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HJ

SB 141

-

SB 239

SB

1411

Original sponsor: Ziegler

Offered: 3/7/79
Referred: Rules

CS

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 141

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to sentencing of criminal defendants;
7 and providing for an effective date."

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

9 * Section 1. AS 12.55 is amended by adding a new section to read:

10 Sec. 12.55.086. IMPRISONMENT AS A CONDITION OF SUSPENDED IMPOSI-
11 TION OF SENTENCE. (a) When the imposition of sentence is suspended
12 under AS 12.55.085, the court may require, as a special condition of
13 probation, that the defendant serve a definite term of continuous or
14 periodic imprisonment, not to exceed the maximum term of imprisonment
15 that could have been imposed. While the defendant is imprisoned, he
16 shall be under the supervision of the Department of Health and Social
17 Services rather than the probation officer of the court.

18 (b) A defendant imprisoned under this section is entitled to a
19 deduction from his term of imprisonment for good conduct under AS 33.-
20 20.010. Unless otherwise specified in the order of suspension of impo-
21 sition of sentence, a defendant imprisoned under this section is eli-
22 gible for parole if his term of imprisonment exceeds one year and is
23 eligible for any work furlough, rehabilitation furlough, or similar
24 program available to other state prisoners.

25 (c) A defendant imprisoned under this section may not have his
26 probation revoked because of abandonment to improper associates while he
27 is imprisoned. If probation is revoked and the defendant is sentenced
28 to imprisonment, he shall receive credit for time served under this
29 section. Deductions for good conduct under AS 33.20.010 do not consti-

1 tute "time served".

2 * Sec. 2. AS 12.55.085(c) is amended to read:

3 (c) Upon the revocation and termination of the probation, the
4 court may pronounce sentence at any time after the suspension of the
5 sentence within the longest period for which the defendant might have
6 been sentenced, subject to the limitation specified in AS 12.55.086(c).

7 * Sec. 3. AS 33.05.070(b) is amended to read:

8 (b) As speedily as possible after arrest the probationer shall be
9 taken before the court for the district having jurisdiction over him.
10 Thereupon the court may revoke the probation and require him to serve
11 the sentence imposed, or any lesser sentence, and, if imposition of
12 sentence was suspended, may impose any sentence which might originally
13 have been imposed, subject to the limitation specified in AS 12.55.-
14 086(c).

15 * Sec. 4. AS 33.05.080(1) is amended to read:

16 (1) "probation", except as authorized under AS 12.55.086, is
17 a procedure under which a defendant, found guilty of a crime upon ver-
18 dict or plea, is released by the superior court subject to conditions
19 imposed by the court and subject to the supervision of the probation
20 service as [HEREINAFTER] provided in this chapter;

21 * Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-
22 070(c).



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

February 21, 1979

SB141

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: An Act Relating to Probation

Dear Bob:

I have reviewed the proposed legislation that would allow imprisonment as a condition of a suspended imposition of sentence and thus, get us out of the disaster fomented by the Boyne decision. I think that the proposed legislation covers all the bases. I particularly like the provisions for deductions for good conduct but I'm not so sure that I agree with the provisions allowing parole. If parole is to be a factor, I think the minimum term of imprisonment should be one year rather than 180 days. In my experience, when a judge suspends imposition of sentence but feels that the defendant should serve some time in prison, he usually has a definite period of time in mind and putting parole eligibility into the equation just makes it more difficult to arrive at a sentence that gets the desired results. I also feel that imprisonment as a condition of a suspended imposition of sentence should never involve more than one year's incarceration anyway. If the guy needs to go to jail longer than a year, he probably should not have gotten an SIS anyway. Of course, the same argument can be made at the six month level but frequently that young slow learner comes along that you want to give a good sharp jolt to but still leave him an opportunity to clear his record of the conviction and so I would like to see the latitude of using up to a year's imprisonment as a condition of an SIS and without having to worry about parole. The good time deduction is fine. If the guy can get along in the institution and obey all the rules and get his good time deduction, he should be able to earn it.

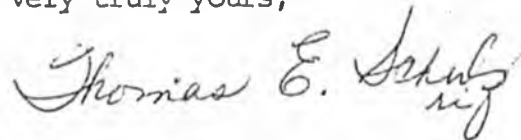
Under Sec. 5, the Act is take effect on January 1, 1980. The new Criminal Code goes into effect on January 1, 1980, as I understand it at this time, and we would not have the Boyne problem under the new Criminal Code because the statute specifically authorizes the judge to impose a period of imprisonment as a condition of probation. I would much prefer to see this Act rammed through

Hon. Robert H. Ziegler, Sr.
February 21, 1979
Page 2

as quickly as possible to take effect immediately after its signature by the Governor and thus, cover the period of time between now and the time the new Code comes into effect.

As you know Jeff Currall has left the District Attorney's Office but I have talked to both he and Mike Thompson on this subject before and I am sure they agree with the need for the Bill. I know that Harold Brown does also but I'm not sure that anyone else would agree with my comments about parole. Since I am going to Anchorage to play Supreme Court Justice for awhile, I am going to send them a copy of this letter and ask that they get their comments to you directly as soon as possible. I would really like to see this legislation in effect just as soon as it can get passed.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas E. Schulz". The signature is written in dark ink and is positioned above the typed name.

Thomas E. Schulz
Superior Court Judge

TES:ri

cc: Hon. Jay Rabinowitz, Chief Justice
Hon. Robert Boochever
Hon. Roger G. Connor
Hon. Edmund W. Burke
Hon. Warren Matthews

probationer whenever found without a warrant. At any time within the probation period, or within the maximum probation period permitted by AS 12.55.080 and 12.55.090, the court for the district in which the probationer is being supervised or, if he is no longer under supervision, the court for the district in which he was last under supervision may issue a warrant for his arrest for violation of probation occurring during the probation period. Such warrant may be executed in any district by the probation officer or any peace officer in the district in which the warrant was issued or of any district in which the probationer is found. If the probationer shall be arrested in any district other than that in which he was last supervised, he shall be returned to the district in which the warrant was issued, unless jurisdiction over him is transferred as above provided to the district in which he is found, and in that case he shall be detained pending further proceedings in that district.

(b) As speedily as possible after arrest the probationer shall be taken before the court for the district having jurisdiction over him. Thereupon the court may revoke the probation and require him to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. (§ 5 ch 105 SLA 1960)

Sec. 33.05.080. Definitions. When used in this chapter, unless the context otherwise requires,

(1) "probation" is a procedure under which a defendant, found guilty of a crime upon verdict or plea, is released by the superior court subject to conditions imposed by the court and subject to the supervision of the probation service as hereinafter provided;

(2) "commissioner" means the commissioner of the Department of Health and Social Services or his designee. (§ 1 ch 105 SLA 1960; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in paragraph (2). **Quoted in Newsom v. State, Sup. Ct Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975).**

Sec. 33.05.090. Short title. This act may be cited as the Probation Administration Act. (§ 7 ch 105 SLA 1960)

Chapter 10. Interstate Compact on Probation and Parole.

Section 10. Authorizing governor to execute interstate compact	Section 20. Definition
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Sec. 33.10.010. Authorizing governor to execute interstate compact. The governor of Alaska is hereby authorized and directed to

the exercise of conscientious judgment, and not arbitrary action; that the discretion of the court has not been abused; and that the facts revealed at the hearing satisfy the court that the modification or revocation of the sentence, or a part thereof, will serve the ends of justice. *Snyder v. State*, Sup. Ct. Op. No. 785 (File No. 1381), 496 P.2d 62 (1972).

Applied in *Hoffman v. State*, Sup. Ct. Op. No. 297 (File No. 562), 404 P.2d 444 (1965).

Am. Jur., ALR and C.J.S. references. — 15 Am. Jur., Criminal Law, §§ 498, 499; 39 Am. Jur., Pardon, Reprieve and Amnesty, §§ 81 to 95.

Validity of probation on condition of leaving state or locality, 70 ALR 100.

Power to impose sentence with direction that, after defendant shall have served part of the time, he be placed on probation for the remainder of term, 147 ALR 656.

Right to notice and hearing before revocation of probation or suspension of sentence, parole, or conditional pardon, 29 ALR2d 1074.

24 C.J.S. Criminal Law §§ 577, 1618; 67 C.J.S. Pardons § 1 et seq.

Sec. 12.55.085. Suspending imposition of sentence. (a) If it appears that there are circumstances in mitigation of the punishment, or that the ends of justice will be served, the court may, in its discretion, suspend the imposition of sentence and may direct that the suspension continue for a period of time, not exceeding the maximum term of sentence which may be imposed, and upon the terms and conditions which the court determines, and shall place the person on probation, under the charge and supervision of the probation officer of the court during the suspension.

(b) At any time during the probationary term of the person released on probation, a probation officer may, without warrant or other process, rearrest the person so placed in his care and bring him before the court, or the court may, in its discretion, issue a warrant for the rearrest of the person and may revoke and terminate the probation, if the interests of justice require, and if the court, in its judgment, has reason to believe that the person placed upon probation is violating the conditions of his probation, or engaging in criminal practices, or has become abandoned to improper associates, or a vicious life.

(c) Upon the revocation and termination of the probation, the court may pronounce sentence at any time after the suspension of the sentence within the longest period for which the defendant might have been sentenced.

(d) The court may at any time during the period of probation revoke or modify its order of suspension of imposition of sentence. It may at any time, when the ends of justice will be served, and when the good conduct and reform of the person held on probation warrants it, terminate the period of probation and discharge the person held. If the court has not revoked the order of probation and pronounced sentence, the defendant shall, at the end of the term of probation, be discharged by the court.

(e) Upon the discharge by the court without imposition of sentence, the court may set aside the conviction and issue to the person a certificate to that effect. (§ 1 ch 50 SLA 1965)

Cross reference.—See note to AS 12.55.080. Sup. Ct. Op. No. 785 (File No. 1381), 496 P.2d 82 (1972).

Subsection (b) provides for the revocation of probation for the violation of conditions imposed or engaging in criminal practices. Snyder v. State, Quoted in Fresno v. State, Sup. Ct. Op. No. 573 (File No. 1045), 458 P.2d 134 (1969).

Sec. 12.55.090. Granting of probation. (a) Probation may be granted whether the crime is punishable by fine or imprisonment or both. If a crime is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

(b) The court may revoke or modify any condition of probation, or may change the period of probation.

(c) The period of probation, together with any extension, shall not exceed five years.

(d) Repealed by § 11 ch 68 SLA 1965.

(e) Repealed by § 11 ch 68 SLA 1965. (§ 8.09 ch 34 SLA 1962; am § 25 ch 43 SLA 1964; am § 11 ch 68 SLA 1965)

Cross reference.—See Cr. R. 35(c). Effect of amendments.—The 1964 amendment added former subsection (d), which prohibited granting of probation in certain instances, and former subsection (e), which specified conditions under which parole board should acquire exclusive jurisdiction over prisoner. and the probationer may not complain if he has been given ample opportunity to appear before the court imposing the sentence, and he has been permitted to combat the accusation or charges against him and there has been no abuse of discretion on the part of the court. United States v. Feller, 17 Alaska 417, 156 F. Supp. 107 (D. Alas. 1957).

The 1965 amendment repealed subsections (d) and (e). Cited in Hood v. Smedley, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

The trial judge who imposed the sentence has certainly broad discretionary powers to revoke probation,

Sec. 12.55.100. Conditions of probation. (a) While on probation and among the conditions of probation, the defendant may be required

- (1) to pay a fine in one or several sums;
(2) to make restitution or reparation to aggrieved parties for actual damages or loss caused by the crime for which conviction was had; and
(3) to provide for the support of any persons for whose support he is legally responsible.

(b) The defendant's liability for a fine or other punishment imposed as to which probation is granted shall be fully discharged

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Quot Op. No. 120 (1971)

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How not b counse No. 68 (1971)

There is no authority which would sanction the expansion of the superior court's jurisdiction to pass sentence into a realm of review and modification which is statutorily vested in either the supreme court or the executive branch of government. Therefore, the superior court lacks jurisdiction to review its own sentence, after it has entered a judgment on the matter, more than 60 days after it has imposed sentence. *Davenport v. State*, Sup. Ct. Op. No. 1218 (File No. 2202), 543 P.2d 1204 (1975).

Sentencing court may impose a fine as a condition of probation upon a defendant's conviction of a crime which is not directly punishable by a fine. *Brown v. State*, Sup. Ct. Op. No. 1367 (File No. 2890), 559 P.2d 107 (1977).

Given the specific authorization emanating from AS 12.55.100(a)(1) which permits the trial court to impose a fine as a condition of probation, together with the need for flexibility on the part of the sentencing court in fashioning appropriate conditions of probation, where probation is

warranted, a rational harmonization and construction of AS 12.55.090(a) and 12.55.100(a)(1) leads to the conclusion that a sentencing court is empowered to make payment of a fine a condition of probation even in the circumstance where the crime is only punishable by imprisonment, or by imprisonment or fine. *Brown v. State*, Sup. Ct. Op. No. 1367 (File No. 2890), 559 P.2d 107 (1977).

Applied in *Jones v. State*, Sup. Ct. Op. No. 1258 (File No. 2689), 548 P.2d 958 (1976); *Andrews v. State*, Sup. Ct. Op. No. 1287 (File No. 2519), 552 P.2d 150 (1976); *Thomas v. State*, Sup. Ct. Op. No. 1445 (File No. 2723), 566 P.2d 630 (1977).

Quoted in *Hofhines v. State*, Sup. Ct. Op. No. 904 (File No. 1845), 511 P.2d 1292 (1973).

Cited in *Wacek v. State*, Sup. Ct. Op. No. 1108 (File No. 2166), 530 P.2d 751 (1975); *Taylor v. State*, Sup. Ct. Op. No. 1436 (File No. 2924), 564 P.2d 1219 (1977); *Szeratics v. State*, Sup. Ct. Op. No. 1525 (File No. 3390), 572 P.2d 63 (1977).

