

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1387 SCOMM 52: JOINT SPEC. COMMITTEE ON LOCAL OPTION LAWS 1985-86

If a law banning possession of alcohol were interpreted to mean that an intoxicated person could be convicted of a law violation simply for possessing alcohol within his blood supply, such a law might be invalidated under the analysis applied in the above-cited cases. There appears to be little distinction between prohibiting being drunk in public and prohibiting possession of alcohol, when that alcohol is possessed solely within the body.¹²⁹

Criminal, Civil and Quasi-criminal Penalties

In Alaska, the law provides an array of remedies for statutory violations. Persons engaging in prohibited behavior may be prosecuted under the state criminal laws, may be subjected to civil suit, or may be sanctioned by imposition of civil monetary penalties within the context of the rules of criminal procedure. The sanctions which

¹²⁹In addition to the conflicts with the Uniform Act discussed above, there is authority which suggests that internal possession of a controlled substance, standing alone, is insufficient to prove knowing possession of the substance. See, e.g., State v. Flinchbaugh, 659 P.2d 208, 211 (Kan. 1983) ("Once a controlled substance is within a person's system, the power of the person to control, possess, use, dispose of, or cause harm is at an end. The drug is assimilated by the body."), and Hunnicut v. State, Memorandum Opinion and Judgment No. 550 at 4 (Alaska App., March 28, 1984) ("On appeal, the state concedes that internal possession alone cannot support a conviction."). Of course, the offender's state of intoxication could clearly be used as circumstantial evidence of prior possession.

combine aspects of both civil and criminal law are referred to as quasi-criminal offenses.¹³⁰

In general, civil actions are brought to protect the rights of individuals, or to remedy private wrongs.¹³¹ The procedural setting in which these actions are heard is controlled by the rules of civil procedure. Ordinary criminal enforcement mechanisms, such as arrest for failing to respond to a summons, are not available.¹³²

The definition of criminal offense was first set forth by the Alaska Supreme Court in Baker v. City of Fairbanks.¹³³ The court held that criminal offenses are those for which a violation may be penalized by incarceration, by loss of a valuable license, or by a fine of such magnitude that it indicates criminality. Criminal offenses are also those which "connote criminal conduct in the traditional sense of the term."¹³⁴

In clarifying the latter phrase, the court has said that offenses "connote criminal conduct" when they have

¹³⁰State v. Clayton, 584 P.2d 1111, 1114 (Alaska 1978); State v. O'Neill Investigations, Inc., 609 P.2d 520, 525-26 (Alaska 1980)

¹³¹State v. O'Neill Investigations, 609 P.2d at 525.

¹³²State v. Clayton, 584 P.2d at 1113

¹³³471 P.2d 386, 402 (Alaska 1970)

¹³⁴Id.

"been long established as part of the common law proscribing criminal conduct"¹³⁵ A criminal connotation may also arise where contemporary social values place "public opprobrium"¹³⁶ on the conduct.¹³⁷

Quasi-criminal offenses are those which are not serious, and do not connote criminality, yet are intended to be enforced within the context of the criminal justice system.¹³⁸ There are both civil and criminal aspects of quasi-criminal statutes. Civil monetary penalties are used as the sole sanction for noncompliance with the statute, however, criminal procedures, such as arrest for failing to respond to a summons, are available as enforcement tools. If an offense is classified as quasi-criminal, a violator is not entitled to a jury trial, nor is court-appointed counsel available.¹³⁹ However, like a criminal case, "A

¹³⁵Alaska Public Defender Agency v. Superior Court, 584 P.2d 1106 (Alaska 1978)

¹³⁶"Opprobrium is defined as "something that brings disgrace" or "public disgrace or ill fame that follows from conduct considered grossly wrong or vicious." Webster's Third New International Dictionary, G. & C. Merriam Co., 1961.

¹³⁷Alaska Public Defender Agency v. Superior Court, 584 P.2d at 1110

¹³⁸State v. Clayton, 584 P.2d 1111 (Alaska 1978)

¹³⁹Baker v. Fairbanks, 471 P.2d 386 (Alaska 1970); Alexander v. Anchorage, 490 P.2d 910 (Alaska 1971); Alaska Public Defender Agency v. Superior Court, 584 P.2d 1106 (Alaska 1978)

quasi-criminal proceeding 'is for the protection of the public.'¹⁴⁰

¹⁴⁰Id. at 1114, citing Bray v. State, 140 Ala. 172, 37 So. 250, 253 (Ala. 1904):

A prosecution for the violation of a municipal ordinance, designed for the preservation of the public peace, the security of the person or property, or the protection of public morals, has been held frequently by this court to be a quasi-criminal proceeding and not a civil action.

¹⁴¹This section sets out the legal support for conclusions reached by the Committee about the effect of proposed amendments to the local option law. See section entitled Legislative Findings and Conclusions, infra at _____.

¹⁴²See also Alaska Constitution, article 1, section 9

¹⁴³Carlson v. State, 676 P.2d 603 (Alaska App. 1984), quoting State v. Currie, 41 N.J. 531, 197 A.2d 678, 684-85 (1964):

[V]iolations are generally tried quickly and informally before local police magistrates who are in some instances not even attorneys at law. The

(Footnote Continued)

Collateral Legal Issues¹⁴²

The Fifth Amendment to the United States Constitution provides in part: "[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb."¹⁴³ If a person is charged and tried or convicted for an offense, the fifth amendment precludes the filing of subsequent charges based on the same incident. However, the double jeopardy clause is triggered only where a person is charged with an "offense." In Alaska, infractions are not considered to be offenses for purposes of double jeopardy.¹⁴⁴

¹⁴²This section sets out the legal support for conclusions reached by the Committee about the effect of proposed amendments to the local option law. See section entitled Committee Findings and Conclusions, *infra* at 107.

¹⁴³See also Alaska Constitution, article 1, section 9.

¹⁴⁴Carlson v. State, 676 P.2d 603 (Alaska App. 1984), quoting State v. Currie, 41 N.J. 531, 197 A.2d 678, 684-85 (1964):

[V]iolations are generally tried quickly and informally before local police magistrates who are in some instances not even attorneys at law. The evidential presentation may be very limited and the legal representation may likewise be very limited or entirely absent. The maximum fines and terms of imprisonment are minor in comparison to those fixed for violation of our Crimes Act...The elements of oppression or harassment historically aimed at by the constitutional and common law prohibition are not significantly involved; and permitting the second prosecution would not violate the reasonable expectations attendant upon the first proceeding while barring it would operate with gross unfairness to the State.

Under Criminal Rule 45(b), a person charged with a felony, a misdemeanor or a violation shall be tried within 120 days. Service of a traffic infraction citation has been found to trigger Criminal Rule 45, and to bar prosecutions for subsequent charges based on the same incident filed after more than 120 days.¹⁴⁵

The United States Constitution, in the Fourth Amendment, provides that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause..." The Fourth Amendment applies, and, unless the case is exceptional, search warrants must be obtained, in all contexts: criminal, civil and quasi-criminal.¹⁴⁶

Committee Findings and Conclusions

Findings:

Finding Number One: The abusive use of alcohol interferes in a serious manner with the health, safety, rights and privileges of Alaskans, and with the public welfare.

¹⁴⁵Koch v. State, 653 P.2d 664 (Alaska App. 1982).

¹⁴⁶Camara v. Municipal Court, 387 U.S. 523 (1967); Marshall v. Barlow's Inc., 436 U.S. 307 (1978).

Finding Number Two: The public health and welfare will, in fact, suffer if the abusive use of alcohol is not controlled.

Finding Number Three: The prohibition of alcohol in rural Alaskan villages is an effective tool for controlling the abusive use of alcohol.

Finding Number Four: Serious crimes, and a wide variety of other social problems, could be prevented if the possession of alcohol were prohibited.

Finding Number Five: There is a strong and unmistakable correlation between alcohol consumption and poor health, fetal damage, death, suicide, crime, family violence, family stability, and child abuse.

Finding Number Six: The level of dangerous alcohol-related behavior is directly tied to the level of alcohol consumption, and the level of alcohol consumption is directly tied to both the cost and availability of alcohol. A law prohibiting possession would limit the availability of alcohol, and would increase the cost of illicitly-available liquor.

Finding Number Seven: The dangers resulting from alcohol abuse are particularly acute in rural Alaska because the communities are small, isolated, without adequate law enforcement, without adequate health care facilities, and populated by people who are closely related and interdependent.

Finding Number Eight: The most damaging type of abusive alcohol-related behavior is that which affects innocent victims, such as children and elders. Children are particularly vulnerable, and as a result of parental alcohol abuse, suffer from a broad range of serious problems.

Finding Number Nine: The abusive use of alcohol perpetuates an escalating pattern of crime and violence from generation to generation.

Finding Number Ten: The most serious harm to the innocent victims of alcohol abuse takes place in private homes and behind closed doors. In communities which have chosen to ban the sale and importation of alcohol, and which have significant alcohol-related social problems, most drinking takes place in private homes.

Finding Number Eleven: The economic cost of alcohol abuse is high, and can not be afforded by either the State of Alaska, or small communities that do not have an independent source of revenue.

Finding Number Twelve: A significant number of rural Alaskan communities want, and would use, the authority to ban possession of alcohol. These communities have had a long-standing belief that alcohol should be completely banned, and this belief is based on a lengthy history of alcohol prohibition in rural villages.

Finding Number Thirteen: The policy decision to ban possession of alcohol is one which must be made by local government. If local authorities are precluded from making

such a decision, self-government efforts are undermined, respect for the state legal system is lost, and the public welfare is damaged.

Finding Number Fourteen: Although Alaska law permits communities to ban the sale and importation of alcoholic beverages, the present law is unenforceable because the possession of alcoholic beverages, including homebrew, is permitted.

Finding Number Fifteen: Despite the serious impact which the abusive use of alcohol has on the public health, safety and welfare, possession of alcohol in violation of a ban is not a serious offense and does not connote criminality. Penalties for violating a ban on alcohol should be limited to civil fines and confiscation of the liquor. Criminal procedures should be used to enforce the civil penalties since the ban on alcohol is for the protection of the public. "Possession of alcohol in violation of a local option law" is a quasi-criminal infraction.

Finding Number Sixteen: A fine of \$1000 is not of such a magnitude that it indicates criminality in either urban or rural Alaskan communities.

Finding Number Seventeen: "Possession of alcohol in violation of a local option law" is an infraction, and is not an "offense" for purposes of constitutional double jeopardy considerations.

Finding Number Eighteen: A determination of whether "possession of alcohol in violation of a local option law" is a violation under Criminal Rule 45(b) should be left to the judiciary.

Finding Number Nineteen: The entire Committee Report to the Legislature, which is entitled "A Search for Control: The Effect of Alcohol on Public Rights and Private Wrongs" is adopted by the Committee and, in its entirety, represents a complete recitation of the Findings of the Joint Special Committee on Local Option Laws.

Conclusions:

[The alcohol problem] is more serious than any war that's going on in the world. Wars have purpose ...but alcohol that abuses young children and all that kind of thing, it is totally no good to nobody.

