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1 requirements for the issuance of a retail stock sale license.

2 (c) If a majority of the voters vote "no" on the question set out  
3 in (a) of this section or vote "yes" on a question set out in AS 04.10.-  
4 432 or 04.10.437 in an election conducted in accordance with AS 04.10.-  
5 438 after an election in which the voters voted "yes" on the question  
6 set out in (a) of this section, the board shall be notified immediately  
7 after certification of the results of the election. Thereafter, the  
8 prohibitions imposed under (b) of this section on the issuance, renewal,  
9 or transfer of licenses between holders and location as a result of the  
10 earlier election in which the voters voted "yes" on the question set out  
11 in (a) of this section are removed.

12 Sec. 04.10.432. COMMUNITY HELD LICENSE. (a) The following ques-  
13 tion, alone or with the questions set out in AS 04.10.435 and 04.10.436,  
14 may be placed before the voters of a first or second class city in  
15 accordance with AS 04.10.438: "Shall the sale of intoxicating liquor be  
16 prohibited in .....(name of city) unless sold under a .....(either a  
17 beverage dispensary or retail store, or both) license held by the city?  
18 (yes or no)"

19 (b) If a majority of the voters vote "yes" on the question set out  
20 in (a) of this section, the board shall be notified immediately after  
21 certification of the results of the election and thereafter may not  
22 issue, renew, or transfer between holders or locations a license for  
23 licensed premises located within the boundaries of a city or in an  
24 unincorporated area outside of but within five miles of the boundaries  
25 of a city, with the exception of beverage dispensary or retail licenses  
26 held by the city. As of midnight on the date the results of the elec-  
27 tion are certified, licenses in effect within the boundaries of a city  
28 and in an unincorporated area outside of but within five miles of the  
29 boundaries of a city are void. However, if a retail license is voided

1 under this subsection, the holder of the voided retail license shall be  
2 issued, upon application, a retail stock sale license without payment of  
3 the retail stock sale license fee if he fulfills all other requirements  
4 for the issuance of a retail stock sale license.

5 (c) If a majority of the voters vote "yes" on the question set out  
6 in (a) of this section, the city council of the city shall apply for a  
7 beverage dispensary or retail license, or both, depending on the terms  
8 of the question.

9 (d) If a majority of the voters vote "no" on the question set out  
10 in (a) of this section or vote "yes" on a question set out in AS 04.10.-  
11 431, 04.10.433, 04.10.434, or 04.10.437 in an election conducted in  
12 accordance with AS 04.10.438 after an election in which the voters voted  
13 "yes" on the question set out in (a) of this section, the board shall be  
14 notified immediately after a certification of the results of the elec-  
15 tion. As of midnight on the date the results of the election are certi-  
16 fied, a beverage dispensary or retail license held by a city is void and  
17 thereafter the prohibitions imposed under (b) of this section on the  
18 issuance, renewal, or transfer of licenses between holders and locations  
19 as a result of the earlier election are removed. If a retail license is  
20 voided under this subsection, the holder of the voided retail license  
21 shall be issued, upon application, a retail stock sale license without  
22 payment of the retail stock sale licensee fee if he fulfills all other  
23 requirements for the issuance of a retail stock sale license.

24 Sec. 04.10.433. PROHIBITION OF POSSESSION AND IMPORTATION OF  
25 INTOXICATING LIQUOR. (a) The following question may be placed before  
26 the voters of a first or second class city or an established village in  
27 accordance with AS 04.10.438: "Shall the possession and importation of  
28 incoxicating liquor be prohibited in .....(name of city or village)?  
29 (yes or no)"

1 (b) If a majority of the voters vote "yes" on the question set out  
2 in (a) of this section, a person, beginning on the first day of the  
3 month following certification of the results of the election, may not  
4 possess intoxicating liquor in the city or established village or  
5 knowingly send, transport, or bring intoxicating liquor into the city or  
6 established village. The board shall be notified immediately after  
7 certification of the results of the election and thereafter may not  
8 issue, renew, or transfer between holders or locations a license for  
9 licensed premises located within the boundaries or perimeter of a city  
10 or established village or in an unincorporated area outside of but  
11 within five miles of the boundaries of the city. As of midnight on the  
12 date the results of the election are certified, licenses in effect  
13 within the boundaries of a city and in an unincorporated area outside of  
14 but within five miles of the boundaries of a city are void. However, if  
15 a retail license is voided under this subsection, the holder of the  
16 voided retail license shall be issued, upon application, a retail stock  
17 sale license without the payment of the retail stock sale license fee if  
18 he fulfills all other requirements for the issuance of a retail stock  
19 sale license.