Sec. 12.55.085. Suspending imposition of sentence.

Subsection (a) and AS 12.55.080 apply to Chapters 10 and 12 of Title 17. — The provisions of AS 12.55.080 and subsection (a) of this section apply to violations of Chapters 10 and 12 of Title 17. *Speas v. State*, Sup. Ct. Op. No. 889 (File No. 1555), 511 P.2d 130 (1973); *Call v. State*, Sup. Ct. Op. No. 890 (File No. 1844), 511 P.2d 135 (1973).

The two-year minimum sentence requirement of AS 17.10.200(d) has thus been implicitly repealed as contrary to more recent expressions of legislative intent. *Speas v. State*, Sup. Ct. Op. No. 889 (File No. 1555), 511 P.2d 130 (1973); *Call v. State*, Sup. Ct. Op. No. 890 (File No. 1844), 511 P.2d 135 (1973).

AS 12.55.080 and this section postdate both the mandatory minimum sentence provision of AS 17.10.200 and the "except where specific provision is otherwise made" language of AS 12.55.010. *Speas v. State*, Sup. Ct. Op. No. 889 (File No. 1555), 511 P.2d 130 (1973).

The mandatory requirements of AS 17.10.200 have been modified by AS 12.55.080 and AS 12.55.085(a) providing for suspended imposition of sentence and parole. *White v. State*, Sup. Ct. Op. No. 1055 (File No. 1907), 523 P.2d 428 (1974).

Different limitations of probation period. — Under AS 12.55.080, a court may

suspend the execution of all or a portion of a sentence and place the defendant on probation "for a period and upon the terms and conditions as the court considers best." That period of probation, however, is specifically limited by AS 12.55.090(c) to a maximum of 5 years. This differs from probation granted after the court suspends the imposition of any sentence under subsection (a). *Tiedeman v. State*, Sup. Ct. Op. No. 1592 (File No. 3394), 576 P.2d 114 (1978).

Where probation is granted after the court suspends the imposition of any sentence, the legislature has specifically limited the period of probation to a term not to exceed the maximum sentence which could be imposed for the particular offense. *Tiedeman v. State*, Sup. Ct. Op. No. 1592 (File No. 3394), 576 P.2d 114 (1978).

Where the court actually imposed sentence and suspended the execution of a portion thereof, the only statutory limitation on the term of probation is that contained in AS 12.55.090(c). *Tiedeman v. State*, Sup. Ct. Op. No. 1592 (File No. 3394), 576 P.2d 114 (1978).

Discretion of sentencing court. — Whether or not a sentencing court should impose a suspended imposition of sentence in a given case is, by subsection (a) left to the discretion of the sentencing court.

Nattrass v. State, Sup. Ct. Op. No. 1314 (File No. 2869), 554 P.2d 399 (1976).

Subsection (a) of this section reposes discretion in the trial court to suspend imposition of the sentence and place the defendant on probation. *Mullins v. State*, Sup. Ct. Op. No. 1549 (File No. 3284), 573 P.2d 860 (1978).

Superior court did not abuse discretion in failing to impose suspended imposition of sentence. — See *Nattrass v. State*, Sup. Ct. Op. No. 1314 (File No. 2869), 554 P.2d 399 (1976).

Where at the time of sentencing for the crime of embezzlement by an employee of property worth more than \$100, defendant was 22 years old, had been working several years and had spent two semesters in college, and other than minor traffic violations he had no previous criminal record, the trial court was not clearly mistaken in failing to order a suspended imposition of sentence, instead of actually imposing a sentence of three years and four months, with the entire period suspended upon the condition that he enter a twelve month period of public service. *Mullins v.*

State, Sup. Ct. Op. No. 1549 (File No. 3284), 573 P.2d 860 (1978).

Probation can be revoked on the basis of a conviction which is on appeal and therefore not yet final. *Alexander v. State*, Sup. Ct. Op. No. 1622 (File No. 3505), 578 P.2d 591 (1978).

A conviction, with the attendant constitutional safeguards, constitutes sufficient "good cause" to find that conditions of probation have been violated and that probation should be revoked. *Alexander v. State*, Sup. Ct. Op. No. 1622 (File No. 3505), 578 P.2d 591 (1978).

Alaska's trial judges totally barred from engaging in either charge or sentencing bargaining. — See *State v. Buckalew*, Sup. Ct. Op. No. 1391 (File No. 3143), 561 P.2d 289 (1977).

Applied in *Andrews v. State*, Sup. Ct. Op. No. 1287 (File No. 2519), 552 P.2d 150 (1976); *Franzen v. State*, Sup. Ct. Op. No. 1546 (File No. 3160), 573 P.2d 55 (1978).

Cited in *Barrett v. State*, Sup. Ct. Op. No. 1225 (File No. 2299), 546 P.2d 161 (1976); *Thomas v. State*, Sup. Ct. Op. No. 1445 (File No. 2723), 566 P.2d 630 (1977).

Sec. 12.55.088. Modification of sentence [Effective January 1, 1980]. (a) The court may modify or reduce a sentence at any time during a term of imprisonment if it finds that conditions or circumstances have changed since the original sentencing hearing such that the purpose of the original sentence is not being fulfilled.

(b) The sentencing court may not be required to entertain a second or successive motion for similar relief brought under (a) of this section on behalf of the same prisoner.

(c) No sentence may be reduced or modified so as to result in a term of imprisonment which is less than the minimum or presumptive sentence required by law for the original sentence. (§ 12 ch 166 SLA 1978)

Effective date. — Section 25, ch. 166, S.L.A. 1978, provides: "This Act takes effect January 1, 1980."

Editor's note. — Section 23, ch. 166, S.L.A. 1978, effective January 1, 1980, provides in subsection (b): "Except as provided in (c) of this section, sec. 12 of this Act governs the punishment for any offense committed on or after the effective date of this Act." Subsection (c) relates to the applicability of AS 12.55.125 through 12.55.185.

Section 23 of ch. 166, in subsection (f), provides: "Sections 1—12 of this Act do not apply to govern the construction of and punishment for any offense committed

before the effective date of this Act or the construction or application of any defense to a prosecution for the offense. An offense shall be construed and punished according to the law existing at the time of the commission of the offense in the same manner as if this Act had not become law."

Section 24, ch. 166, S.L.A. 1978, effective January 1, 1980, provides: "AS 12.55.088, enacted in sec. 12 of this Act, changes Rule 35 of the Alaska Rules of Criminal Procedure by defining additional circumstances without regard to time limit wherein a defendant's sentence may be modified or reduced."

POSITION PAPER

Senate Bill 141

"An Act relating to sentencing of Criminal Defendants; and Providing for an Effective Date."

The Dept. of Health & Social Services is in support of Senate Bill 141.

This legislation would provide a means by which a defendant who has received a suspended imposition of sentence may be required to serve a portion of that suspended sentence in incarceration.

This concept allows the court to prescribe a short period of incarceration as a special condition of probation. Thus, the defendant, especially in cases of youthful and/or first offender, will experience incarceration and also receive probation supervision upon release to the community. This "jail therapy" is one attempt to deter offenders from committing additional crimes when used as a part of a probation plan.

At this time, the Department is unable to determine the fiscal impact that would result from this method of sentencing. The Department will be able to make that determination after having gained experience. It should be noted that terms of incarceration served on a continuous basis would probably not have a major impact. However, a sentence to be served on weekends, would be difficult and restrictive from an operational aspect. All correctional centers are presently operating near, at or over capacity. Normally, there is an increase in the population of these facilities over the weekend period. To include offenders sentenced to serve their period of incarceration on weekends would increase the "weekend peaking effect" and possibly cause overcrowding.

Recommended by: Charles F. Campbell 3/28/79
Charles F. Campbell, Director Date
Division of Corrections

Approved by: Helen D. Beirne 3/28/79
Helen D. Beirne, Commissioner Date
Department of Health & Social Services



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

SB141

Chambers of
THOMAS E. SCHULZ, Judge

February 21, 1979

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: An Act Relating to Probation

Dear Bob:

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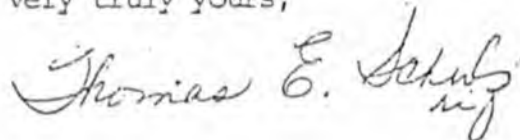
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Very truly yours,

A handwritten signature in cursive script that reads "Thomas E. Schulz". The signature is written in dark ink and is positioned above the typed name.

Thomas E. Schulz
Superior Court Judge

TES:ri

cc: Hon. Jay Rabinowitz, Chief Justice
Hon. Robert Boochever
Hon. Roger G. Connor
Hon. Edmund W. Burke
Hon. Warren Matthews

SB

171

SB

176

House Judiciary Committee Minutes

Thursday, April 5, 1979

Chairman Charlie Parr called the meeting to order at 3:00 p.m. with Representatives Buchholdt, Phillips, O'Connell, and Anderson present.

The subject of the meeting was Senate Bill 176, limitation of civil actions as applied to minors.

Senator Pat Rodey appeared before the committee as prime sponsor of the legislation. He testified that the bill is basically a housekeeping measure, that he first discovered this inconsistency when looking at the structure of small claims courts. As the age of majority for everything (except consuming alcohol) in the state, the 18 year old person should have the right to sue in small claims court.

Representative Nels Anderson moved to report out SB 176 and since there was no objection, House Judiciary Committee reported out SB 176.

Memorandum

1-24-79 = 13 extra

Alaska Court System

Use
18yrs old

TO: Arthur H. Snowden, II
Administrative Director

DATE : November 16, 1978

FROM: James D. Babb, Jr.
Administrative Associate

SUBJECT: Conflict in Statutes Relating
to Capacity to Sue or Be
Sued in Small Claims Court

1. There has been some question as to whether it is correct that anyone 19 years old or older can file a small claim, or, alternatively, be sued in small claims court as is indicated in the latest edition of the Small Claims Handbook. Susan Miller is of the belief the correct age should be 18, in accordance with AS25.20.010 (1977), which states:

Age of Majority. A person is considered to have arrived at majority at the age of 18 years, and thereafter has control of his own actions and business and has all the rights and is subject to all liabilities of citizens of full age, except as otherwise provided by statute (§ 20-1-1ACLA 1949; am. § 1 ch 37 SLA 1959; am § 5 ch 63 SLA 1977) (emphasis added)

This statute appears in the Parent and Child chapter of the Marital and Domestic Relation title. The annotation, "Effect of the Amendment" states: "The 1977 amendment decreased the age of majority from 19 to 18 years.

2. Susan Burke, Deputy Administrative Director and Staff Counsel, with whom I agree, believes there is conflict in the statutes and that the question could be argued from either side. For example, AS 09.10.140 within the Limitations of Actions chapter of the Code of Civil Procedure title states:

Disabilities of Minority, Insanity, and Imprisonment. If a person entitled to bring an action mentioned in this chapter is at the time the cause of action occurs either (1) under the age of 19 years... the time of disability is not a part of the time limited for the commencement of the action... (§ 1.14 ch 101 SLA 1962)

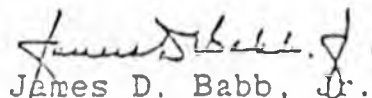
The annotations to that statute, relying on Turnbill v. Bonkowski 274 F Supp 733 (D. Alas. 1967), similarly indicate one must reach age 19 before one can be sued or has the capacity to be sued.

But, under the Parties chapter to the Code of Civil Procedure title, no exact reference is made to a number of years. AS 09.15.010, Parents or Guardian May Sue for Injuries or Death to a Child, and AS 09.15.020, Parents or Guardian May Sue for Seduction of Daughter, speak only to "the age of majority", which would seem to be controlled by the 1977 amendment above.

However, AS 45.60.091, the definitional section of the Alaska Uniform Gifts to Minors Act in the Trade and Commerce title defines an "adult" as one who has attained the age of 19 years, and a "minor" as one who has not attained the age of 19 years.

3. It is my belief that Ms. Miller is correct, despite the apparent confusion in the statutes, particularly in AS 09.10.140. However, for practical considerations, I want to be sure. If we spread the word that persons age 18 can be reached through the Small Claims court, there might be an increase in claims filed against them which then would be met with arguments based on AS 09.10.140. A similar result may occur where a person age 18 attempts a suit on his own behalf. Thus, we are going to have to reach a clear conclusion.
4. My opinion is that the 1977 amendment was intended to accomplish what it so simply states and that the proper age for the capacity to sue or be sued is 18, the body of AS 09.10.140 notwithstanding. However, I would like that opinion certified, so to speak, before we open the courts to a flood of adolescent litigation.

Very respectfully,



James D. Babb, Jr.
Administrative Associate

JD/ch

cc: Susan Burke
Susan Miller

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 12, 1979

SUBJECT: Age at which disability of minority is removed
for the purpose of actions in the small claims
courts. (Work Order No. 6423)

TO: Senator Patrick Rodey

FROM: Kenneth M. Rosenstein *KRM*
Legislative Counsel

Attached is the bill you have requested resolving an apparent conflict regarding the age at which a person may sue or be sued in small claims court.

Please be advised that the bill would lower that age to 18 years for the purpose of suits in all courts of the state, not only small claims. There seems little reason to limit this only to small claims actions. An 18-year old may presently enter into a contract for an amount over the \$2,000 jurisdictional limit of the small claims court. It therefore makes sense to allow him to sue or be sued on such contracts. If the bill is not satisfactory, please advise so that we can prepare a substitute.

KRM:jdn

Enclosure

SB

239

(9)

COMMITTEE REPORT

HOUSE

4/15/80

FURTHER:

Date: _____

Mr. Speaker:

The Committee on JUDICIARY has had CSSSSB 239am

"An Act relating to alcoholic beverages; and providing for an effective date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

**MEMBERS SIGNING
DO PASS**

Robert L. Anderson

Tony Mastriano

William J. Malone

**MEMBERS HAVING
OTHER RECOMMENDATIONS:**

Charles H. ...