Neil Charlie, Minto elder

The severity of Alaska's problems with alcohol cannot be overemphasized, or exaggerated. Alcohol-induced tragedies have become a reality of daily life across the entire state, and have repeatedly forced Alaskans to recognize the fragility and vulnerability of human existence. Every possible tool must be available for use in combatting the threat posed by alcohol.

Since Alaskan communities are extremely diverse, the tools available to fight alcohol abuse must be equally varied. Approaches to controlling alcohol which are effective in cities such as Anchorage or Juneau, are unlikely to work in the predominantly Eskimo villages of the

Yukon-Kuskokwim Delta. Similarly, alcohol control mechanisms which help stop the disintegration of homogenous and isolated Eskimo villages, would be completely out of place in a complex urban community. The laws must be flexible enough to provide solutions to the problems faced in all communities.

Villagers have repeatedly told the Committee that they want the power to completely prohibit alcohol. The broad range of problems which are associated with alcohol abuse, as set forth more fully in the Findings of Fact, legally and morally justify legislative action which grants villages that power. Therefore, the recommendation of the Committee is that the local option law be amended and that communities be granted the power to ban possession of alcohol.

Appendix A

The following documents have formed the basis for the Committee report and have specifically and formally been made a part of the hearing record. In addition to the documents listed, transcripts have been made of all eighteen Committee hearings held during November and December 1985. The transcripts have also specifically and formally been made a part of the hearing record and were heavily relied upon by the Committee in making the Findings of Fact contained in this report.

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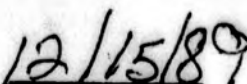


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#52:4

Original sponsor: Rules Committee by request

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to regulation of alcoholic beverages
7 and enactment of municipal ordinances."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that
10 (1) abuse of alcohol seriously interferes with the rights and
11 privileges of the people of the state;
12 (2) the public health, safety, and welfare does in fact suffer
13 when alcohol abuse is not controlled;
14 (3) prohibition of alcohol in rural areas of the state is an
15 effective tool for controlling the abuse of alcohol;
16 (4) serious crimes and a wide variety of other social problems
17 could be prevented if the possession of alcohol were prohibited;
18 (5) there is a strong and unmistakable correlation between
19 alcohol consumption and poor health, fetal damage, suicide, domestic vio-
20 lence, and crime;
21 (6) the dangers resulting from alcohol abuse are particularly
22 acute in rural areas of the state because the communities are small, iso-
23 lated, without adequate law enforcement, without adequate health care
24 facilities, and populated by people who are closely related and interdepen-
25 dent;
26 (7) in communities that have chosen to ban the sale and importa-
27 tion of alcohol, most drinking takes place in private homes;
28 (8) the economic cost of alcohol abuse is high, and cannot be
29 afforded by the state or small rural communities; and

1 (9) a fine in the amount of \$1,000 or 200 hours of community
2 work, is not so severe a penalty as to indicate criminality in either rural
3 or urban Alaska communities.

4 * Sec. 2. AS 04.11 is amended by adding a new section to read:

5 Sec. 04.11.498. PROHIBITION OF POSSESSION OF ALCOHOLIC BEVER-
6 AGES. (a) The following question, appearing alone, may be placed
7 before the voters of a municipality or an established village in
8 accordance with AS 04.11.502: "Shall the possession of alcoholic
9 beverages be prohibited in (name of municipality or vil-
10 lage)? (yes or no)."

11 (b) If a majority of the voters of an established village vote
12 "yes" on the question set out in (a) of this section, and the sale of
13 alcoholic beverages, or the sale and importation of alcoholic bever-
14 ages, has been previously prohibited in the established village in
15 accordance with AS 04.11.490 or 04.11.494, a person, beginning on the
16 first day of the month following certification of the results of the
17 election, may not knowingly possess an alcoholic beverage in the
18 established village, unless the alcoholic beverage is wine to be used
19 for bona fide religious purposes based on tenets or teachings of a
20 church or religious body, is limited in quantity to the amount neces-
21 sary for religious purposes, and is dispensed only for religious
22 purposes, by a person recognized by the church or religious body as
23 authorized to dispense the wine. The board shall be notified immedi-
24 ately after certification of the results of the election and there-
25 after may not issue, renew, or transfer between holders or locations a
26 license for licensed premises located within the perimeter of the
27 established village as defined in AS 04.21.080(b)(8).

28 (c) If a majority of the voters of an established village vote
29 "yes" on the question set out in (a) of this section and the sale of

1 alcoholic beverages, or the sale and importation of alcoholic beverages,
2 ages, has not been previously prohibited in the established village in
3 accordance with AS 04.11.490 or 04.11.494, and a person, beginning 90
4 days after certification of the results of the election, may not
5 knowingly possess an alcoholic beverage in the established village,
6 unless the person is licensed by the board or the alcoholic beverage
7 is wine to be used for bona fide religious purposes based on tenets or
8 teachings of a church or religious body, is limited in quantity to the
9 amount necessary for religious purposes, and is dispensed only for
10 religious purposes by a person by the church or religious body as
11 authorized to dispense the wine. The board shall be notified immedi-
12 ately after certification of the results of the election and there-
13 after may not issue, renew, or transfer between holders or locations a
14 license for licensed premises located within the perimeter of the
15 established village as defined in AS 04.21.080(b)(8). Licenses that
16 may not be renewed because of a local option election held under this
17 section are void 90 days after the results of the election are cer-
18 tified. A license that will expire during the 90 days after the
19 results of a local option election under this section are certified
20 may be extended until it is void under this section, by payment of a
21 prorated portion of the annual license fee.

22 (d) If a majority of the voters of a municipality vote "yes" on
23 the question set out in (a) of this section, and the sale of alcoholic
24 beverages, or the sale and importation of alcoholic beverages, has
25 been previously prohibited in the municipality in accordance with
26 AS 04.11.490 or 04.11.494, an ordinance is adopted that becomes effec-
27 tive beginning on the first day of the month following certification
28 of the results of the election, and a person may not knowingly possess
29 an alcoholic beverage in the municipality, unless the alcoholic

1 beverage is wine to be used for bona fide religious purposes based on
2 tenets or teachings of a church or religious body, is limited in
3 quantity to the amount necessary for religious purposes, and is dis-
4 pensed only for religious purposes, by a person recognized by the
5 church or religious body as authorized to dispense the wine. The
6 board shall be notified immediately after certification of the results
7 of the election and thereafter may not issue, renew, or transfer
8 between holders or locations a license for licensed premises located
9 within the boundaries of the municipality and within unincorporated
10 areas within five miles of the boundaries of the municipality.

11 (e) If the majority of the voters of a municipality vote "yes"
12 on the question set out in (a) of this section and the sale of alco-
13 holic beverages, or the sale and importation of alcoholic beverages,
14 has not been previously prohibited in the municipality in accordance
15 with AS 04.11.490 or 04.11.494, and an ordinance is adopted that
16 becomes effective beginning 90 days after certification of the results
17 of the election, and a person may not knowingly possess an alcoholic
18 beverage in the municipality, unless the alcoholic beverage is wine to
19 be used for bona fide religious purposes based on tenets or teachings
20 of a church or religious body, is limited in quantity to the amount
21 necessary for religious purposes, and is dispensed only for religious
22 purposes by a person recognized by the church or religious body as
23 authorized to dispense the wine. The board shall be notified immedi-
24 ately after the adoption of the ordinance and thereafter may not
25 issue, renew, or transfer between holders or locations a license for
26 licensed premises located within the boundaries of the municipality
27 and within unincorporated areas within five miles of the boundaries of
28 the municipality. Licenses that may not be renewed because of a local
29 option election held under this section are void 90 days after the

1 results of the election are certified. A license that will expire
2 during the 90 days after the results of a local option election under
3 this section are certified may be extended, until it is void under
4 this section, by payment of a prorated portion of the annual fee.

5 (f) If a majority of the voters vote "no" on the question set
6 out in (a) of this section or vote "yes" on the questions set out in
7 AS 04.11.492 or 04.11.500 in an election conducted in accordance with
8 AS 04.11.502 after an election in which the voters voted "yes" on the
9 question set out in (a) of this section, the prohibition on the pos-
10 session of alcoholic beverages is removed effective 90 days after the
11 results of the election are certified except as those prohibitions
12 continue to be imposed in accordance with the results of the subse-
13 quent election.

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

18 * Sec. 3. AS 04.11.502 is amended by adding a new subsection to read:

19 (c) A petition filed with the local governing body of a munic-
20 ipality in accordance with (a) of this section, which places on the
21 ballot the question set out in AS 04.11.498, shall constitute a pro-
22 posed ordinance of the municipality.

23 * Sec. 4. AS 04.16 is amended by adding a new section to read:

24 Sec. 04.16.205. PENALTY FOR VIOLATING BAN ON POSSESSION OF
25 ALCOHOLIC BEVERAGES. (a) A person who possesses alcoholic beverages
26 in a municipality or established village in violation of AS 04.11.498
27 or an ordinance adopted under AS 04.11.498 may, upon conviction, be
28 punished by a fine not to exceed \$1,000. When a peace officer stops
29 or contacts a person concerning a violation of AS 04.11.498 or an

1 ordinance enacted under AS 04.11.498, the peace officer may, in the
2 officer's discretion, issue a citation to the person as provided in
3 AS 12.25.180.

4 (b) A person cited for a violation of AS 04.11.498 or an ordi-
5 nance adopted under AS 04.11.498 for which a bail amount has been
6 established under (c) of this section may, within 30 days after the
7 date the citation is issued

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

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

15 (c) The supreme court shall establish by rule or order a sched-
16 ule of bail amounts that may be forfeited without a court appearance
17 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
18 11.498. In establishing the bail schedule the supreme court may
19 consider the quantity of alcoholic beverages possessed and the number
20 of prior violations of the person cited. Before establishing or
21 amending the schedule of bail amounts required by this subsection, the
22 supreme court shall appoint and consult with an advisory committee
23 consisting of the following seven persons: one superior court judge,
24 one magistrate from each judicial district in the state, a representa-
25 tive of the Department of Law, and a representative of the Public
26 Defender Agency. The maximum bail amount may not exceed \$1,000, and
27 the issuing officer shall write on the citation the amount of bail
28 applicable to the violation.

29 (d) Community work shall be performed at the direction of the

1 governing body of the municipality or the governing body of the estab-
2 lished village. The value of community work in lieu of a fine is
3 \$5.00 per hour. When the community work is completed, the person
4 cited for the violation shall mail or personally deliver to the clerk
5 of the court in which the citation is filed by the peace officer

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

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

13 (e) When bail has been forfeited or proof of performance of
14 community work under this section has been filed with the court, a
15 judgment shall be entered. Forfeiture of bail or filing proof of
16 performance of community work and forfeiture of all seized items is a
17 complete satisfaction for the violation. The clerk of court accepting
18 the bail or the form indicating performance of community work shall
19 provide the offender with a receipt stating that fact, if requested.