20 (c) If a majority of the voters vote "no" on the question set out  
21 in (a) of this section or vote "yes" on the questions set out in AS 04.-  
22 10.432 or 04.10.435 - 04.10.437 in an election conducted in accordance  
23 with AS 04.10.438 after an election in which the voters voted "yes" on  
24 the question set out in (a) of this section, the prohibition on the  
25 possession and importation of intoxicating liquor and the prohibition on  
26 the issuance, renewal, or transfers of licenses between holders and  
27 locations, imposed as a result of the earlier election in which the  
28 voters voted "yes" on the question set out in (a) of this section are  
29 removed effective on the first day of the month following certification

1 of the results of the election.

2 Sec. 04.10.434. PROHIBITION OF IMPORTATION OF INTOXICATING LIQUOR.

3 (a) The following question may be placed before the voters of a first  
4 or second class city or an established village in accordance with AS 04.-  
5 10.438: "Shall the importation of intoxicating liquor into .....(name  
6 of city or village) be prohibited? (yes or no)"

7 (b) If a majority of the voters vote "yes" on the question set out  
8 in (a) of this section, a person may not knowingly send, transport, or  
9 bring intoxicating liquor into the city or established village, beginning  
10 on the first day of the month following certification of the results of  
11 the election. The board shall be notified immediately after certifica-  
12 tion of the results of the election and thereafter may not issue, renew,  
13 or transfer between holders or locations a license for licensed premises  
14 located within the boundaries or perimeter of the city or established  
15 village or in an unincorporated area outside of but within five miles of  
16 the boundaries the city. However, if a retail license may not be re-  
17 newed under this subsection, the holder of the voided retail license  
18 shall be issued, upon application, a retail stock sale license without  
19 the payment of the retail stock sale license fee if he fulfills all  
20 other requirements for the issuance of a retail stock sale license.

21 (c) If a majority of the voters vote "no" on the question set out  
22 in (a) of this section or vote "yes" on the question set out in AS 04.-  
23 10.432, 04.10.435 or 04.10.437, in an election conducted in accordance  
24 with AS 04.10.438 after an election in which the voter voted "yes" on  
25 the question set out in (a) of this section, the prohibition on impor-  
26 tation of intoxicating liquor and the prohibition on the issuance,  
27 renewal, or transfer of licenses between holders and locations, imposed  
28 as a result of the earlier election are removed effective the first day  
29 of the month following certification of the results of the election.

1           Sec. 04.10.435. PROHIBITION OF IMPORTATION OF INTOXICATING LIQUOR  
2 EXCEPT DURING HOLIDAY PERIODS. (a) The following question, alone or  
3 with the question set out under AS 04.10.436 if the same holiday periods  
4 are listed on the ballot, or with one of the questions set out in AS 04.-  
5 10.431, 04.10.432, or 04.10.436 if the same holiday periods are listed  
6 on the ballot, or under AS 04.10.437, may be placed before the voters of  
7 a first or second class city or an established village in accordance  
8 with AS 04.10.438: "Shall the importation of intoxicating liquor into  
9 .....(name of city or village) be prohibited, except during .....  
10 (listing of holiday periods during which the importation of intoxicating  
11 liquors would be permitted if the measure passes)? (yes or no)"

12           (b) If a majority of the voters vote "yes" on the question set out  
13 in (a) of this section, a person, except during the holiday periods  
14 listed in the question, may not knowingly send, transport, or bring  
15 intoxicating liquor into the city or established village, beginning on  
16 the first day of the month following certification of the results of the  
17 election. The board shall be notified immediately after certification  
18 of the results of the election and thereafter may not issue, renew, or  
19 transfer between holders or locations a license for licensed premises  
20 located within the boundaries or perimeter of a city or established  
21 village, or in an unincorporated area outside of but within five miles  
22 of the boundaries of a city, unless the duration of the license is  
23 limited to those periods listed on the ballot.