Charles H. ...

CHAIRMAN

C O D E R E V I S I O N

C O M M I S S I O N

SUPPLEMENT

TO

COMMISSION TRANSMITTAL STATEMENT AND
TENTATIVE DRAFT OF APRIL 18, 1979 ON TITLE 4 --
ALCOHOLIC BEVERAGES

- I. Sectional Cross-Reference Table
- II. Substantive Comparison of Revision with Present Law
- III. Policy Considerations for Legislature

I. SECTIONAL CROSS-REFERENCE TABLE

The following table provides a cross-reference from the sections of the tentative draft to the appropriate section numbers of AS 4, to facilitate a detailed comparison of the draft revision and the current law. (While the cross-referenced provisions relate as to subject matter, they should not be assumed to be identical in either scope or content.)

<u>Draft Revision</u>	<u>Alaska Statutes</u>
04.06.010 -----	04.05.010(a)
04.06.020 - 04.06.030 -----	New
04.06.040 -----	04.05.010(a)
04.06.050 -----	04.05.030(a), (b), (d), (e) and (f); 04.05.010(b)
04.06.060 -----	04.05.010(b); 04.15.030(b); 04.10.030; 04.05.050
04.06.070 -----	04.05.040
04.11.010 -----	04.10.010
04.11.020 -----	04.10.180
04.11.030 -----	04.10.170
04.11.040 -----	04.10.160; 04.10.230; 04.15. 020(c); 04.10.390
04.11.050 -----	04.10.210; 04.10.260; 04.10. 430(c)
04.11.060 -----	04.10.200
04.11.070 -----	04.10.270 - 04.10.280
04.11.080 -----	04.10.270; 04.10.300
04.11.090 -----	New
04.11.100 -----	04.10.440; 04.10.310
04.11.110 - 04.11.120 -----	New
04.11.130 -----	04.10.370
04.11.140 -----	04.10.020; 04.10.040; 04.10. 130; 04.10.410; 04.10.145 - 04.10.146
04.11.145* -----	04.10.140
04.11.150 -----	04.10.139
04.11.160 -----	04.10.320
04.11.170** -----	04.10.450; 04.10.040 - 04.10. 130; 04.10.145 - 04.10.146; 04.10.340
04.11.175* -----	04.10.450; 04.10.140
04.11.180 -----	04.10.280
04.11.190 -----	04.10.190; 04.10.330(b); 04. 10.420; 04.10.360
04.11.200 -----	04.10.190; 04.10.360
04.11.210 -----	04.10.360
04.11.220 -----	04.05.030(c); 04.10.300(a)
04.11.230 -----	04.10.350
04.11.240 -----	04.10.240; 04.10.220
04.11.250 -----	04.15.020(b); 04.15.100(b)

* See also the Alaska Administrative Code, at 15 AAC 20.220 - 15 AAC 20.250.

** See also 15 AAC 20.240 - 15 AAC 20.250.

Draft Revision

Alaska Statutes

04.14.010 -----	04.10.430(a) - (c); 04.05.060
04.14.020 -----	04.10.430(d)
04.14.030 -----	04.10.300(b) —
04.14.040 -----	04.15.110
04.14.050 - 04.14.060 -----	New
04.16.010 -----	04.10.290; 04.15.020(f)
04.16.020 -----	04.15.010
04.16.030 -----	04.15.020(c) and (g)
04.16.040 -----	04.15.020(a)
04.16.050 -----	04.15.020(a)
04.16.050 -----	04.15.020(a), (d) and (h); 04.15.060(e)
04.16.070 -----	04.15.080
04.16.080 -----	04.15.060
04.16.090 -----	04.15.065
04.16.100 -----	New
04.16.110 [100] -----	04.15.030
04.16.120 [110] -----	04.15.035
04.16.130 [110] -----	04.15.050
04.16.140 [120] -----	04.15.040
04.85.010 -----	04.15.070
04.85.020 -----	04.10.450
04.90.010 -----	04.15.100
04.90.020 -----	04.10.380
04.90.030 -----	New
04.90.040 -----	04.20.010; 04.15.050; 04.10.145; 04.10.300(f)
Deleted -----	04.10.150; 04.15.085; 04.15.090

The present law's restriction on credit sales of alcoholic beverages at retail (AS 04.15.085) is not retained in the revision. In prohibiting sales on credit (i.e., other than by cash or credit card) only to lodgers at a lodging place which has a licensed premises, the present law appears discriminatory and seemingly inconsistent with common practice. (The lifting of the restriction against credit sales in the revision should not be confused with restrictions on credit applicable to licensee selling alcoholic beverages on a wholesale basis under the revision. Credit on inventory to retailers, as indicated above (Sec. 04.11.040(b), is specifically authorized for up to 90 days only).

Another provision of current law not continued in the redraft is the "B-Girl" provision, AS 04.15.090. The existing statute has been held unconstitutional as overbroad discrimination in a 1973 state superior court decision (Dawn v. State, Superior Ct., 4th Jud. Dist., Cr. No. 72-140), and its enforceability in current form seems dubious. An enforceable provision adequate to deal with the problem area and free of constitutional problems is the subject of proposed ABC board regulations currently being promulgated and would seem a feasible subject for treatment by regulation under the revision also. (CSHB 47 am, repealing the current "B-Girl" statute was adopted in the House during the first session of the current Legislature, it might be noted.)

ARTICLE 2. MINORS.

The main revision effort with respect to current Title 4 provisions concerning minors has been to improve the organization of the existing law. A limited number of substantive refinements have been made. One makes clear that consumption of an alcoholic beverage by a person under 19 is unlawful (Sec. 04.16.070(b)). Under present law, the offense is specified only by regulation (15 AAC 20.100(b); the validity of the regulation became the subject of a state supreme court suit, resolved in favor of the state, (Michael v. State of Alaska, 583 P.2d 852 (1978)).

The exemption under present law of parents and others from the prohibition on furnishing to minors is extended to furnishing between spouses and is specifically confined in application to furnishing in nonpublic places. The exemption is qualified so as not to bar prosecution for contributing to the delinquency of a minor if furnishing can be shown to have contributed to the delinquency (Sec. 04.16.070(e)(2)).

The revision clarifies the present law relating to signed statements of persons on licensed premises when their age as 19 or over is questioned to require the signed statement only if adequate identification is not otherwise shown (Sec. 04.16.070(e), the apparent intent of current law. It also provides for treatment of minors as adults if arrested for a violation and specifically authorizes protective custody under AS 47.37.170 as an alternative to arrest in cases where the minor detained is intoxicated or incapacitated by alcohol (Sec. 04.16.100).

II. SUBSTANTIVE COMPARISON OF REVISION WITH PRESENT LAW
(References are to chapter, article and section
headings appearing in the draft revision)

CHAPTER 6. ALCOHOLIC BEVERAGE CONTROL
AND DIRECTOR.

The ABC board is placed within the Department of Commerce and Economic Development, which now exercises administrative responsibility for some twenty-one regulatory bodies, rather than in the Department of Revenue as under present law. Commerce would seem the more appropriate administrative location, given the function of the board as a regulatory body.

Standard provisions for filling board vacancies and authorizing board per diem and travel are set out, in addition to provisions authorizing the board to elect officers and adopt rules for conduct of its business. A specific requirement provides for individual members' votes on motions before the board to be reflected in board minutes (Sec. 04.06.040(c)).

The board's present composition of five members with two industry representatives is left unchanged from present law, except to require that one member be from the public health and alcoholism treatment field. The board chairman is designated also as an ex-officio member of the Governor's Interdepartmental Coordinating Committee on Alcoholism.

The board's proposed role as an appeals body, to hear appeals on protests of the board director's decisions (a major change noted in the transmittal statement) is initially set out in this article (Sec. 04.06.050(5)). Under current law, the board may exercise initial decision-making authority on all aspects of licensing as well as all other matters of administration under Title 4. The role as appeals body is intended to expedite day-to-day decision making on alcoholic beverage control matters, without impairing rights of parties to board determination of a disputed matter.

Authority to appoint a board director is conferred on the board in the revision, subject to approval by the governor, (as required in art. III, sec. 26 of the state constitution.) Present law gives appointing authority directly to the governor, subject to legislative confirmation. (Under the state supreme court doctrine of Bradner v. Hammond, (553 P.2d 1 (1976)), legislative confirmation of an ABC board director by statute appears impermissible. Confirmation has apparently neither been offered nor required since the court decision, the requirement of current AS 04.05.010(b) notwithstanding).

Except for express authority conferred to regulate the furnishing of alcoholic beverages without charge by a licensee, the list of specific (but not exclusive) subjects with which the board may deal by regulation is streamlined but not intended to be substantively expanded from present law (Sec. 04.05.040).

CHAPTER 11. LICENSING.

ARTICLE 1. RESTRICTIONS.

Substantially the same prohibitions and restrictions on licenses and licensees are continued in this article from present law, with a few refinements:

- exemption of sales of alcoholic beverages under execution from licensing requirements is specifically extended to sales on enforcement of a security agreement, and a notice of intended sale is required to be furnished the ABC director (Sec. 04.11.010(b));
- serving of alcoholic beverages at office parties or other private gatherings where persons attending "chip in" for purchase of beverages is expressly exempt from licensing or special permit requirements, in accordance with the apparent intent of current law (Sec. 04.11.010(c));
- the current law's prohibition of any person's having a direct or indirect financial interest in a licensed business other than the person named on the license is expressly made inapplicable to percentage or graduated lease agreements approved by the ABC board director; these agreements, commonly executed now between licensees and their lessors for licensed premises, are apparently not intended to be prohibited under current law; also, management agreements, under which a license purchaser often manages licensed premises while awaiting approval of the license transfer, are also specifically exempt from the prohibition, and authority of the director is recognized to exempt other persons from the prohibition when necessary on a temporary, transitional basis (Sec. 04.11.020, 04.11.130);
- makes clear that wholesalers who extend inventory or other business credit to a tavern or package store licensee, when credit is limited to 90 days or less, are not taking a financial interest in a retail business (Sec. 04.11.040(b)); The 90 day period takes particular account of the needs of rural licensees, who must order large shipments of alcoholic beverages and presumably finance part of the cost of the shipment from the proceeds of sale of goods shipped.

- surety bonds in the amount of \$2500 required under present law of beverage dispensary licensees are not continued as a requirement; the requirement seems to have little practical significance and apparently has rarely if ever been relied on in enforcement of the control laws;
- references to federal internal revenue strip stamps required on packages sold at wholesale or retail are not continued; the federal requirement may undergo review and the subject is considered most appropriately left to treatment by regulation at the state level.

ARTICLE 2. POPULATION LIMITATIONS, PUBLIC NOTICE, PROTEST AND CONSENT.

The population limitations on licensing (quotas) continue unaltered from present law. In the case of licenses issued outside a city or unified municipality, the revision makes present practice explicit, that is, in computation of population within a five-mile radius of premises proposed to be licensed, the population of the area of a city or unified municipality within the five-mile radius is excluded (Sec. 04.11.050(1)). The source of population figures to be relied on in determining quotas is anticipated under the revision to be established by regulation.

Tourist facility licenses are continued as an exception to quota requirements, but a 10-room minimum guest accommodation is set for a facility to qualify, and, once granted a license, the facility is then included in subsequent quota computations for the particular type of license issued (Sec. 04.11.050(b) - (c)).

The public notice requirements for new license or license transfer applications are continued in the revision as under existing law, with some minor refinements to facilitate administration. The present option under statute to require paid notice of an applicant is applied to license transfers as well as new license applications (Sec. 04.11.060(b)).

The special requirements of present law calling for public consent to new licenses or license transfers in rural areas are continued; again, to facilitate administration, present law requiring consent petitions to be signed by a designated number of adult bona fide residents is changed, so as to require signatures of the same number of qualified voters (Sec. 04.11.100). (The requirements for public consent by petition, it might be noted, apply under both the present law and the revision to the outside-city areas of organized boroughs, as well as to unorganized borough areas outside cities. Their application to outside-city areas of organized boroughs had been challenged in a superior court action in 1977 but were sustained (Trussel v. Brown, Superior Ct., 4th Jud. Dist., No 76-1384, 1977)).

As to protest of license applications, within a municipality the governing body continues to be the vehicle of protest for premises within the municipality (Sec. 04.11.070), but protest may also be made directly by a municipal resident or any other person directly to the ABC board director (Sec. 04.11.080), an option which seems uncertain under present law. Outside a municipality, protest provisions are also broadened to permit protest to the director by any person, and protest is not restricted to persons residing within a certain distance of premises as under present law. The broadened requirement is intended to simplify administration. However, the special requirement of a 1977 law calling for an election in village areas where a protest is made by 35 percent of residents within a certain distance of premises is retained in the revision, and the effect of the election as apparently contemplated under present law is spelled out (namely, the election is on the question of whether the area concerned should go "dry" (Sec. 04.14.030).

The protest provisions of the revision also are intended to clarify and simplify the manner in which protests are made and resolved. A simple informal due process hearing is provided for initially to resolve any protest properly made, whether made by a municipality or individual person (Sec. 04.11.080). The requirement of present law for an initial formal hearing under the state Administrative Procedure Act upon municipal protest is not continued.

Any party to the initial hearing may appeal the director's decision to the ABC board and at that point the more formal APA hearing is accorded the municipality or other party appealing (Sec. 04.11.090). Under present law, only the municipality's right to hearing, i.e., a formal APA hearing, is mandatory upon protest. Hearings on individual person's protests are discretionary with the board.

To further simplify administration, formal application for renewal of licenses is not required in the revision; rather, renewal is automatic upon payment of the license fee and filing of an affidavit relative to any convictions for violations of law by a renewal applicant (Sec. 04.11.230). Nothing in the simplified renewal process precludes a protest or other challenge to a licensee's continuing right to operate, which could be initiated as under present law by a protest, complaint or other facts communicated to the director, and a hearing if disciplinary action is proposed. However, the formal procedure under present law, for renewal applications to be transmitted to local governing bodies and an APA hearing held upon protest of renewal, is not continued.