20 (f) If the person fails to pay the bail amount established under
21 (c) of this section, or fails to provide proof of performance as spec-
22 ified in (d)(1) of this section to the court, the citation is con-
23 sidered a summons.

24 (g) Notwithstanding other provisions of law, if a person cited
25 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
26 11.498 for which a bail amount has been established under (c) of this
27 section appears in court and is found guilty, the penalty that is
28 imposed for the offense may not exceed the bail amount for that of-
29 fense established under (c) of this section.

1 (h) A violation of AS 04.11.498 or an ordinance adopted under
2 AS 04.11.498 may not be considered a criminal offense and may not
3 result in imprisonment, nor is a fine imposed for a violation con-
4 sidered criminal punishment. A person cited for a violation does not
5 have a right to a jury trial or court appointed counsel.

6 (i) The commissioner of public safety shall prescribe and pro-
7 vide a suitable standard citation form that is in a form necessary to
8 identify the offender, to identify the offense, and to meet the needs
9 of public safety and administration of justice.

10 (j) A municipality shall adopt a citation form that is equiva-
11 lent to that prescribed by the commissioner under (i) of this section.

12 * Sec. 5. AS 04.16.220(a) is amended to read:

13 (a) The following are subject to forfeiture:

14 (1) alcoholic beverages manufactured, sold, offered for
15 sale or possessed for sale, bartered or exchanged for goods and ser-
16 vices in this state in violation of AS 04.11.010; alcoholic beverages
17 stocked, warehoused, or otherwise stored in violation of AS 04.21.060;
18 alcoholic beverages possessed, sold or offered for sale in an area
19 where the results of a local option election have, under AS 04.11.-
20 490 - 04.11.500, prohibited the possession of alcoholic beverages or
21 prohibited the board from issuing, renewing, or transferring one or
22 more licenses or permits under this title in the area; alcoholic
23 beverages transported into the state and sold to persons not licensed
24 under this chapter in violation of AS 04.16.170(b);

25 (2) materials and equipment used in the manufacture, sale,
26 offering for sale, possession for sale, barter or exchange of alco-
27 holic beverages for goods and services in this state in violation of
28 AS 04.11.010; materials and equipment used in the stocking, warehous-
29 ing, or storage of alcoholic beverages in violation of AS 04.21.060;

1 materials and equipment used in the sale or offering for sale of an
2 alcoholic beverage in an area where the results of a local option
3 election have, under AS 04.11.490 - 04.11.500, prohibited the board
4 from issuing, renewing, or transferring one or more licenses or per-
5 mits under this title in the area;

6 (3) aircraft, vehicles, or vessels used to transport, or
7 facilitate the transportation of

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

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

13 (C) alcoholic beverages imported into a municipality
14 or established village in violation of AS 04.11.496;

15 (4) alcoholic beverages found on licensed premises that
16 [WHICH] do not bear federal excise stamps if excise stamps are re-
17 quired under federal law;

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

20 * Sec. 6. AS 04.16.220(b) is amended to read:

21 (b) Property subject to forfeiture under this section may be
22 actually or constructively seized under an order issued by the su-
23 perior court upon a showing of probable cause that the property is
24 subject to forfeiture under this section. Constructive seizure is
25 effected upon posting a signed notice of seizure on the item to be
26 forfeited, stating the violation and the date and place of seizure.
27 Seizure without a court order may be made if

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

29 (2) the property subject to seizure is the subject of a

1 prior judgment in favor of the state; or

2 (3) there is probable cause to believe that the property is
3 subject to forfeiture under (a) of this section; except for alcoholic
4 beverages possessed in violation of AS 04.11.498 or an ordinance
5 adopted under AS 04.11.498, property seized under this paragraph may
6 not be held over 48 hours or until an order of forfeiture is issued by
7 the court, whichever is earlier.

8 * Sec. 7. AS 04.16.220(d) is amended to read:

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

11 (1) upon conviction of a person under AS 04.11.010, 04.11.-
12 496(b), or AS 04.21.060 or upon entry of judgment under AS 04.11.498
13 or an ordinance adopted under AS 04.11.498;

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

17 * Sec. 8. AS 04.16.220(h) is amended to read:

18 (h) Alcoholic beverages forfeited under (d) of this section
19 shall be placed in the custody of a peace officer of the state and
20 destroyed no earlier than 30 days after forfeiture. All other prop-
21 erty [PROPERTY] forfeited under this section shall be placed in the
22 custody of the commissioner of public safety for disposition according
23 to an order entered by the court. The court shall order destroyed any
24 property forfeited under this section that [WHICH] is harmful to the
25 public. Other property shall be ordered sold and the proceeds used
26 for payment of expenses of the proceedings for forfeiture and sale,
27 including expenses of seizure, custody and court costs. The remainder
28 of the proceeds shall be deposited in the general fund.

29 * Sec. 9. AS 04.21.010(a) is amended to read:

1 (a) A municipality may adopt ordinances governing the barter,
2 sale, and consumption of alcoholic beverages within the municipality
3 as necessary for the orderly conduct of the business of selling alco-
4 holic beverages within the municipality and may ban possession of
5 alcoholic beverages under AS 04.11.498(d) or (e). An ordinance adopt-
6 ed under this section may not be inconsistent with this title or
7 regulations adopted under this title.

8 * Sec. 10. AS 04.21.080(b)(1) is repealed and reenacted to read:

9 (1) "alcoholic beverage" means spirituous, vinous, malt or
10 other fermented or distilled liquids, whatever the origin, that are
11 intended for human consumption as a beverage and that contain alcohol,
12 whether produced commercially or privately;

13 * Sec. 11. AS 04.21.080(b) is amended by adding a new paragraph to
14 read:

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

21 * Sec. 12. AS 29.10.200 is amended by adding a new paragraph to read:

22 (47) AS 29.20.270(e) (ordinance veto by mayor).

23 * Sec. 13. AS 29.20.270(a) is amended to read:

24 (a) Except as provided in (c), [AND] (d) and (e) of this sec-
25 tion, the mayor may veto an ordinance, resolution, motion, or other
26 action of the governing body and may strike or reduce appropriation
27 items.

28 * Sec. 14. AS 29.20.270 is amended by adding a new subsection to read:

29 (e) The veto does not extend to an ordinance adopted under

1 AS 04.11.498. This subsection applies to home rule and general law
2 municipalities.

3 * Sec. 15. AS 29.25.020 is amended by adding a new subsection to read:
4

5 (d) This section does not apply to an ordinance proposed under
6 AS 04.11.502(c).

7 * Sec. 16. AS 29.25.070 is amended by adding a new subsection to read:

8 (d) This section does not apply to an ordinance adopted under
9 AS 04.11.498(d) or (e).

10 * Sec. 17. AS 29.35.080(a) is amended to read:

11 (a) A municipality may regulate the possession, barter, sale,
12 importation, and consumption of alcoholic beverages in accordance with
13 AS 04.11.480 - 04.11.506 and AS 04.21.010.

HOUSE
COMMITTEE REPORT

(11)

Date referred: 4/17/86

(Judiciary waived 4/17)

FURTHER REFERRALS:

DATE: 4-23-86

The FINANCE Committee has considered HB 700

"An Act relating to regulation of alcoholic beverages and enactment of municipal ordinances."

and recommends:

- ☐ do pass
☐ do not pass
☐ do pass with attached amendment(s)
☐ no recommendation

☒ replace with CSSH B 700 (FIN) ☒ same title
☐ new title

and recommends do pass

☐ further referral to the _____ Committee

and attaches: ☐ letter of intent
☐ first fiscal note
☒ ~~new~~ fiscal note 4/17/86 19.9
☐ zero fiscal note

SIGNING DO PASS:

Robert P. L...
Don ...
Mike ...
Jim ...
Ronald L. ...
Pat ...
...
Steve ...
Dolene ...
...

SIGNING OTHER RECOMMENDATIONS:

Robert P. L...
Chairman

A M E N D M E N T

Offered in the HOUSE

By Binkley

TO: CSSSHB 700(C&RA)

Page 1, line 27, delete "and"

Page 1, line 29, following "communities", delete "." and insert "; and"

Page 1, after line 29, insert a new paragraph to read:

"(9) a fine in the amount of \$1,000 or 200 hours of community work, is not so severe a penalty as to indicate criminality in either rural or urban Alaska communities."

Offered: 4/16/80
Referred: Judiciary and Finance

Original sponsor: Rules Committee

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

1 IN THE HOUSE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulation of alcoholic beverages
7 and enactment of municipal ordinances."

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

9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10 (1) abuse of alcohol seriously interferes with the rights and
11 privileges of the people of the state;

12 (2) the public health, safety, and welfare does in fact suffer
13 when alcohol abuse is not controlled;

14 (3) prohibition of alcohol in rural areas of the state is an
15 effective tool for controlling the abuse of alcohol;

16 (4) serious crimes and a wide variety of other social problems
17 could be prevented if the possession of alcohol were prohibited;

18 (5) there is a strong and unmistakable correlation between
19 alcohol consumption and poor health, fetal damage, suicide, domestic vio-
20 lence, and crime;

21 (6) the dangers resulting from alcohol abuse are particularly
22 acute in rural areas of the state because the communities are small, iso-
23 lated, without adequate law enforcement, without adequate health care
24 facilities, and populated by people who are closely related and interdepen-
25 dent;

26 (7) in communities that have chosen to ban the sale and importa-
27 tion of alcohol, most drinking takes place in private homes; and

28 (8) the economic cost of alcohol abuse is high, and cannot be
29 afforded by the state or small rural communities.

1 * Sec. 2. AS 04.11 is amended by adding a new section to read:

2 Sec. 04.11.498. PROHIBITION OF POSSESSION OF ALCOHOLIC BEVER-
3 AGES. (a) The following question, appearing alone, may be placed
4 before the voters of a municipality or an established village in
5 accordance with AS 04.11.502: "Shall the possession of alcoholic
6 beverages be prohibited in (name of municipality or vil-
7 lage)? (yes or no)."

8 (b) If a majority of the voters of an established village vote
9 "yes" on the question set out in (a) of this section, and the sale of
10 alcoholic beverages, or the sale and importation of alcoholic bever-
11 ages, has been previously prohibited in the established village in
12 accordance with AS 04.11.490 or 04.11.494, a person, beginning on the
13 first day of the month following certification of the results of the
14 election, may not knowingly possess an alcoholic beverage in the
15 established village, unless the alcoholic beverage is wine to be used
16 for bona fide religious purposes based on tenets or teachings of a
17 church or religious body, is limited in quantity to the amount neces-
18 sary for religious purposes, and is dispensed only for religious
19 purposes, by a person recognized by the church or religious body as
20 authorized to dispense the wine. The board shall be notified immedi-
21 ately after certification of the results of the election and there-
22 after may not issue, renew, or transfer between holders or locations a
23 license for licensed premises located within the perimeter of the
24 established village as defined in AS 04.21.080(b)(8).

