

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

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Table IX-1. Total revenues derived from corporation and personal income taxes associated with wholesale and retail sale of beverage alcohol are not able to be determined by the Department of Revenue.* Thus, net state revenue was determined to be about \$7 million

TABLE IX-1
NET REVENUE OF STATE REGULATION OF SALE AND CONSUMPTION OF
BEVERAGE ALCOHOL, ALASKA, FY 1975^a

Source	Amount (dollars)
License Fees	
Wholesale Licenses	\$ 81,850
Retail Licenses	773,041
Excise Tax	6,598,213
Wholesale Industry Income Tax ^b	81,381
Multistate Tax	3,222
GROSS STATE REVENUE	\$ 7,537,707
Administrative Costs:	
Alcohol Beverage Control Office	225,659
Audit and Collection Division	261,242
TOTAL ADMINISTRATIVE COSTS	\$ 486,901
NET STATE REVENUE	\$ 7,050,806

^aAll figures provided by Department of Revenue, Division of Audit and Collections, except as noted.

^bReview of the Wholesale Liquor Industry, State of Alaska Legislative Council, Subcommittee of Taxation and Revenue Report, prepared by Janice C. Gull, p. 1. Figure is an estimate; direct information is unavailable.

*These taxes are paid out of the wages, salaries and profits generated by the beverage alcohol industry and were thus included in the calculation of value added to state production (Part II).

STATE GOVERNMENT ALCOHOL-RELATED EXPENDITURES

Table IX-2 provides a summary overview of budgeted expenditures, for various units of state government, that are attributable to regulation of sale of beverage alcohol and/or alcoholism and alcohol abuse.

TABLE IX-2

ALCOHOL-RELATED BUDGETED EXPENDITURES OF ALASKA STATE GOVERNMENT BY TYPE OF FUNDING SOURCE, 1975/1976

State Government Agency	Funding Source and Amount (thousands)				
	State General Fund	State General Fund-Match	Federal	Other	Total
Office of Alcoholism ^a	\$ 1,302.5	\$ 400.0	\$ 1,018.9	\$ 298.9	\$ 3,020.2
Program Service and Social Services ^b	924.7	760.9	1,550.0	214.0	3,449.6
Public Assistance ^b (AFDC, AD, Medicaid)	902.9	802.6	1,381.5		3,087.0
Public Health ^c	87.0				87.0
Division of Mental Health (API/Mental Health Centers) ^d	654.7	3.2	2.2		660.1
Municipal Revenue Sharing (Law enforcement and health) ^e	1,086.8				1,086.8
Alcohol Beverage Control Office ^f	225.7				225.7
Audit and Collection-Excise Tax ^f	261.2				261.2
Public Protection ^g					
Planning and Support (CJPA)	1.4	0.1	29.2	0.6	31.3
Violent Crimes Compensation Board	30.0				30.0
Enforcement--State Troopers	5,634.0		66.0		5,700.0
Prosecution	690.0				690.0
Public Defender	717.0				717.0
Court System	1,972.0				1,972.0
Corrections	3,780.9	0.19	1.9		3,782.9
TOTAL EXPENDITURES	\$ 18,270.8	\$ 1,966.9	\$ 4,049.7	\$ 513.4	\$ 24,800.8

^aPart VII, this Volume.

^bPart VI, this Volume.

^cCorrespondence with Program Managers--Public Health Nursing and Family Health.

^dAlaska Psychiatric Institute--Part V, this Volume; Mental Health Centers--Annual Plan, 1975.

^eCorrespondence--Department of Community and Regional Affairs.

^fDepartment of Revenue, Division of Audit and Collection.

^gPart IV, this Volume.

The total alcohol-related state government expenditure amounted to over \$24.8 million. This figure represents the total overall fiscal expenditure that can be realistically and fairly attributed to regulation of the sale of beverage alcohol, and to alcoholism and alcohol abuse. Thus, this figure is the gross overall expenditure of the state government due to the sale and consumption of beverage alcohol. Review of the table shows the various components of this overall expenditure, by state government unit and source of funds.

Table IX-3 provides an abbreviated overview of both revenues and expenditures attributable to the sale and consumption of beverage alcohol and alcoholism and alcohol abuse. The information from Table IX-1 and IX-2 is summarized here, and shows that total revenues actually amounted to about \$10.4 million, when state government-generated revenues and "tied" federal funds (federal funds specifically available for alcohol-related expenditures) are aggregated. The amount of over about \$24.8 million for alcohol-related state government expenditures remained the same as in Table IX-2.

The amount for "tied" federal funds is included in both the revenue and expenditure column of the table. These funds are indeed additional resources for the state government. They are also expenditures. Exclusion of this amount from either column would misrepresent the situation; exclusion from both columns would distort the magnitude of the relative revenues and expenditures.

Comparison of the alcohol-related revenues and expenditures shows that, from a fiscal point of view, state government expenditures exceeded revenues by more than \$14.4 million. This comparison is useful, however, only from a fiscal perspective, and raises several questions. The most

TABLE IX-3
SUMMARY OF ALCOHOL-RELATED STATE GOVERNMENT REVENUES AND
EXPENDITURES, 1975/1976
(thousands of dollars)

Revenues		Expenditures	
State Taxes and Fees	\$ 7,537.7	State General Fund Expenditures	\$ 20,751.1
Other Sources	513.4		
"Tied" Federal Funds*	2,400.4	State Expenditure of "tied" federal funds	2,400.4
		State Expenditure of non-"tied" federal funds **	1,649.3
TOTAL REVENUES ALCOHOL-RELATED	\$ 10,451.5	TOTAL EXPENDITURES ALCOHOL-RELATED	\$ 24,800.3

Source: Table IX-1 and Table IX-2.

*"Tied" federal funds are those funds received by the state government because of beverage alcohol consumption. The \$2,400.4 figure is comprised of \$1,018.9 of federal funds for alcohol programs and \$1,381.9 of federal funds for transfer payments due to alcoholism and alcohol abuse. (See also Part I, and Table IX-2.)

**"Non-tied" federal funds are those funds received by the state independent of their expenditure for alcohol associated reasons, but expended by the state government for alcoholism and alcohol abuse problems. As resources, these funds could be used for expenditures that were not associated with alcohol problems. (See also Table IX-2.)

Note: "tied" federal funds are included in both the revenue and expenditure column (see text).

important question concerns the distribution of the revenues and expenditures. This question and other related concerns are discussed in the next Part of this Volume. However, at this point, it is interesting to take notice of the various categories of revenues and expenditures (Table IX-1 and IX-2) and their relative magnitude. For example, only about 14% of state government expenditures due to consumption of beverage alcohol are budgeted for treatment and rehabilitation of alcoholics and alcohol abusers (Office of Alcoholism and Mental Health expenditures, Table IX-2). The remainder of the expenditures are excess costs in the operation of standard government activities due to alcoholism and alcohol abuse--about 86% of all alcohol-related expenditures.

PART X. CONCLUSION

The primary objective of this Volume was to provide a measure of the magnitude of the economic cost of alcoholism and alcohol abuse, and the economic benefit from sale and consumption of beverage alcohol, in Alaska. Each of the preceding Parts of this Volume provided detailed estimates of benefits or costs associated with sale and consumption, and abusive consumption, of beverage alcohol for particular categories of costs, isolated for the purpose of analysis.

This concluding Part brings these estimates together and provides a summary overview of the economic costs and benefits. Further, a comparison is made of the relative magnitude of the cost categories. In addition, this categorical profile of economic costs due to alcoholism and alcohol abuse in Alaska is compared with a corresponding profile of economic cost estimates derived from national estimates.

PROFILE OF ECONOMIC COSTS ATTRIBUTABLE TO ALCOHOLISM AND ALCOHOL ABUSE IN ALASKA

An overview summary of the economic cost attributable to alcoholism and alcohol abuse for the state of Alaska is presented in Table X-1, by category of cost. The total economic cost for Alaska was found to be approximately \$131.2 million. The greatest portion of this amount, 65.8%, is accounted for by the economic cost associated with loss of production--diminished productivity, occupational injuries and excess mortality due to alcoholism and alcohol abuse. The next major category of economic costs, 11.7% of the total, is accounted for by the alcohol-related cost to

the criminal justice system--enforcement, prosecution, courts and corrections. The economic cost for health and medical care contributes 10.1% of the total cost, and motor vehicle accidents (minus excess mortality costs) contribute 6.9% of the total. The economic cost for social services and direct alcoholism and alcohol abuse program services account for 2.7% and 2.8% of the total.

TABLE X-1
PROFILE OF ECONOMIC COST ATTRIBUTABLE TO ALCOHOLISM AND
ALCOHOL ABUSE

Category	Item Cost (\$-millions)	Non-Redundant Total Cost (\$-millions)	Percent of Total
Lost Production:		\$ 86.4	65.8 %
Diminished Productivity	\$ 57.5		
Occupational Injuries	4.3		
Excess Mortality	24.6		
Motor Vehicle Accidents	19.7	9.0*	6.9 %
Criminal Justice System	15.3	15.3	11.7 %
Health & Medical Care	13.3	13.3	10.1 %
Social Services	3.5	3.5	2.7 %
Direct Alcohol Programs	<u>3.7</u>	<u>3.7</u>	<u>2.8 %</u>
TOTAL ECONOMIC COST ATTRIBUTABLE TO ALCOHOLISM AND ALCOHOL ABUSE:		\$ 131.2	100.0 %

*Economic cost of alcohol-related motor vehicle accidents, excluding costs of excess mortality for fatal accidents.

ECONOMIC BENEFIT

The overall economic benefit from the sale and consumption of beverage alcohol in the state of Alaska during 1975 was found to be approximately \$94.1 million. As calculated in Part II, this amount includes the

economic value added to total state production as a result of the activities of the beverage alcohol industry within the state. In addition, this total benefit figure includes certain federal funds received as resources by the state for dealing with problems of alcoholism and alcohol abuse.

ECONOMIC COSTS AND BENEFITS

Within a strict economic framework, the economic benefit of \$94.1 million can be compared to the total economic cost of \$131.2 million, and yield the result of a net economic cost of \$37.1 million. This type of economic result, however, is not a particularly useful analytic finding from a social or political perspective. Although it does indicate that the economic cost of alcoholism and alcohol abuse in the state of Alaska is greater than the overall economic benefit derived from the sale and consumption of beverage alcohol by a substantial margin, several concerns emerge.

One of the primary concerns regards the distribution of the costs and benefits. Put very simply, who receives the economic benefits and who pays for the economic costs? This question of the distribution of economic costs and benefits is not simple to answer, and demonstrates the point of limited usefulness of the net cost result mentioned above.

As previously indicated, the purpose of this investigation was to provide a measure of the magnitude of the overall economic cost and benefit associated with beverage alcohol sale and consumption. However, interpretation of this information and implications of the findings require the use of contexts other than provided by an economic framework. The question of the distribution of economic costs and benefits involves social and political concerns. Should the economic benefit be more than, less than, or equal to the economic cost? How should the costs and benefits be distributed? What level of cost or benefit is desirable or tolerable in a population group?

There are a number of other questions that could be raised for discussion of the findings of the economic cost and benefit of sale and consumption of beverage alcohol. But this discussion is beyond the scope of this study. The main point is that for practical purposes the economic cost and the economic benefit, as able to be determined in this investigation, ought to be held separate for interpretation and discussion according to the various cost categories and not combined to produce some sort of net economic impact. However the magnitude and the profile of the economic cost and benefit are useful indicators for examination and analysis of the parameters of alcoholism and alcohol abuse.

The next section will provide some additional information that may be useful for future discussion of the interpretation and implications of the findings of this economic study.

NATIONAL COMPARISON

Another perspective for analyzing the economic cost attributable to alcoholism and alcohol abuse may be useful for examination of the parameters of alcoholism and alcohol abuse in Alaska. Thus the absolute and relative magnitude of the categories of the total economic cost as determined in this study will be compared with the estimates of the corresponding economic cost for the nation.* This is the only comparison available presently. Comparable information for any other state is based on that state's proportional share of the national cost estimate.

Comparative information for the absolute magnitude of the economic cost for alcoholism and alcohol abuse for the nation and for the state of Alaska is presented in Table X-2. In order to make this comparison, the national cost estimate for each cost category, determined in 1971 (column 1),

*Economic Cost, 1971.

TABLE X-2

COMPARISON OF ECONOMIC COST ATTRIBUTABLE TO ALCOHOLISM AND ALCOHOL ABUSE FOR ALASKA AND THE NATION, 1975

Cost Categories	1 National Study 1971 (\$-Billion)	2 National Study 1975 (\$-Billions)	3 National Study Adjusted 1975 (\$-millions)	4 Alaska Study 1975 (\$-millions)	5 Alaska Study vs. National Study Dollar Difference (\$-millions)	6 Percent Difference
Lost Production	\$ 9.35	\$ 13.28	\$ 25.2	\$ 57.5	\$ +32.3	+128.2 %
Excess Mortality	4.85	6.87	13.1	21.8	+8.7	+66.4 %
Motor Vehicle Accidents	6.44	9.14	17.4	19.7	+2.3	+13.2 %
Criminal Justice System	.51	.72	1.4	15.3	+13.9	+992.9 %
Health & Medical Care	8.29	11.77	22.4	13.3	-9.1	-40.6 %
Social Welfare	.14	.21	.4	3.5	+3.1	+775.0 %
Direct Alcohol Programs	.64	.91	1.7	3.7	+2.0	+117.6 %
TOTALS	\$ 30.21*	\$ 42.9	\$ 81.6	\$ 134.8**	\$ 53.2	65.2 %

Sources:

Column 1: Economic Cost, 1971.

Column 2: Adjustment of 1971 dollar amounts to 1975 dollar value, based on a 42% increase in the Consumer Price Index, 1971-1975, U.S. Bureau of Labor Statistics, San Francisco Regional Office.

