in 1977 under the provisions of title 4 of the Alaska statutes a majority of the eligible voters within the City of Bethel voted themselves into local option to prohibit the sale of alcoholic beverages within City limits however alcohol could still be purchased in other areas and shipped in;

WHEREAS, the proposed limitations in the new legislation will only drive up the price of bootlegged alcohol and perpetuate the problem; while bootlegging is a major issue in rural Alaska, this is not the best avenue to combat the problem;

WHEREAS, only four of the nineteen communities with "damp" status (Barrow, Kotzebue, Saint Mary's Bethel) will be impacted;

WHEREAS, it is the community's option to regulate the alcohol within their community through a local option referendum, stricter alcohol limitation should also be established by a vote of the people within the communities affected by the change;

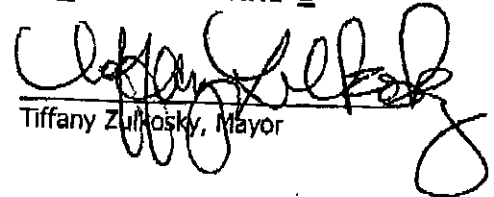
WHEREAS, whether it be through limitations on alcohol amounts purchased or possessed, establishing a dry community or opting out of local option completely;

WHEREAS, none of these actions should be taken without the majority of the community's vote, local option should be just that, the option of the local community, allow the people to choose the best method of improvement for their city;

Introduced by: Mayor Zulkosky
Vice-Mayor Leinberger
Date: February 10, 2009
Action: Passed
Vote: 5-0

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Bethel is hereby opposed to the Committee substitute for Senate Bill 85 (CRA); as it should be left up to the respective community to establish additional regulations if desired.

ENACTED THIS 24th DAY OF FEBRUARY 2009 BY A VOTE OF 5 IN FAVOR AND 0 OPPOSED.


Tiffany Zulkosky, Mayor

ATTEST:

Lori Strickler, City Clerk

CS FOR SENATE BILL 85(CRA)
Sectional Analysis

Section 1 amends the law that requires package store liquor licensees who send alcohol to persons living in damp communities to check a statewide database before sending alcohol to a person. Under current law a licensee may send 10 ½ liters of distilled spirits, 24 liters of wine, and 12 gallons of malt beverage to each adult in a damp local option area every month.

This bill would change this provision so that a package store liquor licensee may send the same amount to an individual in a damp local option area once in a two month period.

Section 2 adopts civil penalties for liquor licensees whose agents or employees are convicted of furnishing alcohol to a minor on the licensee's premises. Under current law there are no certain legal consequences for the owner of a bar or liquor store if an employee sells alcohol to a minor. The bill requires Alaska Alcoholic Beverage Control Board to send a warning letter to the licensee the first time the licensee's agent or employee is convicted of furnishing alcohol to a minor on his or her premises. For a second or subsequent conviction by an agent or employee, the ABC board would impose a civil fine of \$1,000.

Sections 3 and 4 correct a minor error in legislation adopted last year that reduced the probation period for minors convicted of consuming alcohol. The law addressing minor consuming in Alaska places progressive penalties on minors who consume alcohol. These sections clarify that the penalties imposed for second and third convictions will be imposed on all minors who have the requisite prior conviction or convictions.

Section 5 corrects a provision in legislation enacted last year that intended to adopt mandatory minimum penalties for bootlegging that are similar to the mandatory minimum penalties for drunk driving. Because the definition of prior conviction for bootlegging is different from that for drunk driving, the legislation did not adopt a mandatory minimum for the first time conviction of felony bootlegging. Senate Bill 85 amends the penalties for felony bootlegging so that the penalties are the same as those for felony drunk driving.

Sections 6 and 7 include applicability and effective date provisions.

SENATE BILL 85
Sectional Analysis

Section 1 addresses the amount of alcohol that a person may possess in or send to a damp community, the possession or sending of which would create a rebuttable presumption that it was for the purpose of illegal sale of the alcohol. A damp community is one that has elected to allow possession but not the sale of alcohol in their community.

Current law provides that a person may possess in or send to a damp community 10 ½ liters (or 14 fifths) of distilled spirits; 24 liters (or 32 bottles) of wine; and 12 gallons (about 21 - 12 ounce six packs) of malt beverages each calendar month before giving rise to the rebuttable presumption that the possession or transporting is for the illegal sale of the alcohol.

Section 1 of Senate Bill 85 reduces the amounts that give rise to the rebuttable presumption to three liters (or four fifths) of distilled spirits; 12 liters (or 16 bottles) of wine; and six gallons (about 11 - 12 ounce six packs). A person could possess or transport these amounts each month without giving rise to the rebuttable presumption.