25 (c) If a majority of the voters of an established village vote
26 "yes" on the question set out in (a) of this section and the sale of
27 alcoholic beverages, or the sale and importation of alcoholic bever-
28 ages, has not been previously prohibited in the established village in
29 accordance with AS 04.11.490 or 04.11.494, and a person, beginning 90

1 days after certification of the results of the election, may not
2 knowingly possess an alcoholic beverage in the established village,
3 unless the person is licensed by the board or the alcoholic beverage
4 is wine to be used for bona fide religious purposes based on tenets or
5 teachings of a church or religious body, is limited in quantity to the
6 amount necessary for religious purposes, and is dispensed only for
7 religious purposes by a person by the church or religious body as
8 authorized to dispense the wine. The board shall be notified immedi-
9 ately after certification of the results of the election and there-
10 after may not issue, renew, or transfer between holders or locations a
11 license for licensed premises located within the perimeter of the
12 established village as defined in AS 04.21.080(b)(8). Licenses that
13 may not be renewed because of a local option election held under this
14 section are void 90 days after the results of the election are cer-
15 tified. A license that will expire during the 90 days after the
16 results of a local option election under this section are certified
17 may be extended until it is void under this section, by payment of a
18 prorated portion of the annual license fee.

19 (d) If a majority of the voters of a municipality vote "yes" on
20 the question set out in (a) of this section, and the sale of alcoholic
21 beverages, or the sale and importation of alcoholic beverages, has
22 been previously prohibited in the municipality in accordance with
23 AS 04.11.490 or 04.11.494, an ordinance is adopted that becomes effec-
24 tive beginning on the first day of the month following certification
25 of the results of the election, and a person may not knowingly possess
26 an alcoholic beverage in the municipality, unless the alcoholic bever-
27 age is wine to be used for bona fide religious purposes based on
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2 church or religious body as authorized to dispense the wine. The
3 board shall be notified immediately after certification of the results
4 of the election and thereafter may not issue, renew, or transfer
5 between holders or locations a license for licensed premises located
6 within the boundaries of the municipality and within unincorporated
7 areas within five miles of the boundaries of the municipality.

8 (e) If the majority of the voters of a municipality vote "yes"
9 on the question set out in (a) of this section and the sale of alco-
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15 beverage in the municipality, unless the alcoholic beverage is wine to
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18 necessary for religious purposes, and is dispensed only for religious
19 purposes by a person recognized by the church or religious body as
20 authorized to dispense the wine. The board shall be notified immedi-
21 ately after the adoption of the ordinance and thereafter may not
22 issue, renew, or transfer between holders or locations a license for
23 licensed premises located within the boundaries of the municipality
24 and within unincorporated areas within five miles of the boundaries of
25 the municipality. Licenses that may not be renewed because of a local
26 option election held under this section are void 90 days after the
27 results of the election are certified. A license that will expire
28 during the 90 days after the results of a local option election under
29 this section are certified may be extended, until it is void under

1 this section, by payment of a prorated portion of the annual fee.

2 (f) If a majority of the voters vote "no" on the question set
3 out in (a) of this section or vote "yes" on the questions set out in
4 AS 04.11.492 or 04.11.500 in an election conducted in accordance with
5 AS 04.11.502 after an election in which the voters voted "yes" on the
6 question set out in (a) of this section, the prohibition on the pos-
7 session of alcoholic beverages is removed effective 90 days after the
8 results of the election are certified except as those prohibitions
9 continue to be imposed in accordance with the results of the subse-
10 quent election.

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

15 * Sec. 3. AS 04.11.502 is amended by adding a new subsection to read:

16 (c) A petition filed with the local governing body of a munic-
17 ipality in accordance with (a) of this section, which places on the
18 ballot the question set out in AS 04.11.498, shall constitute a pro-
19 posed ordinance of the municipality.

20 * Sec. 4. AS 04.16 is amended by adding a new section to read:

21 Sec. 04.16.205. PENALTY FOR VIOLATING BAN ON POSSESSION OF
22 ALCOHOLIC BEVERAGES. (a) A person who possesses alcoholic beverages
23 in a municipality or established village in violation of AS 04.11.498
24 or an ordinance adopted under AS 04.11.498 may, upon conviction, be
25 punished by a fine not to exceed \$1,000. When a peace officer stops
26 or contacts a person concerning a violation of AS 04.11.498 or an
27 ordinance enacted under AS 04.11.498, the peace officer may, in the
28 officer's discretion, issue a citation to the person as provided in
29 AS 12.25.180.

1 (b) A person cited for a violation of AS 04.11.498 or an ordi-
2 nance adopted under AS 04.11.498 for which a bail amount has been
3 established under (c) of this section may, within 30 days after the
4 date the citation is issued

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

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

12 (c) The supreme court shall establish by rule or order a sched-
13 ule of bail amounts that may be forfeited without a court appearance
14 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
15 11.498. In establishing the bail schedule the supreme court may
16 consider the quantity of alcoholic beverages possessed and the number
17 of prior violations of the person cited. Before establishing or
18 amending the schedule of bail amounts required by this subsection, the
19 supreme court shall appoint and consult with an advisory committee
20 consisting of the following seven persons: one superior court judge,
21 one magistrate from each judicial district in the state, a representa-
22 tive of the Department of Law, and a representative of the Public
23 Defender Agency. The maximum bail amount may not exceed \$1,000, and
24 the issuing officer shall write on the citation the amount of bail
25 applicable to the violation.

26 (d) Community work shall be performed at the direction of the
27 governing body of the municipality or the governing body of the estab-
28 lished village. The value of community work in lieu of a fine is
29 \$5.00 per hour. When the community work is completed, the person

1 cited for the violation shall mail or personally deliver to the clerk
2 of the court in which the citation is filed by the peace officer

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

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

10 (e) When bail has been forfeited or proof of performance of
11 community work under this section has been filed with the court, a
12 judgment shall be entered. Forfeiture of bail or filing proof of
13 performance of community work and forfeiture of all seized items is a
14 complete satisfaction for the violation. The clerk of court accepting
15 the bail or the form indicating performance of community work shall
16 provide the offender with a receipt stating that fact, if requested.

17 (f) If the person fails to pay the bail amount established under
18 (c) of this section, or fails to provide proof of performance as spec-
19 ified in (d)(1) of this section to the court, the citation is con-
20 sidered a summons.

21 (g) Notwithstanding other provisions of law, if a person cited
22 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
23 11.498 for which a bail amount has been established under (c) of this
24 section appears in court and is found guilty, the penalty that is
25 imposed for the offense may not exceed the bail amount for that of-
26 fense established under (c) of this section.

27 (h) A violation of AS 04.11.498 or an ordinance adopted under
28 AS 04.11.498 may not be considered a criminal offense and may not
29 result in imprisonment, nor is a fine imposed for a violation

1 considered criminal punishment. A person cited for a violation does
2 not have a right to a jury trial or court appointed counsel.

3 (i) The commissioner of public safety shall prescribe and pro-
4 vide a suitable standard citation form that is in a form necessary to
5 identify the offender, to identify the offense, and to meet the needs
6 of public safety and administration of justice.

7 (j) A municipality shall adopt a citation form that is equiva-
8 lent to that prescribed by the commissioner under (i) of this section.

9 * Sec. 5. AS 04.16.220(a) is amended to read:

10 (a) The following are subject to forfeiture:

11 (1) alcoholic beverages manufactured, sold, offered for
12 sale or possessed for sale, bartered or exchanged for goods and ser-
13 vices in this state in violation of AS 04.11.010; alcoholic beverages
14 stocked, warehoused, or otherwise stored in violation of AS 04.21.060;
15 alcoholic beverages possessed, sold or offered for sale in an area
16 where the results of a local option election have, under AS 04.11.-
17 490 - 04.11.500, prohibited the possession of alcoholic beverages or
18 prohibited the board from issuing, renewing, or transferring one or
19 more licenses or permits under this title in the area; alcoholic
20 beverages transported into the state and sold to persons not licensed
21 under this chapter in violation of AS 04.16.170(b);

22 (2) materials and equipment used in the manufacture, sale,
23 offering for sale, possession for sale, barter or exchange of alco-
24 holic beverages for goods and services in this state in violation of
25 AS 04.11.010; materials and equipment used in the stocking, warehous-
26 ing, or storage of alcoholic beverages in violation of AS 04.21.060;
27 materials and equipment used in the sale or offering for sale of an
28 alcoholic beverage in an area where the results of a local option
29 election have, under AS 04.11.490 - 04.11.500, prohibited the board

1 from issuing, renewing, or transferring one or more licenses or per-
2 mits under this title in the area;

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

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

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

10 (C) alcoholic beverages imported into a municipality
11 or established village in violation of AS 04.11.496;

12 (4) alcoholic beverages found on licensed premises that
13 [WHICH] do not bear federal excise stamps if excise stamps are re-
14 quired under federal law;

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

17 * Sec. 6. AS 04.16.220(b) is amended to read:

18 (b) Property subject to forfeiture under this section may be
19 actually or constructively seized under an order issued by the su-
20 perior court upon a showing of probable cause that the property is
21 subject to forfeiture under this section. Constructive seizure is
22 effected upon posting a signed notice of seizure on the item to be
23 forfeited, stating the violation and the date and place of seizure.
24 Seizure without a court order may be made if

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

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

28 (3) there is probable cause to believe that the property is
29 subject to forfeiture under (a) of this section; except for alcoholic

1 beverages possessed in violation of AS 04.11.498 or an ordinance
2 adopted under AS 04.11.498, property seized under this paragraph may
3 not be held over 48 hours or until an order of forfeiture is issued by
4 the court, whichever is earlier.

5 * Sec. 7. AS 04.16.220(d) is amended to read:

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

8 (1) upon conviction of a person under AS 04.11.010, 04.11.-
9 496(b), or AS 04.21.060 or upon entry of judgment under AS 04.11.498
10 or an ordinance adopted under AS 04.11.498;

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

14 * Sec. 8. AS 04.16.220(h) is amended to read:

15 (h) Alcoholic beverages forfeited under (d) of this section
16 shall be placed in the custody of a peace officer of the state and
17 destroyed no earlier than 30 days after forfeiture. All other prop-
18 erty [PROPERTY] forfeited under this section shall be placed in the
19 custody of the commissioner of public safety for disposition according
20 to an order entered by the court. The court shall order destroyed any
21 property forfeited under this section that [WHICH] is harmful to the
22 public. Other property shall be ordered sold and the proceeds used
23 for payment of expenses of the proceedings for forfeiture and sale,
24 including expenses of seizure, custody and court costs. The remainder
25 of the proceeds shall be deposited in the general fund.

26 * Sec. 9. AS 04.21.010(a) is amended to read:

27 (a) A municipality may adopt ordinances governing the barter,
28 sale, and consumption of alcoholic beverages within the municipality
29 as necessary for the orderly conduct of the business of selling

1 alcoholic beverages within the municipality and may ban possession of
2 alcoholic beverages under AS 04.11.498(d) or (e). An ordinance adopt-
3 ed under this section may not be inconsistent with this title or
4 regulations adopted under this title.