Column 3: Adjustment of 1975 dollar amounts to amounts proportional to Alaska's population. 1975 U.S. civilian and military population--212.8 million; 1975 Alaska civilian and military population--404,600. Figures provided by Alaska Department of Labor.

Column 4: Figures from this Volume, Parts III-VIII.

*The actual reported total was \$25.37 billion. This amount excluded calculated value for excess mortality, which was included for comparison here.

**The actual reported total is \$131.2 million. For purposes of comparison with national study, estimated costs for occupational injuries--\$4.3 million and excess mortality for females--\$2.8 million were excluded. However, excess mortality costs were included in Motor Vehicle Accidents--\$10.7 million. Thus, the resulting total of \$134.8 rather than \$131.2 million.

was converted to the 1975 dollar value (column 2) and then pro rated in relation to the 1975 total population for Alaska (column 3). In other words, the economic cost for each category as presented in column 3 represents Alaska's share of the estimated national economic cost for alcoholism and alcohol abuse in 1975 dollars. Column 4 shows the economic cost for each corresponding category as determined in this study, which used essentially the same methodology as the national study, but current, Alaska-specific data. The value for the total economic cost for all categories as shown for column 4 is slightly different than the actual value, because certain amounts were included or excluded in different cost categories to allow for a more appropriate comparison (see footnote, Table X-2).

The major general finding of this comparison is that the total economic cost attributable to alcoholism and alcohol abuse as calculated for Alaska in this study amounts to over 65 percent more than Alaska's proportional share of the national economic cost of alcoholism and alcohol abuse. The fact that the economic cost calculated in this study is greater than Alaska's proportional share of the national economic cost is not surprising, but the magnitude is certainly dramatic.

The fact that the economic cost is greater, as well as the magnitude of the difference, may be due to differences in available data and assumptions made in the process of estimation, or to actual differences in the parameters of alcoholism and alcohol abuse in Alaska compared to the nation as a whole. Or, of course, some combination of these two possibilities may be the explanation.

At this point, the difference will be considered to be primarily due to actual variations in the impact of alcoholism and alcohol abuse on the characteristics of the categories used to estimate the economic cost. The

design of the present study was based on the design and the procedures of the national study, since it was the only prototype available, and also for the purpose of comparison. Some differences in methodology and estimation procedures do exist, and some improvements were made. However, in most cases the calculations made in this study must be considered more accurate, even if only from the point of view of greater availability and accessibility of more complete information for the state here in Alaska, compared to the sources used for the national estimate.

In addition, and perhaps most important, the national economic cost represents a composite of the impact of alcoholism and alcohol abuse for all fifty states. It would be unreasonable to expect that alcoholism and alcohol abuse problems would be evenly distributed across all states. Obviously, all the possible variables that could influence the situation are not similarly distributed in each state. Nevertheless, the magnitude of the difference in the total economic cost is striking, and certainly must be considered as significant.

A better understanding of the nature of the differences in the two overall cost estimates is provided by the estimates of economic cost for each category, presented in columns 4 and 5 of Table X-2. Examination of these columns shows that each category of cost is greater than the corresponding national equivalent, except for the category of health and medical care.

Available information for the estimated cost produced by this study shows that the economic impact of alcoholism and alcohol abuse on the health and medical care system in Alaska is smaller than Alaska's proportional share of the national economic cost estimate. For all other categories, this study produced a cost estimate that was in excess of the national equivalent, and in some cases the differences were quite extreme. Extreme differences were found particularly for the criminal justice system and the social welfare categories, which show percentage differences in economic

cost of over 993 and 775 percent, respectively, compared to the corresponding national cost estimate.

The percentage differences in economic cost for each category are somewhat misleading, because they show the absolute difference between corresponding economic cost categories without reference to the total cost for all categories. Perhaps a better representation of the differentiation of categories of economic cost is shown in Table X-3, where each category of economic cost is presented as a percentage of the total overall cost (all categories).

TABLE X-3

COMPARISON OF ECONOMIC COSTS ATTRIBUTABLE TO ALCOHOLISM AND ALCOHOL ABUSE FOR ALASKA AND THE NATION, RELATIVE TO TOTAL COST, 1975

Economic Cost Categories	National Study Adjusted		Alaska Study*	
	1 Amount (\$-millions)	2 Percent of Total	3 Amount (\$-millions)	4 Percent of Total
Lost Production	\$ 25.2	30.9 %	57.5	42.7 %
Excess Mortality	13.1	16.1 %	21.8	16.2 %
Motor Vehicle Accidents	17.4	21.3 %	19.7	14.6 %
Criminal Justice System	1.4	1.7 %	15.3	11.3 %
Health & Medical Care	22.4	27.4 %	13.3	9.9 %
Social Welfare	.4	.5 %	3.5	2.6 %
Direct Alcohol Programs	<u>1.7</u>	<u>2.1 %</u>	<u>3.7</u>	<u>2.7 %</u>
Totals	\$ 81.6	100.1%	134.8	100.0 %

*The economic cost and percentage of total are not the same as presented in Table X-1. Certain cost categories were adjusted for purpose of comparison. See footnote for Table X-2.

From this perspective, the relative importance of each cost category in accounting for the overall difference in the Alaskan and national estimate appears quite different. Comparison of the percentage figures in column 2 and 4, Table X-3, reveals that although the category of lost production accounts for the greatest percentage of the total cost in both estimates of total economic cost due to alcoholism and alcohol abuse, the estimate produced by this study for lost production (42.7% of total cost) is disproportionately greater than the corresponding national estimate (30.9%). In addition, the impact of alcoholism and alcohol abuse on the criminal justice system is also disproportionately greater as determined by this study, 11.3% of the total compared to 1.7% of the national total estimate of economic cost.

Relatively less important as contributors to the total economic cost are the categories of health and medical care, and motor vehicle accidents, in comparison to national estimates. The economic cost of health and medical care represents 27.4% of the total cost based on the national estimate, and only 9.9% of the total cost as determined in this study. Similarly, the economic cost of alcohol-related motor vehicle accidents accounts for 21.3% of the total national estimate, and 14.6% of the Alaskan estimate.

The economic cost for the social welfare category is only slightly greater than the corresponding percentage of the national total cost estimate. Finally, the relative percentages of the total cost accounted for by the categories of excess mortality and direct alcohol programs are similar for both the Alaskan and national estimates.

SUMMARY

The overall economic cost attributable to alcoholism and alcohol abuse is significantly greater than might be expected on the basis of

pro rated national findings. The magnitude of this difference is dramatically large--65% greater than the corresponding national estimate. The total economic cost amounts to \$131.2 million.

In Alaska, as compared with national estimates, a disproportional percentage of the total economic cost of alcoholism and alcohol abuse is accounted for by the cost associated with lost production and the criminal justice system. Similarly, in Alaska, the economic cost of excess health care contributes a disproportionately smaller percentage of the total cost compared to national findings.

**WORKING PAPERS:
DESCRIPTIVE ANALYSIS OF THE IMPACT OF ALCOHOLISM AND
ALCOHOL ABUSE IN ALASKA, 1975
(FIVE VOLUMES)**

Volume II

**AN ANALYSIS OF STATE LEGISLATION PERTAINING TO REGULATION AND
CONTROL OF BEVERAGE ALCOHOL AND ALCOHOLISM AND ALCOHOL
ABUSE, ALASKA, 1975**

Final Report

January, 1977

Prepared by

**Analysis of Alcohol Problems Project
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Project Director**

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**State Office of Alcoholism
Robert L. Cole, Coordinator
Department of Health and Social Services
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**Funded by a Special Grant for Implementation of the Uniform
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- Volume I The Economic Impact of Alcoholism and Alcohol Abuse
in Alaska, 1975
- Volume II An Analysis of State Legislation Pertaining to Regu-
lation and Control of Beverage Alcohol and Alcoholism
and Alcohol Abuse, Alaska, 1975
- Volume III Alcoholism and Alcohol Abuse Programs, Services
Delivery Systems, Alaska, 1975
- Volume IV Social Systems Indicators of Alcoholism and Alcohol
Abuse in Alaska, 1975
- Volume V Executive Summary: Descriptive Analysis of the Impact
of Alcoholism and Alcohol Abuse in Alaska, 1975

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FOREWORD

There is no topic in Alaska more familiar, more controversial, and simultaneously more opaque than alcoholism. Almost as if the problems and concerns associated with it were an intrinsic part of the Alaskan experience, everyone seems to have something to say about it. Newspaper articles and radio talk shows debate public drunkenness. Political campaigns are waged, promising greater priorities for the alcohol problem. Even the national wire services carry stories dubbing alcoholism "the bane of Alaska." From the person on the street, to merchants and city councils, to the most specialized of government and health officials--everyone seems to agree that alcoholism and alcohol abuse constitute the greatest human problem facing the state.

In short, there is no shortage of opinion in Alaska about alcoholism and alcohol abuse. In point of fact, however, there is precious little else except opinion. Theories abound as to the causes of problem drinking. Definitions of the very nature of the "problem" are as numerous as the dozens of State agencies, officials, organizations, and interest groups created (or simply compelled) to deal with it. Concerning what to do about it, feelings range all the way from simple apathy, to lip-service, to honest concern, to almost ideological fervor operating at the limits of reason. This is not to say that the public concern is in error: it is not. It is instead to say that, without foundation, not much can be done to seriously respond to that concern.

For so volatile and perduring a problem, there has been in Alaska virtually no significant statewide research to date. What research has

been conducted, has been fragmentary and poorly disseminated. Most often, as well, it has largely been based on concepts and models transplanted from other, inapplicable regions of the country. In all cases, such research has confined itself to a single problem or single aspect of a problem. Never, in other words, has an attempt been made to comprehensively conceptualize the problem in terms of all its major manifestations and attendant effects. By no means is this a denigration of any prior research efforts anywhere, for such was not their ambition. The time has simply come for a particular kind of undertaking: an integrated information and data base capable of addressing Alaska's alcoholism and alcohol abuse problems in all their important interrelationships.

The Analysis of Alcohol Problems Research Project, organized in September of 1975, began just such an undertaking. In response to the question of what (in its entirety) constitutes the problem of alcoholism and alcohol abuse in Alaska, the Project assumed as its province the full context of the intended and unintended consequences of the sale, distribution, and consumption of beverage alcohol in the state. Formally stated, the mission of the Project became the systematic collection of valid and reliable information for implementation of Alaska's Uniform Alcoholism and Intoxication Treatment Act. (The adoption of this act in 1972 essentially established policy for the State by decriminalizing public drunkenness and defining alcoholism as a public health problem.)

Throughout the Project, the nature of the research process was considerably less difficult to specify than the nature of the topic. With the health and medical services community exhibiting as much variance within its own ranks as between itself and the law enforcement or educational communities, little agreement existed as to how "alcoholism" and "alcohol abuse" should be defined. Considerable agreement existed, however, on the

fact that alcoholism and alcohol abuse impact the general public and the social system in a variety of ways. Alcoholism program client loads, child abuse, automobile accidents, alcohol-related crime, etc.--all became, from this perspective, equally valid and interconnected ways of looking at alcohol's impact on Alaskan society. In the same sense, they also thereby provided a composite basis for relating the many extant definitions of the problem (e.g., as a public health problem, mental health problem, criminal justice problem, child welfare problem, etc.).

For this reason, the Project took as its focus the measurable indicators of alcohol's impact on Alaska's social system, and on selected specific sub-systems: the economy, health and medical services delivery system, criminal justice system, et al.. The intention was not to be exhaustive, for such was impossible given the limitations of resources and time available for conduct of the study. Nor was the intention to be definitive, as the general paucity of useful information which plagues research efforts in Alaska made such a goal unrealistic. (In many cases, even basic information is not systematically reported or collected, nor kept in summary fashion.) Rather, the ambition was to develop a research methodology capable of being implemented at once, but also capable of being elaborated and refined on a continuing basis. Such an instrumentality, it was hoped, would serve the dual purpose of linking for the first time the several major areas (e.g., economic, legislative, programmatic, social, et al.) related to alcohol affairs in Alaska, and of constellating and grounding future alcohol-related research efforts in the state.

It should be said that such concentration on the collective effects of alcoholism and alcohol abuse was not intended to preclude genuine concern for the health and well being of individual alcohol abusers and their families. From the perspective taken, and because of the limitations

mentioned, it was not possible to address such highly relevant questions as whether alcoholism is a disease, addiction, defensive coping mechanism, etc.; or whether it derives from genetic transmission, learned behavior, cultural assimilation, or--in Alaska's case--a set of environmental factors so pervasive but elusive of description that it might quite unjokingly be called the "Arctic Factor". These remain, nonetheless, serious questions, and their omission had only to do with the fact that a need for the multiple-definition approach described above was considered more pressing.

The beginnings of this kind of multiple-definition approach are contained in the present report, Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975. The title is preceded by the term "Working Papers" because this is the first time that alcohol-related information of this scope has been collected and put to use, and because a great deal more information is still missing. For these reasons, reaction to the content of the report is not only seriously invited, but regarded as indispensable. Only by such review and response, it is felt, will the efforts initiated by this project and report yield more complete and comprehensive information about the impact of alcoholism and alcohol abuse upon Alaskan society.

The five volumes of the report are described below:

VOLUME I : The Economic Impact of Alcoholism and Alcohol Abuse in Alaska, 1975

Volume I investigates and describes the economic impact on Alaska of alcoholism and alcohol abuse. Major goals of the volume include the identification and estimation of financial benefits deriving from the sale and consumption of beverage alcohol, and determination of the economic cost of alcoholism and alcohol abuse for the state as a whole. Findings and methodologies for each of the cost categories utilized are presented. Further, the absolute and relative magnitude of economic costs for each category are analyzed, then compared with corresponding estimates based on national findings. Finally, a separate part of the volume examines the fiscal revenues and expenditures for State government which are directly attributable to the sale and consumption of beverage alcohol.