Section 2 amends the law that requires package store liquor licensees who send alcohol to persons living in damp communities to check a statewide database before sending alcohol to a person. The licensee may not send alcohol if the person has already received the amount of alcohol that gives rise to the rebuttable presumptions described in Section 1. Section 2 amends the law to conform to the changes in the presumptive amounts described in Section 1.

Section 3 adopts civil penalties for liquor licensees whose agents or employees are convicted of furnishing alcohol to a minor on the licensee's premises. Under current law there are no certain legal consequences for the owner of a bar or liquor store if an employee sells alcohol to a minor. The bill requires Alaska Alcoholic Beverage Control Board to send a warning letter to the licensee the first time the licensee's agent or employee is convicted of furnishing alcohol to a minor on his or her premises. For a second or subsequent conviction by an agent or employee, the ABC board would impose a civil fine of \$1,000.

Sections 4 and 5 correct a minor error in legislation adopted last year that reduced the probation period for minors convicted of consuming alcohol. The law addressing minor consuming in Alaska places progressive penalties on minors who consume alcohol. These sections clarify that the penalties imposed for second and third

convictions will be imposed on all minors who have the requisite prior conviction or convictions.

Section 6 addresses the penalties for bootlegging, that hinge on the amount of alcohol illegally transported into a local option community. Under current law a bootlegger commits a class A misdemeanor (maximum term of incarceration one year) if the amount of alcohol illegally transported is less than 10 ½ liters of distilled spirits, 24 liters of wine, or 12 gallons of malt liquor. The bill would reduce the amount that delineates a class A misdemeanor to less than three liters of distilled spirits, 12 liters of wine, and six gallons of malt liquor.

Section 6 makes conforming changes for felony bootlegging. Bootlegging more than the amounts described above would be a class C felony. A third conviction of bootlegging the lower amounts within 15 years of the two prior convictions is also a class C felony.

Section 7 corrects a provision in legislation enacted last year that intended to adopt mandatory minimum penalties for bootlegging that are similar to the mandatory minimum penalties for drunk driving. Because the definition of prior conviction for bootlegging is different from that for drunk driving, the legislation did not adopt a mandatory minimum for the first time conviction of felony bootlegging. Senate Bill 85 amends the penalties for felony bootlegging so that the penalties are the same as those for felony drunk driving.

Sections 8 and 9 include applicability and effective date provisions.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SARAH PALIN, GOVERNOR

Mailing: PO Box 110300
Juneau, AK 99811-0300
Physical: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
Fax: (907) 465-4043

January 27, 2009

Senator Donald Olson, Chair
Senate Community and Regional Affairs Committee
Alaska State Capitol, Room 514
Juneau, Alaska 99801

Re: An act relating to limitation on
transporting alcohol to local option
communities, minor consuming, and
civil fines for licensees.

Dear Chairman Olson:

I am writing to respectfully request that you schedule the referenced bill for hearing in the Senate Community and Regional Affairs Committee at your earliest convenience. The bill builds on the recent alcohol enforcement efforts made by the legislature, by reducing the amount of alcohol a person may possess in or transport to a damp community before raising the presumption that the possession or transportation was for illegal sale of the alcohol. The bill makes conforming changes to the amount of alcohol that package stores may send to damp communities, and the penalties for bootlegging alcohol.

The bill also would impose civil penalties on a liquor licensee whose agents or employees are convicted of furnishing alcohol to a minor on the licensee's premises. For a first conviction, the ABC Board would send a warning letter to the licensee. For second and subsequent convictions, the Board would impose a civil fine of \$1,000. Most liquor licensees are very responsible in emphasizing the importance of refusing to sell alcohol to minors. For the few that are not, this would encourage them to stress the importance of the law to their employees and agents.

Last, the bill makes two corrections in legislation adopted last year. The legislation that changed the probation period for minor consuming had a minor error. Second, the legislation that adopted mandatory minimum penalties for bootlegging needs amendment to conform to the mandatory minimum penalties for drunk driving.

Chairman Olson

January 27, 2009

Re: An act relating to limitation on transporting alcohol to local
option communities, minor consuming, and civil fines for licensees.

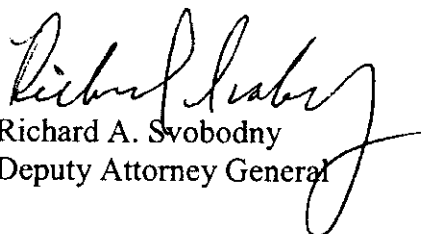
Page 2

In support of this bill we plan to have witnesses from the Division of Behavioral Health, the ABC Board, and a participant in the Rural Justice Commission.

Thank you for your consideration of this request.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: 
Richard A. Svobodny
Deputy Attorney General

RAS:ADC: sf