As under present law, public notice of renewals, such as by public posting or newspaper advertisement, is not required. The 1976 amendment to the current law noted above calling for an election in certain village areas upon objection of 35 percent of residents to licensing is continued in the case of renewals, as an exception to the procedure for automatic renewal.

ARTICLE 3. LICENSE AND
CERTIFICATE TO OPERATE.

The major substantive change in the licensing provisions of the revised draft, as pointed out in the transmittal statement, recognizes the practical distinction between a license as a valuable property right, often representing a large financial investment by its holder, and the privilege to operate a license as a matter to be carefully regulated in the best interests of the state. For this purpose, issuance of a license under the revision is to be accompanied by issuance of a certificate to operate (Sec. 04.11.120).

The certificate to operate in effect takes on the characteristics of a license under current law, as a privilege to operate a business which may be granted, renewed, transferred, suspended or revoked. The license itself is distinguished in the revision as a separate qualified personal property right which may be used as any other property, except that (1) transfer of the license continues subject to application to the ABC board director, to insure that a license transferee is as qualified as a new licensee and that transfer of location also conforms to requirements under the proposed code, and (2) attachment and execution upon licenses is authorized only "to the extent otherwise permitted by law" (Sec. 04.11.110). [The policy of current law exempting liquor licenses from execution (AS 09.35.087) appears to be to prohibit one general creditor from being allowed to place himself in a preferred position over other general creditors of a licensee; see C.Y. Incorporated v. Brown, 547 P.2d 1274 (1978). In a separate measure prepared by the Code Revision Commission and introduced into the current legislature as HB 56, the exemption of present law is continued to protect the license from legal process to collect an unsecured debt (except for bankruptcy proceedings). It does not encompass security interests in licenses created contractually under the state's codification of Article 9 of the Uniform Commercial Code (AS 45.05.690 - 45.05.794) to secure payment or performance of an obligation, and the revision does not bar creation of such security interests in the license as would occur, for example, when a license purchaser executes a written consent to transfer the license to the vendor as security in the event of default on payment of the purchase price. The state supreme court recently held that the right to petition the ABC board for license transfer can qualify as a security interest. See Queen of the North, Inc., v. LeGrue, 582 P.2d 144 (1978).]

With the qualifications noted, the license is intended to be treated as other personal property; the use of the license however, remains subject to regulation under the police powers of the state. As an example of the application of this concept, if a certificate to operate under a license is suspended or revoked, the license can still be the subject of an application for transfer to another party, who then can apply for a certificate to operate a business under the license.

While the distinction between licenses as property and certificates to operate is not traditional in statutes of the states relating to alcoholic beverage control, it is submitted as a practical and equitable means of balancing a licensee's right in the considerable investment

in his license with the state's power of regulating the alcoholic beverage business in the public interest. (The distinction is, moreover, far from novel; parallels might be found, for example, in limited entry permits, which are essentially freely transferable and irrevocable, and regulation of use of the permits through the required fishing license, or even more familiarly, the right to own or dispose of a motor vehicle and the privilege to operate the vehicle.)

Only the holder of a license under the revision may qualify for a certificate to operate. As a technical point, it should be noted that the use of the term "license" in the revision includes certificates to operate, except where the latter term is expressly used in the context of a provision (Sec. 04.11.120(b). [In this regard, a drafting correction should be noted at page 37, line 16 of the draft; the term "license" should read "licensee's certificate to operate". At page 37, line 18, "license" should read "certificate to operate".] However, interim certificates for a limited time period are authorized in a few cases for transitional purposes, mainly the operation of licensed premises under a management agreement by a license purchaser, or the interim operation of premises of a deceased licensee (Sec. 04.11.130).

ARTICLE 4. CLASSIFICATION OF LICENSES.

The revised article on types of licenses retains and streamlines existing classifications of licenses and clarifies the apparent intent of existing law. In addition, a few limited changes in existing law are made, primarily as follows:

- holders of recreational site licenses are authorized to sell hot-spiced wine at the site of a recreational event, in addition to beer (Sec. 04.11.140(1)(G);
- in-flight catering licenses are authorized for sale of alcoholic beverages to certificated domestic and international air carriers;
- special permits, currently authorized only by regulation under AS 4, are expressly provided for in the proposed statute (Sec. 04.11.140(1)(I) and Sec. 04.11.145); the current special events permit is broadened to authorize sale of wine as well as beer by political and charitable organizations, as well as fraternal, civic or patriotic organizations (Sec. 04.11.145(a);
- community liquor licenses, currently authorizing beverage dispensary and retail package store licenses to first and second class cities, are authorized without the necessity of a local option election prohibiting sale of alcoholic beverages other than by the city or under a tourist facility license. In current administrative interpretation, the two references in AS 4 to community

liquor licenses (namely, AS 04.10.139 and 04.10.430(c)) are apparently construed to require such a election, but the statutes appear also to support the meaning as clarified in the revision. In addition, the restriction of eligibility of cities under current law to cities not having a private beverage dispensary or retail package store license in effect within the municipal boundaries before June 1, 1970 is not retained.

ARTICLE 5. FEES AND TERMS.

No change is made in license and permit fees or duration. As discussed above, licenses for which annual fees are not timely paid are not forfeited as under current law but instead lapse and may be reinstated within a three-year period upon payment of the accrued fees plus a penalty payment.

ARTICLE 6. APPLICATIONS.

Rather than stipulate by statute specific contents of a license application, as under current law, the revision vests the ABC board director with discretion to prescribe contents of an application (Sec. 04.11.190). The current requirement of law that a beverage dispensary or retail package store licensee be a one-year resident is not continued because of its doubtful constitutionality.

The revised article also sets out statutory criteria for determining whether or not a license and operating certificate issuance or transfer is in the best interests of the public (Sec. 04.11.210). Current law, while establishing objective criteria such as quotas for licenses and restrictions on who may hold a license or interest in licensed premises, provides little in the way of policy direction on the more subjective criteria of licensing. The proposed section is intended to define the criteria to provide some degree of specificity on this basic licensing consideration.

ARTICLE 7. RENEWALS, TRANSFERS, SUSPENSIONS, REVOCATIONS.

As discussed above, license and operating certificate renewals are provided for in the revision without the necessity of formal application as if for a new license. The current requirement of law that licenses must be exercised or active for at least 30 days during the year preceding renewal is not retained in the revision (Sec. 04.11.230(d)); the apparent intent of the requirement, to discourage monopolistic practice, is understood to be within the scope of the anti-monopoly provisions of AS 45.52.

The revision alters the requirement of current law that applications for transfers of licenses may not be approved unless all debts and taxes owed by the transferor to a creditor of the business are paid or satisfactory arrangements for payment made; rather, an affidavit of the transferor stating the amount of debts and taxes owed and identifying the creditors is required, and notice is to be provided any creditor or taxing authority of the application and the amount owed (Sec. 04.11.190(c)). While simplifying the transfer process and avoiding an ABC role of debt collecting, the modified requirement is considered an adequate balancing of the licensee's interest in transferring freely with the need for protection of creditors.

As indicated above, suspensions and revocations under the proposed code are intended to apply only to certificates to operate (the license being distinguished as a personal property right). Grounds for certificate suspension and revocation are expressly set forth in the revision (Sec. 04.11.250) and are intended to specify grounds which appear fairly implied but are not stated in current law; they are based in part on current regulations in effect under existing law.

CHAPTER 14. LOCAL OPTION.

The current provision of law authorizing elections on sale of intoxicating liquors within cities, AS 04.10.430, has been completely redrafted to answer a number of questions on meaning and application of the provision as amended over the years (Sec. 04.14.010). The current law implies that at least two questions may be the subject of a local option election, namely, whether the city should be "wet" or "dry", and, if not "dry", whether sale should be permitted only under a community liquor license of the kind authorized first and second class cities under other provisions of current law. This effect is spelled out in the revision.

The current law's prohibiting in case of a "dry" vote, further license issuance in the city "for a period of one year" (AS 04.10.430(a)) seems to be so ambiguous as to intended effect that it is not retained, but the provision under current law for extraterritorial effect of a "dry" vote, so as to prohibit new beverage dispensary or package store licenses within five miles of the city, is continued. Should the option of a community liquor license rather than "dry" status be elected, no extraterritorial effect appears intended under present law or is provided for in the redraft.

Unlike the current law, the exclusion of all licenses within the city having elected the community liquor license option carries no exception for tourist facility licenses and extends to renewals and transfers of existing licenses as well as new licenses (the only category affected under present law), but licenses issued before September 10, 1972 -- the effective date of the current law authorizing local option election for community licenses -- remains unaffected.

Current law calling for a mandatory local option election in a city in which there are no licensed premises before a license may be issued is continued and is intended to prohibit sale under either a permit or license if the majority vote is "dry", the same effect as under current law (Sec. 04.14020)).

The one provision of current law which now has the effect of authorizing local option election on the question of "wet" or "dry" (but not community license) status in unincorporated areas of the state, upon a 35 percent protest of license issuance, renewal or transfer, as noted above, is also retained and the effect of the election expressly spelled out and made consistent with the effect of a "dry" or subsequent "wet" vote within a city (Sec. 04.14.030).

Sales in an area in violation of a "dry" ban continue to be penalized as a misdemeanor (Sec. 04.14.040(a)). (The term "class A misdemeanor" is used in the revision to conform to classifications of penalties taking effect January 1, 1980 under ch. 166 SLA 1978, the criminal code revision.) The revised section makes clear that mail or telephone orders originating from a "dry" area to a package store in an area not prohibiting sale do not per se constitute a violation (Sec. 04.14.040(b)).

Provisions specifically authorizing seizure of conveyances utilized in connection with illegally-sold alcoholic beverages and specifying the conditions of seizure are added to current law (Secs. 04.14.040 - 04.14.060), essentially as they appear in pending proposed alcoholic beverage control legislation introduced at the request of the Governor (HB 219 of the current Legislature.)

The local option elections authorized in this article, while obviously principally intended as an alcoholic beverage regulatory means for rural areas, continue in the revision, as under current law, to be applicable within any city of the state, regardless of population or location. A 35 percent petition of municipal voters continues prerequisite to any local option election.

CHAPTER 16. REGULATION OF SALES AND DISTRIBUTION.

ARTICLE 1. OPERATION OF PREMISES.

The present prohibition of law on serving intoxicated persons is changed so as to proscribe serving "visibly intoxicated" persons, largely to facilitate enforcement as a practical matter (Sec. 04.16.050). In addition, the present restriction of law on permitting intoxicated persons to remain on licensed premises is modified so as to permit an intoxicated person to remain in order to avoid unreasonable risk of bodily harm to the person (Sec. 04.16.050).

ARTICLE 3. DISTRIBUTION.

To the knowledge requirement imputed to licensees under current law, i.e., that the person from whom they purchase alcoholic beverages on a wholesale basis is properly licensed, the revision adds a similar requirement for the person selling on a wholesale basis as to purchasers from him (Sec. 04.16.120).

The article also specifies that shipments of alcoholic beverages into and within the state for sale other than to licensees are contraband, with exceptions for mail and telephone orders, as authorized in the revision at Sec. 04.14.040(b) and other exceptions as determined necessary by board regulation (Sec. 04.16.110). Current law specifically declares to be contraband only shipments into the state for sale other than to a licensee, but application of the concept to such shipments within the state seems implicit in the current law. The present exemption of alcohol used for religious, industrial, pharmaceutical or medical purposes from the provision is continued, in the definitions article of the revision (Sec. 04.90.040(2)).

CHAPTER 85. MISCELLANEOUS PROVISIONS.

The broad grant of authority to municipalities under present law to adopt alcoholic beverage control ordinances consistent with the state law is retained, with an additional requirement that the ordinances not impede implementation of the policy of the state law (Sec. 04.85.010). The additional provision is intended to insure that the statewide policy set forth in the proposed title is paramount to local enactments, which, strictly speaking, may be "consistent with" but not otherwise comport with the state policy.

Not continued in the revision is a provision of current law enacted in 1976, which authorizes in "dry" municipalities ordinances making sale a misdemeanor "whether the sale is made pursuant to license or otherwise" (AS 04.15.070). The revision provides for the phasing out of sale operations upon a "dry" vote; in addition, municipal authority already granted in the section to regulate consistently with state law would seem adequate for making sale in violation of local option a local as well as a state offense.

It might be noted that the exercise of municipal regulatory power by organized boroughs, both under the proposed code and current law, is assumed to be subject to the restrictions under AS 29 on borough acquisition of areawide borough powers and powers exercised by boroughs in the area outside cities only.

[A drafting oversight, omitting present law intended to be included in the revision should be corrected in this chapter of the tentative draft, as follows. At page 37, between lines 3 and 4, insert:

"Sec. 04.85.020. REFUNDS TO MUNICIPALITIES. The amount of license fees, excluding wholesale license fees, collected under AS 04.11.170 within a city, borough area outside a city, or unified municipality shall be refunded semi-annually to the city, borough

or unified municipality. However, if the director determines the local government fails to exercise its power to enforce actively federal and state laws and regulations and local ordinances governing the manufacture, barter, sale and possession of alcoholic beverages within the municipality, the commissioner or revenue may deny a refund under this section until the director determines enforcement is actively resumed."

The provision derives from AS 04.10.450.]

CHAPTER 90. GENERAL PROVISIONS.

The informal hearing and the appeals procedure for licensing set out earlier in the revision (Sec. 04.11.090) is applied in this chapter to all actions of the director. Under current law, the Administrative Procedure Act governs all proceedings under Title 4 (AS 04.05.030(f)). Summary suspension of the operating authority of premises is expressly authorized for up to seven days, however, without a right of hearing or appeal (Sec. 04.90.020(b)).