VOLUME II : An Analysis of State Legislation Pertaining to Regulation and Control of Beverage Alcohol and Alcoholism and Alcohol Abuse, Alaska, 1975

Volume II identifies and analyzes all Alaskan legislative statutes and administrative codes which are in any way concerned with the sale and consumption of beverage alcohol, or with alcoholism or alcohol abuse problems. Analysis includes internal examination of all the statutes and codes, resulting in presentation of detailed summaries of each of the major provisions within a categorical structure developed in the process. (No such categorical listing or cross-reference system for alcohol-related legislation existed, previously.) Additionally, all identified statutes and codes are discussed and analyzed with respect to their consistency or inconsistency with policies and provisions set forth in the Uniform Alcoholism and Intoxication Treatment Act, the only available source of legislative policy for alcoholism and alcohol abuse. Throughout, analysis of the statutes and codes is cast within the context of existing, relevant federal legislation.

VOLUME III : Alcoholism and Alcohol Abuse Programs, Services Delivery System, Alaska, 1975

Volume III presents the findings of an analysis of the major elements of the alcohol services delivery system in Alaska. Based on a modified systems approach, the analysis employs nationally established alcohol program components promulgated by the Joint Committee on Accreditation of Hospitals for development of the concept of an appropriate statewide alcohol services delivery system. Statewide organizations providing direct and indirect alcoholism services are described with respect to their various administrative and programmatic dimensions. Local alcohol programs are similarly described and compared with respect to their various treatment or program components. Additionally, all organizations and programs are analyzed with regard to their participation in an emergent, comprehensive services delivery system at both the statewide and regional levels. Throughout, the focus of analysis is the nature of the overall delivery system itself (components, allocations, comprehensiveness, etc.), and not comparison or evaluation of individual programs.

VOLUME IV : Social Systems Indicators of Alcoholism and Alcohol Abuse in Alaska, 1975

Volume IV assembles and discusses a range of current data and information regarding the social impact on Alaska of alcoholism and alcohol abuse. The data compiled are regarded as conventional social system indicators, and discussed accordingly. Each part of the volume concentrates on a specific set of such indicators, with primary attention given to the prevalence of alcoholism in Alaska, the consumption of beverage alcohol, related mortalities, crime, and highway safety. A number of other, related indicators are also reviewed. Wherever possible, information is analyzed historically and compared with corresponding national (and, where applicable, international) information and research findings.

Volume V Executive Summary: Descriptive Analysis of the Impact of
Alcoholism and Alcohol Abuse in Alaska, 1975

As an executive summary, Volume V synoptically treats the findings contained in the four primary volumes preceding it. Additionally, it integrates various portions of these findings to provide alternative descriptions of the impact on Alaska of alcoholism and alcohol abuse. The descriptions are not viewed as competitive, but as demonstrative of the various perspectives and approaches possible for description and analysis of the associated problems. Finally, overall policy-level recommendations extrapolated from the study's findings are suggested for more effective implementation of Alaska's Uniform Alcoholism and Intoxication Treatment Act.

VOLUME II

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VOLUME II

AN ANALYSIS OF STATE LEGISLATION PERTAINING TO REGULATION AND
CONTROL OF BEVERAGE ALCOHOL AND ALCOHOLISM AND ALCOHOL
ABUSE, ALASKA, 1975

PART ONE

I. INTRODUCTION

The social policy in the United States with regard to alcohol is embodied in legislation, and as will be seen, especially in the legislation of the fifty states. Unfortunately, even a cursory glance at Federal and State legislation indicates that national and state policy is so inconsistent--especially when related to manufacture, distribution and sales regulations--that at times it seems there is no real policy at all.*

The ultimate goal of this volume of the study is to present as comprehensive a review of Alaska's alcohol-related laws and regulations as possible, and to provide an analytic description of the various policies which do exist and their relationship to each other. Hopefully, an understanding of the current state of the law will lead to a more comprehensive implementation of alcohol policies.

The lack of a cohesive Federal and State policy probably stems from the changing public attitudes toward alcohol; ideas have changed, but the laws have often not. Essentially public attitudes and legislative responses in this century have moved from temperance and prohibition, to partial attempts to control the social consequences of drinking, to emphasis on alcohol abuse as a public health problem, the latter being

*"The Enhancement of Health," Chapter X in Alcohol and Health: New Knowledge, ed. by Mark Keller (Rockville, Md.: Dept. of Health, Education and Welfare, National Institute on Alcohol Abuse and Alcoholism, June, 1974); and R.J. Driver, A Survey of Alcoholic Beverage Control in the United States, a report prepared for the National Institute on Alcohol Abuse and Alcoholism (1974) for recent studies on contemporary state alcohol-related regulatory legislation.

embodied in the Hughes Act and various state adaptations of the Model Uniform Alcoholism and Intoxication Treatment Act. Along with these changes in attitudes has come a shift in responsibility from the national to the state and local levels of government. In order to understand the difficulties involved in formulating a cohesive alcohol policy, a brief review of legislative changes at Federal and State levels is necessary. (See Part VII for overview of analysis.)

FEDERAL ALCOHOL POLICIES

The temperance movement of the late nineteenth century finally culminated in the Eighteenth Amendment and the Volstead Act, establishing a national policy regarding the sale and manufacture of alcoholic beverages. Unfortunately the hopes of the temperance movement were not realized, and Prohibition led to increased lawlessness rather than national abstention. With the repeal of Prohibition in 1933, the Federal government ended its control over the manufacture, sale and distribution of alcohol, and thrust the responsibility for these matters back on the States. As a result, it became the duty of the various state legislatures to decide whether or not alcoholic beverages were to be sold, and what control measures would best protect the public health and safety.

Beginning in the mid-sixties, the Federal government partially reentered the alcohol field in response to growing public recognition that the problems of alcohol abuse were exceeding the capacities of state and local governments to respond. The Highway Safety Act of 1966, the Economic Opportunity Act amendments of 1967 and 1969, the Alcoholism Rehabilitation Act of 1968 and the Community Mental Health Center Act amendments of 1970 all reflect awareness by the Federal government that the consumption of alcohol leads to serious social problems. The Comprehensive Alcohol Abuse

and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (known as the Hughes Act) and its 1974 and 1976 amendments, established the National Institute on Alcohol Abuse and Alcoholism (NIAAA) to initiate a policy development program for alcohol abuse, and originally provided for federal assistance to state and local treatment programs. While the Hughes Act is the main federal response to alcohol problems, the U.S. Congress has also provided for approaches to alcohol-related problems through the following Acts: The Health Maintenance Organization Act of 1973, the National Health Planning and Resources Development Act of 1975, the research provisions of the Public Health Service Act of 1944, the Comprehensive Employment and Training Act of 1973, the Omnibus Crime Control and Safe Streets Act of 1968, the Juvenile Justice and Delinquency Prevention Act of 1974, the Food Stamp Act of 1964, the medicaid, medicare and social services provisions of the Social Security Act of 1935, the Rehabilitation Act of 1973, and the Housing and Community Development Act of 1974. The Drug Abuse Act of 1970 was amended in 1974 and retitled the Alcohol and Drug Abuse Education Act in recognition of the priority which Congress has assigned to coping with the nation's alcohol-related problems by facilitating the implementation of educational programs specially designed to deal with problems associated with alcohol abuse.

The sheer bulk of Federal legislation*, along with the definition of alcohol as a dangerous drug in the Alcohol and Drug Abuse Education Act, clearly indicates that the Federal government considers alcohol a severe threat to public health and safety. Nevertheless, the fact remains that, except for a few unimportant revenue and import-export measures, the Federal government has refrained from exercising any control over the manufacture and sale of alcohol. While the Federal government has recognized the dangerous effects of alcohol, it remains the responsibility of the

*See Appendix C.

individual states to control the sale and distribution of the substance itself.

STATE ALCOHOL POLICIES

With the repeal of national prohibition, States had three options-- state-wide prohibition, which has been abandoned by all who tried it, state monopoly for off-premise sales, which is used by eighteen states, and licensing systems, which are used by thirty-two states and the District of Columbia. Alaska currently uses the licensing system, which does not allow as much control by the state as the monopoly method does.

State legislation from 1933 to the mid-sixties reflects an ambivalent attitude towards drinking which may have resulted from the public's ambivalence.* On the one hand, the fact that alcohol is a dangerous drug is tacitly recognized--although Alaska does not officially define it as such--in such control measures as required closing hours, limits on the number of licenses per capita, and the prohibition against sales to minors, on election days, and near churches. On the other hand, many alcohol-related regulations are aimed at promoting an economically healthy and stable liquor industry (especially revenue measures) and at keeping the liquor industry dissociated from criminal elements and activities. State legislation enacted during this period of history appears to be in large part a result of the experiences of National Prohibition; the laws reflect

*Selden D. Bacon, "Meeting the Problems of Alcoholism in the United States," in A World Dialog on Alcohol and Drug Dependence, ed. by Elizabeth D. Whitney (Boston: Beacon Press, 1970). Selden D. Bacon, "Alcohol and Complex Society," Chap. V. in Society, Culture and Drinking Patterns, ed. by David J. Pittman and Charles R. Snyder (New York and London: John Wiley and Sons, Inc., 1962); and Mark Keller, "Tributes to E.J. Jellinek," pp. xi-xvi in Alcohol and Alcoholism, ed. by Robert E. Popham (Toronto: Univ. of Toronto Press, 1970) for information and analysis of the social dimensions of alcohol use and misuse.

little hope of preventing alcohol abuse and instead focus on the liquor industry as a legitimate business and on limits on the availability of alcohol--issues suited more toward business stability rather than moderation of consumption. Unfortunately there is little reason to believe that this approach has been successful in promoting moderate drinking practices.*

Although there have been no major breakthroughs in the field of alcohol abuse, the states in the last decade have evidenced some hope of controlling alcohol abuse by treating it as a public health problem. The Uniform Alcoholism and Intoxication Treatment Act (hereinafter, the Uniform Act), adopted in Alaska (1972) with some modifications, attempts to treat and prevent alcohol abuse as a disease and remove it from the criminal justice system.**

The Uniform Act also provides the only clear statement of legislative policy on alcoholism and alcohol abuse for the state--that it is to be treated as a public health problem.

The net effect of this historical development in Alaska is a schizophrenic policy. On the one hand the dangerous effects of alcohol are recognized in the Uniform Act and a few control measures limiting availability

*See Don Cahalan, "Implications of National Surveys on Drinking Behavior Problems," pp. 361-2 in Alcohol Abuse and Alcoholism Vol. II of Alcoholism: A California State Senate Report (Sacramento: State of California, The Senate, August, 1974).

**See Frank Grad, Audrey Goldberg and Barbara Shapiro, Alcoholism and the Law (Dobbs Ferry, N.Y.: Ocean Publications, Inc., 1971); "The Legal Status of Intoxification and Alcoholism," Chap. VII in Alcohol and Health, Mark Keller, cons. ed. (Rockville, Md.: Dept. of Health Education and Welfare, National Institute on Alcohol Abuse and Alcoholism, Dec., 1971); Arthur D. Pratt, Jr., "A Mandatory Treatment Program for Skid Row Alcoholics; its Implication for the Uniform Alcoholism and Intoxication Act," Journal of Studies on Alcohol, Vol. 36, No. 1 (New Brunswick, N.J.: Rutgers University, The Center of Alcohol Studies, Jan., 1975); and Norman P. Kurtz and Marilyn Reiger, "The Uniform Alcoholism and Intoxication Treatment Act: The Compromising Process of Social Policy Formulation," Journal of Studies on Alcoholism, Vol. 36, No. 11, (Nov., 1975), for the legislative history of the development of, and critical comments on the implementation of the model state Uniform Alcoholism and Intoxication Treatment Act.

of alcohol. On the other hand, control of sales is minimal, despite the fact that the legislature has plenary powers over alcohol,* including but not limited to, control over closing hours, advertising, container size, excise taxes, and the criminal justice system. As a result, administrative agencies such as the Office of Alcoholism and the A.B.C. Board are not given a clear indication of the policy which they are to implement, or the changes in public opinion which they are to foster. Instead, much of the responsibility for controlling sales is passed on to the localities, while the resources needed by local governments are scarce due to revenue sharing problems and a prohibition against special local taxes on alcohol. Some of the responsibility for controlling the sale of alcohol is also passed on to individual sellers, but typically rests with local law enforcement agencies.

Ultimately, however, the responsibility for controlling the sale and distribution of alcohol rests with state legislatures, and has since the Federal government passed it back to the States in 1933. It is up to the states to formulate a sale and distribution policy which will deal adequately with the problems of alcohol abuse. Admittedly a legislature must consider the general social climate in which it operates, however shifts in public opinion in recent years** indicate that this may be an appropriate time for the legislature to exercise leadership in this area.

*See *Boehl v Sabre Jet Room Inc.*, 349 P2d 585 (Alaska, 1960).

**See L. Harris and Associates, Inc., "Public Awareness of the NIAAA Advertising Campaign and Public Attitudes Toward Drinking and Alcohol Abuse," a report prepared for the National Institute on Alcohol Abuse and Alcoholism, (1974); and D. Cahalan, I.H. Cisin and H.M. Crossley, American Drinking Practices; A National Study of Drinking Behavior and Attitudes, Monograph No. 6 (New Brunswick, N.J.: Rutgers University, Rutgers Center of Alcohol Studies, 1969) for public opinion surveys on the use of alcoholic beverages.

For this reason, the laws relating to alcohol have been summarized and organized according to the following categories: (1) Sales, covering statewide regulations, local controls, licensing, and the A.B.C. Board; (2) Revenue Measures, including license fees and the excise tax; (3) Criminal and Civil disabilities associated with alcohol; (4) The Uniform Act and Title IV; and (5) Administrative Agencies concerned with alcohol. This organizational scheme is not based on that in the statutes--none exists--but has been designed to provide the clearest presentation possible. This exhaustive legislative outline is presented in PART TWO.