5 * Sec. 10. AS 04.21.080(b)(1) is repealed and reenacted to read:
6 (1) "alcoholic beverage" means spirituous, vinous, malt or
7 other fermented or distilled liquids, whatever the origin, that are
8 intended for human consumption as a beverage and that contain alcohol,
9 whether produced commercially or privately;

10 * Sec. 11. AS 04.21.080(b) is amended by adding a new paragraph to
11 read:
12 (12) "community work" means and is limited to work on
13 projects designed to reduce or eliminate environmental damage, protect
14 the public health, or improve public land, forests, parks, roads,
15 highways, facilities, or education; community work may not confer a
16 private benefit on a person except as may be incidental to the public
17 benefit.

18 * Sec. 12. AS 29.10.200 is amended by adding a new paragraph to read:
19 (47) AS 29.20.270(e) (ordinance veto by mayor).

20 * Sec. 13. AS 29.20.270(a) is amended to read:
21 (a) Except as provided in (c), [AND] (d) and (e) of this sec-
22 tion, the mayor may veto an ordinance, resolution, motion, or other
23 action of the governing body and may strike or reduce appropriation
24 items.

25 * Sec. 14. AS 29.20.270 is amended by adding a new subsection to read:
26 (e) The veto does not extend to an ordinance adopted under
27 AS 04.11.498. This subsection applies to home rule and general law
28 municipalities.

29 * Sec. 15. AS 29.25.020 is amended by adding a new subsection to read:

1 (d) This section does not apply to an ordinance proposed under
2 ALS 04.11.502(c).

3 * Sec. 16. AS 29.25.070 is amended by adding a new subsection to read:

4 (d) This section does not apply to an ordinance adopted under
5 AS 04.11.498(d) or (e).

6 * Sec. 17. AS 29.35.080(a) is amended to read:

7 (a) A municipality may regulate the possession, barter, sale,
8 importation, and consumption of alcoholic beverages in accordance with
9 AS 04.11.480 - 04.11.506 and AS 04.21.010.

Sectional Analysis

Committee Substitute for Sponsor Substitute Bill for House Bill 700

"An Act relating to regulation of alcoholic beverages and enactment of municipal ordinances."

SECTION 1: Sets forth in Legislative Findings the specific reasons for amending the existing local option law.

SECTION 2: Provides established villages and municipalities the authority to hold elections to ban possession of alcohol, as an addition to the options for regulating alcohol allowed under current law. Following an election, alcoholic beverages would be banned by city ordinance in municipalities and by state statute in established villages. Excludes from the definition of possession "alcoholic beverages within the digestive system of a person."

SECTION 3: Specifies that a petition for local option election constitutes a proposed ordinance of a municipality.

SECTION 4: Sets penalty for possession of alcohol in violation of law as a maximum \$1,000 fine, for which community work, supervised by the governing body of the community, may be substituted at the option of the offender. Authorizes the Supreme Court to set a bail forfeiture schedule after consultation with an advisory committee. Mandates that the Commissioner of the Department of Public Safety develop a uniform citation form, which must be adopted by municipalities. Allows appearance on a citation to be waived, a plea of no contest to be entered, and bail and all alcoholic beverages seized to be forfeited. Specifies that possession of alcohol in violation of the law is not a criminal offense, and does not give rise to the right to jury trial or to court-appointed counsel.

SECTION 5: Provides that alcoholic beverages possessed in violation of a ban is subject to forfeiture.

SECTION 6: Provides an exception to the requirement that a court hearing be held within 48 hours of seizure of property subject to forfeiture for alcoholic beverages possessed in violation of a community ban on alcohol. This section does not change Alaska law

relating to search and seizure, rather it recognizes that alcohol possessed in violation of a ban is contraband and that a court hearing to consider the propriety of its seizure would have no purpose.

SECTION 7: Specifies that forfeiture may occur at the point when judgment has been entered on a citation.

SECTION 8: Requires that alcoholic beverages forfeited under the law be destroyed no earlier than 30 days after forfeiture.

SECTION 9: Authorizes municipalities to adopt ordinances banning possession of alcohol as set forth in Section 2 of CSSSHB700.

SECTION 10: Clarifies that the definition of alcoholic beverage includes privately produced beverages containing alcohol.

SECTION 11: Conforms Title 29 with Sections 2 and 9.

SECTION 12: Conforms Title 29 with Sections 2 and 9.

SECTION 13: Conforms Title 29 with Sections 2 and 9.

SECTION 14: Conforms Title 29 with Sections 2 and 9.

SECTION 15: Conforms Title 29 with Sections 2 and 9.

SECTION 16: Conforms Title 29 with Sections 2 and 9.

Alaska State Legislature

CHAIR
REPRESENTATIVE JOHNE BINKLEY

MEMBERS
SENATOR JOHN SACKETT
SENATOR EDNA DEVRIES
SENATOR VIC FISCHER
REPRESENTATIVE KATIE HURLEY
REPRESENTATIVE JOHN SUND

COUNSEL TO THE COMMITTEE
LAURIE H. OTTO



LOCAL OPTION COMMITTEE OFFICE
P.O. BOX 1672
BETHEL, AK 99559
(907) 543-3573

IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4737

Joint Special Committee On Local Option Laws

MEMORANDUM

TO: Mike Ford
Legislative Legal Counsel

FROM: Representative Johne Binkley, Chairman
Joint Special Committee on Local Option Laws

DATE: April 16, 1986

RE: Amendment to CSSSHB 700 - Local Option Legislation

This is to request the following amendment to CSSSHB 700, for consideration by the House Finance Committee.

Section 1. Legislative Findings. Add a new number (9) to read:

(9) a fine in the amount of \$1,000, or 200 hours of community work, is not so severe a penalty as to indicate criminality in either rural or urban Alaska communities.

**HOUSE
COMMITTEE REPORT**

(7)

Date referred: 4/4/86

JUDICIARY

FURTHER REFERRALS:

FINANCE

DATE: 4-14-86

The COMMUNITY AND
REGIONAL AFFAIRS Committee has considered SSHB 700

"An Act relating to regulation of alcoholic beverages and enactment of municipal ordinances."

and recommends:

☒ do pass

☐ do not pass

☐ do pass with attached amendment(s)

☐ no recommendation

☐ replace with CS S SHB 700 (C12A) ☒ same title

☐ new title

and recommends _____

☐ further referral to the _____ Committee

and attaches: ☐ letter of intent
☐ first fiscal note
☐ new fiscal note
☐ zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Roll E. Bell

Wesley L. Humberg

F. Kay Wallis

John Kopman

Peter Joe

Peter Joe

Chairman

Introduced: 4/4/86
Referred: Community & Regional
Affairs, Judiciary and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulation of alcoholic beverages
7 and enactment of municipal ordinances."

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

9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10 (1) abuse of alcohol seriously interferes with the rights and
11 privileges of the people of the state;

12 (2) the public health, safety, and welfare does in fact suffer
13 when alcohol abuse is not controlled;

14 (3) prohibition of alcohol in rural areas of the state is an
15 effective tool for controlling the abuse of alcohol;

16 (4) serious crimes and a wide variety of other social problems
17 could be prevented if the possession of alcohol were prohibited;

18 (5) there is a strong and unmistakable correlation between
19 alcohol consumption and poor health, fetal damage, suicide, domestic vio-
20 lence, and crime;

21 (6) the dangers resulting from alcohol abuse are particularly
22 acute in rural areas of the state because the communities are small,
23 isolated, without adequate law enforcement, without adequate health care
24 facilities, and populated by people who are closely related and interdepen-
25 dent;

26 (7) in communities that have chosen to ban the sale and importa-
27 tion of alcohol, most drinking takes place in private homes; and

28 (8) the economic cost of alcohol abuse is high, and cannot be
29 afforded by the state or small rural communities.

1 * Sec. 2. AS 04.11 is amended by adding a new section to read:

2 Sec. 04.11.498. PROHIBITION OF POSSESSION OF ALCOHOLIC BEVER-
3 AGES. (a) The following question, appearing alone, may be placed
4 before the voters of a municipality or an established village in
5 accordance with AS 04.11.502: "Shall the possession of alcoholic
6 beverages be prohibited in (name of municipality or vil-
7 lage)? (yes or no)."

8 (b) If a majority of the voters of an established village vote
9 "yes" on the question set out in (a) of this section, a person, begin-
10 ning on the first day of the month following certification of the
11 results of the election, may not knowingly possess an alcoholic
12 beverage in the established village, unless the alcoholic beverage is
13 sacramental wine to be used for bona fide religious purposes based on
14 tenets or teachings of a church or religious body, is limited in
15 quantity to the amount necessary for religious purposes, and is dis-
16 pensed only for religious purposes by a person authorized by the
17 church or religious body to dispense the sacramental wine. The board
18 shall be notified immediately after certification of the results of
19 the election and thereafter may not issue, renew, or transfer between
20 holders or locations a license for licensed premises located within
21 the perimeter of the established village. Licenses that may not be
22 renewed because of a local option election held under this section are
23 void on the first day of the month following certification of the
24 election.

25 (c) If a majority of the voters of a municipality vote "yes" on
26 the question set out in (a) of this section, an ordinance is adopted
27 that becomes effective beginning on the first day of the month follow-
28 ing certification of the results of the election, and a person may not
29 knowingly possess an alcoholic beverage in the municipality, unless

Introduced: 4/4/86
Referred: Community & Regional
Affairs, Judiciary and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulation of alcoholic beverages
7 and enactment of municipal ordinances."

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

9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10 (1) abuse of alcohol seriously interferes with the rights and
11 privileges of the people of the state;

12 (2) the public health, safety, and welfare does in fact suffer
13 when alcohol abuse is not controlled;

14 (3) prohibition of alcohol in rural areas of the state is an
15 effective tool for controlling the abuse of alcohol;

16 (4) serious crimes and a wide variety of other social problems
17 could be prevented if the possession of alcohol were prohibited;

18 (5) there is a strong and unmistakable correlation between
19 alcohol consumption and poor health, fetal damage, suicide, domestic vio-
20 lence, and crime;

21 (6) the dangers resulting from alcohol abuse are particularly
22 acute in rural areas of the state because the communities are small,
23 isolated, without adequate law enforcement, without adequate health care
24 facilities, and populated by people who are closely related and interdepen-
25 dent;

26 (7) in communities that have chosen to ban the sale and importa-
27 tion of alcohol, most drinking takes place in private homes; and

28 (8) the economic cost of alcohol abuse is high, and cannot be
29 afforded by the state or small rural communities.

1 the alcoholic beverage is sacramental wine to be used for bona fide
2 religious purposes based on tenets or teachings of a church or reli-
3 gious body, is limited in quantity to the amount necessary for reli-
4 gious purposes, and is dispensed only for religious purposes by a
5 person authorized by the church or religious body to dispense the
6 sacramental wine. The board shall be notified immediately after the
7 adoption of the ordinance and thereafter may not issue, renew, or
8 transfer between holders or locations a license for licensed premises
9 located within the boundaries of the municipality and within unincor-
10 porated areas within five miles of the boundaries of the municipality.
11 Licenses that may not be renewed because of a local option election
12 held under this section are void on the first day of the month follow-
13 ing certification of the election.