The chapter specifically designates ABC enforcement officers as peace officers and indicates their particular powers as enforcement officers (Sec. 04.90.030).

The definitions section of the chapter incorporates the existing Title 4 definition of "alcoholic beverages" with two modifications; first, alcoholic beverages used for religious, industrial, pharmaceutical or medical purposes, as defined by ABC board regulations, are excluded and, second, any nonliquid substance having alcoholic content and intended for human consumption, i.e., "powdered alcohol", is included within the definition (Sec. 04.90.040(2)). With regard to the latter, it is recognized that the question of permitting any use of the relatively new substance, "powdered alcohol", is currently under legislative scrutiny, and the inclusion of this form of alcoholic beverage within the definition is intended only to insure that it is subject to control should it not be prohibited entirely or separately regulated through other legislation.

"Transfers" as used in the proposed code is defined to include both transfers of location and ownership (unless the context of a provision requires otherwise), and in addition, a transfer of ownership is defined to include replacing one named licensee with another or addition to a license of another named licensee; deletion of a named licensee would not itself be regarded as a transfer of ownership, requiring a formal application for transfer (Sec. 04.90.040(21)).

"Municipality" is defined in the chapter to encompass both home rule and general law municipalities (Sec. 04.90.040(12)), an application not expressly stated in the current law but probably effective under current judicial interpretation of the applicability of state statutes to home rule local governments.

[As a technical refinement, at page 69, between lines 15 and 16 of the tentative draft, a definition of "director" as the "board director" should be inserted.]

III. POLICY CONSIDERATIONS FOR THE LEGISLATURE

As indicated in its transmittal statement, the commission has been working towards an essentially technical revision of Title 4, with the primary effort being to improve the organization and content of the current law without altering its underlying policies. Nonetheless, in the course of its research effort described in the transmittal statement, the commission has identified policy areas which it believes the Legislature should give particular attention to in developing and maintaining a modern and effective alcoholic beverage control law.

The commission is not recommending changes in present policies necessarily but rather that the policy concerns be reviewed by the Legislature.

Initially, some fairly specific concerns are briefly outlined, and, then, a fundamental policy concern noted. The specific concerns relate to:

A. Administration

1. Composition of the ABC board, specifically the requirement by law that two of the five board members be selected from the retail alcoholic beverage industry. The state is apparently alone in requiring industry membership. The state's recent "sunset" review of the ABC recommends reduction of required industry membership to one member (see "A Performance Review of the Alcoholic Beverage Control Board", Division of Legislative Audit, State of Alaska, November 3, 1978, p. 8).

2. Board regulatory authority, in terms of the broad statutory discretion conferred on the ABC board to regulate the industry "in the public interest". An alternative approach is to exercise control more by statutory means, with board rulemaking authority limited to designated subjects. Broad regulatory authority, however, is typical of almost all states utilizing boards as the control agency.

B. Licensing

1. The quota system of licensing, in terms of an evaluation of the validity of the traditional reasons advanced for limiting the number of licenses on a population basis, i.e., the encouragement of moderation and high standards of operation through protection from injurious competition. (A commission research report specifically explores this question). An equitable means of phasing out quotas so as not to penalize licensees who

have had to pay substantial prices for their licenses as a direct result of existing quota restrictions should be part of any consideration of eliminating quotas. Whether, under a continued quota system, some license types in addition to tourist facility licenses might be exempt is another concern.

2. Particular license-type considerations, namely, the contemporary relevance of limiting sales to beer and wine under some licenses (e.g., restaurant, pub licenses), prohibiting package goods sales under beverage dispensary licenses, and prohibiting alcoholic beverage sales in grocery outlets, might be evaluated.

3. Municipal participation in the licensing process. There appears to be considerable concern at the local level with the effectiveness of the current law, which limits municipal participation in the licensing process to a right of protest and hearing. Alternatives have been suggested which range from making the municipal recommendation for license approval or disapproval binding upon the state control agency unless arbitrary (at one time the law in the state) to dispensing with municipal participation entirely. Generally, a stronger role in municipal license approval appears to be favored at the local level. The subject appears to be of widespread concern, and legislative reexamination of this aspect of the current law seems especially indicated.

C. Local Option

1. Authorizing local option election choices in addition to the choices under present law, i.e., "wet", "dry" or community license status. In particular, authorizing communities which change from "wet" to "dry" status to further limit the number and types of outlets permitted by quota has been urged (most notably in a formal city council resolution conveyed to the commission; Resolution #250, 1978, Bethel City Council). Other options which have also been proposed are limited and unlimited community licenses (HB 219 of the current Legislature), and election to permit only sales of beer and wine.

2. Authorizing local option elections in unincorporated areas, e.g., outside-city areas of election precincts in the unorganized borough; under current law (retained in the revision), a very limited right of local option outside incorporated areas is authorized within two miles of village boundaries, and then only upon protest of a issuance, renewal or transfer within the village (Sec. 04. ~~14~~ 14.030(a) discussed above).

3. Authorizing compensation to communities voting "dry" for loss of alcoholic beverage sales tax revenues. A fear of economic loss from prohibiting alcoholic beverage sales appears to be a key and perhaps inappropriate consideration of local option elections under present law.

D. Enforcement

1. Improving the enforcement function. Enforcement of the ABC laws and regulations appears to be a particular problem area under the existing control system, with no immediate solution apparent. It has been proposed that ABC enforcement responsibilities with respect to the 1300 outlets within the state be transferred from the ABC board to a special unit within the Department of Public Safety. This recommendation is made in the "sunset" report noted above (at pp. 15-16 of the report, with a dissenting view of the Department of Revenue set out at pp. 43(a) - 43(c), and comment of the ABC board chairman at pp. 44(a) - 44(b)).

One evident need is coordination of enforcement activities among the ABC and state and local police agencies, an objective which presumably could be at least partially attained through training programs and uniform enforcement procedures. These might be a starting point for legislative examination of policy options to strengthen enforcement efforts.

2. Alcoholic beverage control in rural areas. Of all the concerns presented to the commission in the course of its research, none have been more forcefully and intensely presented than concern for finding methods to control alcohol abuse in rural areas of the state, particularly through control of bootlegging. Stiffer, i.e., felony, penalties for at least aggravated cases of sales of alcoholic beverages in areas where a local option election has made sales illegal, confiscation of vehicles used for bootlegging purposes (express authority for that purpose is conferred in the revision, as noted above) and increased enforcement efforts seem to be the main control techniques advanced to deal with bootlegging.

Additional approaches to control bootlegging, together with other proposals relating to bush area alcohol problems, are offered in HB 219 of the current Legislature. In a research report the commission has organized as a checklist possible policy alternatives coming to its attention on the concern. Without endorsing or recommending particular solutions, attention is called to this obvious policy area needing legislative scrutiny. It should also be noted that the Criminal Justice Center of the University of Alaska has been reviewing the subject of alcoholic beverage control in rural areas of the state and presumably will offer substantive proposals in its project report.

3. Possible specific enforcement aids, particularly:

a. Reducing hours of sale -- There is some evidence within the state that local action to move up tavern and package store closing hours from 5:00 a.m. to 2:00 a.m. weekdays has reduced police problems. Requiring package stores to close shortly before taverns is another alternative of possible practical benefit.

b. Raising minimum drinking ages -- Nationally, several states which initially had lowered drinking ages have recently raised them, partly in response to increases in alcohol-related auto accidents occurring concurrently with the lowered drinking age (whether raising the minimum results in a decrease of the accident rate has apparently not been established).

c. Restricting the advertising of alcoholic beverages -- This is a subject under current review by the Treasury Department's Bureau of Alcohol, Tobacco and Firearms, as to the 40-year old regulations covering national advertising of alcoholic beverages, and it is also a subject treated in HB 219 of the current Legislature (with the effect of permitting in-state advertising by manufacturers and wholesalers only). Restricting advertising is a key point of proposals by health and alcoholism officials to discourage excessive consumption.

d. Providing legislatively for rehabilitation of persons convicted of offenses as a result of alcohol problems, as an alternative permitted sentence -- Presently, the threat of jail or a fine precedes a defendant's consent to treatment; direct authority to impose the requirement of treatment, in place of a fine or imprisonment, might be considered. (A provision to this effect exists in the law now, as to rehabilitation of some drug offenders; see AS 17.12.120. It was also proposed as to alcohol-related offenses in SB 551 of the Tenth Legislature).

These approaches, again, are not being recommended but rather special attention is called to them as possible aids, to reduce enforcement problems within the state, which seem to merit further study.

4. Liability or immunity from liability in tort of third persons serving intoxicated persons, a subject under current legislative consideration (CSSB 115 (Rules)).

A number of "scope limitations" on commission policy concerns should be noted here: (1) alcoholic beverage taxation and pricing policies -- such as rates of state and local taxation, and "resale price maintenance" through price posting and price affirmation -- were not included within the scope of the commission's research effort on Title 4 and are thus not referred to as possible policy concerns, (2) in commission deliberations, occasion has not yet been taken to communicate directly with representatives of the wholesale industry, and their concerns thus may not be reflected in the review above, and (3) while the commission is cognizant of the fact that a regulatory board is not the control agency in a number of the 32 "open license" states, (as distinguished from the 18 "control" states having a monopoly, or "state-stores" system of control at the wholesale or retail level), the commission has presumed the state ABC board as the regulatory agency.

Finally, one overriding policy concern remains to be identified:

The relationship of laws restricting access to alcoholic beverages and alcohol-related problems in society. While much attention has been devoted nationally to prevention and treatment of alcoholism and alcohol abuse, surprisingly little in the way of factual data seems to have been formulated nationally on the basic question of whether laws restricting legal access to alcohol help significantly to reduce alcohol-related problems. The basic thrust of a modern state regulatory policy would seem to depend on an assessment of that question.

There appear to be two distinct schools of thought on the subject. One, supported by alcoholism and health authorities, appears to hold that there is a clear relationship between overall alcohol consumption and the level of alcohol problems in society, and that restricting access through legal means is one way to discourage or reduce consumption and thereby lessen alcohol problems.

The rationale of reducing per capita consumption extends not only to direct means of lessening access (such as minimum drinking ages and restrictions on hours and conditions of sale), but also to restrictions on advertising, to maintaining a reasonably constant relationship between the price of alcohol and levels of disposable income (e.g., increasing price according to increase of per capita disposable income), and to other means forming a "constellation" of public policy efforts rendering alcohol a less accepted and significant aspect of our culture. Under this rationale the relevant question in governing alcoholic beverage manufacture and distribution would be whether a proposed regulatory measure would contribute to higher consumption levels and therefore an increase in alcohol-related problems and the costs resulting from them.

The contrary school of thought, supported and encouraged by the industry in large part apparently, holds that liberal or strict alcoholic beverage control laws have little effect on patterns of consumption and that attempts to control access to alcohol through legal means are not effective. Encouraging a healthy attitude towards drinking, that is, moderation, rather than controlling availability, is urged as the appropriate public policy goal.

Perhaps the obvious disagreement on this fundamental question, and the research only beginning now to emerge to resolve it, helps explain the absence of any proposed "model law" of alcoholic beverage control and, as well, the differences in regulatory practices among the states. In any case, the commission has compiled research material from within and outside the state on this

question, as well as other materials. A workbook has been maintained of in-state survey responses (with many specific suggestions), proposed legislation, checklists of policy alternatives, and commission research memoranda. Recorded and indexed commission deliberations have also been maintained, and other information compiled which should be of assistance in any current legislative evaluation of the underlying policy of Title 4. As indicated, the commission views the policy concerns identified in this supplement as the prerogative of the Legislature to decide.

As also indicated in the transmittal statement accompanying its tentative draft of Title 4, while the commission has not yet taken final action, it plans no further action on AS 4 until receiving further direction from the Legislature.

C O D E R E V I S I O N C O M M I S S I O N

TENTATIVE DRAFT OF REVISION OF TITLE 4 .