Following the legislative outline, a narrative summary and analysis of all legislation considered is presented in PART THREE. This includes a brief overview of the laws and a discussion of the interrelationship of the laws with particular reference to the policies of the Uniform Act.

Additional resource materials are provided in the Appendices for further reference.

PART TWO

II. SALE: CONTROL OF ALCOHOLIC BEVERAGES PRIOR TO CONSUMPTION

A. STATEWIDE REGULATION

1. When Sales May Not Occur.

a. Between 5:00 a.m. and 8:00 a.m. on each day of the week.

1.) No person may consume, sell, offer for sale, give, furnish or deliver intoxicating liquor from an authorized licensee on any licensed premise between the hours of 5:00 a.m. and 8:00 a.m. each day of the week (1).

2.) Additional Specifications - AAC (170).

- a.) No person shall sell, offer for sale, give, furnish or deliver any intoxicating liquor on any licensed premise between the hours of 5:00 a.m. and 8:00 a.m. each day.
- b.) No person shall be on any licensed premise between the hours of 5:00 a.m. and 8:00 a.m. each day. This sub-section shall not apply to bona fide employees of the licensee who are on the premises for the specific purpose of preparing for the next day's business, or to persons remaining on the premises of a bona fide restaurant for the purpose of consuming food or non-alcoholic beverages.
- c.) No licensee shall permit any person to be on his licensed premises between the hours of 5:00 a.m. and 8:00 a.m. each day. This sub-section shall not apply to bona fide employees of the licensee who are on the premises for the specific purpose of preparing for the next day's business or to persons remaining on the premises of a bona fide restaurant for the purpose of consuming food or non-alcoholic beverages.
- d.) No persons shall consume any intoxicating liquor on any licensed premises between the hours of 5:00 a.m. and 8:00 a.m. each day.
- e.) No licensee shall permit any person to consume intoxicating liquor on his licensed premises between the hours of 5:00 a.m. and 8:00 a.m. each day.

b. On an election day. It is unlawful to give, barter, sell, or in any licensed premises to dispose of intoxicating liquor on an election day until the polls have closed (2).

2. Where Sales May Not Occur.

- a. Where licensed premises is connected to another retail establishment. Retail liquor store sales may not occur on any licensed premises (retail) which is connected by a door or any other means of passage to another retail establishment (except establishments licensed under Title 4.) (3).
- b. Where entrance to the premises is near a church or school. Beverage dispensary or retail liquor store sales may not occur in any building in which the public entrance is within 200 feet of a school or church building (4).
- c. Where zoning regulations prohibit sales. Beverage dispensary or retail liquor store sales may not occur (licensees may not operate such establishments) in incorporated cities where zoning regulations prohibit liquor sales (5). (SEE LOCAL OPTIONS, PART II, B.)

3. To Whom Sales May Not Occur.

- a. To minors or intoxicated persons.
 - 1.) It is unlawful to give, barter or sell any intoxicating liquors to a person under 19 or to an intoxicated person or for a licensee to permit the giving, selling, bartering, or drinking of liquor by either of the forbidden classes within the premises (7).
 - 2.) Persons under 19 may not enter or remain on licensed premises unless accompanied by a parent, guardian or spouse who is of age (8).
 - 3.) A person or firm, company or employee thereof who sells, barter, gives or delivers liquor to a person under 19 is guilty of a misdemeanor, punishable by imprisonment of not more than one year and/or a fine of not more than \$500.00 (9).
 - 4.) It is unlawful for a person under 19 to solicit the purchase or in any other way attempt to purchase liquor (10).
 - 5.) A person who influences or attempts to influence the sale, giving or selling of liquor to a person under 19 is guilty of a misdemeanor (11).

6.) Additional Specifications - AAC (171).

- a.) No person under the age of 19 years shall knowingly enter or remain in that portion of any licensed premises wherein alcoholic beverages are being sold, served or consumed, except in the company of a parent, spouse over the age of 19 years, or a legal guardian.
- b.) A licensee, at his discretion, may refuse entry to that part of the licensed premises wherein alcoholic beverages are being sold, served or consumed to any or all persons under the age of 19, even though such person is accompanied by a parent, spouse over the age of 19 years, or legal guardian. The licensee may refuse any service to such persons under the age of 19 years and may require them to leave the portion of the licensed premises wherein alcoholic beverages are sold, served or consumed.
- c.) No licensee shall permit any person under the age of 19 years to sell or serve any alcoholic beverages.
- d.) No licensee shall permit any person under the age of 19 years to entertain or work on a paid or voluntary basis, in that portion of the licensed premises wherein alcoholic beverages are being sold, served, or consumed.

7.) Other Provisions

- a.) Proof of age.
 - (1.) A valid Alaska driver's license is acceptable as proof of age when used for identification for purchase of liquor and for presence in liquor establishments. If such identification is presented, the licensee may not be held liable for serving minors or permitting minors on the premises (12).
 - (2.) Identification cards for the same purpose as above are issued by the Department of Public Safety (13).
- b.) Employment of minors and others.
 - (1.) No person under 19 may be employed or allowed to sell or serve intoxicating liquors or to work in any room or other place where intoxicating liquors are sold for consumption on the premises, unless it is in the course of his or her employment as a musician, entertainer or busboy (14).

(2.) Additional Specifications - AAC (172).

- (a.) No person shall employ, upon any licensed beverage dispensary, any hostess or entertainer for the purpose of directly procuring or encouraging the purchase or sale of alcoholic beverages, or to pay any such hostess or entertainer a percentage or commission on the sale of alcoholic beverages for procuring or encouraging the purchase or sale of alcoholic beverages on such premises.
- (b.) No licensee, in any place of business where alcoholic beverages are sold to be consumed on the premises, shall employ or knowingly permit anyone to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting.
- (c.) Liability of employer for acts of bartenders. A licensee is responsible for his bartender's employment of girls to solicit drinks from patrons.
- (d.) Board may make further rules: The enactment of this section does not deprive the board of authority to adopt a rule against beverage dispensary licensees permitting female employees from soliciting or accepting drinks for their own consumption.
- (e.) Definitions:
 - * "solicitation" means direct solicitation of drinks and does not prohibit purchase of drinks by patrons while watching entertainment or when asked by an individual regularly employed as a waitress. An example is: evidence that a female asks a male patron, "Do you want a drinking companion?" supports a finding that she solicited or begged a drink.
 - * "loiter" means to linger idly by the way, to idle, or to loaf.

4. Controls On Number Of Licenses.

Number of licenses limited by a population base. Unless otherwise provided, no new licenses are issued where the total of licensed premises in the aggregate at one time would exceed one license of each type for each 1,500 population (16).

5. Taxation

For description of the State Excise Tax see, under REVENUE, III. Taxation is a statewide regulation because it affects the price of alcoholic beverages, which in turn affects demand (consumption).

6. Other Regulations

a. Toilet facilities required.

1.) An owner of a restaurant or tavern shall provide and maintain on the premises sanitary toilet accommodations for public use. An owner of a restaurant or tavern in operation on August 1, 1974, has two years from that date to comply with this requirement (17).

2.) A person who fails to comply with the above is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500.00 (18).

b. Limitations on conduct of employment agencies. The Department of Labor may not issue a permit to conduct an employment agency in connection with a pool hall, bar or intoxicating liquor dispensary, or recreation center operated for profit (19).

c. Credit sales of intoxicating beverages. No holder of a retail alcoholic beverage license may sell intoxicating beverages other than for cash, except that a hotel, boardinghouse or inn which offers lodging may sell intoxicating beverages to persons lodging there and include the charge for the beverages with the bill for the lodging, to be paid at the time the customer pays for the lodging. A person who unlawfully sells intoxicating beverages on credit is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 (20).

7. Penalties

a. General penalty (for violation of Title 4). A person who violates any provision of Title 4 other than giving liquor to persons under 19, is guilty of a misdemeanor, punishable by imprisonment of not more than one year or by a fine of not more than \$500.00 (21).

b. Additional penalty for violation by licensee. Upon conviction of a licensee for violating a regulation of Title 4, the board may suspend the license for the first and second violations, and revoke it for the third (22).

B. LOCAL CONTROLS

1. The Municipality's Power to Regulate.

a. Municipality's powers include power to regulate alcoholic beverages.

Among its other powers of regulation, municipality may regulate alcoholic beverages as provided in AS 04.15.070. (23).

b. Municipality may provide rules and regulations by ordinance.

1.) A municipality may by ordinance provide rules and regulations governing the barter, sale and possession of intoxicating liquor within the municipality necessary to the orderly conduct of the business of selling liquor. The ordinance may not be inconsistent with Title 4 (24).

2.) No municipality may impose taxes other than property taxes on liquor inventories and sales taxes on liquor sales when these taxes are levied on other property and sales within the municipality (24).

2. Options For Control Available Within Incorporated Municipalities.

a. Local governing body may protest application for transfer, renewal or new license.

1.) Upon deciding to approve a license application, the board must transmit written notice of its intent to approve the transfer, renewal or new license requested, to the city governing body or borough assembly. If the local governing body wishes to protest approval, the board may not take final action on the application until it has provided for a hearing on the protest in accordance with the requirements of the Administrative Procedure Act (AS 44.62) (25).

2.) If at the hearing the application for a license is rejected, the board shall refund the application fee less the sum of \$25.00. No license fee may be refunded after the license has been issued (26).

b. Local option election. If 35% of the voters in an incorporated city petition the city council to do so, the council will place the question of whether or not intoxicating liquor is to be sold on the ballot. If, at the next municipal election, the majority of voters are against liquor sales, the board shall deny applications for licenses and shall not issue new licenses for one year. In incorporated cities where there were no licensed premises on June 19, 1976 no new license or permit may be issued until the city council conducts a local option referendum election.

c. Local authorities may further restrict hours of sale. Incorporated municipalities may provide for additional closing hours (beyond the minimum of between 5:00 a.m. and 8:00 a.m.) (1).

- d. Local authorities may permit liquor sales during local elections. The governing body of a political subdivision of the state may provide by ordinance that liquor sales are lawful in that political subdivision on election days (28).
- e. City council approval where zoning regulations prohibit sale. No licensee may operate a beverage dispensary or retail liquor store in any incorporated city where zoning regulations prohibit liquor sales, without city council approval (5).

3. Options For Control Available Outside Incorporated Municipalities.

- a. Citizen protest. An adult resident in an area outside of a municipality may protest the issuance, reissuance, renewal or transfer of a license within two miles of his residence or within his established village. If 35 percent of the residents of a village protest the issuance, reissuance, renewal or transfer of a license in writing to the A.B.C. Board, the Department of Community and Regional Affairs must conduct a local option referendum election, the results of which are binding upon the A.B.C. Board (29).
- b. Public approval in remote areas. No license for the sale of intoxicating liquor may be issued in any area which is 50 miles or more from the incorporated boundaries of a municipality, unless a petition containing the signatures of two-thirds of the residents 19 or over residing within a five-mile radius of the nearest U.S. post office station is filed with the board (30).
- c. Consent of residents outside incorporated cities. If no post office exists within a five-mile radius of the proposed business location, then a majority of the residents 19 or over residing within one mile of the location may file a petition with the board requesting that the license be issued (31).

4. Penalties.

- a. Penalty for violation of municipal ordinance. A person who violates any provision of a municipal ordinance is guilty of a misdemeanor, punishable by imprisonment for not more than one year or by a fine of not more than \$500.00 (32).
- b. Additional penalty for violation by licensee. Upon conviction of a licensee for violating a local ordinance, the A.B.C. board may suspend the license for the first and second violations, and revoke it for the third (22).
- c. Penalty for sale in violation of local option. A person who unlawfully sells or offers for sale an intoxicating liquor in an area where the local option has made it illegal is guilty of a misdemeanor, punishable by imprisonment for a period not to exceed one year, and/or by a fine not to exceed \$5,000.00 (33).

C. LICENSING

1. Control of Liquor Manufacture and Traffic Through Licensing.

- a. Appropriate license necessary for liquor manufacture and traffic. No person, firm, corporation, organization, or company may manufacture, sell, offer for sale or possess for sale or barter, traffic in, barter or exchange for goods in this state, an intoxicating liquor without first procuring an appropriate license (34).
- b. Place which is common nuisance. A place where unlicensed manufacture or sale or drinking of intoxicating liquor is allowed is declared to be a common nuisance. A person who maintains, aids or abets or is associated in maintaining such a place is guilty of a misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$500.00, and/or imprisonment for not less than 30 days nor more than six months (35).
- c. Consumption may not occur upon any licensed premises, unless permitted in the terms of the license. The licensee shall not permit the drinking of hard or distilled liquors by any person upon the premises, unless it's permitted under classification of the license (7).

2. Classification of Licenses.

a. Wholesale (no sale to consumers).

1.) General Wholesale

- * Liquor sold in original packages, wine in bulk; sales in quantities not less than 5 wine gallons to license holders only. License required for each distributing point.
- * Fee: \$500.00 for first \$50,000 sales;
- * Excess Fees: \$250.00 to \$5,000 on graduated schedule, depending on total sales above \$50,000 (36).

2.) Wholesale Malt Beverage and Wine

- * Sales of malt beverages and wine in original packages and in bulk; sales in quantities not less than 5 wine gallons to license holder.
- * Fee: \$100.00 for first \$100,000 sales;
- * Excess Fees: \$150.00 to \$5,000 on graduated schedule, depending on total sales above \$10,000 (37).

b. Retail.

Additional Specifications - AAC (173).

- * A retail license gives to the holder thereof the privilege, as accorded by law, to transfer ownership of intoxicating beverages from himself to a legally qualified purchaser, for cash, paid promptly after the verbal or written solicitation for purchase has been received within his licensed premises.

* Definition:

- "sell or sale" means the transfer of ownership of alcoholic beverages from a licensee to a qualified purchaser upon the receipt of verbal or written solicitation to contract such transfer.
- "cash" means money or its equivalent paid promptly to a licensee by a qualified purchaser upon transfer of ownership of alcoholic beverages.
- "establishment" means a place of business. i.e., licensed premises as stated on a licensee's application for his current license as filed with the board.