14 (d) If a majority of the voters vote "no" on the question set
15 out in (a) of this section or vote "yes" on the questions set out in
16 AS 04.11.492 or 04.11.500 in an election conducted in accordance with
17 AS 04.11.502 after an election in which the voters voted "yes" on the
18 question set out in (a) of this section, the prohibition on the pos-
19 session of alcoholic beverages is removed effective 90 days after the
20 results of the election are certified except as those prohibitions
21 continue to be imposed in accordance with the results of the subse-
22 quent election.

23 (e) For the purposes of this section, "possession" means having
24 physical possession of or exercising dominion or control over alco-
25 holic beverages, but does not include having alcoholic beverages
26 within the digestive system of a person.

27 * Sec. 3. AS 04.11.502 is amended by adding a new subsection to read:

28 (c) A petition filed with the local governing body of a munic-
29 ipality in accordance with (a) of this section, which places on the

1 ballot the question set out in AS 04.11.498, shall constitute a pro-
2 posed ordinance of the municipality.

3 * Sec. 4. AS 04.16 is amended by adding a new section to read:

4 Sec. 04.16.205. PENALTY FOR VIOLATING BAN ON POSSESSION OF
5 ALCOHOLIC BEVERAGES. (a) A person who possesses alcoholic beverages
6 in a municipality or established village in violation of AS 04.11.498
7 or an ordinance adopted under AS 04.11.498 may, upon conviction, be
8 punished by a fine not to exceed \$1,000. When a peace officer stops
9 or contacts a person concerning a violation of AS 04.11.498 or an
10 ordinance enacted under AS 04.11.498, the peace officer may, in the
11 officer's discretion, issue a citation to the person as provided in
12 AS 12.25.180.

13 (b) A person cited for a violation of AS 04.11.498 or an ordi-
14 nance adopted under AS 04.11.498 for which a bail amount has been
15 established under (c) of this section may, within 30 days after the
16 date of the citation

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

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

24 (c) The supreme court shall establish by rule or order a sched-
25 ule of bail amounts that may be forfeited without a court appearance
26 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
27 11.498. In establishing the bail schedule the supreme court may
28 consider the quantity of alcoholic beverages possessed and the number
29 of prior violations of the person cited. The maximum bail amount may

not exceed \$1,000, and if a citation is issued that may be disposed of without court appearance, the issuing officer shall write on the citation the amount of bail applicable to the violation.

(d) Community work shall be performed at the direction of the governing body of the municipality or the village council of the established village. The value of community work in lieu of a fine is \$5.00 per hour. When the community work is completed, the person cited for the violation shall mail or personally deliver to the clerk of the court in which the citation is filed by the peace officer

(1) a form, prescribed by the board, indicating completion of the community work; and

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

(e) When bail has been forfeited or community work performed under this section, a judgment of conviction shall be entered. Forfeiture of bail or performance of community work and forfeiture of all seized items is a complete satisfaction for the violation. The clerk of court accepting the bail or the form indicating performance of community work shall provide the offender with a receipt stating that fact.

(f) If the person fails to pay the bail amount established under (c) of this section or to perform community work as provided in (d) of this section, the citation is considered a summons.

(g) Notwithstanding other provisions of law, if a person cited for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-11.498 for which a bail amount has been established under (c) of this section appears in court and is found guilty, the penalty that is

1 imposed for the offense may not exceed the bail amount for that
2 offense established under (c) of this section.

3 (h) A violation of AS 04.11.498 or an ordinance adopted under
4 AS 04.11.498 may not be considered a criminal offense and may not
5 result in imprisonment, nor is a fine imposed for a violation con-
6 sidered criminal punishment. A person cited for a violation does not
7 have a right to a jury trial or court appointed counsel.

8 * Sec. 5. AS 04.16.220(a) is amended to read:

9 (a) The following are subject to forfeiture:

10 (1) alcoholic beverages manufactured, sold, offered for
11 sale or possessed for sale, bartered or exchanged for goods and ser-
12 vices in this state in violation of AS 04.11.010; alcoholic beverages
13 stocked, warehoused, or otherwise stored in violation of AS 04.21.060;
14 alcoholic beverages possessed, sold or offered for sale in an area
15 where the results of a local option election have, under AS 04.11.-
16 490 - 04.11.500, prohibited the possession of alcoholic beverages or
17 prohibited the board from issuing, renewing, or transferring one or
18 more licenses or permits under this title in the area; alcoholic
19 beverages transported into the state and sold to persons not licensed
20 under this chapter in violation of AS 04.16.170(b);

21 (2) materials and equipment used in the manufacture, sale,
22 offering for sale, possession for sale, barter or exchange of alco-
23 holic beverages for goods and services in this state in violation of
24 AS 04.11.010; materials and equipment used in the stocking, warehous-
25 ing, or storage of alcoholic beverages in violation of AS 04.21.060;
26 materials and equipment used in the sale or offering for sale of an
27 alcoholic beverage in an area where the results of a local option
28 election have, under AS 04.11.490 - 04.11.500, prohibited the board
29 from issuing, renewing, or transferring one or more licenses or

1 permits under this title in the area;

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

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

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

9 (C) alcoholic beverages imported into a municipality
10 or established village in violation of AS 04.11.496;

11 (D) alcoholic beverages possessed in violation of
12 AS 04.11.498 or an ordinance adopted under AS 04.11.498;

13 (4) alcoholic beverages found on licensed premises that
14 [WHICH] do not bear federal excise stamps if excise stamps are re-
15 quired under federal law;

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

18 * Sec. 6. AS 04.16.220(b) is amended to read:

19 (b) Property subject to forfeiture under this section may be
20 actually or constructively seized under an order issued by the
21 superior court upon a showing of probable cause that the property is
22 subject to forfeiture under this section. Constructive seizure is
23 effected upon posting a signed notice of seizure on the item to be
24 forfeited, stating the violation and the date and place of seizure.
25 Seizure without a court order may be made if

26 (1) the seizure is incident to a valid arrest, [OR] search,
27 or a citation issued under AS 04.11.498 or an ordinance adopted under
28 AS 04.11.498;

29 (2) the property subject to seizure is the subject of a

1 prior judgment in favor of the state; or

2 (3) there is probable cause to believe that the property is
3 subject to forfeiture under (a) of this section; property seized under
4 this paragraph may not be held over 48 hours or until an order of
5 forfeiture is issued by the court, whichever is earlier.

6 * Sec. 7. AS 04.16.220(d) is amended to read:

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

9 (1) upon conviction of a person under AS 04.11.010, 04.11.-
10 496(b), 04.11.498, or AS 04.21.060;

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

14 * Sec. 8. AS 04.16.220(h) is amended to read:

15 (h) Alcoholic beverages forfeited under (d) of this section
16 shall be placed in the custody of a peace officer of the state and
17 destroyed not later than 30 days after forfeiture. All other property
18 [PROPERTY] forfeited under this section shall be placed in the custody
19 of the commissioner of public safety for disposition according to an
20 order entered by the court. The court shall order destroyed any
21 property forfeited under this section that [WHICH] is harmful to the
22 public. Other property shall be ordered sold and the proceeds used
23 for payment of expenses of the proceedings for forfeiture and sale,
24 including expenses of seizure, custody and court costs. The remainder
25 of the proceeds shall be deposited in the general fund.

26 * Sec. 9. AS 04.21.010(a) is amended to read:

27 (a) A municipality may adopt ordinances governing the barter,
28 sale, and consumption of alcoholic beverages within the municipality
29 as necessary for the orderly conduct of the business of selling

1 alcoholic beverages within the municipality and may ban possession of
2 alcoholic beverages under AS 04.11.498(c). An ordinance adopted under
3 this section may not be inconsistent with this title or regulations
4 adopted under this title.

5 * Sec. 10. AS 04.21.080(b)(1) is repealed and reenacted to read:
6 (1) "alcoholic beverage" means spirituous, vinous, malt or
7 other fermented or distilled liquids, whatever the origin, that are
8 intended for human consumption and that contain alcohol, whether
9 produced commercially or privately;

10 * Sec. 11. AS 29.10.200 is amended by adding a new paragraph to read:
11 (47) AS 29.20.270(e) (ordinance veto by mayor).

12 * Sec. 12. AS 29.20.270(a) is amended to read:
13 (a) Except as provided in (c), [AND] (d) and (e) of this sec-
14 tion, the mayor may veto an ordinance, resolution, motion, or other
15 action of the governing body and may strike or reduce appropriation
16 items.

17 * Sec. 13. AS 29.20.270 is amended by adding a new subsection to read:
18 (e) The veto does not extend to an ordinance adopted under
19 AS 04.11.498. This subsection applies to home rule and general law
20 municipalities.

21 * Sec. 14. AS 29.25.020 is amended by adding a new subsection to read:
22 (d) This section does not apply to an ordinance proposed under
23 AS 04.11.502(c).

24 * Sec. 15. AS 29.25.070 is amended by adding a new subsection to read:
25 (d) This section does not apply to an ordinance adopted under
26 AS 04.11.498(c).

27 * Sec. 16. AS 29.35.080(a) is amended to read:
28 (a) A municipality may regulate the possession, barter, sale,
29 importation, and consumption of alcoholic beverages in accordance with

1 AS 04.11.480 - 04.11.506 and AS 04.21.010.

Ford
4/1/86✓

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulation of alcoholic beverages
7 and enactment of municipal ordinances."

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

9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10 (1) abuse of alcohol seriously interferes with the rights and
11 privileges of the people of the state;

12 (2) the public health, safety, and welfare does in fact suffer
13 when alcohol abuse is not controlled;

14 (3) prohibition of alcohol in rural areas of the state is an
15 effective tool for controlling the abuse of alcohol;

16 (4) serious crimes and a wide variety of other social problems
17 could be prevented if the possession of alcohol were prohibited;

18 (5) there is a strong and unmistakable correlation between
19 alcohol consumption and poor health, fetal damage, suicide, domestic vio-
20 lence, and crime;

21 (6) the dangers resulting from alcohol abuse are particularly
22 acute in rural areas of the state because the communities are small,
23 isolated, without adequate law enforcement, without adequate health care
24 facilities, and populated by people who are closely related and interdepen-
25 dent;

26 (7) in communities that have chosen to ban the sale and importa-
27 tion of alcohol, most drinking takes place in private homes; and

28 (8) the economic cost of alcohol abuse is high, and cannot be
29 afforded by the state or small rural communities.

1 * Sec. 2. AS 04.11 is amended by adding a new section to read:

2 Sec. 04.11.498. PROHIBITION OF POSSESSION OF ALCOHOLIC BEVER-
3 AGES. (a) The following question, appearing alone, may be placed
4 before the voters of a municipality or an established village in
5 accordance with AS 04.11.502: "Shall the possession of alcoholic
6 beverages be prohibited in (name of municipality or vil-
7 lage)? (yes or no)."