(April 18, 1979)

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CODE REVISION COMMISSION

ERRATA SHEET

To accompany tentative draft of revision of Title 4

(submitted April 18, 1979)

<u>Page</u>	<u>Line</u>	<u>Delete</u>	<u>Insert</u>
1	18	"wholesale"	<u>wholesaler</u>
2	15	"lease"	<u>least</u>
4	23	"and"	
5	12	"otherwise"	
6	9	"or"	after "issued": (comma) ,
6	18, 22	"(a)"	(d)
10	26		after "perty": <u>subject to this title</u>
11	5		after "title": <u>excluding sec. 11 of this chapter</u>
22	21		after "010": <u>and AS 04.14.030</u>
22	22	"reinststed"	<u>reinstated</u>
23	24	"or otherwise revoked"	
24	12	"chis chapter"	<u>(a) and (b) of this section and sec. 200 of this chapter and AS 04.14</u>
25	1	"and"	
25	7	(period) "."	(semicolon) ;
27	14		after "fee": <u>and irrespective of the type of license he holds</u>
28	28	"order"	<u>orders</u>
30	19	"and certificate to operate"	
31	21		after "except": <u>alcoholic</u>
31	25		after "person.": <u>(b)</u>
31	29	"(b)"	(c)
32	4	"No"	after "(a)": <u>Except as provided in (b) of this section, no</u>
32	25	"deliver"	<u>furnish</u>
33	18	(first) "or"	(comma) ,
33	18, 23		after "serving": <u>or furnishing</u>
35	12	"Sec. 04.16.100"	<u>Sec. 04.16.110</u>
	17	"Sec. 04.16.110"	<u>Sec. 04.16.120</u>
35	23	(semicolon) ";"	(comma) ,
36	4	"Sec. 04.16.110"	<u>Sec. 04.16.130</u>
36	11	"Sec. 04.16.120"	<u>Sec. 04.16.140</u>
36	20	(period) "." following	
		"CHAPTER"	
		"ELECTIONS"	<u>RESTRICTIONS</u>
36	21		add: <u>AS 04.85.010(a)</u>
37	13		<u>licensee's certificate to operate</u>
37	16	"license"	<u>certificate to operate</u>
37	18, 19, 21	"license"	
37	25	(comma) ","	
38	4		after "section": , <u>and AS 04.11.130(d)(2)</u>
38	5	"license"	
42	3		after "licenses": <u>or permits</u>

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

file copy
JAY S. HAMMOND, GOVERNOR

POUCH 5 - JUNEAU 99811

May 28, 1980

The Honorable Charles Parr
Chairman
House Judiciary Committee
Room 124 - Capitol Building

Dear Representative Parr:

Re: HCS CS for Sponsor Substitute for Senate Bill No. 239

HCS CS for Sponsor Substitute for Senate Bill No. 239, an Act relating to alcoholic beverages, was referred on April 15, 1980 to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a Fiscal Note prepared by Patrick Sharrock, Director, Alcoholic Beverage Control Board, Anchorage concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

cc: The Honorable Russ Meekins
Chairman
House Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Patrick Sharrock, Director
Alcoholic Beverage Control Board
Department of Revenue

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HCS CS SS SB#239
 Title Relating to Alcoholic Beverages
 Requested by House Judiciary Committee Date _____

II. FISCAL DETAIL

Agency Affected Department of Revenue
 Program Category Affected Consumer Protection
 Budget Request Unit(s) Affected Alcoholic Beverage Control Board

EXPENDITURES (Thousands of Dollars)

	FY ⁸⁰	FY ⁸¹	FY ⁸²	FY ⁸³	FY ⁸⁴	FY ⁸⁵
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		15.0				
400 COMMODITIES		3.0				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	18.0	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	18.0				
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

NOTES:

- 1) With passage of this legislation, agency regulations will require review and modification. This will require contracting with the Department of Law for an Assistant Attorney General. Costs associated with writing regulations will be at least \$15.0. Commodities costs are for printing and distribution of the new law and regulations to licenses and the public.
- 2) Annual General Fund revenues are increased \$350.0 from increases for certain license fees. (See attached schedule)

IV. DATE May 28, 1980

PREPARED BY *Richard J. Hancock* Director
 AGENCY Alcoholic Beverage Control Board
 PHONE Anchorage 277-8638
Juneau 465-2300

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

May 28, 1980

Present Type License	No. of Licenses	License Fee		Total Fees	
		Present	Proposed	Present	Proposed
Beverage Dispensary			1,250		775,000
Over 1500 pop.	392	1,000		392,000	
Under 1500 pop.	228	500		114,000	
Retail	436	600	750	261,600	327,000
Club	57	400	600	22,800	34,200
Restaurant	141	300)	300	42,300)	47,700
Roadhouse	18	150)		2,700)	
Common Carrier	58	250	350	14,500	20,300
Wholesale (General)	17	500	1,000	77,750	117,500
Wholesale Malt, Beverage and Wine	7	100	200	10,200	10,700
Pub	1	300	400	300	400
Recreational Site	10	300	400	3,000	4,000
Conditional Contractor Permit	0	300	600	300	0
Community)					
Brewery)					
Bottling Works)					
Distillery)					
Retail Stock)					
Winery)					
		No licenses currently issued			
Total	<u>1,366</u>			<u>941,450</u>	<u>1,315,200</u>

Form No. 01-001

STATE OF ALASKA
OFFICE OF THE GOVERNOR

TO:
DEPT: Alaska State Legislature
ATTN: House Judiciary - Sandra Stringer

- Return letter with draft
 Return letter with comment
 Reply direct
 Action
 Your information

REMARKS:

FROM: Rod Mourant Date: 5/29/80
Administrative Officer



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MS. SANDRA STRINGER
HOUSE JUDICIARY COMMITTEE

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House CS for Senate Bill 365
 Title "An Act relating to local option and establishing penalties for violations of liquor laws."
 Requested by House Judiciary Committee Date 5-28-80

II. FISCAL DETAIL

Agency Affected Office of the Governor
 Program Category Affected Executive Operations
 BRU, Program, or Subprogram(s) Affected Lt. Governor Office - Elections
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		0				

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
		0				

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						
		0				

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is impossible to determine how many village local option elections might occur. As the number of elections is unknown, the fiscal impact is 0, however, fiscal impact will occur when elections are conducted.

IV. DATE 5-29-80 PREPARED BY Patty Ann Polley
 AGENCY Division of Elections
 PHONE 586-6181
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

file copy

I. REQUEST

Bill/Resolution No. SB 365
 Title An Act imposing penalties on persons who deal in intoxicating liquors without a
 Requested by Senator Sackett Date 1/28/80 /license

(ALEPLE MORRISON - 3753)

II. FISCAL DETAIL

Agency Affected Department of Law
 Program Category Affected Administration of Justice
 BRU, Program, or Subprogram(s) Affected Prosecution

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill, which increases penalties on persons who deal in intoxicating liquors without a license, can be effectively enforced by state prosecutors without additional staffing, provided the Governor's FY81 budget recommendations are adopted. These recommendations concentrate prosecution efforts at the trial level and increase prosecution services in rural areas of the state. This bill is very similar to that portion of the Governor's proposed legislation consolidating and revising the laws relating to drug abuse which deals with intoxicating liquors. Both measures have the full endorsement of the Department of Law.

Richard I. Regues

IV. DATE January 29, 1980 PREPARED BY Richard I. Regues (Admin. Officer)
 AGENCY Law
 PHONE 465-3605

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

III. ANALYSIS (cont'd)

of Title 4. This strengthening of the local option penalties, found in Sec. 04.16.200(e)(f), has a valuable social purpose, but, it is one which will have a price. The major impact of this change will be felt in the Bethel judicial services area where the majority of communities having local option ordinances are located. This area is currently served by two attorneys, one bilingual paralegal and one secretary. The addition of new cases and an increase in the severity of cases will place a substantial new burden on the Bethel Office. This burden will be felt particularly by the single support staff person. Although the attorneys and the paralegal should be able to cope with this change in Title 4, at least until the full impact of the change is felt by the end of FY 81, there will be immediate impact on available clerical services. For this reason we are requesting the addition of a clerk/typist III at Bethel to handle the additional services which will be required by this part.

I. REQUEST

Bill/Resolution No. House CS for CS for Sponsor Substitute for Senate Bill No. 239
 Title "An Act relating to Alcoholic beverages; and providing for an effective date."
 Requested by House Judiciary Committee Date May 28, 1980

II. FISCAL DETAIL

Agency Affected Department of Law
 Program Category Affected Administration of Justice
 BRU, Program, or Subprogram(s) Affected Prosecution

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		23.4	25.3	27.3	29.5	31.9
200 TRAVEL						
300 CONTRACTUAL		3.3	3.6	3.9	4.2	4.5
400 COMMODITIES		.5	.5	.6	.6	.7
500 EQUIPMENT		1.3				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		28.5	29.4	31.8	34.3	37.1

FUNDING (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND		28.5	29.4	31.8	34.3	37.1
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME		1.0	1.0	1.0	1.0	1.0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

There are two parts of this act which will have substantial impact on prosecution activities. The first is Sec. 04.16.040 which provides a misdemeanor penalty for an intoxicated person to knowingly enter or remain on premises licensed under Title 4. The extent to which this provision may be enforced is unknown. The impact, however, could be felt statewide and would be substantial if a program of selective enforcement were adopted as a local policy matter. Because the extent to which this provision may be enforced is unknown, the fiscal impact cannot be calculated at this time. The second part having an impact is that which provides for both misdemeanor and felony penalties for the possession and transportation of alcoholic beverages within local jurisdictions which have prohibited the sale and distribution of alcoholic beverages under the local option provisions

IV. DATE May 29, 1980 PREPARED BY Richard I. Pegues Admin. Officer
 AGENCY Department of Law
 PHONE 465-3695

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE CS FOR LATE BILL NO. 365
 Title "An Act relating to local option and establishing penalties for
 Requested by House Judiciary Committee Date May 28, 1980

violation of liquor laws."

II. FISCAL DETAIL

Agency Affected Department of Law
 Program Category Affected Administration of Justice
 BRU, Program, or Subprogram(s) Affected Prosecution
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This fiscal note should be read in conjunction with our comments provided in the fiscal note to SB 239. We originally provided a fiscal note for SB 365 on January 29, 1980. Since that date, the bill has been revised to provide for additional prohibitions concerning possession and transportation of intoxicating liquors. These new provisions will have a fiscal impact on prosecution activities which are detailed in our fiscal note to SB 239.

Richard I. Pegues

IV. DATE May 29, 1980 PREPARED BY Richard I. Pegues, Admin. Officer
 AGENCY Department of Law
 PHONE 465-3695

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

SB 239
file

F. P. PETTYJOHN
LAWYER
BOX 1277
ANCHORAGE, ALASKA 99510
907-276-2879

May 19, 1980

Mr. Jim Thibodeaux
Executive Director
CHAR

Re: Senate Bill 239

Dear Jim:

Pursuant to our conversation earlier this week, I have researched the questions discussed at our meeting.

With regard to the advantages or disadvantages of having the statutes of our State specifically set forth that a liquor license is a privilege and not a property right, I have definitely concluded that the advantages are clearly in favor of this situation. *Frontier Saloon, Inc. v. Alcoholic Beverage Control Board*, 524 p2d 657 (Alaska 1974), stated that under the current law a liquor license holder is entitled to due process when dealing with government authorities, including the Alcoholic Beverage Control Board. This statement of the law of Alaska was subsequently reaffirmed in *Herschner v. State of Alaska*, 568 p2d 996 (Alaska 1977). Under the proposed law, the situation would be clarified, in that the statute would specifically state that a liquor license is a privilege. One of the cases cited in *Frontier Saloon, Inc. v. Alcoholic Beverage Control Board*, was *Hornsby v. Allen*, 326 f2d 605 (5th Circuit 1964). This case, cited with approval by our Supreme Court, would directly affect the situation regarding due process for license holders once the new statute passed. In the *Hornsby* case, the State of Georgia had statutorily declared that a license was a privilege, but the Court stated, "merely calling a liquor license a privilege does not free the municipal authorities from the due process requirements and licensing and allow them to exercise an uncontrolled discretion". *Hornsby*, supra, at 609.

It is thus clear that license holders, under the new statute, would be entitled to all the due process requirements set forth in the *Frontier* case. These include the right to a hearing, the right to notice, the right to representation, and other rights under the due process clauses of the United States and Alaska constitutions.

The other aspect of a property right as opposed to a privilege involves the availability of a license as collateral for loans, and the fact that a license may or may not be executed upon or foreclosed upon. The present situation clearly does not allow a license to be subject of an execution on a judgment. The new statute would further clarify and expand the protection afforded a license from judgments. Since, in the practical world, banks or other lending institutions will not accept a

liquor license as collateral, the new statute does not take away anything that presently exists. It merely expands and clarifies the protection afforded a license.

In sum, my clear recommendation would be not to oppose the statutory definition of a license as a privilege as opposed to a property right.

With regard to the other matter we discussed, namely the inclusion of the word "shall" as opposed to the word "may" in various provisions of the statute, is clearly a concern. In the following provisions of the proposed law this could be a problem for license holders.

Section 4.11.320 - Denial of a new license.

Section 4.11.330 - Denial of a renewal of a license.

Section 4.11.340 - Denial of a transfer of location.

Section 4.11.360 - Denial of transfer of ownership.

Section 4.11.370 - Suspension and revocation of license.

These proposed provisions take discretionary power away from the Board. This could most definitely be a problem in all of the above situations. Section 4.11.330 would seem to require that a license not be renewed if the Board found that the renewal would not be in the best interests of the public. This is a very nebulous standard, and it could be argued by either the Board or members of the public, that upon the showing of information concerning an individual license, absent evidence to the contrary, it would be in the public interest to have the license not renewed. This would represent a definite threat to license holders. Citizens groups, Moral Majority types, or anyone else in the community could create considerable pressure on the Board to make a finding that a license was not in the public interest. I would recommend that the provisions contained in the new statute, with regard to "licenses not being in the best interests of the public", should be removed. Such statements are contained in 4.11.330 1, 4.11.340 1, 4.11.360 1.

Perhaps the most disturbing provision is contained in 4.11.370. This requires that a suspension or revocation of a license take place if, among other things, "(2) continuation of activities authorized under license or permit would be contrary to the best interests of the public, (3) failure on the part of the licensee to correct objectionable conditions within a prescribed time after the receipt of notice issued by the Board or its agent, (8) occurrence of illegal gambling within the limits of the licensed premises, (9) occurrence of any public offense involving moral turpitude on the licensed premises, (10) violation by a licensee of this title or regulation adopted under this title or an ordinance adopted under AS 04.21.010".

The most disturbing aspect of Section 4.11.370 is that it calls for a mandatory suspension or revocation should certain events occur, even if the licensee had done everything humanly possible to prevent the occurrence

complained of. Thus it would be possible for a licensee to face a mandatory suspension or revocation for illegal gambling occurring in the rest rooms located on his premises, without his knowledge, and without his approval, and despite his very best efforts to see that such an act had not occurred. Likewise, if an offense involving moral turpitude occurred on the licensed premises, even though the license holder had done all in his power to prevent such an occurrence, he would nonetheless be faced with a suspension or revocation of his license. I believe these provisions are very serious threats to license holders and should be lobbied for removal.

Thank you for allowing me to look into these matters for you. I would be happy to discuss them further, or to alter this letter to a format more appropriate for inclusion in your newsletter.

Very truly yours,


F. P. Pettyjohn

*Section 1. FINDINGS AND INTENT. The legislature finds that the abuse of intoxicating liquor is inflicting very deleterious effects on individuals, families, and the public at large. The legislature intends that the manufacture, distribution, and sale of intoxicating liquor be controlled and regulated under the police power of the state in such a manner as to mitigate the deleterious effects of intoxicating liquor on the health, safety and welfare of the people of the state. The legislature finds, in furtherance of that intention, that the health, safety and welfare of the public will be well served by placing a person on the Alcoholic Beverage Control Board who is trained to recognize the deleterious effect of alcohol in society and who will be in a position to influence the development of a state policy competent to mitigate or neutralize those effects.