24           (c) If a majority of the voters vote "no" on the question set out  
25 in (a) of this section or vote "yes" on the question set out in AS 04.-  
26 10.433, 04.10.434, or 04.10.435 if different holiday periods are listed,  
27 in an election conducted in accordance with AS 04.10.438 after an elec-  
28 tion in which the voters voted "yes" on the question set out in (a) of  
29 this section, the prohibition on importation of intoxicating liquor and

1 the prohibition on the issuance, renewal, or transfer of licenses be-  
2 tween holders and locations imposed as a result of the earlier election  
3 is removed effective on the first day of the month following certifica-  
4 tion of the results of the election.

5 Sec. 04.10.436. PROHIBITION OF POSSESSION AND IMPORTATION OF  
6 INTOXICATING LIQUOR EXCEPT DURING HOLIDAY PERIODS. (a) The following  
7 question, alone or with the questions set out under either AS 04.10.432  
8 or 04.10.437, and AS 04.10.435 if the same holiday periods are listed on  
9 the ballot, may be placed before the voters of a first or second class  
10 city or an established village in accordance with AS 04.10.438: "Shall  
11 the possession and importation of intoxicating liquor be prohibited in  
12 .....(name of city or village), except during ..... (listing of holiday  
13 periods during which the possession and importation of intoxicating  
14 liquors would be permitted if the measure passes)? (yes or no)"

15 (b) If a majority of the voters vote "yes" on the question set out  
16 in (a) of this section, a person, except during the holiday periods  
17 listed on the ballot, may not possess intoxicating liquor in the city or  
18 established village or knowingly send, transport, or bring intoxicating  
19 liquor into the city or established village, beginning on the first day  
20 of the month following certification of the results of the election.  
21 The board shall be notified immediately after certification of the  
22 results of the election and thereafter may not issue, renew, or transfer  
23 between holders or location a license for licensed premises located  
24 within the boundaries or perimeter of a city or established village, or  
25 in an unincorporated area outside of but within five miles of the boun-  
26 daries of a city, unless the duration of the license is limited to the  
27 holiday periods listed on the ballot. Beginning on the first day of the  
28 month following certification of the results of the election, licenses  
29 in effect within the boundaries or perimeter of the city or established

1 village, and in an unincorporated area outside but within five miles of  
2 the boundaries of a city are effective only during the holiday periods  
3 listed on the ballot. However, if a retail license is voided under this  
4 subsection, the holder of the voided retail license shall be issued,  
5 upon application, a retail stock sale license without payment of the  
6 retail stock sale license fee if he fulfills all other requirements for  
7 the issuance of a retail stock sale license.

8 (c) If a majority of the voters vote "no" on the question set out  
9 in (a) of this section or vote "yes" on the question set out in AS 04.-  
10 10.433, 04.10.434, or 04.10.435, and 04.10.436 if different holiday  
11 periods are listed on the ballot in an election conducted in accordance  
12 with AS 04.10.438 after an election in which the voters voted "yes" on  
13 the question set out in (a) of this section, the prohibition on posses-  
14 sion and importation of intoxicating liquor and the prohibition on the  
15 issuance, renewal, or transfer of licenses between holders and locations  
16 imposed as a result of the earlier election are removed effective on the  
17 first day of the month following certification of the results of the  
18 election.

19 Sec. 04.10.437. PROHIBITION OF THE SALE OF INTOXICATING LIQUOR  
20 EXCEPT BY SELECTED LICENSES. (a) The following question, alone or with  
21 the questions set out in AS 04.10.435 and 04.10.436, may be placed  
22 before the voters of a first or second class city or an established  
23 village in accordance with AS 04.10.438: "Shall the sale of intoxicating  
24 liquor be prohibited in .....(name of city or village) except by .....  
25 (listing of the types of licenses which premises would be exempted from  
26 the prohibition on the sale of liquor if the measure passes)? (yes or  
27 no)"

28 (b) If a majority of the voters vote "yes" on the question set out  
29 in (a) of this section, the board shall be notified immediately after

1 certification of the results of the election and thereafter may not  
2 issue, renew, or transfer between holders or locations a license for  
3 licensed premises located within the boundaries or perimeter of a city  
4 or established village, or in an unincorporated area outside of but  
5 within five miles of the boundaries of the city, except those types of  
6 licenses listed on the ballot. As of midnight on the date the results  
7 of the election are certified, licenses in effect within the boundaries  
8 or perimeter of the city or established village, and in an unincorporated  
9 area outside of but within five miles of the boundaries of a city,  
10 except those types of licenses listed on the ballot, are void. However,  
11 if a retail license is voided under this subsection, the holder of the  
12 voided retail license shall be issued, upon application, a retail stock  
13 sale license without the payment of the retail stock sale license fee if  
14 he fulfills all other requirements for the issuance of a retail stock  
15 sale license.