1.) On-sale (sales by drink to consumers for on-premises consumption).

Additional Specifications - AAC (174).

No licensee, except those who qualify under AS 04.05.030, shall permit alcoholic beverages sold for consumption on the licensed premises to be removed therefrom. A licensee, his agent or employee who shall use reasonable diligence in the enforcement of this regulation shall not be deemed in violation of said regulation.

a.) Beverage Dispensary

- * Beer, wine, hard liquors sold on premises for consumption on premises.
- * \$2,500 surety bond filed when applying for license; conditions that applicant sole owner, no other person financially interested directly or indirectly, applicant conduct business under law.
- * FEE: \$500.00, pop. under 1,500; \$1,000, pop. over 1,500 (38).

Additional Specifications - AAC (175).

Any licensee who is the holder of a beverage dispensary license who maintains upon or within the premises for which his license is issued more than one room in which there is regularly maintained a fixed counter or service bar at which alcoholic beverages are served to members of the public for consumption within the licensed premises shall obtain from the board, after proper investigation and approval, a duplicate of his original license for each such additional room containing a fixed counter or service bar and shall post a duplicate of his original license in each of such rooms. He shall pay to the board at the time of application for each duplicate license an amount equal to the license payable for a like period for his original beverage dispensary license. (City Council recommendation within corporate municipalities is mandatory for the maintenance of such additional rooms.)

b.) Restaurant - Beer & Wine

- * Serve beer and wine in restaurant with meals.
- * FEE: \$300.00 (39)

Additional Specification - AAC (176)

The entire business conducted on the licensed premises of a restaurant or eating place licensed to sell beer or wine must be under the sole operation and control of the licensee. Any other arrangement is inconsistent with the Act.

c.) Roadhouse - Beer & Wine

- * Roadhouse is more than 18 miles from city limits, serves food.
- * Sell beer and wine for consumption on premises only.
- * FEE: \$150.00 (40)

d.) Club

- * Been incorporated and active for two years or more, club serves liquor on premises to members and families (state or national charter necessary).
- * FEE: \$400.00, except gross sales preceeding year under \$5,000, then \$200.00 (41).

Additional Specifications - AAC (177)

- * A member is defined as one who has paid up membership in a licensed club or organization and who, under their constitution and by-laws, has all voting rights and full membership privileges.
- * Guests (who enter the club premises on the invitation of a member) may be served alcoholic beverages if accompanied personally by said member. A guest shall be required to leave the premises immediately upon the departure of the member who extended the invitation of entry.
- * A club license may not be used to accomodate club members, officers, employees or anyone else seeking to purchase bottle or case goods for use off the licensed premises of the club.
- * The issuance of a club license is a privilege extended to certain qualified organizations which do not traffic in alcoholic beverages for profit and are operated solely for social, recreational, political, benevolent or athletic purposes, but not for pecuniary gain. The soliciting of public patronage except under circumstances approved by the board is inconsistent with the provisions of the Act.
- * The club is responsible for all activities in all parts of their licensed premises and is charged with strict adherence to all provisions of the liquor laws of Alaska and any regulations promulgated thereunder.

e.) Common Carrier Dispensary

- * Sell for consumption on boats, aircraft, railroad buffet cars, transit only, except stationary sales allowed if not prohibited by local ordinance.
- * FEE: \$250.00 per each vessel, aircraft, buffet car (42)

f.) Recreational Site - Beer

- * Sell beer at recreational event one hour before or after event, for consumption at site. Sale during school event prohibited.
- * FEE: \$300.00 (43).

g.) Pub - Beer & Wine

- * Sell beer and wine for consumption at designated location on premises of accredited college, university.
- * FEE: \$300.00 (44).

2.) Off-Sale (for off-premises consumption, package sales).

a.) Retail (sales to consumers).

- * Liquor sold original packages; wine in bulk. 20 wine gallons maximum sale at one time to one person.
- * Consumption on premises prohibited.
- * FEE: \$600.00, except sales for year not exceed \$20,000., fee is \$300.00 (45).

Additional Specifications - AAC (178).

- * Each retail licensee desiring to prove less than \$200,000 gross sales in any calendar year from the sale of intoxicating beverages must maintain a complete record of all retail package sales of intoxicating beverages. This record shall clearly show the total amount of such sales for each fiscal year period separately from sales of other commodities and for intoxicating beverages sold on any other licensed premises.
- * Any such licensee must also keep the original bills and invoices in connection with the purchase of intoxicating beverages. Also, they shall take and preserve a physical inventory of intoxicating beverages on June 30 or December 31 of each year. Such inventory shall be extended financially at cost.

b.) Retail Stock Sale (no sales to consumers).

- * Bulk quantity sale, 5 wine gal. minimum; stock of former retail liquor store when owner closing out.
- * 90 day license.
- * FEE: \$100.00 - 90 day period.(46).

c.) Community Liquor License (Beverage Dispensary or Retail).

- * Holder must be first or second class city.
- * City which has within boundaries beverage dispensary or retail license issued to private person before June 1, 1970 not eligible for community liquor license unless held liquor license through corporation or otherwise before June 1, 1970.
- * FEE: See beverage dispensary or retail license fees (47).

c. Production (No sales to consumers).

1.) Bottling Works - Beer and Wine

- * Beer and wine bottled and sold; no sales less than 5 wine gallons.
- * FEE: \$100.00 (48).

2.) Brewery - Beer

- * Beer brewed, manufactured, prepared, bottled, barreled for sale.
- * No sale less than 5 wine gallons.
- * FEE: \$100.00 (49).

3.) Distillery

- * Liquors distilled, prepared, bottled, barreled; no sale less than 5 wine gallons, sales in state only to licensees.
- * FEE: \$100.00 (50).

3. Qualifications of Licensees.

- a. Licensee is charged with knowledge that is purchasing from properly licensed source. Licensees selling to the general public are charged with the knowledge that the wholesaler, distiller, importer, brewer or bottler from whom they purchased intoxicating liquor is properly licensed (51).
- b. Residence requirement. No beverage dispensary or retail license may be issued to a person or association of persons who have not resided in the state for at least one year prior to the date of the application, or to a corporation not qualified to do business in the state (52).
- c. Financial interest. No corporation, wholesaler, owner, officer or representative of a wholesaler, brewery, winery, bottling works, or distillery may own interest in a beverage dispensary or retail liquor store, or finance directly or indirectly, a license-holder in procuring quarters, or supplying equipment, furnishings or stock (53).

d. Financial interest and personal superintendence.

- 1.) No person but the licensee shall have a direct or indirect financial interest in the licensed business (54).
- 2.) The licensee is solely responsible for the lawful conduct of the business under Title 4 (54).

e. Qualifications of non-resident licensees.

- 1.) A distiller, brewer or wholesaler, whose principal place of business is outside the state shall obtain a separate wholesale license for the sale of his or her products in the state and shall obtain a separate license for each wholesale distributing point inside the state (55).
- 2.) A non-resident selling liquors in the state, shall designate a principal place of business in the state where records shall be located, and appoint an agent upon whom process can be had (55).

4. Application For License.

a. Manner of filing and contents of application.

- 1.) An applicant shall file a written application with the director of the A.B.C. board specifying the kind of license desired, a description of the place for which the license is desired, and a statement of the citizenship or corporate qualifications of the applicant (56).
- 2.) Additional Specifications - AAC (179).
 - a.) Each license shall be issued to a specific person or persons and except in case of licenses authorizing the sale of alcoholic beverages on trains or boats, or the service of alcoholic beverages on airplanes, shall be issued for a specific location to be known as the licensed premises, the principal address of which shall be indicated on the license. The mailing address of the licensees must be kept current and on file in the main office of the Alcoholic Beverage Control Board.
 - b.) Corporations applying for licenses shall provide the names and addresses of the president, vice-president, secretary, managing officer or officers and all stockholders who own ten percent or more of the stock in said corporation, together with all other information deemed necessary by the board.
- 3.) Additional Specifications - AAC (180).

The state police shall assist in the investigation of new licensees and applications for liquor licenses outside the corporate limits of any municipality before such applications are considered or reviewed by the board.

- 4.) Any applicant making a false statement in the application is guilty of perjury, subject to the penalty provided by law for the crime of perjury (56).
- 5.) If any false statements are made in the application, it may be denied. If false statements are discovered after the license has been granted, the A.B.C. board may revoke the license. If the license is revoked, license money deposited by the applicant is forfeited to the state (56).
- b. Public notice. Before a license is issued, renewed or transferred the A.B.C. Board shall provide by regulation for adequate notice to the public and the local governing body. When necessary the notice shall be bilingual. It shall be posted at the location of the premises, at the nearest post office and at one other conspicuous location for at least 10 days. A true copy of the application must be provided to the news media 30 days before it is filed (57).
- c. Posting of the license. The licensee shall post the license conspicuously in the place of business (58).
- d. Case in which license renewal shall not be denied. No licensee shall be denied a renewal of his or her license for another location where, because the lease terminated for the old location, or because of condemnation or substantial destruction of the premises by any cause, it becomes necessary to relocate, or where public convenience is better served by the transfer. The licensee, if deprived of his or her business location, shall apply for another acceptable location within three months (59).
- e. Transfer of license. No license may be transferred without the consent of the A.B.C. Board. License transfers are subject to the population limitations on licenses under Title 4. No license may be transferred out of the election district in which it was granted except within an organized borough or a unified municipality. Licenses already issued on April 25, 1960, shall be renewed irrespective of the population limitations (60).
- f. Licensing to encourage tourist trade. The board may, in its discretion, approve the issuance or transfer of a license without regard to the quota provisions under Title 4. When it appears that the issuance or transfer will encourage the construction or improvement of a hotel, motel, resort or similar business related to the tourist trade having a minimum of 10 rooms and a dining facility (61).
- g. Other controls on application for licenses. See controls under state-wide and local regulations:
 - 1.) Regulations against monopolies. II., A., 4., a.
 - 2.) Number of licenses limited by population base. II., A., 4., b.
 - 3.) Where zoning regulations prohibit sale. II., B., 2., e.
 - 4.) Local governing body may protest application for transfer, renewal or new license. II., B., 2., a.

- 5.) Local option election. II., B., 2., b.
- 6.) Protest by individual. II., B., 3., a.
- 7.) Public approval in remote areas. II., B., 3., b.
- 8.) Consent of residents outside incorporated cities. II., B., 3., c.

5. Regulation of Existing Licenses.

- a. Provisional license. A provisional license shall be issued upon payment of the minimum fees for wholesale licenses. Not later than February 15 of each year following that for which a license has been issued to a licensee, the licensee shall file an affidavit showing the amount of business done during the preceding year, and shall pay the excess fees for the wholesale license. Unless the affidavit is filed and the fee paid, the license shall be cancelled (62).
- b. Duration of licenses. All licenses, except for lesser periods authorized, shall be issued for the calendar year ending December 31. The director may issue a license for half a year upon payment of half the license fee (63).
- c. Reissuance of licenses. A license is renewable automatically if the license fee is paid. An application for reissuance shall contain the same information as is required for a new license (proof of posting not necessary). A license which has not been active at least 30 days during the preceding year may not be reissued. The license is automatically revoked if the renewal application has not been filed and the license fees have not been paid by February 28 (64).
- d. Transfer of licenses.
 - 1.) A license may be transferred to a new location to be operated by a qualified licensee. An application for transference shall contain the information requested by the A.B.C. board and be accompanied by proof of posting of application (65).
 - 2.) No license may be transferred by the licensee to any other person except with the written consent of the A.B.C. board. The board shall not approve the transfer unless all the debts and taxes are paid, or the transferor gives security for the payment of them (66).
 - 3.) Additional Specifications - AAC (181)
No person shall receive or transfer controlling interest in a liquor license issued to a corporation without the written consent and approval of the board.

- e. Death of licensee. If the licensee dies, the executor of his or her estate shall within 90 days or before December 31 (whichever date occurs first) apply to the board for transfer of the license. If this is not done, the license is forfeited and void (67).
- f. Service of guests in public accommodations. A hotel, motel, resort or similar business holding a beverage dispensary license which has as a substantial part of its business the catering to the travelling public, may serve alcoholic beverages in its dining room, banquet room and to guests in their rooms (68).
- g. Exemption for liquor licenses. (In a bankruptcy case) the liquor license of a judgment debtor is exempt from execution (69).

6. Penalties.

Suspension or revocation of license.

- 1.) The drinking of intoxicating liquor by, or the presence of either of the forbidden classes on the premises covered by a license issued under Title 4 is cause for suspension or revocation of any license (70).
- 2.) Upon conviction of a licensee for violating a provision of Title 4 or a local ordinance, the A.B.C. board may suspend the license for the first and second violations, and revoke it for the third (22).

D. A.B.C. BOARD

1. Composition and Conditions of Membership

a. Appointment, qualifications, and terms of office of members of departmental boards, councils, or commissions. Each member of the [Alcoholic Beverage Control Board] shall be a citizen of the United States. The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the [Department of Revenue], and with a view to providing diversity of interest and points of view in the membership. Appointments are subject to confirmation by a majority of the members of the legislature, joint session (71).

b. Creation of board and office of director.

1.) The A.B.C. Board is established within the Department of Revenue and consists of five members appointed for overlapping three-year terms. The governor shall appoint the board subject to legislative confirmation. No board member may hold any other state or federal office, two members shall be actively engaged in the alcoholic beverage industry (except wholesale), and no three members may be engaged in the same business. Three members constitute a quorum. The board shall meet at least once a year in each of the four judicial districts (72).

2.) The governor shall appoint a director, subject to legislative confirmation, who is the executive officer of the board, but who is not a member of the board. The director may cast a tie-breaking vote and shall issue all licenses (72).

c. Delegation of duties to the director. The board may delegate any duty to the director except its power to make rules and regulations (73).