8 (b) If a majority of the voters of an established village vote
9 "yes" on the question set out in (a) of this section, a person, begin-
10 ning on the first day of the month following certification of the
11 results of the election, may not knowingly possess an alcoholic
12 beverage in the established village, unless the alcoholic beverage is
13 sacramental wine to be used for bona fide religious purposes based on
14 tenets or teachings of a church or religious body, is limited in
15 quantity to the amount necessary for religious purposes, and is dis-
16 pensed only for religious purposes by a person authorized by the
17 church or religious body to dispense the sacramental wine. The board
18 shall be notified immediately after certification of the results of
19 the election and thereafter may not issue, renew, or transfer between
20 holders or locations a license for licensed premises located within
21 the perimeter of the established village. Licenses that may not be
22 renewed because of a local option election held under this section are
23 void on the first day of the month following certification of the
24 election.

25 (c) If a majority of the voters of a municipality vote "yes" on
26 the question set out in (a) of this section, an ordinance is adopted
27 that becomes effective beginning on the first day of the month follow-
28 ing certification of the results of the election, and a person may not
29 knowingly possess an alcoholic beverage in the municipality, unless

1 the alcoholic beverage is sacramental wine to be used for bona fide
2 religious purposes based on tenets or teachings of a church or reli-
3 gious body, is limited in quantity to the amount necessary for reli-
4 gious purposes, and is dispensed only for religious purposes by a
5 person authorized by the church or religious body to dispense the
6 sacramental wine. The board shall be notified immediately after the
7 adoption of the ordinance and thereafter may not issue, renew, or
8 transfer between holders or locations a license for licensed premises
9 located within the boundaries of the municipality and within unincor-
10 porated areas within five miles of the boundaries of the municipality.
11 Licenses that may not be renewed because of a local option election
12 held under this section are void on the first day of the month follow-
13 ing certification of the election.

14 (d) If a majority of the voters vote "no" on the question set
15 out in (a) of this section or vote "yes" on the questions set out in
16 AS 04.11.492 or 04.11.500 in an election conducted in accordance with
17 AS 04.11.502 after an election in which the voters voted "yes" on the
18 question set out in (a) of this section, the prohibition on the pos-
19 session of alcoholic beverages is removed effective 90 days after the
20 results of the election are certified except as those prohibitions
21 continue to be imposed in accordance with the results of the subse-
22 quent election.

23 (e) For the purposes of this section, "possession" means having
24 physical possession of or exercising dominion or control over alco-
25 holic beverages, but does not include having alcoholic beverages
26 within the digestive system of a person.

27 * Sec. 3. AS 04.11.502 is amended by adding a new subsection to read:

28 (c) A petition filed with the local governing body of a munic-
29 ipality in accordance with (a) of this section, which places on the

1 ballot the question set out in AS 04.11.498, shall constitute a pro-
2 posed ordinance of the municipality.

3 * Sec. 4. AS 04.16 is amended by adding a new section to read:

4 Sec. 04.16.205. PENALTY FOR VIOLATING BAN ON POSSESSION OF
5 ALCOHOLIC BEVERAGES. (a) A person who possesses alcoholic beverages
6 in a municipality or established village in violation of AS 04.11.498
7 or an ordinance adopted under AS 04.11.498 may, upon conviction, be
8 punished by a fine not to exceed \$1,000. When a peace officer stops
9 or contacts a person concerning a violation of AS 04.11.498 or an
10 ordinance enacted under AS 04.11.498, the peace officer may, in the
11 officer's discretion, issue a citation to the person as provided in
12 AS 12.25.180.

13 (b) A person cited for a violation of AS 04.11.498 or an ordi-
14 nance adopted under AS 04.11.498 for which a bail amount has been
15 established under (c) of this section may, within 30 days after the
16 date of the citation

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

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

24 (c) The supreme court shall establish by rule or order a sched-
25 ule of bail amounts that may be forfeited without a court appearance
26 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
27 11.498. In establishing the bail schedule the supreme court may
28 consider the quantity of alcoholic beverages possessed and the number
29 of prior violations of the person cited. The maximum bail amount may

1 not exceed \$1,000, and if a citation is issued that may be disposed of
2 without court appearance, the issuing officer shall write on the
3 citation the amount of bail applicable to the violation.

4 (d) Community work shall be performed at the direction of the
5 governing body of the municipality or the village council of the
6 established village. The value of community work in lieu of a fine is
7 \$5.00 per hour. When the community work is completed, the person
8 cited for the violation shall mail or personally deliver to the clerk
9 of the court in which the citation is filed by the peace officer

10 (1) a form, prescribed by the board, indicating completion
11 of the community work; and

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

16 (e) When bail has been forfeited or community work performed
17 under this section, a judgment of conviction shall be entered. For-
18 feiture of bail or performance of community work and forfeiture of all
19 seized items is a complete satisfaction for the violation. The clerk
20 of court accepting the bail or the form indicating performance of
21 community work shall provide the offender with a receipt stating that
22 fact.

23 (f) If the person fails to pay the bail amount established under
24 (c) of this section or to perform community work as provided in (d) of
25 this section, the citation is considered a summons.

26 (g) Notwithstanding other provisions of law, if a person cited
27 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
28 11.498 for which a bail amount has been established under (c) of this
29 section appears in court and is found guilty, the penalty that is

1 imposed for the offense may not exceed the bail amount for that
2 offense established under (c) of this section.

3 (h) A violation of AS 04.11.498 or an ordinance adopted under
4 AS 04.11.498 may not be considered a criminal offense and may not
5 result in imprisonment, nor is a fine imposed for a violation con-
6 sidered criminal punishment. A person cited for a violation does not
7 have a right to a jury trial or court appointed counsel.

8 * Sec. 5. AS 04.16.220(a) is amended to read:

9 (a) The following are subject to forfeiture:

10 (1) alcoholic beverages manufactured, sold, offered for
11 sale or possessed for sale, bartered or exchanged for goods and ser-
12 vices in this state in violation of AS 04.11.010; alcoholic beverages
13 stocked, warehoused, or otherwise stored in violation of AS 04.21.060;
14 alcoholic beverages possessed, sold or offered for sale in an area
15 where the results of a local option election have, under AS 04.11.-
16 490 - 04.11.500, prohibited the possession of alcoholic beverages or
17 prohibited the board from issuing, renewing, or transferring one or
18 more licenses or permits under this title in the area; alcoholic
19 beverages transported into the state and sold to persons not licensed
20 under this chapter in violation of AS 04.16.170(b);

21 (2) materials and equipment used in the manufacture, sale,
22 offering for sale, possession for sale, barter or exchange of alco-
23 holic beverages for goods and services in this state in violation of
24 AS 04.11.010; materials and equipment used in the stocking, warehous-
25 ing, or storage of alcoholic beverages in violation of AS 04.21.060;
26 materials and equipment used in the sale or offering for sale of an
27 alcoholic beverage in an area where the results of a local option
28 election have, under AS 04.11.490 - 04.11.500, prohibited the board
29 from issuing, renewing, or transferring one or more licenses or

1 permits under this title in the area;

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

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

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

9 (C) alcoholic beverages imported into a municipality
10 or established village in violation of AS 04.11.496;

11 (D) alcoholic beverages possessed in violation of
12 AS 04.11.498 or an ordinance adopted under AS 04.11.498;

13 (4) alcoholic beverages found on licensed premises that
14 [WHICH] do not bear federal excise stamps if excise stamps are re-
15 quired under federal law;

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

18 * Sec. 6. AS 04.16.220(b) is amended to read:

19 (b) Property subject to forfeiture under this section may be
20 actually or constructively seized under an order issued by the
21 superior court upon a showing of probable cause that the property is
22 subject to forfeiture under this section. Constructive seizure is
23 effected upon posting a signed notice of seizure on the item to be
24 forfeited, stating the violation and the date and place of seizure.
25 Seizure without a court order may be made if

26 (1) the seizure is incident to a valid arrest, [OR] search,
27 or a citation issued under AS 04.11.498 or an ordinance adopted under
28 AS 04.11.498;

29 (2) the property subject to seizure is the subject of a

1 prior judgment in favor of the state; or

2 (3) there is probable cause to believe that the property is
3 subject to forfeiture under (a) of this section; property seized under
4 this paragraph may not be held over 48 hours or until an order of
5 forfeiture is issued by the court, whichever is earlier.

6 * Sec. 7. AS 04.16.220(d) is amended to read:

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

9 (1) upon conviction of a person under AS 04.11.010, 04.11.-
10 496(b), 04.11.498, or AS 04.21.060;

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

14 * Sec. 8. AS 04.16.220(h) is amended to read:

15 (h) Alcoholic beverages forfeited under (d) of this section
16 shall be placed in the custody of a peace officer of the state and
17 destroyed not later than 30 days after forfeiture. All other property
18 [PROPERTY] forfeited under this section shall be placed in the custody
19 of the commissioner of public safety for disposition according to an
20 order entered by the court. The court shall order destroyed any
21 property forfeited under this section that [WHICH] is harmful to the
22 public. Other property shall be ordered sold and the proceeds used
23 for payment of expenses of the proceedings for forfeiture and sale,
24 including expenses of seizure, custody and court costs. The remainder
25 of the proceeds shall be deposited in the general fund.

26 * Sec. 9. AS 04.21.010(a) is amended to read:

27 (a) A municipality may adopt ordinances governing the barter,
28 sale, and consumption of alcoholic beverages within the municipality
29 as necessary for the orderly conduct of the business of selling

1 alcoholic beverages within the municipality and may ban possession of
2 alcoholic beverages under AS 04.11.498(c). An ordinance adopted under
3 this section may not be inconsistent with this title or regulations
4 adopted under this title.

5 * Sec. 10. AS 04.21.080(b)(1) is repealed and reenacted to read:

6 (1) "alcoholic beverage" means spirituous, vinous, malt or
7 other fermented or distilled liquids, whatever the origin, that are
8 intended for human consumption and that contain alcohol, whether
9 produced commercially or privately;

10 * Sec. 11. AS 29.10.200 is amended by adding a new paragraph to read:

11 (47) AS 29.20.270(e) (ordinance veto by mayor).

12 * Sec. 12. AS 29.20.270(a) is amended to read:

13 (a) Except as provided in (c), [AND] (d) and (e) of this sec-
14 tion, the mayor may veto an ordinance, resolution, motion, or other
15 action of the governing body and may strike or reduce appropriation
16 items.

17 * Sec. 13. AS 29.20.270 is amended by adding a new subsection to read:

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

21 * Sec. 14. AS 29.25.020 is amended by adding a new subsection to read:

22 (d) This section does not apply to an ordinance proposed under
23 AS 04.11.502(c).

24 * Sec. 15. AS 29.25.070 is amended by adding a new subsection to read:

25 (d) This section does not apply to an ordinance adopted under
26 AS 04.11.498(c).