16 (c) If a majority of the voters vote "no" on the question set out  
17 in (a) of this section or vote "yes" on the questions set out in AS 04.-  
18 10.431 - 04.10.434 or 04.10.437 if different types of licenses are  
19 listed on the ballot in an election conducted in accordance with AS 04.-  
20 10.438 after an election in which the voters voted "yes" on the question  
21 set out in (a) of this section, the board shall be notified immediately  
22 after certification of the results of the election. As of midnight on  
23 the date the results of the election are certified, licenses in effect  
24 in the city or established village which were excepted from the prohib-  
25 ition on sale in accordance with the results of the earlier election are  
26 void. Thereafter the board may not issue, renew, or transfer between  
27 holders or locations a license for licensed premises located within the  
28 boundaries or perimeter of the city or established village, or in an  
29 unincorporated area outside of but within five miles of the boundaries

1 of a city, except a license which may be issued to a first or second  
2 class city or to one of the types of licenses listed on the ballot as a  
3 result of a majority of the voters voting "yes" on the question set out  
4 in AS 04.10.432 or this section.

5 Sec. 04.10.438. PROCEDURE FOR LOCAL OPTION ELECTIONS. (a) The  
6 city council of a first or second class city, whenever a number of  
7 registered voters equal to at least 35 percent of the number of votes  
8 cast at the last regular city election petition the city council to do  
9 so, shall place upon a separate ballot at the next regular election  
10 whichever question or combination of questions set out in AS 04.10.431 -  
11 04.10.437 constitute the subject of the petition. The votes shall be  
12 canvassed in accordance with election ordinances adopted under AS 29.28.-  
13 010 and the vote certified.

14 (b) The lieutenant governor, whenever 35 percent of the registered  
15 voters residing within an established village petition the lieutenant  
16 governor to do so, shall place upon a separate ballot at a special  
17 election that question or combination of questions set out in AS 04.10.-  
18 431, or 04.10.433 - 04.10.437 which constitutes the subject of the  
19 petition. The lieutenant governor shall conduct the election in the  
20 general manner prescribed by the Alaska Election Code (AS 15.05 -  
21 15.60).

22 Sec. 04.10.439. REINSTATEMENT OF LICENSES. If a prohibition  
23 imposed on the issuance, renewal, or transfer of licenses between  
24 holders and locations under AS 04.10.431 - 04.10.437 is removed by a  
25 vote of "no" on a question for which the majority of the people voted  
26 "yes" in an earlier election, the board shall, upon application, issue  
27 the same number and type of licenses which were in effect in the city or  
28 established village on the date of certification of the earlier elec-  
29 tion. If the prohibition imposed on issuance, renewal, or transfer of

1 licenses between holders and locations is removed by a "yes" vote on a  
2 question set out in AS 04.10.431 - 04.10.437, the board may issue the  
3 types of licenses specified in the question presented to the voters in  
4 the subsequent election. Licenses may be issued for the same or other  
5 premises within the city or established village which were licensed on  
6 the date of certification of the earlier election. In issuing licenses,  
7 the board shall accord priority to those applicants who held licenses  
8 which were voided on the date of certification of the earlier election.  
9 The director of the board shall notify persons who held licenses in the  
10 city or village on the date of certification of the earlier election of  
11 their priority under this section.

12 Sec. 04.10.441. NOTICE OF THE RESULTS OF A LOCAL OPTION ELECTION.

13 (a) If a majority of the voters vote "yes" on a question set out in  
14 AS 04.10.431 - 04.10.437, the board shall immediately notify the Depart-  
15 ment of Law and the Department of Public Safety of the results of the  
16 election.

17 (b) If a majority of the voters vote "yes" on a question set out  
18 in AS 04.10.433 - 04.10.436, the following actions, in addition to those  
19 prescribed in (a) of this section, shall be undertaken before the date  
20 the prohibition on importation or possession becomes effective:

21 (1) the board shall notify by registered mail all licensees  
22 of the prohibition;

23 (2) the first or second class city or established village  
24 shall post notice of the prohibition in the city or village.