2. As Administrator of Title 4.

a. Application of Administrative Procedures Act. The procedure of state boards, commissions, and officers, ie., of the Alcoholic Beverage Control Board, shall be conducted under the Administrative Procedures Act, not withstanding similar provisions in the statutes dealing with state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under the A.P.A. is limited to named functions of the agency (74).

b. Powers, authority and control.

1.) The board may control the manufacture, barter, sale and possession of liquor and may adopt necessary rules and regulations to assume the proper administration of state liquor regulations in a manner that will protect the public health, safety and welfare (75).

a.) Additional Specifications - AAC (182).

Licensed premises shall be construed to mean any or all so designated portions of any building or structure, rooms or enclosures therein, or real estate leased, used, controlled and/or operated by a licensee in the conduct of the business for which he is licensed by the board at the specific address for which the license is issued. It shall be the duty of the licensee to clearly designate the limits of the licensed premises in his application for license. The board may reduce the area of the licensed premises described in the application where, in the judgement of the board, a reduction in area is in the best interests of the public or where a reduction in area is necessary to insure adequate control over the sale and consumption of alcoholic beverages on the premises.

b.) Additional Specifications - AAC (183).

(1.) It shall be illegal to sell varieties of whiskey which generally have been sold in containers of a specific size, in containers of similar appearance and size but of smaller content, which might mislead the public as to the quantity of whiskey contained in them.

(2.) Containers of whiskey of 1/10 gallon and 1/6 of a gallon capacity shall be considered prima facie to be containers which might mislead the public, as defined above, except that nothing in this regulation shall prohibit the continued sale of varieties of liquor in 1/10 gallon or 1/6 of a gallon containers, which varieties were sold in Alaska prior to August 15, 1962.

c.) Additional Specifications - AAC (184).

Any corporation holding any license under AS 04.05.030. shall report to the board any transfer of its corporate stock involving ten percent or more of said stock or any change of its corporate officers or members of its board of directors. Such report shall be made in writing in duplicate to the board at Juneau at a date not more than ten days following the transfer of the stock or the change in officers or directors. The provisions of this rule shall not apply to any corporation the stock of which is listed on a stock exchange, or to any bank, trust company, financial institution or title company to which a license is issued in a fiduciary capacity, or corporation which are required by laws to file periodic reports with the Securities Exchange Commission.

2.) The board shall review all applications for licenses and shall issue, reissue, revoke, transfer or suspend all licenses in the best interests of the public (75).

a.) Additional Specifications - AAC (185).

The following are the grounds which constitute a basis for the possible suspension or the revocation of licenses:

- (1.) When the continuance of a license would be contrary to the best interest of the public; but proceedings under this section upon this ground are not limitation on the Alcoholic Beverage Control Board to proceed under provisions of AS 04.05.030.
- (2.) A violation of any Alcoholic Beverage Control Board rule or regulation by a licensee, his agent or employee.
- (3.) The misrepresentation of a material fact by an applicant in obtaining any license.
- (4.) The plea, verdict, or judgement of guilty to any public offense involving moral turpitude or violation of any law concerning the manufacture, barter, sale and possession of intoxicating liquors.
- (5.) Where the portion of the premises of the licensee upon which the activities permitted by the license are conducted are a resort for illegal possessors or users of narcotics, prostitutes, pimps, panderers or sexual perverts. In addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort of illegal possessors or users of narcotics, prostitutes, pimps, panderers or sexual perverts.
- (6.) Failure to correct objectionable conditions within a prescribed time or reasonable time after receipt of notice to make such correction issued by the Alcoholic Beverage Control Board or agent thereof.
- (7.) Disciplinary action by military or naval authorities against any licensed premises.
- (8.) Any failure to comply with the laws, rules and regulations pertaining to public health in Alaska.
- (9.) Conviction of a charge of gambling within the limits of any licensed premises.

b.) Additional Specifications - AAC (186).

It is the opinion of the board that any individual, group of individuals, company, corporation, agency of the state of federal government, who by writ of attachment shall force the involuntary transfer of an existing license, shall in effect become the transferrer and shall bear the responsibility for the same as provided for under AS 04.05.030.

c.) AAC (187).

(1.) The board has determined that it is against the best interests of the public for any persons to maintain any club room in which any alcoholic beverage is received or kept, or to which any alcoholic beverage is brought, for consumption on the premises by members of the public or of any club, corporation, or association, unless the person or premises are licensed under AS 04.05.030.

(2.) The board has further determined that it is against the best interests of the public for any person to keep, maintain, operate or lease any premises for the purpose of providing therein, for a consideration, a place for the drinking of alcoholic beverages by members of the public or other persons, unless the person and premises are licensed under AS 04.05.030.

(3.) As used herein, consideration includes cover charge, the sale of food, ice, mixers or other liquids used with alcoholic beverage drinks, or the furnishing of glassware or other containers for use in the consumption of alcoholic beverage drinks.

d.) AAC (188).

The board may refuse the renewal or transfer of any license when the applicant is delinquent in the payment of any taxes when such tax liability arises in full or in part out of the exercise of the privilege of an alcoholic beverage license.

e.) AAC (189).

At any time when there are no premises, the licensee shall surrender the license to the board until such time as operations are resumed.

3.) The board may hold public hearing when applications are protested and require applicants to answer pertinent questions (75).

- 4.) The board may appoint support personnel it considers necessary in giving effect to Title 4 (75).

Additional Specifications - AAC (190).

The director and the persons employed by the board for the administration and enforcement of Chapter 197, SLA 1959 have all the powers of peace officers in the enforcement of the penal provisions of this Act, the rules and regulations of the board, and any other penal provisions of the State of Alaska governing the manufacture, barter, sale and possession of intoxicating liquors in the State of Alaska.

- 5.) The board may promulgate rules and regulations necessary to effectuate the purpose of Title 4. These rules and regulations shall have the effect of law (75).

Additional Specifications - AAC (191).

- a.) Beer manufacturers or wholesalers of alcoholic beverages to non-licensees having a fixed place of business or residence upon territory within the State of Alaska which is maintained by the United States Government as a military or naval reservation or a national park, may deliver such alcoholic beverages to such instrumentalities at such premises only when the purchaser is a ship's service store, officer's club, officer's mess, post exchange or similar organization. Such deliveries may be made only to persons who present at the instrumentalities' place of business a written order for the purchase of the alcoholic beverages specified in the order, which shall be issued by the service organization for which the purchase is made. Any licensee making such sales and deliveries shall keep the original order attached to the copy of the invoice on file at the licensee's premises.
- b.) Alcoholic beverages sold to federal instrumentalities by beer manufacturers or wholesalers licensed under AS 04.05.030. may be delivered only for use within the state which comprises the military or naval reservation or national park.
- c.) Manufacturers, wholesalers, and rectifiers who deliver or cause to be delivered alcoholic beverages on federal reservations, shall pay the state alcoholic beverages tax on such alcoholic beverages so delivered and subsequently claim credit for all excise taxes paid when such deliveries are made to organizations which are instrumentalities of the federal government.

- 6.) The A.P.A. governs all proceedings under Title 4 (75).

- c. Providing for local option elections. The board shall provide a system for holding of local option elections and prescribe the rules and regulations for holding of elections and canvassing of the votes (76).
- d. Review of board action. An action relating to the administrative duties imposed by Title 4. is subject to review by the board at the instance of an aggrieved party. A board action or decision relating to the issuance, reissuance, suspension or revocation of a license under Title 4. is subject to review (77).

3. As Regulatory Agency.

- a. General power to regulate. The board shall prescribe rules and regulations consistent with Title 4. governing the manufacture, barter, sale, and possession of intoxicating liquors and shall prescribe application fees (78).

- b. Scope of regulations.

- 1.) Regulating employment, conduct and duties of board employees (79).
- 2.) Prescribing the forms of application, reports and other forms, and the terms and conditions in permits and licenses (79).

- a.) Additional Specifications - AAC (192).

- (1.) A caterer's permit shall give to the holder thereof the right to sell intoxicating beverages at conventions, picnics, social gatherings, sporting events or similar affairs where the premises are not otherwise licensed. Any holder of a beverage dispensary license currently in use may apply to the board for a caterer's permit. Before applying to the board for a caterer's permit, written notice must be given to the chief of police if the permit is sought for a location within a municipality, and to the state police officer in charge if the permit is sought for a location outside of a municipality.
- (2.) Such notice shall be given to the appropriate police authority at least one week in advance of the date for which the caterer's permit is desired, and proof of such notice having been timely given must accompany the application to the board. The board shall consider any protest made by the appropriate police authority in determining whether or not the granting of the permit would be in the best interest of the community involved.

a.) Additional Specifications - AAC (192). (Continued)

- (3.) A copy of the notice given to the proper police authority shall be submitted to the board as part of the application and shall include a description of the premises, and specific hours of intended operation. At such catered affairs, the licensee shall comply with all provisions of the law, rules or regulations pertaining to the proper conduct of business to those holders of beverage dispensary licenses. Any violation of any provisions of said law, rules or regulations may be grounds for suspension or revocation of licensee's beverage dispensary license. A caterer's permit is not transferable. The fee for a caterer's permit shall be \$25.00 and shall accompany the application for permit.

b.) Additional Specifications - AAC (193).

- (1.) A special events permit shall give the holder thereof the right to sell beer at retail for consumption on designated premises for a specific occasion and limited period of time.
- (2.) Only non-profit, fraternal, civic or patriotic organizations incorporated and active for a period of two or more years may make application for such permit and all profits derived from sale of the beer must go to the organization itself and not to any individual.
- (3.) All applications for special events permits must be received in the main office of the Alcoholic Beverage Control Board at least ten days prior to the date the permit is desired. All applications must be signed and duly notarized by both the president and secretary of the organization applying for said permit. Further, a sworn affidavit showing the length of time said organization has been in existence must accompany the application together with a certified copy of the resolution of the membership or board of directors authorizing the application.
- (4.) The written approval of the local law enforcement agency under whose jurisdiction the proposed premises are located must also accompany the application.
- (5.) The special events permit may be used only at the premises stipulated on the permit. The permit must be surrendered to the board, its agent, or the law enforcement agency approving the permit, within 48 hours of its expiration time. Failure to so surrender the permit may, in the discretion of the board, prevent the organization from acquiring future permits.

b.) Additional Specifications - AAC (193). (Continued)

(6.) Not in excess of three such special events permits may be granted to any organization, including any women's auxiliary thereof, in any one calendar year.

(7.) All regulatory measures of the Liquor Act and the rules and regulations of the board shall be strictly adhered to by the holders of a special events permit.

(8.) The fee for a special events permit shall be \$25.00 per day.

c.) Additional Specifications - AAC (194).

A conditional contractor's permit shall give to the holder thereof the right to sell beer upon specified premises located within the boundaries of a military or naval reservation, or in a remote area as designated by the board. Provided, however, that said holders thereof shall file with the board written permission for same from the commanding officer of said military or naval reservation or the prime contractor of the remotely situated project. This permission shall be renewed yearly upon re-application for permit and may be cancelled or suspended at the commanding officer's or the prime contractor's discretion. In no event shall a condition contractor's permit be transferable, nor shall it be valid after the completion of the holders' thereof contract or closing of said military or naval reservation. The conditional contractor's permit fee shall be \$300.00.

d.) AAC (195).

A conditional canteen or beer hall permit shall give to the holder thereof the right to sell beer upon specified premises located within the boundaries of a military or naval reservation or at a remotely situated project, provided however, that said holders thereof shall file with the board written permission for same from the commanding officer of said military or naval reservation or the prime contractor of the remotely situated project. This permission shall be renewed yearly upon re-application for permit and may be cancelled or suspended at the commanding officer's or the prime contractor's discretion. In no event shall a conditional canteen or beer hall permit be transferable. The conditional canteen or beer hall permit fee shall be \$300.00.

3.) Prescribing the fees to be paid for permits and licenses issued for which no fees are prescribed by statute, and prescribing the fees for anything done or permitted to be done under the regulations (79).

4.) Providing for regular and special board meetings (79).

- 5.) Providing for delegation to the director of routine administrative functions and powers, including the issuance, transfer and renewal of licenses and permits where there is no contest or protest (79).
- 6.) Prescribing the manner of giving and serving notice required by law or regulation where it is not provided for by statute (79).
- 7.) Prescribing the conditions, accommodations, qualifications, and inspections of each type or kind of license, licensee, or licensed premises (74).
- 8.) Providing for the making of returns and reports by wholesalers of wine, beer and liquor (79).
- 9.) Providing for the giving of fidelity bonds by any or all of the board employees, the state to pay the premiums for the bonds (79).
- 10.) Providing for the issuance, renewal, reissuance, revocation and suspension of licenses and permits (79).
- 11.) Prohibiting possession of alcoholic beverages by minors (79).

Additional Specifications - AAC (196).

- a.) Any person under the age of 19 years is prohibited from possessing or controlling any alcoholic beverages.
 - b.) Any person under the age of 19 years is prohibited from knowingly consuming alcoholic beverages except as provided under AS 04.15.080. However, this provision in no way exonerates parents, guardians or spouses from prosecution for contributing to the delinquency of a minor when such delinquency arises in part or full from their giving of alcoholic beverages to any said minor.
- 12.) Prescribing reports from license corporations, including reports of stock ownership transfer and changes of officers and directors (79).

d. Designation of restaurants.

- 1.) The board, with the approval of the city council or borough assembly shall designate which premises are restaurants because minors are allowed to enter and remain upon such premises where liquor is sold for the purpose of dining or dancing if accompanied by an adult (8).

2.) The board shall promulgate regulations for the designation of restaurants and the continuation or withdrawal of the designation (8).

- e. Sale on election days in unorganized areas of the state. The A.B.C. board shall adopt regulations governing the sale of liquor on election days in the unorganized areas of the state (28).