Sec. 04.06.020 is amended to read:

APPOINTMENT AND QUALIFICATIONS. The board consists of six (FIVE) members appointed by the governor and confirmed by a majority of the members of the legislature in joint session. A member of the board may not hold any other state or federal office, either elective or appointive. Two members of the board shall be persons actively engaged in the alcoholic beverage industry, except that no member may hold a wholesale license or be an officer, agent, or employee of a wholesale alcoholic beverage enterprise. One member of the board must have training or .. experience in the epidemiology of alcoholism. No three members of the board may be engaged in the same business, occupation, or profession.



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ALASKA STATE LEGISLATURE
 POUCHY STATE CAPITOL
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EXECUTIVE SECRETARY
 BILLY G. BARRIER

April 18, 1979

MEMORANDUM

SUBJECT: Revision of Title 4 -- Alcoholic Beverages

TO: Senator George H. Hohman, Chairman
 Alaska Legislative Council

FROM: John W. Abbott, Chairman
 Code Revision Commission *JWA*

Pursuant to authority granted in AS 24.20.075(c), the Code Revision Commission has prepared the attached tentative draft, dated April 18, revising the alcoholic beverage control laws of the state encompassed in AS 4. The tentative draft is transmitted for informational purposes for use by the Legislative Council and appropriate committees during their consideration of legislation regarding Title 4.

In keeping with the principal reason for which revision of Title 4 has long been urged, the commission has been working towards a technical redraft of existing law. The commission's primary effort has been to clarify and simplify the subject matter of the existing title (i.e., alcoholic beverage control administration, licensing, enforcement and local option), by redrafting current provisions to remove ambiguities, inconsistencies and anachronisms, developing the apparent intent of a number of provisions, and filling in gaps in areas of the law in a manner consistent with the policy underlying Title 4.

The technical redraft effort has inherently involved some substantive changes of limited scope; it is not feasible to attempt to identify every change resulting from redrafting of the present law, but a cross-reference table of sections comparing code provisions with their counterparts in the current title will be distributed as a supplement to this memorandum to facilitate detailed comparison. In addition, the commission has proposed a limited number of substantive changes to promote simpler and more expeditious alcoholic beverage control administration and to promote control policy which reflects actual practice more than appears to be the case under several existing statutes.

There are two major substantive proposals to accomplish these purposes. One relates to distinguishing in the law between (1) a liquor license as a valuable property right and (2) the privilege to operate a business under the license as a public concern requiring careful regulation in the public interest. The other substantive proposal calls for according initial authority to the ABC director (rather than the board itself as under current law) to make decisions on licensing, enforcement and other administrative matters, with the board reserving the right of final administrative decision as an appeals body.

The commission has been spending considerable time in its revision effort to reviewing alcoholic beverage control policies of other states, soliciting by letter the views of interested officials and agencies statewide; and participating in round-table conferences with present or former officials and representatives of the Cabaret, Hotel and Restaurant Owners Association (CHAR), rural agencies, the ABC board, ABC office, the departments of law, public safety and revenue, and the state Office of Alcoholism and Drug Abuse, all of whose representatives gave generously of their time and knowledge. Additionally, a well-attended hearing on alcoholic beverage control was held in Bethel.

In addition to the substantive proposals mentioned above, there are policy concerns which the commission believes are the prerogative of the legislature to resolve. Early in its deliberations on Title 4, the commission decided not to recommend changes in the policies underlying existing law. The attached tentative draft, therefore reflects what the commission believes to be existing policy. The commission does recommend, however, that these policies should be reviewed by the legislature, and the supplement that will follow identifies these policy issues. We expect to transmit the supplement within a few weeks.

The commission met with the House Commerce Committee on March 16 to discuss the Committee's report on the Sunset Review of the ABC Board as it related to the work performed by the commission. A copy of the attached tentative draft has been provided the House Commerce Committee at its request.

The commission has not yet taken final action. However, due to the time constraints of this legislative session, and at the request of the House Commerce Committee, we transmit this tentative draft for whatever assistance it may provide the legislative committees during their deliberations on this subject. The commission plans to take no further action on AS 4 until receiving further direction from the legislature.

JWA/jms

Attachment

TENTATIVE DRAFT NO.
FOR DISCUSSION PURPOSES ONLY.
4/18/79
DATE

BY THE RULES COMMITTEE BY
REQUEST OF THE LEGISLATIVE
COUNCIL (for the Code
Revision Commission)

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to alcoholic beverage control."

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

* Section 1. AS 04 is amended by adding new chapters to read:

CHAPTER 6. ALCOHOLIC BEVERAGE CONTROL BOARD AND DIRECTOR.

Sec. 04.06.010. BOARD ESTABLISHMENT AND TERM. (a) There is established within the Department of Commerce and Economic Development the Alcoholic Beverage Control Board consisting of five members with overlapping three-year terms. Members are appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and serve at the pleasure of the governor.

(b) Two board members shall be actively engaged in the alcoholic beverage industry but not as holder of a manufacturer's or wholesale license or as an officer, agent or employee of a wholesale, distiller, bottler, brewery, or winery.

(c) One board member shall be actively engaged in the public health field and have professional experience in alcohol abuse prevention and treatment.

(d) No board member may hold another state or federal office, whether elective or appointive.

(e) No three board members may be engaged in the same business, occupation or profession.

Sec. 04.06.020. VACANCY. A vacancy in board membership shall be filled for the balance of the unexpired term in the same manner as the original appointment.

TENTATIVE DRAFT NO.
 FOR DISCUSSION PURPOSES ONLY
4/18/79
 DATE

1 Sec. 04.06.030. COMPENSATION. Board members receive no salary
 2 but are entitled to per diem and travel expenses authorized by law
 3 for other boards and commissions.

4 Sec. 04.06.040. CHAIRMAN AND MEETINGS. (a) By a majority vote
 5 of its membership, the board shall provide for the election and term
 6 of a board chairman and other officers it considers necessary and
 7 may adopt, and amend or rescind other rules it considers necessary
 8 for the conduct of board meetings.

9 (b) Except as provided in (a) of this section, three members of
 10 the board constitute a quorum for the conduct of business.

11 (c) The board shall keep minutes of meetings and include
 12 a roster of individual members' votes on motions before the board.

13 (d) The board shall meet at the call of its chairman unless a
 14 different interval of meetings is provided in its rules. The board
 15 shall meet at least once each year in each judicial district to
 16 review concerns of alcoholic beverage control and determine whether
 17 modification of existing statutes or regulations is advisable.
 18 The board shall report any recommendations to the legislature.

19 Sec. 04.06.050. POWERS AND DUTIES. The board shall

20 (1) control the manufacture, barter, sale and possession of
 21 alcoholic beverages in the state to protect the public health, safety
 22 and welfare;

23 (2) assure the proper administration of state laws and regu-
 24 lations relating to alcoholic beverages;

25 (3) adopt regulations considered by the board to be in the
 26 best interests of the public;

27 (4) appoint a director of the board as provided in sec. 060
 28 of this chapter, and employ or otherwise retain personnel it considers
 29 necessary to carry out the purposes of this title;

1 (5) hear and decide appeals from decisions of the director,
2 in accordance with the hearing provisions of AS 04.90.020.

3 Sec. 04.06.060. DIRECTOR. (a) The board shall appoint a
4 director to serve at its pleasure. Appointment by the board is subject
5 to approval by the governor.

6 (b) The director shall

7 (1) serve as executive officer of the board;

8 (2) carry out licensing and other specific responsibilities
9 assigned to the director in this title and regulations adopted by
10 the board;

11 (3) enforce the provisions of this title and regulations
12 adopted by the board.

13 (c) The director may subpoena witnesses, administer oaths, take
14 the testimony of persons under oath, and require the production for
15 examination of books and papers relating to a matter under investiga-
16 tion or in question, in order to carry out his responsibilities under
17 this section.

18 (d) The board may delegate to the director authority conferred
19 on the board in this title, except the board's power to adopt regula-
20 tions and hear appeals. The board may revoke authority delegated.

21 Sec. 04.06.070. SCOPE OF REGULATIONS. The power of the board
22 to adopt regulations specifically includes, but is not limited to,
23 the following:

24 (1) regulating the employment, conduct and duties of board
25 personnel;

26 (2) prescribing the form of application, reports, and other
27 forms;

28 (3) prescribing the terms and conditions of licenses and
29 permits;

1 (4) prescribing the conditions, accommodations, qualifica-
2 tions and inspections for each classification of license, permit,
3 licensee or licensed premises;

4 (5) prescribing fees, except fees prescribed in this title;

5 (6) providing for the making of returns and reports by
6 holders of manufacturer's and wholesale licenses;

7 (7) requiring reports of licensees relating to management
8 and ownership of licenses;

9 (8) providing for the issuance, transfer and renewal of
10 licenses and the issuance, transfer, renewal, suspension and revocation
11 of certificates to operate and permits.

12 (9) regulating the furnishing of alcoholic beverages without
13 charge by a licensee.

14 CHAPTER 11. LICENSING.

15 ARTICLE 1. RESTRICTIONS.

16 Sec. 04.11.010. CONTROL. (a) No person or governmental entity
17 may manufacture, sell, offer for sale, or possess for sale or barter
18 an alcoholic beverage without an appropriate license or permit
19 authorized under this title.

20 (b) This section does not apply to

21 (1) sales under execution or to enforcement of a security
22 agreement, if notice of the sale is provided the director 10 days
23 before the sale; and

24 (2) the serving of alcoholic beverages at private gatherings
25 of office or other co-workers or of fraternal, professional, civic or
26 social organizations when equal contributions of money or other valuable
27 consideration are made by all persons in attendance and only the amount
28 required to purchase the alcoholic beverages is collected. All other
29 applicable provisions of law and regulations govern the furnishing of

1 alcoholic beverages at the private gatherings.

2 Sec. 04.11.020. FINANCIAL INTEREST AND RESPONSIBILITY. (a) No
3 person other than a person named on the license may have a direct or in-
4 direct financial interest in the business licensed, except as provided
5 in sec. 130 of this chapter.

6 (b) Nothing in (a) of this section prohibits a graduated or per-
7 centage lease agreement made by a licensee and a lessor with respect to
8 licensed premises, if the director reviews the agreement and determines
9 that it is not a direct or indirect financial interest in the business
10 licensed.

11 (c) A licensee is solely responsible for the conduct of the busi-
12 ness licensed, except as otherwise provided in sec. 130 of this chapter.

13 Sec. 04.11.030. NONRESIDENTS' MANUFACTURER'S AND WHOLESALE
14 LICENSES. (a) No person selling alcoholic beverages on a wholesale
15 basis whose plant or principal place of business is outside the state
16 may sell products directly to licensees in the state unless he

17 (1) obtains a general wholesale license under sec. 140(2)(A)
18 of this chapter for sale in the state;

19 (2) designates a principal place of business or headquarters
20 in the state where all records shall be located;

21 (3) appoints an agent upon whom process can be had, in con-
22 formity with AS 10.05.045, and

23 (4) obtains the other appropriate licenses under this title.

24 Sec. 04.11.040. BEVERAGE DISPENSARY OR RETAIL PACKAGE STORE
25 RESTRICTIONS. (a) No person selling alcoholic beverages on a whole-
26 sale basis may

27 (1) hold a financial interest or security interest in a
28 beverage dispensary or retail package store business, or

29 (2) finance directly or indirectly the premises, supplies,

1 equipment, furnishings, stock or inventory of the business.

2 (b) Extension of business credit to a licensee for a period of
3 90 days or less is not a financial interest under (a) of this section
4 and is not prohibited under (a) of this section.

5 (c) If zoning controls of a municipality prohibit sale of alco-
6 holic beverages without approval of the municipality, no beverage dis-
7 pensary or retail package store may be operated without that approval.

8 (d) No beverage dispensary or retail package store license
9 may be issued or renewed, or transferred for premises located within
10 200 feet of a school ground or church building in which religious
11 services are conducted. The 200 foot limitation is measured by the
12 shortest pedestrian route from the outer boundaries of the school
13 ground or public entrance of the church building to the public entrance
14 of the premises. However, a license already issued on April 25, 1960
15 and thereafter continuously renewed may be renewed or its ownership
16 transferred irrespective of the restriction of this section.

17 (e) If the certificate to operate a business under a license
18 for premises described in (a) of this section is revoked, or the
19 license forfeited or transferred to another location, no beverage
20 dispensary or retail package store license may be issued or transferred
21 to the prior licensed location, unless the cause of the restriction
22 under (a) of this section is removed.

23 (f) The licensed premises of a retail package store shall not
24 be connected by a door or other opening directly to another retail
25 business establishment, except one licensed under this title.

26 ARTICLE 2. POPULATION LIMITATIONS, PUBLIC NOTICE,
27 PROTEST AND CONSENT.

28 Sec. 04 11.050. POPULATION LIMITATIONS ON LICENSE ISSUANCE OR
29 TRANSFER. (a) Except as provided in (b) of this section, no new

1 license may be issued for proposed premises located

2 (1) outside a city or unified municipality if by the
3 issuance there would be more than one license of each type for each
4 1,500 population or fraction of 1,500 within a radius of five miles
5 of the proposed premises; however, the area of a city or unified
6 municipality within the five-mile radius shall be excluded from the
7 computation;

8 (2) within a city or unified municipality if by the
9 issuance there would be more than one license of each type for each
10 1,500 population or fraction of 1,500 within the city or unified
11 municipality.