25 \* Sec. 2. AS 04.10 is amended by adding a new section to read:

26 Sec. 04.10.185. COMMUNITY HELD LICENSE. (a) A beverage dispen-  
27 sary or retail license may not be issued or transferred between holders  
28 and locations if the license sought is for premises to be located in a  
29 first or second class city where the type of license sought is already

1 held in the name of the city, unless the license sought is to become  
2 effective after the license held by the city is no longer effective,  
3 either as the result of a local option election or otherwise.

4 (b) A beverage dispensary or retail license may not be issued or  
5 transferred between locations or holders if the license sought to be  
6 issued or transferred is to be held in the name of a first or second  
7 class city, in a city where the type of license sought is already held  
8 by a private licensee, unless the license sought is to become effective  
9 after the city held license is not longer effective, either as the  
10 result of a local option election or otherwise.

11 \* Sec. 3. AS 04.10 is amended by adding a new section to article 3 to  
12 read:

13 Sec. 04.10.315. LOCAL OPTION ELECTION REQUIRED IN DRY AREAS. (a)  
14 The board may not issue a license for a premises to be located in a  
15 first or second class city in which there are no licensed premises on  
16 the effective date of this Act unless a majority of voters in a local  
17 option election conducted in accordance with AS 04.10.438 have voted  
18 "no" on the question set out in AS 04.10.431, or have voted "yes" on a  
19 question set out in AS 04.10.432 or 04.10.437.

20 (b) The board may not issue a license for a premises to be located  
21 in an established village in which there are no licensed premises on the  
22 effective date of this Act unless a majority of the voters in a local  
23 option election conducted in accordance with AS 04.10.438 have voted  
24 "no" on the question set out in AS 04.10.431, or have voted "yes" on the  
25 question set out in AS 04.10.437.

26 \* Sec. 4. AS 04.10.320(a) i. amended to read:

27 (a) All licenses issued under this title, except for lesser periods  
28 authorized or required as a result of a local option election held on a  
29 question set out in AS 04.10.435 and AS 04.10.436, shall be issued for

1 the calendar year ending December 31.

2 \* Sec. 5. AS 04.15.070(a) is amended to read:

3 (a) A municipality may by ordinance provide rules and regulations  
4 governing the barter, sale and possession of intoxicating liquor within  
5 the municipality necessary to the orderly conduct of the business of  
6 selling intoxicating liquor. If, as a result of an election held in  
7 accordance with AS 04.10.438 within a first or second class city, the  
8 board is prohibited from issuing, renewing, or transferring between  
9 holders or locations a license within the city or the possession or  
10 importation of intoxicating liquor is prohibited within the city, the  
11 city may adopt an ordinance making the sale, possession, or importation  
12 of intoxicating liquor a misdemeanor, whether the sale, possession, or  
13 importation is under a license or otherwise. [WHEN, UNDER A LOCAL  
14 OPTION ELECTION, THE CITY CLERK FINDS THE MAJORITY OF THE VOTERS ARE  
15 AGAINST THE SALE OF INTOXICATING LIQUOR, THE MUNICIPALITY, BY ORDINANCE,  
16 MAY MAKE THE SALE OF INTOXICATING LIQUOR WITHIN THE MUNICIPALITY A  
17 MISDEMEANOR WHETHER THE SALE IS MADE PURSUANT TO LICENSE OR OTHERWISE.]  
18 The ordinance may not be inconsistent with this title or the [RULES AND]  
19 regulations adopted [PROMULGATED] under this title. A [NO] municipality  
20 may not impose taxes other than property taxes on liquor inventories and  
21 sales taxes on liquor sales when these taxes are levied on other property  
22 and sales within the municipality.

23 \* Sec. 6. AS 04.15 is amended by adding a new section to read:

24 Sec. 04.15.095. PENALTIES FOR UNLAWFUL SALE, POSSESSION, AND  
25 IMPORTATION. (a) A person who violates AS 04.10.010 is, upon conviction,  
26 guilty of a class A misdemeanor.

27 (b) A person who violates AS 04.10.010 in an area where the results  
28 of a local option election have, under AS 04.10.431 - 04.10.437,  
29 prohibited the board from issuing, renewing or transferring any license

1 or permits under this title in the area is upon conviction guilty of a  
2 class C felony, if

3 (1) he has previously been convicted of a violation of AS 04.  
4 10.010;

5 (2) the sale or offer for sale was made to a person under 19  
6 years of age; or

7 (3) the quantity of intoxicating liquor sold or offered for  
8 sale is 12 liters or more of distilled spirits, 24 liters or more of  
9 wine, or 45 liters or more of malt beverages.