4. Penalties For Violation of Regulation.

- a. Penalty for violation of A.B.C. Board regulation. A person, firm, or corporation, who violates a board rule or regulation governing the manufacture, sale, barter, and possession of liquor, or the qualifications of those engaging in the manufacture, sale, barter, and possession of liquor, or the payment of license fees and excise taxes, is guilty of a misdemeanor, punishable by imprisonment of not more than one year or by a fine of not more than \$500.00 (80).
- b. Suspension or revocation of license. The board may, upon direction of a majority of its members, suspend or revoke a license and declare the bond forfeited upon conviction of a licensee for violation of a provision of Title 4. or of a municipal ordinance (22).

III. REVENUE FROM LICENSES AND TAXATION

A. LICENSES

1. Disposition Of Funds.

Revenue from license fees goes into general fund. Money collected or due the state for licenses under the provisions of Title 4. shall be deposited with the Dept. of Revenue and covered into the general fund (81).

2. Conditions Of Refund.

Cities and boroughs must enforce liquor laws to participate in revenue sharing. Money derived from the licenses issued, except wholesale licenses within organized boroughs and all classes of cities, shall be refunded semi-annually to the boroughs and cities. If the officers of a borough or city fail to actively enforce its ordinances, the laws of the state, and the regulations relating to the manufacture and sale of liquor in the state, the commissioner of revenue may deny the refund and no further money may be paid to the local governments until the enforcement of the laws and regulations is actively resumed (82).

3. Additional Fees.

Deposited in general fund. Any application fee prescribed by the board is in addition to any other fee charged under Title 4. and shall be deposited in the general fund (83). (SEE FEES CHARGED FOR LICENSES UNDER II., C., 2., CLASSIFICATION OF LICENSES.)

B. TAXATION

1. Excise Tax On Intoxicating Liquor.

- a. A.B.C. board's power to adopt rules & regulations. The power of the board to adopt rules and regulations includes providing for the making of returns and reports by wholesalers of wine, beer and liquor (79).
- b. Liquor tax. Every brewer, distiller, bottler, jobber, retailer, wholesaler, or manufacturer who sells intoxicating liquors in the state or who consigns shipments of intoxicating liquors into the state, whether or not the liquors are brewed, distilled, bottled or manufactured in the state, shall pay the following taxes (84):

Type of Intoxicating Liquor	Tax
Malt Beverages (Alcoholic content 1% or more).	25¢ / gallon
Wine & other liquors 21% by volume or less.	60¢ / gallon
Liquors with alcoholic content more than 21%.	\$4.00 / gallon

- c. When tax may not be levied. The excise tax may not be levied on consigned shipments of liquor into the state if the consignments are to state licensed bonded warehouses in this state until the intoxicating liquor is removed from the warehouse for sale or consignment to retailers (85).
- d. When report must be filed and tax paid.
- 1.) A statement containing an account of the liquors sold or consigned to buyers or consignees in the state during the preceding month shall be sent to the Dept. of Revenue on or before the last day of each calendar month (86).
 - 2.) The excise tax is paid to the Dept. of Revenue on or before the last day of each month for liquor sold or consigned during the preceding month (87).
- e. Delinquency. A penalty fee of 5% per 30 days for delinquent tax payments (not to exceed 25% in the aggregate) is added to the payments and interest in delinquent cases is assessed at the rate of 6% a year (88).
- f. Administration and enforcement of tax.
- 1.) Wholesalers (including brewers, distillers, bottlers, jobbers and manufacturers) are primarily liable for payment of the excise tax and they shall furnish a \$25,000. surety bond payable to the Dept. of Revenue and approved by the Dept. of Law. In the event that the wholesaler fails to pay the excise tax, the bond is forfeited and his or her license is revoked. (The Dept. of Revenue, at its discretion, may issue permits in lieu of requiring bonds of resident wholesalers, upon prepayment of the excise tax). It is unlawful for a wholesaler (including the holder of a production license) to sell intoxicating liquors in the state or consign them into the state, without first furnishing the bond and obtaining the appropriate license (89).

2.) The retailer or buyer is secondarily liable for the taxes on intoxicating liquors which are sold to him or her. The state has a lien upon the liquors, and may seize, confiscate and sell them to satisfy the payment of the taxes and the costs of the proceedings, without regard to where or in whose possession the liquors are found (90).

3.) Restrictions on flow of liquor.

a.) Stock must be confined to licensed premises. It is unlawful for a licensee to carry for sale any stock of intoxicating liquor except on the premises indicated on the license (91).

b.) Premises must be accessible for inspection. The licensed premises shall be easily accessible for inspection by peace officers, including members of the director of the A.B.C. board, during regular business hours (92).

c.) Liquor shipments to unlicensed persons are subject to confiscation. Any liquor shipped into the state for sale other than to licensees is contraband and subject to confiscation by the state (93).

d.) Restrictions on warehousing of liquor.

(1.) Liquor may not be stocked or warehoused on premises other than those indicated on the license unless the premises are inspected and approved by the board before their use; the use of the premises for storage is authorized by applicable zoning ordinances; and the premises are accessible for inspection (94).

(2.) Liquor sales may not be transacted from premises approved for storage (94).

(3.) Liquor warehoused on premises that are not licensed or that have not been approved is contraband and subject to confiscation (94).

2. Penalties Related to Excise Tax.

a. Person who wilfully fails to fulfill requirements of law. A person who wilfully fails to obtain the license certificate or permit, pay the excise tax, make a return, keep or display the required records, or supply the required information at the time required by law or regulation is, in addition to other penalties provided by law, guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 and/or imprisonment for not less than one year, together with the cost of prosecution (95).

- b. Person who wilfully lies on a return. A person who wilfully lies on a return is guilty of a felony, subject to the penalties prescribed for perjury under the laws of the state.(96).
- c. Penalty for fraud with intent to evade the tax. If a part of a deficiency in the tax is due to fraud with intent to evade the tax, then 50% of the total amount of the deficiency (in addition to the deficiency) shall be assessed and collected (97).

3. Sales And Property Tax.

No municipality may impose (alcoholic beverage) taxes other than property taxes on liquor inventories and sales taxes on liquor sales when these taxes are levied on other property and sales within the municipality (24).

IV. CONSUMPTION PROBLEMS: CRIMINAL SANCTIONS AND CIVIL DISABILITIES

A. CRIMINAL SANCTIONS

1. Voluntary Intoxication Not a Defense.

Intoxication shall not be used as a defense. An act committed by a person while in a state of voluntary intoxication is not less criminal because he or she was intoxicated. However, in considering a case the jury may take into consideration the defendant's intoxication when a particular motive, purpose or intent is a necessary element in a particular kind or degree of crime. "Intoxication" refers to intoxication from the use of a drug as well as to the intoxication from alcohol (98).

2. Operating a Motor Vehicle While Under The Influence of Intoxicating Liquor.

a. Mandatory revocation of license. Operating or driving an automobile, motorcycle or other motor vehicle while under the influence of intoxicating liquor, dangerous or narcotic drugs is grounds for immediate revocation of an operator's license (99).

b. Implied consent doctrine.

1.) Person who operates motor vehicle in this state considered to have given permission to chemical test of breath if arrested for offense related to O.M.V.I. Test administered by law enforcement officer (100).

2.) If arrested person refuses to submit to chemical test after advised by officer that refusal result in suspension, denial, or revocation of license, test not given. Upon receipt of sworn statement from officer that person refused submit to chemical test, Department of Public Safety notify person license revoked or suspended or no original license issued for 3 months (101).

3.) Department of Public Safety also inform person right to appeal decision, take to district court (without jury). Appeal limited to following issues:

a.) Whether arresting officer had reasonable grounds to believe person was O.M.V.I. (101).

b.) Whether arrested person refused to submit to breath test after being advised that refusal would result in suspension of license (101).

c.) Whether accused was fairly informed as to nature of tests, accuracy of methods, expertise of testee, and given other requested information (101).

- 4.) If issues set out in 3.) affirmative, court will sustain action of department. If one or more negative, department action rescinded (101).
- 5.) If person refusing to submit to test has been convicted in this or other state for O.M.V.I. within two years, license will be suspended for one year (101).

c. Chemical analysis of blood.

- 1.) Upon trial of civil or criminal action arising from acts committed O.M.V.I., amount of alcohol in blood at time (shown by chemical breath analysis) shall give rise to following presumptions (presumptive intoxication) (102):

(Per cent by weight alcohol defined as milligrams alcohol per 100 cubic centimeters blood.)

Amount of Alcohol	Presumption
0.05 per cent or less by weight alcohol in blood.	Person not under influence of intoxicating liquor.
More than 0.05 but less than 0.10 per cent by weight alcohol in blood.	Whether person under influence not self-evident; must be taken in conjunction with other competent evidence.
0.10 per cent or more by weight alcohol in blood.	Person under influence.

- 2.) To be valid, chemical analysis must be performed according to methods approved by Department of Health and Social Services. If established at trial that approved methods followed, is presumption that test results valid (102).
 - a.) Additional Specifications - AAC (197).
The Borkenstein Breathalyzer is approved by the department for ascertaining alcohol content of blood by chemical analysis of breath.
 - b.) AAC (198).
The procedures set forth in this section shall be followed to obtain and analyze breath samples by use of the Borkenstein Breathalyzer:

b.) Additional Specifications - AAC (198). (Continued)

- (1.) Complete the "Breathalyzer Operational Check List" form by recording the name of the subject, date, the ampoule control number, the name of the operator, the name of a witness if the test is witnessed by someone other than the operator, and the serial number of the instrument used. Procedures specified on the list shall be checked as they are completed;
- (2.) observe the subject to be tested for at least 15 minutes immediately prior to testing to insure that he does not regurgitate or place anything in his mouth during that period of time;
- (3.) turn on the Breathalyzer and warm the sample chamber to a temperature of 50 degrees centigrade, plus or minus three degrees;
- (4.) gauge a test ampoule and insert it in the left holder;
- (5.) gauge a second test ampoule, open it, insert the bubbler and make the connection to the outlet tube;
- (6.) turn the control knob to "TAKE", flush the sample chamber with a syringe and turn the control valve to "ANALYZE";
- (7.) wait 90 seconds after the red light appears, then turn on the photometer light source and balance the galvanometer;
- (8.) set the blood alcohol pointer on the start position;
- (9.) turn the control valve to "TAKE", procure the sample of breath and turn the control valve to "ANALYZE";
- (10.) record the time when the breath sample was acquired;
- (11.) wait 90 seconds after the red light appears, then turn on the photometer light source and balance the galvanometer;
- (12.) record the value indicated by the blood alcohol pointer;
- (13.) record the test particulars in the Breathalyzer log book.

c.) Additional Specifications - AAC (199).

A person shall be certified as a qualified Breathalyzer operator after successfully completing a course of training under a qualified Breathalyzer instructor. The training shall consist of:

- (1.) A minimum of four hours' instruction in the theory of alcohol physiology, pharmacology, toxicology and instrument function;
- (2.) a minimum of four hours of practical operation of the Breathalyzer instrument including satisfactory performance by the trainee of tests of not less than five known specimens achieving results consistent with the manufacturers recommended tolerances of accuracy and the collection and analysis of at least three samples from human subjects;
- (3.) the successful completion of a written examination demonstrating his basic knowledge of the effect of alcohol on the human body, the basic mechanical functions of the Breathalyzer and the proper collection of breath samples from human subjects.

d.) AAC (200).

- (1.) A person shall be certified as a qualified Breathalyzer instructor after completing an instructor's training course meeting the following standards:

- * The course shall be equal to or exceed the instructor course offered by the Indiana University, Department of Police Administration.
- * The curriculum shall include an advanced survey of current information on alcohol and the human body, operational principles and theories applicable to the breath testing program, instrument maintenance and calibration, legal considerations, public relations and principles of instruction.
- * The trainee must satisfactorily pass written and practical examinations demonstrating an understanding of the theory of chemical tests for intoxication, methods for determining presence of ethyl alcohol, physiological effects of alcohol on the human body, the pharmacology and toxicology of alcohol, instrument maintenance and calibration.

- (2.) A qualified breathalyzer instructor may calibrate, verify and perform routine maintenance on Breathalyzer instruments.

e.) Additional Specifications - AAC (201).

- (1.) Each Breathalyzer instrument shall be calibrated in accordance with the manufacturer's instructions at intervals not to exceed 60 days.
- (2.) At the time of calibration the instructor performing the activity shall:
 - * enter the date and calibration information in the Breathalyzer log;
 - * forward to the department a certificate containing the date of calibration, the serial number of the instrument and its location;
 - * provide a copy of the certificate calibration required by this section to the local supervisor responsible for the instrument.

f.) AAC (202).

- (1.) 10 ampoules, selected at random from each ampoule lot, shall be chemically analyzed by an approved laboratory to verify the proper chemical composition and volume stated by the ampoule manufacturer.
- (2.) The entire lot, as identified by the ampoule solution control number, may be certified if the samples analyzed meet or surpass the manufacturer's specifications.
- (3.) At the time of analysis the laboratory shall complete a written certificate setting forth the number of ampoules and the results of the analysis for each ampoule.
- (4.) Approved laboratories shall file with the department a report of the methods or tests to be employed by the laboratory to ascertain the characteristics or properties of the sample tested.

g.) AAC (203).