12 (b) Except in a city electing under AS 04.14.010 either to
13 prohibit the sale of alcoholic beverages or permit sale only under a
14 community liquor license, the director may approve the issuance or
15 transfer of a license without regard to the quota provisions of (a) of
16 this section if he finds that issuance or transfer will encourage the
17 construction or improvement of a hotel, motel, resort or similar
18 business related to the tourist trade. The board by regulation shall
19 set standards to insure the facility has a genuine and significant
20 relationship to the tourist trade, the regulations requiring as a
21 minimum that any facility other than an airport terminal have

22 (1) a minimum accommodation of 10 rooms for lodging, or
23 larger number as the board determines appropriate, and

24 (2) a dining facility or, in the alternative, a majority
25 of rooms with kitchen facilities.

26 (c) Premises licensed and placed in operation under (b) of this
27 section shall be included in the computation of quotas under (a) of
28 this section.

29 Sec. 04.11.060. PUBLIC NOTICE. (a) The board shall provide

1 by regulation for adequate notice to inform the public of an appli-
2 cation for a new license or transfer of ownership or location of an
3 existing license. As a minimum, notice must be given by

4 (1) posting a true copy of the license application at

5 (A) the location of the proposed premises;

6 (B) the post office nearest the premises, and

7 (C) one other conspicuous location in the

8 area for a period of at least 10 days commencing with the
9 date of filing of the application;

10 (2) public service announcements provided to newspapers
11 and radio and television stations at the time of filing the appli-
12 cation.

13 (b) The board may require additional notice of a new licens. or
14 transfer application, to be paid for by the applicant.

15 (c) If appropriate in a particular case, the director may require
16 notice to be bilingual.

17 Sec. 04.11.070. PROTEST BY MUNICIPALITY. An application for a
18 new license or transfer of ownership or location of premises within
19 a municipality shall be made to the director, who shall transmit a
20 copy of the application to each municipality within which the premises
21 are located. If the municipality wishes to protest, it shall furnish
22 the director with a written statement of its grounds of protest
23 within 45 days after its receipt of the application. Upon receipt
24 of the protest, the director shall notify the municipality of his
25 subsequent action on the application and of its right to request a
26 hearing under sec. 090 of this chapter.

27 Sec. 04.11.080. INDIVIDUAL PROTEST. (a) A person may protest
28 the issuance or transfer of a license. A protest shall be in writing,
29 shall state the name and permanent place of abode of the protestor,

1 the name of the applicant or premises upon which alcoholic beverages
2 would be sold, and the reasons for the protest.

3 (b) The protest must be delivered or mailed to the applicant
4 and the director within 45 days of the posting of the notice of license
5 application provided for in sec. 060 of this chapter. If it is deli-
6 vered or mailed within that time, the director shall notify the
7 protestor of his subsequent action on the application and of his
8 right to request a hearing under sec. 090 of this chapter.

9 (c) No notification or hearing under (b) of this section is
10 required if a special election is to be held on the protest as
11 provided in AS 04.14.030. Upon certification of election results
12 approving license issuance, renewal and transfer, the director shall
13 notify the protestors of the original license application of his
14 action on the application and their right to request a hearing under
15 sec. 090 of this chapter.

16 Sec. 04.11.090. REVIEW BY DIRECTOR AND APPEAL TO BOARD. (a) An
17 applicant or protestor may, within 20 days after notice of the direc-
18 tor's action on an application, request a hearing before the director
19 for review of the action. If a hearing is requested, a date is
20 scheduled and the parties notified at least 10 days before that date.
21 At the hearing, the director shall hear the applicant and all parties
22 appearing in connection with the matter. Following the hearing, the
23 director shall provide, in writing to the applicant and protestor,
24 his decision on the application and the reasons for his decision.

25 (b) Upon notification of the decision of the director under (a)
26 of this section, the applicant or protestor appearing at the hearing
27 personally or by representative may appeal to the board for review
28 of the action of the director. Appeal to the board is subject to the
29 adjudication provisions of the Administrative Procedure Act (AS 44.

1 62.330 - 44.62.630).

2 Sec. 04.11.100. PUBLIC CONSENT TO NEW LICENSE. (a) Outside a
3 city or unified municipality, no new license may be issued, or the
4 location of licensed premises transferred to the area, unless a
5 petition consenting to issuance or transfer is filed with the
6 director. The petition must be signed by a majority of the qualified
7 voters residing within a one-mile radius of the proposed premises,
8 including any part lying within a municipality.

9 (b) In an unincorporated area located 50 miles or more from the
10 boundaries of a municipality, no new license may be issued, or the
11 location of licensed premises transferred to the area, unless a
12 petition consenting to issuance or transfer is filed with the director.
13 The petition must be signed by two-thirds of the qualified voters
14 residing within a radius of five miles of the nearest post office
15 located within five miles of the proposed premises. If there
16 are two or more post offices within five miles of the premises,
17 the post office nearest the premises is the point of measurement.

18 (c) If no post office is located within five miles of the
19 proposed premises, the petition requirements of (a) of this section
20 apply.

21 ARTICLE 3. LICENSE AND CERTIFICATE TO OPERATE.

22 Sec. 04.11.110. LICENSE AS PROPERTY. (a) A license issued under
23 this title is a qualified personal property right and may be trans-
24 ferred, alienated, devised, encumbered, subjected to attachment and
25 execution to the extent provided by law, and otherwise used as pro-
26 perty.

27 Sec. 04.11.120. CERTIFICATE TO OPERATE. (a) A person may not
28 operate a business under the license unless he obtains from the
29 director a certificate to operate, or an interim certificate to

1 operate provided for in sec. 130 of this chapter. Termination of a
 2 certificate or modification of the rights incident to it by law is
 3 not a taking of property.

4 (b) A certificate to operate is an incident of the license and,
 5 as used in this title, "license" includes a certificate to operate
 6 unless express reference to "certificate to operate" is made in the
 7 context of a provision.

8 Sec. 04.11.130. INTERIM CERTIFICATE. (a) The director may
 9 upon application, and in accordance with regulations issued by the
 10 board, issue an interim operating certificate for a licensed business
 11 to a person other than a licensee. An interim operating certificate
 12 is authorized to

13 (1) permit operation of a licensed business; under a manage-
 14 ment agreement approved by the director;

15 (2) permit operation of the licensed business of a deceased
 16 sole licensee by a person authorized by law to deal with property
 17 devised or passing by intestate succession, or

18 (3) permit operation of a licensed business in other
 19 circumstances in which the director determines an interim operating
 20 certificate is necessary as a transitional measure to comply with
 21 this title.

22 (b) An application for an interim operating certificate, in
 23 addition to other requirements which may be established by the board,
 24 shall state the reason for which interim operating authority is
 25 necessary, and shall be made jointly by the licensee or, if he is
 26 deceased by his personal representative, and the person seeking
 27 interim operating authority. Notice of application for a certificate
 28 shall be given by the director to the law enforcement authority having
 29 jurisdiction of the premises which are the subject of the certificate.

1 (c) The holder of an interim operating certificate is personally
2 responsible financially and otherwise for the conduct of the licensed
3 business during the term of the certificate.

4 (d) An interim operating certificate

5 (1) expires 60 days after issuance unless renewed by the
6 director upon application for renewal, and

7 (2) may be suspended or terminated by the director without
8 hearing or right of appeal to the board.

9 ARTICLE 4. CLASSIFICATION OF LICENSES.

10 Sec. 04.11.140. LICENSES. Licenses are classified as follows:

11 (1) Retail licenses, which include the following:

12 (A) retail package store license, which permits the
13 holder to sell on the premises alcoholic beverages in the original
14 package and wine in bulk, for off-premises consumption only;

15 (B) beverage dispensary license, which permits the
16 holder to sell and serve on the premises alcoholic beverages
17 for consumption on the premises; the holder of a license for
18 premises which are a hotel, motel, resort or similar business
19 catering to the traveling public as a substantial part of business
20 may serve alcoholic beverages in a dining or banquet room on the
21 premises, and to guests in their rooms, although those areas are
22 not designated as licensed premises;

23 (C) restaurant license, which permits the
24 holder to sell beer and wine for consumption on the premises
25 in a bona fide restaurant to patrons ordering meals;

26 (D) road house license, which permits the holder
27 to sell beer and wine for consumption on premises which are
28 located at least 18 miles from the boundaries of a city and which
29

1 serve food to the traveling public;

2 (E) club license, which permits the holder to sell
3 alcoholic beverages for consumption on the premises to members and
4 their families only, except that patriotic organizations may also
5 serve military personnel on active duty in uniform upon special
6 occasions; a club license is limited to clubs, fraternal organizations
7 and patriotic organizations which have a state or national charter
8 and have been incorporated and active for a period of at least two
9 years;

10 (F) common carrier dispensary license, which permits
11 the holder to sell alcoholic beverages for consumption aboard a vessel,
12 aircraft, or railroad buffet car licensed for passenger travel,
13 while in transit only and during the same hours as sales are permitted
14 on licensed premises in the immediate area of transit; no common
15 carrier dispensary license may be issued for a boat or other vessel of
16 less than 25 gross tons, United States Custom House measurement;

17 (G) recreational site license, which permits the holder
18 to sell beer and hot spiced wine for consumption on the premises of a
19 recreational event during and one hour before and after the event;
20 however, sale during a school event is prohibited;

21 (H) pub license, which permits the holder to sell
22 beer and wine for consumption on the premises at an accredited
23 university or college; only one pub license may be issued for each
24 university or college campus in the state and then only upon the
25 approval of the governing body of the university or college;

26 (I) conditional canteen or beer hall license, which
27 permits the holder to sell beer and wine for consumption on the
28 premises located within the boundaries of a military or naval reserva-
29 tion or at a remotely situated construction project; however, the

1 license may be issued only upon the written permission of the com-
2 manding officer of the military or naval reservation or the prime
3 contractor of the remotely situated project.

4 (2) Wholesale licenses, which permit sales only to
5 licensees, and include the following:

6 (A) general wholesale license, which permits the holder
7 to sell alcoholic beverages in the original package and wine in bulk
8 in quantities of not less than five gallons;

9 (B) wholesale malt beverage and wine license, which
10 permits the holder to sell malt beverages and wine in the original
11 packages and malt beverages and wine in bulk in quantities of not less
12 than five gallons;

13 (C) in-flight catering license, which permits the
14 holder to sell alcoholic beverages in the original package and wine in
15 bulk to certificated domestic and international air carriers; the holder
16 of an in-flight catering license must purchase alcoholic beverages from
17 a wholesaler licensed under (A) or (B) of this paragraph.

18 (3) Manufacturer's licenses, which include the following:

19 (A) distillery license, which permits the holder to
20 operate a distillery where alcoholic beverages are distilled, prepared,
21 bottled or barreled for sale; however, no sale may be made in quantities
22 of less than five gallons, and sale may be made only to licensees;

23 (B) bottling works license, which permits the holder to
24 operate a bottling works where beer and wine may be bottled and sold;
25 however, no sale may be made in quantities of less than five gallons;

26 (C) brewery license, which permits the holder to
27 operate a brewery where beer is manufactured, brewed, prepared,
28 bottled or barreled for sale; the holder of a brewery license may sell
29 beer to a person holding a license authorizing the sale of beer and

1 also may sell beer produced by him on the licensed premises for
2 consumption on or off the premises;

3 (D) winery license, which permits the holder to operate
4 a winery where wine may be produced, prepared, and bottled or barreled
5 for sale; the holder of a winery license may sell wine to a person
6 holding a license authorizing the sale of wine and also may sell wine
7 produced by him on the licensed premises for consumption on or off the
8 premises.

9 Sec. 04.11.145. PERMITS. Special permits are limited to a single
10 event or have a duration of less than one year and include the fol-
11 lowing:

12 (1) retail stock sale permit, which permits the holder
13 to sell in bulk quantities of not less than five gallons per sale, and
14 only to a licensee, the entire stock of a former retail package store,
15 where the owner wishes to close out or terminate the business of the
16 store; the license may be issued only if the owner does not have a
17 retail package store license and may not be issued if the owner has
18 been deprived of a retail package store license because of a violation
19 of a state law; the retail stock sale license is issued for a period
20 of 90 days only for each store closing out and is not renewable;

21 (2) special events permit, which permits the holder to
22 sell beer and wine for consumption on designated premises for
23 a specific occasion and for a limited time period; the permit is
24 limited to fraternal, professional, civic, political, patriotic or
25 charitable organizations organized for a period of at least two years
26 and all profits derived from sale of beer and wine shall go to the
27 organization and not to an individual; three special events permits
28 may be issued to an organization in one calendar year; issuance of a
29 permit is contingent on approval of the local law enforcement agency

1 having jurisdiction of the proposed premises;

2 (3) caterer's permit, which permits the holder to sell
3 alcoholic beverages for consumption on the premises at conventions,
4 picnics, social gatherings, sporting events or similar affairs if the
5 proposed premises are not otherwise licensed; however, the permit may
6 be issued only to a holder of a beverage dispensary license in current
7 use, and issuance is contingent on approval of the local law enforce-
8 ment agency having jurisdiction of the premises.

9 Sec. 04.11.150. COMMUNITY LIQUOR LICENSE. (a) A first or
10 second-class city is eligible for a beverage dispensary license and
11 retail package store license; other provisions of this title notwith-
12 standing, ownership of the license may not be transferred.

13 (b) A local option election under AS 04.14.010 is not prere-
14 quisite to implementation of this section, but if an election is held
15 and a community liquor license authorized by the voters under that
16 section, the city shall apply for the license in accordance with the
17 election results.

18 ARTICLE 5. FEES AND TERMS.

19 Sec. 04.11.160. LICENSE TERM. Licenses shall be issued for
20 the calendar year ending December 31, but the director may issue
21 a license for any continuous six-month period upon application and
22 payment of one-half the license fee.

23 Sec. 04.11.170.. LICENSE FEES. (a) The annual fees for the
24 classes of licenses authorized in sec. 140 of this chapter shall be
25 deposited in the general fund and shall be as follows:

26 (1) Retail licenses -

27 (A) retail package store:

28 (i) for a store having gross annual sales
29 less than \$20,000 - \$300;