10 (c) A person who possesses intoxicating liquor in violation of  
11 AS 04.10.433(b) and 04.10.436(b) is, upon conviction, guilty of a  
12 class B misdemeanor.

13 (d) A person who sends, transports, or brings intoxicating liquor  
14 into a city or established village in violation of AS 04.10.434 or  
15 04.10.435, is, upon conviction,

16 (1) guilty of a class A misdemeanor if the quantity imported  
17 is less than 12 liters of distilled spirits, 24 liters of wine, or 45  
18 liters of malt beverages;

19 (2) guilty of a class C felony if the quantity possessed is  
20 12 liters or more of distilled spirits, 24 liters or more of wine, or 45  
21 liters or more of malt beverages; or

22 (3) guilty of a class C felony if he has previously been  
23 convicted of a violation of AS 04.10.434 or 04.10.435.

24 \* Sec. 7. AS 04.15.100(a) is amended to read:

25 (a) Except as provided in AS 04.15.095, a [A] person who violates  
26 any provision of this title other than AS 04.15.080 is guilty of a  
27 misdemeanor, and upon conviction is punishable by imprisonment of not  
28 more than one year, or by a fine of not more than \$500. Each violation  
29 is a separate offense.

1 \* Sec. 8. AS 04.15 is amended by adding a new section to read:

2 Sec. 04.15.115. SEIZURE, FORFEITURE, AND SALE OF CONVEYANCE. (a)

3 An aircraft, vehicle, or vessel is subject to forfeiture if used to  
4 transport or facilitate the transportation of

5 (1) intoxicating liquor manufactured, sold, offered for sale,  
6 possessed for sale, trafficked in, bartered, or exchanged for goods in  
7 violation of AS 04.10.010 in a first or second class city or established  
8 village where the results of an election held in accordance with AS 04.-  
9 10.438 on a question set out in AS 04.10.431 - 04.10.437 have prohibited  
10 the board from issuing, renewing, or transferring between holders or  
11 locations the type of license which would authorize the manufacture,  
12 sale, offering for sale, possession for sale, trafficking, barter, or  
13 exchange of intoxicating liquor;

14 (2) intoxicating liquor imported or possessed in a city or  
15 established village in violation of AS 04.10.433(b) and 04.10.436(b); or

16 (3) intoxicating liquor transported or imported into a city  
17 or established village in violation of AS 04.10.434(b) and 04.10.435(b).

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

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

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

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

1 this paragraph may not be held over 48 hours or until an order of for-  
2 feiture is issued by the court, whichever is earlier.

3 (c) Within 30 days of a seizure under this section the Department  
4 of Public Safety shall make reasonable efforts to ascertain the identity  
5 and whereabouts of any person holding an interest or an assignee of a  
6 person holding an interest in the property seized, including a right to  
7 possession, a lien, mortgage, or conditional sales contract. The De-  
8 partment of Public Safety shall notify the person ascertained to have an  
9 interest in property seized of the impending forfeiture, and before  
10 forfeiture the Department of Law shall publish, once a week for four  
11 consecutive calendar weeks, a notice of the impending forfeiture in a  
12 newspaper of general circulation in the judicial district in which the  
13 seizure was made, or if no newspaper is published in that judicial  
14 district, in a newspaper published in the state and distributed in that  
15 judicial district.

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

18 (1) upon conviction of a person under AS 04.10.010, 04.10.-  
19 433(b), 04.10.434(b), 04.10.435(b), or 04.10.436(b);

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

23 (e) The owner of property subject to forfeiture under (a) of this  
24 section is entitled to relief from the forfeiture in the nature of  
25 remission of the forfeiture if in an action under (d) of this section  
26 the owner shows that he was not a party to the violation and had no  
27 actual knowledge that the property was used or was to be used in viola-  
28 tion of the law.

29 (f) A person, other than the owner, holding or the assignee of a

1 lien, mortgage, conditional sales contract on, or the right to possess-  
2 ion to property subject to forfeiture under (a) of this section is  
3 entitled to relief from the forfeiture in the nature of remission of the  
4 forfeiture if in an action under (d) of this section the person shows  
5 that he was not a party to the violation subjecting the property to  
6 forfeiture and had no actual knowledge that the property was used or was  
7 to be used in violation of the law.