The Department of Public Safety shall file the following materials with the Department of Health & Social Services:

- (1.) The beginning and ending dates of each training session for operators or instructors and a copy of the training course curriculum;
- (2.) the names of instructors conducting courses in each training session;

g.) Additional Specifications - AAC (203). (Continued)

- (3.) the names and addresses of persons successfully completing the training;
- (4.) a copy of the tests employed to establish the qualifications of the persons receiving training.

h.) AAC (204).
Definitions:

- (1.) "ampoule" means the glass cuvette containing the chemical reagent used to measure the oxidation of ethyl alcohol;
- (2.) "approved laboratory" means a laboratory certified by the Division of Public Health of the Department of Health and Social Services;
- (3.) "blood alcohol pointer" means the coupled pointer whose travel across a linear scale represents the blood-alcohol concentration as measured by photometric balance between light transmitted through the test ampoules;
- (4.) "bubbler" means a glass tube that conveys the breath sample from the outlet tube into the opened test ampoule;
- (5.) "control knob" means a pointed knob controlling the three positions of sample chamber valve assembly;
- (6.) "department" means the Department of Health and Social Services;
- (7.) "galvanometer" means the electrical device that measures and indicates the balance of current produced by the photometric cells;
- (8.) "gauge" means a double ended machined tube used to verify the ampoule size and liquid volume;
- (9.) "outlet tube" means the capillary tube connecting the sample chamber to the bubbler;
- (10.) "photometer" means the electrical device used to measure the intensity of light passed through the test ampoule;
- (11.) "sample chamber" means the chamber, including a piston, used to collect a measured volume of breath and discharge the breath via the outlet tube and bubbler through the opened test ampoule solution;
- (12.) "start position" means the line designated on the percent blood alcohol scale as ".00."

- 3.) Persons being tested may have physician, or other qualified person of own choosing, administer second test. Failure to obtain second test not negate one taken by enforcement officer. Person's attempt to obtain second test is admissible as evidence. Upon request, full information on test, including results, made available to person or attorney (102).

d. Penalties.

- 1.) *First conviction - fine not more than \$1,000.00 and/or imprisonment of not more than one year.
*Second conviction - within 5 years of first, imprisonment not less than three days.
*Subsequent conviction within 5 years of second, imprisonment not less than ten days (103).
- 2.) In addition, operator's license revoked in accordance with AS 28.15.210(c). (103).
- 3.) *First conviction - license revoked for not less than 30 days.
*Second conviction - license revoked for not less than one year.
*Third or subsequent conviction - license revoked for not less than three years.
*Court may limit the license instead of revoking it for the first conviction if it determines the revocation would severely impair the person's ability to earn a livelihood (104).

3. Grounds for Arrest Without Warrant.

O.M.V.I. grounds for arrest without warrant. A peace officer may arrest a person without a warrant, whether or not the offense is committed in the presence of the officer, when the officer has probable cause to believe that the person has committed the crime of operating a motor vehicle while under the influence of intoxicating liquor or drugs (in violation of AS 28.35.030.) or a similar city or borough ordinance, if the violation is alleged to have occurred less than eight hours before the time of arrest (105).

4. Actions Which are Prohibited While Under The Influence of Intoxicating Liquor.

- a. Possession of firearm while under the influence of intoxicating liquor or drug. A person who, while under influence of intoxicating liquor or an exhilarating or stupefying drug, carries, has in possession or under control, or uses or discharges a firearm is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 and/or by imprisonment for not more than one year (106).

b. Prohibited operation. No person shall operate a watercraft or manipulate water skis, surfboard, or similar device on inland waters while under the influence of intoxicating liquor, narcotic drug, barbituate or marijuana (107).

c. Reckless operation.

1.) No person may operate an aircraft in the air or on the ground or water while under the influence of intoxicating liquor, narcotics or other habit-forming drugs (108).

2.) No person may operate an aircraft occupied by a crew member or passenger who is obviously under the influence of intoxicating liquor or habit-forming drugs (109).

5. Physician Doing Act While Intoxicated Which Results in Death.

Intoxicated physician who does act resulting in death guilty of manslaughter. A physician, or person pretending to be a physician, who while in a state of intoxication, without a design to cause death, administers any poison, drug, or medicine, or does another act to a person which produces the person's death, is guilty of manslaughter, punishable accordingly (110).

B. CIVIL DISABILITIES

1. Marriages and Divorces

- a. Issuance of marriage license. If all requirements have been met, and there is no legal objection to the contemplated marriage, and neither party is under the influence of intoxicating liquor or otherwise incapable of understanding the seriousness of the proceeding, the licensing officer shall issue a license (111).
- b. Grounds for divorce. A divorce may be granted on the grounds of habitual gross drunkenness contracted since marriage and continuing for one year to the commencement of the action (112).

2. No Right to Worker's Compensation

- a. Cases in which no compensation is payable. No compensation may be paid if the injury was occasioned solely by the intoxication of the employee (113).
- b. Presumptions. In a proceeding for the enforcement of a claim for compensation it is presumed, in the absence of substantial evidence to the contrary, that the injury was not occasioned solely by the intoxication of the injured employee (114).
- c. Employer's failure to insure. If an employee fails to provide worker's compensation to employees he or she may not escape liability for personal injury or death sustained by an employee when the injury arises out of and in the usual course of the employment because the employee was negligent, unless it appears that the negligence was the result of wilful intoxication on the part of the injured party (115).

3. No Right to Insurance Coverage

Intoxicants and narcotics. The insurer shall not be liable for a loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of a narcotic unless administered on the advice of a physician (116).

4. Estates of Habitual Drunkards

- a. Trust company as trustee of estate. A trust company may act under court order or appointment as the trustee, guardian, receiver or committee of the estate of a habitual drunkard (117).
- b. Bank as trustee of estate. A bank may act under court order or appointment as the trustee, guardian, receiver or committee of the estate of a habitual drunkard (117).

5. Alcoholic Physician

Duty of physicians to report. A physician who professionally treats a person licensed to practice medicine and surgery or osteopathy, for alcoholism, drug addiction, mental, emotional or personality disorders shall report it to the State Medical Board if he or she feels the person may constitute a danger to patients (119).

ALCOHOLISM: PROVISIONS FOR TREATMENT, REHABILITATION AND EDUCATION

A. UNIFORM ALCOHOLISM AND INTOXICATION TREATMENT ACT

1. Policy Established.

- a. Policy of the state. Alcoholics and intoxicated persons shall not be criminally prosecuted for consumption of alcohol (120).
- b. Alcoholics and intoxicated persons shall be afforded continuum of treatment (120).

2. Administrative Structure

- a. Creation of office of alcoholism. Office of Alcoholism created in Department of Health and Social Services; headed by coordinator (121).
- b. Responsibilities of office of alcoholism.
 - 1.) Plan, establish, maintain treatment programs; make contracts incidental to performance of duties; solicit and accept gifts and grants of money from state, federal; coordinate activities and cooperate with programs; keep records, engage in research; encourage local participation; provide treatment facilities (122).
 - 2.) Develop educational programs; organize personnel training programs; advise governor in preparation of comprehensive treatment plan; cooperate with Department of Public Safety and Department of Highways in setting up programs to deal with persons O.M.V.I.; encourage hospitals admit alcoholics without discrimination, provide adequate treatment; encourage health and disability insurance programs include alcoholism as covered illness; submit annual report to legislature, covering office activities (123).
 - 3.) Establish comprehensive and coordinated treatment programs.
 - a.) Divide state into regions for administration of programs. Programs shall include: (1) emergency treatment facility affiliated with hospital; (2) inpatient treatment; (3) intermediate treatment; (4) outpatient and followup treatment (124).
 - b.) Provide adequate and appropriate treatment within limits of available state and federal funds (124).

- c.) Maintain, supervise, control all facilities operated by it; administrator of each facility shall submit annual activity report to coordinator (124).
 - d.) Publish list annually - all public and private treatment facilities (124).
- 4.) Establish standards for public and private facilities.
 - a.) Standards only include health conditions to be met, standards of treatment afforded, fixing fees to be charged for required inspections of facilities (125).
 - b.) Each facility, on request, provide office with any information about facility, statistics, schedules, data, etc. Any facility not furnishing requested information, furnishing fraudulent information, removed from list of approved facilities (125).
 - c.) Upon petition of office, district court may issue warrant to officer or employee of office, authorizing to inspect facility, examine books (125).
- 5.) Promulgate regulations for admission of persons into treatment programs. Regulations based on guidelines such as treating person, when possible, on voluntary preferable to involuntary basis and initially assigning person to outpatient or intermediate status, rather than inpatient status (126).
- c. Creation of interdepartmental coordinating committee.
 - 1.) Interdepartmental coordinating committee created, composed of coordinator and five commissioners (Commissioner of Health and Social Services, who is chairperson, and Commissioners of Education, Highways, Labor and Public Safety); committee shall meet at least twice annually (127).
 - 2.) Committee provide for coordination and exchange of information on programs relating to alcoholism; act as permanent liaison among state departments engaged in alcohol-related activities. Committee assist Commissioner of Health and Social Services and coordinator in formulating a comprehensive prevention and treatment plan (127).
- d. Establishment of advisory board on alcoholism.
 - 1.) An advisory board on alcoholism is established in the Department of Health and Social Services; it consists of nine members appointed by the governor. Members serve terms of four years (128),(129),(130).

2.) Advisory board act in advisory capacity to commissioner in following matters:

- a.) Mental health problems relating to alcoholism;
- b.) educational and research activities;
- c.) social problems affecting rehabilitation;
- d.) related legal processes;
- e.) public relations programs (131).

3. Treatment and Commitment Procedure.

a. Voluntary treatment for alcoholics. Alcoholic may voluntarily apply for treatment directly to approved public treatment facility. Administrator in charge of facility may determine who admitted for treatment. If person refused admission, administrator, if possible, refer person to other treatment facility. When patient on inpatient status leaves facility, shall be encouraged to pursue outpatient or intermediate treatment (132).

b. Treatment and services for intoxicated persons and persons incapacitated by alcohol.

1.) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in public or a person who appears to be intoxicated upon a licensed premise and refuses to leave may be taken into protective custody and assisted by a peace officer or by the emergency service patrol to his home, an approved public or private treatment facility or another health facility. If none of these are available he may be taken to a state or municipal detention facility (133).

2.) A person who appears to be incapacitated by alcohol in public shall be taken into protective custody by a peace officer or the emergency service patrol and brought to an approved public or private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no medical facility or service is available he may be taken to a state or municipal detention facility if that appears necessary for the protection of the person's health or safety. Protective custody does not constitute arrest (133).

3.) Person who voluntarily appears or is brought to approved public treatment facility shall be examined by physician as soon as possible, admitted or referred. If referred, facility provide transportation (133).

- 4.) No person who incapacitated by alcohol may be detained at facility after no longer incapacitated. No person who remains incapacitated by alcohol may be detained at facility for more than 48 hours. After admission, unless committed under emergency commitment, person may consent to remain in facility as long as physician in charge considers appropriate (133).
- 5.) Person who not admitted to treatment facility, not referred to other health facility, has no funds, may be taken to own home, if have one. If not, treatment facility assist in finding shelter (133).

c. Emergency commitment.

- 1.) Intoxicated person who (a) has threatened, attempted to inflict, or inflicted physical harm on another or is likely to inflict physical harm on another unless committed, or (b) is incapacitated by alcohol, may be committed to treatment facility for emergency treatment. Refusal to undergo treatment not constitute evidence of lack of judgment as to need for treatment (134).
- 2.) Certifying physician, spouse, guardian, relative of person to be committed, or other responsible person, may make written application for commitment, directed to administrator of facility. Application state facts to support need for emergency treatment, be accompanied by physician's certificate supporting need for emergency treatment and stating physician examined person sought to be committed within two days before certificate's date (134).
- 3.) Upon approval of application by administrator in charge of facility, person brought to facility by peace officer, health officer, member of emergency service patrol, applicant for commitment, patient's spouse, patient's guardian, or any other interested person. Person retained at facility, or transferred to another facility, until discharged under (5) of this section. However, no person be detained under this section for more than 48 hours unless district or superior court judge reviewed, approved commitment application (134).
- 4.) Administrator in charge of facility may refuse application if in his/her opinion, application and certificate fail to sustain grounds for commitment (134).
- 5.) When on advise of medical staff, administrator determines grounds for commitment no longer exists, shall discharge person. No person committed this section detained in treatment facility for more than five days. If petition for involuntary commitment (SEE d., INVOLUNTARY COMMITMENT) been filed within five days and administrator in charge of facility finds grounds for emergency commitment still exist, he/she may detain person until petition has been heard and determined, but no longer than 10 days after filing petition (134).

- 6.) A copy of the written application for commitment and of the physician's certificate, and a written explanation of the person's right to legal counsel, shall be given to the person within 24 hours after commitment by the administrator, who shall provide a reasonable opportunity for the person to consult with legal counsel (134).

d. Involuntary commitment.

- 1.) After hearing initiated by petition of spouse, guardian, relative, certifying physician, or administrator in charge of facility, person may be committed to custody of office by superior court. Petition shall allege that person is alcoholic who habitually lacks self-control in using alcoholic beverages and that he/she (a) has threatened, attempted to inflict, or inflicted physical harm on another and unless committed likely to inflict physical harm on another, or (b) is incapacitated by alcohol. Refusal to undergo treatment not constitute evidence of lack of judgment as to need for treatment. Petition shall be accompanied by certificate of physician who examined person within two days before submission of petition, unless person refused to submit to medical examination, in which case fact of refusal be alleged in petition (135).
- 2.) After petition filed, court fix date for hearing no later than 10 days after date petition filed. Copy of petition and notice of hearing, including date fixed by court, be served on (a) petitioner; (b) person whose commitment sought; (c) person's next of kin; (d) administrator in charge of facility, and any other person court considers appropriate. Copy of petition and certificate be delivered to each person notified (135).
- 3.) If, not less than two days before date fixed for hearing, person sought to be committed or counsel or advisor files written request with superior court, court summon and impanel jury of six, to hear, consider evidence concerning person's condition (135).
- 4.) At hearing, court or jury, shall hear all relevant testimony, including, if possible, testimony of at least one licensed physician who examined person. Person be present unless court believes presence likely be injurious to him/her, which case court appoint guardian ad litem to represent person in open court, or if advisable, examine out of court. If person refused be examined by physician, be given opportunity to request examination by court-appointed physician. If fails to request medical examination and is sufficient evidence believe allegations of petition are true, or if court believes more medical evidence necessary, court may issue temporary order committing him/her to office for period of not more than five days for purposes of diagnostic examination (136).