27 * Sec. 16. AS 29.35.080(a) is amended to read:

28 (a) A municipality may regulate the possession, barter, sale,
29 importation, and consumption of alcoholic beverages in accordance with

1 AS 04.11.480 - 04.11.506 and AS 04.21.010.
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MEMORANDUM

TO: Mike Ford
Legislative Legal Counsel

FROM: Representative John Binkley, Chairman
Joint Special Committee on Local Option Laws

DATE: March 26, 1986

RE: Amendment to HB 700 - Local Option Legislation

This is to request the following three amendments to House Bill 700, prepared in Work Draft form.

Section 1. Legislative Findings. Add a new number (7) taken from Finding Number Ten of the Committee's report, and specifically the statement that "In communities which have chosen to ban the sale and importation of alcohol, most drinking takes place in private homes." Existing number (7) would move to (8).

New section following Section 5. Amending AS 04.16.220(b). Add to authority for seizure without a court order the authority to seize if the seizure is made incident to a citation issued under the new statutory authority.

Section 8. Amending AS 04.21.080(b)(1) Definitions. Change the definition of "alcoholic beverage" to mean "...spiritous, vinous, malt or other fermented or distilled liquids, whatever the origin, that are intended for human consumption and that contain alcohol, whether produced commercially or privately."

It is my understanding that you have discussed these changes with Laurie Otto, counsel to the Committee. I feel it will be helpful to have these changes incorporated in the text of the bill as it proceeds for consideration by committee members.

If you have further questions, please call my offices or Laurie directly.

BY THE RULES COMMITTEE BY
REQUEST OF ~~THE JOINT SPECIAL~~
~~COMMITTEE ON LOCAL OPTION LAWS~~

1 IN THE HOUSE

2 HOUSE BILL NO. 700

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulation of alcoholic beverages
7 and enactment of municipal ordinances."

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

9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10 (1) abuse of alcohol seriously interferes with the rights and
11 privileges of the people of the state;

12 (2) the public health, safety, and welfare does in fact suffer
13 when alcohol abuse is not controlled;

14 (3) prohibition of alcohol in rural areas of the state is an
15 effective tool for controlling the abuse of alcohol;

16 (4) serious crimes and a wide variety of other social problems
17 could be prevented if the possession of alcohol were prohibited;

18 (5) there is a strong and unmistakable correlation between
19 alcohol consumption and poor health, fetal damage, suicide, domestic
20 violence, and crime;

21 (6) the dangers resulting from alcohol abuse are particularly
22 acute in rural areas of the state because the communities are small,
23 isolated, without adequate law enforcement, without adequate health care
24 facilities, and populated by people who are closely related and interdepen-
25 dent; and

26 (7) the economic cost of alcohol abuse is high, and cannot be
27 afforded by the state or small rural communities.

28 * Sec. 2. AS 04.11 is amended by adding a new section to read:

29 Sec. 04.11.498. PROHIBITION OF POSSESSION OF ALCOHOLIC

1 BEVERAGES. (a) The following question, appearing alone, may be
2 placed before the voters of a municipality or an established village
3 in accordance with AS 04.11.502: "Shall the possession of alcoholic
4 beverages be prohibited in (name of municipality or vil-
5 lage)? (yes or no)."

6 (b) If a majority of the voters of an established village vote
7 "yes" on the question set out in (a) of this section, a person, begin-
8 ning on the first day of the month following certification of the
9 results of the election, may not knowingly possess an alcoholic
10 beverage in the established village, unless the alcoholic beverage is
11 sacramental wine to be used for bona fide religious purposes based on
12 tenets or teachings of a church or religious body, is limited in
13 quantity to the amount necessary for religious purposes, and is dis-
14 pensed only for religious purposes by a person authorized by the
15 church or religious body to dispense the sacramental wine. The board
16 shall be notified immediately after certification of the results of
17 the election and thereafter may not issue, renew, or transfer between
18 holders or locations a license for licensed premises located within
19 the perimeter of the established village. Licenses that may not be
20 renewed because of a local option election held under this section are
21 void on the first day of the month following certification of the
22 election.

23 (c) If a majority of the voters of a municipality vote "yes" on
24 the question set out in (a) of this section, an ordinance is adopted
25 that becomes effective beginning on the first day of the month follow-
26 ing certification of the results of the election, and a person may not
27 knowingly possess an alcoholic beverage in the municipality, unless
28 the alcoholic beverage is sacramental wine to be used for bona fide
29 religious purposes based on tenets or teachings of a church or

1 religious body, is limited in quantity to the amount necessary for
2 religious purposes, and is dispensed only for religious purposes by a
3 person authorized by the church or religious body to dispense the
4 sacramental wine. The board shall be notified immediately after the
5 adoption of the ordinance and thereafter may not issue, renew, or
6 transfer between holders or locations a license for licensed premises
7 located within the boundaries of the municipality and within unincor-
8 porated areas within five miles of the boundaries of the municipality.
9 Licenses that may not be renewed because of a local option election
10 held under this section are void on the first day of the month follow-
11 ing certification of the election.

12 (d) If a majority of the voters vote "no" on the question set
13 out in (a) of this section or vote "yes" on the questions set out in
14 AS 04.11.492 or 04.11.500 in an election conducted in accordance with
15 AS 04.11.502 after an election in which the voters voted "yes" on the
16 question set out in (a) of this section, the prohibition on the pos-
17 session of alcoholic beverages is removed effective 90 days after the
18 results of the election are certified except as those prohibitions
19 continue to be imposed in accordance with the results of the subse-
20 quent election.

21 (e) For the purposes of this section, "possession" means having
22 physical possession of or exercising dominion or control over alco-
23 holic beverages, but does not include having alcoholic beverages
24 within the digestive system of a person.

25 * Sec. 3. AS 04.11.502 is amended by adding a new subsection to read:

26 (c) A petition filed with the local governing body of a munic-
27 ipality in accordance with (a) of this section, which places on the
28 ballot the question set out in AS 04.11.498, shall constitute a pro-
29 posed ordinance of the municipality.

1 * Sec. 4. AS 04.16 is amended by adding a new section to read:

2 Sec. 04.16.205. PENALTY FOR VIOLATING BAN ON POSSESSION OF
3 ALCOHOLIC BEVERAGES. (a) A person who possesses alcoholic beverages
4 in a municipality or established village in violation of AS 04.11.498
5 or an ordinance adopted under AS 04.11.498 may, upon conviction, be
6 punished by a fine not to exceed \$1,000. When a peace officer stops
7 or contacts a person concerning a violation of AS 04.11.498 or an
8 ordinance enacted under AS 04.11.498, the peace officer may, in the
9 officer's discretion, issue a citation to the person as provided in
10 AS 12.25.180.

11 (b) A person cited for a violation of AS 04.11.498 or an ordi-
12 nance adopted under AS 04.11.498 for which a bail amount has been
13 established under (c) of this section may, within 30 days after the
14 date of the citation

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

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

22 (c) The supreme court shall establish by rule or order a sched-
23 ule of bail amounts that may be forfeited without a court appearance
24 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
25 11.498. In establishing the bail schedule the supreme court may
26 consider the quantity of alcoholic beverages possessed and the number
27 of prior violations of the person cited. The maximum bail amount may
28 not exceed \$1,000, and if a citation is issued that may be disposed of
29 without court appearance, the issuing officer shall write on the

1 citation the amount of bail applicable to the violation.

2 (d) Community work shall be performed at the direction of the
3 governing body of the municipality or the village council of the
4 established village. The value of community work in lieu of a fine is
5 \$5.00 per hour. When the community work is completed, the person
6 cited for the violation shall mail or personally deliver to the clerk
7 of the court in which the citation is filed by the peace officer

8 (1) a form, prescribed by the board, indicating completion
9 of the community work; and

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

14 (e) When bail has been forfeited or community work performed
15 under this section, a judgment of conviction shall be entered. For-
16 feiture of bail or performance of community work and forfeiture of all
17 seized items is a complete satisfaction for the violation. The clerk
18 of court accepting the bail or the form indicating performance of
19 community work shall provide the offender with a receipt stating that
20 fact.

21 (f) If the person fails to pay the bail amount established under
22 (c) of this section or to perform community work as provided in (d) of
23 this section, the citation is considered a summons.

24 (g) Notwithstanding other provisions of law, if a person cited
25 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
26 11.498 for which a bail amount has been established under (c) of this
27 section appears in court and is found guilty, the penalty that is
28 imposed for the offense may not exceed the bail amount for that
29 offense established under (c) of this section.

1 (h) A violation of AS 04.11.498 or an ordinance adopted under
2 AS 04.11.498 may not be considered a criminal offense and may not
3 result in imprisonment, nor is a fine imposed for a violation con-
4 sidered criminal punishment. A person cited for a violation does not
5 have a right to a jury trial or court appointed counsel.

6 * Sec. 5. AS 04.16.220(a) is amended to read:

7 (a) The following are subject to forfeiture:

8 (1) alcoholic beverages manufactured, sold, offered for
9 sale or possessed for sale, bartered or exchanged for goods and ser-
10 vices in this state in violation of AS 04.11.010; alcoholic beverages
11 stocked, warehoused, or otherwise stored in violation of AS 04.21.060;
12 alcoholic beverages possessed, sold or offered for sale in an area
13 where the results of a local option election have, under AS 04.11.-
14 490 - 04.11.500, prohibited the possession of alcoholic beverages or
15 prohibited the board from issuing, renewing, or transferring one or
16 more licenses or permits under this title in the area; alcoholic
17 beverages transported into the state and sold to persons not licensed
18 under this chapter in violation of AS 04.16.170(b);

19 (2) materials and equipment used in the manufacture, sale,
20 offering for sale, possession for sale, barter or exchange of alco-
21 holic beverages for goods and services in this state in violation of
22 AS 04.11.010; materials and equipment used in the stocking, warehous-
23 ing, or storage of alcoholic beverages in violation of AS 04.21.060;
24 materials and equipment used in the sale or offering for sale of an
25 alcoholic beverage in an area where the results of a local option
26 election have, under AS 04.11.490 - 04.11.500, prohibited the board
27 from issuing, renewing, or transferring one or more licenses or per-
28 mits under this title in the area;

29 (3) aircraft, vehicles, or vessels used to transport, or

1 facilitate the transportation of

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

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

7 (C) alcoholic beverages imported into a municipality
8 or established village in violation of AS 04.11.496;

9 (D) alcoholic beverages possessed in violation of
10 AS 04.11.498 or an ordinance adopted under AS 04.11.498;

11 (4) alcoholic beverages found on licensed premises that
12 [WHICH] do not bear federal excise stamps if excise stamps are re-
13 quired under federal law;

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

16 * Sec. 6. AS 04.16.220(d) is amended to read:

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

19 (1) upon conviction of a person under AS 04.11.010, 04.11.-
20 496(b), 04.11.498, or AS 04.21.060;

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

24 * Sec. 7. AS 04.16.220(h) is amended to read:

25 (h) Alcoholic beverages forfeited under (d) of this section
26 shall be placed in the custody of a peace officer of the state and
27 destroyed not later than 30 days after forfeiture. All other property
28 [PROPERTY] forfeited under this section shall be placed in the custody
29 of the commissioner of public safety for disposition according to an