8 (g) It is no defense in an in rem forfeiture action brought by the  
9 Department of Law under (d)(2) of this section that a criminal proceed-  
10 ing is pending or has resulted in conviction or acquittal of a person  
11 charged with violating AS 04.10.010, 04.10.433(b), 04.10.434(b), 04.10.-  
12 435(b), or 04.10.436(b).

13 (h) Property forfeited under this section shall be placed in the  
14 custody of the commissioner of public safety for disposition according  
15 to an order entered by the court. The court shall order destroyed any  
16 property forfeited under this section which is harmful to the public.  
17 Other property shall be ordered sold and the proceeds used for payment  
18 of expenses of the proceedings for forfeiture and sale, including ex-  
19 penses of seizure, custody and court costs. The remainder of the pro-  
20 ceeds shall be deposited in the general fund.

21 \* Sec. 9. AS 04.20.010 is amended to read:

22 Sec. 04.20.010. INTOXICATING LIQUOR DEFINED. As used in this  
23 title,

24 (1) "intoxicating liquor" includes whiskey, brandy, rum, gin,  
25 wine, ale, porter, beer and all other spirituous, vinous, malt and other  
26 fermented or distilled liquors intended for human consumption and con-  
27 taining more than one percent alcohol by volume;

28 (2) "board" means the Alcoholic Beverage Control Board;

29 (3) "established village" means an unincorporated area that

1                    (A) is within the perimeter of a circle described by  
2                    drawing a five-mile radius around a post office station; and  
3                    (B) has 25 or more permanent residents.

4                    \* Sec. 10. AS 04.10.139, 04.10.300(b), 04.10.300(d), 04.10.430, and  
5 AS 04.15.110 are repealed.

S B

3 6 7

# COMMITTEE REPORT

(9)

## HOUSE

5/9/80

FURTHER:

Date: \_\_\_\_\_

Mr. Speaker:

The Committee on JUDICIARY has had CSSB 367am

"An Act relating to savings associations; 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
- and recommends \_\_\_\_\_  new title
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

Larry Martin Do Pass

Patrick J. Connelley

J. P. McConery

Charles R. ...

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

Robt W. Anderson J. W. ...

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Charles R. ...

CHAIRMAN

A M E N D M E N T

OFFERED IN THE HOUSE:

By: Judiciary Committee

To: CS for HOUSE BILL No. 367 am

SENATE BILL No. \_\_\_\_\_

PAGE: 3

LINE: 4

Insert a new Sec. 11 to read:

\* Sec. 11. This Act takes effect immediately in accordance with AS 01.10.070(c).

# FRONTIER INCORPORATORS

P. O. BOX 74320 • FAIRBANKS, ALASKA 99707

February 7, 1980

Honorable Brad Bradley  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Re: Senate Bill # 367 (CSSB 367)

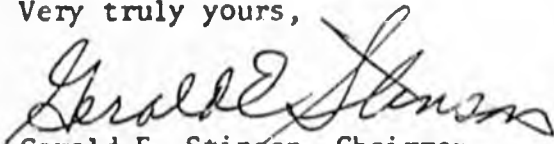
Dear Sir:

I am told that Senate Bill 367 will become CSSB 367 in your committee. I am familiar with the substitute language and Senator Hackney's amendment. I believe that the new language and amendment are superior to the original version of the bill in that the substitute as amended more clearly sets forth the legislative declaration of policy and the mechanism of remedy.

I therefore ask that the bill be reported out as is. Its language will suffice to end the disparity between mutual savings banks and savings and loan associations in their competition for savings dollars, ensuring that both compete on an equal footing.

I am sending a copy of this letter to all members of the Fairbanks delegation along with my request that each of them do whatever he or she can on either the House or Senate side to see that this (substitute) bill moves to the Governor's desk this session. I am also sending a copy hereof to Mr. Julius J. Brecht, Director of Banking, Securities and Corporations for his information and advice.

Very truly yours,



Gerald E. Stinson, Chairman  
FRONTIER SAVINGS AND LOAN ASSOCIATION

GES/kr

# PENINSULA SAVINGS AND LOAN ASSOCIATION

Eddie J. Turner  
President  
and Managing Officer

February 12, 1980

Honorable W. E. "Brad" Bradley  
Senate Commerce Committee Chairman  
Pouch V  
Juneau, Alaska 99811

RE: Senate Bill No. 367 - "An act relating to savings associations"

Dear Senator Bradley:

It was indeed a pleasure discussing with you today the worthwhile efforts of the commerce committee.

The referenced senate bill, as approved by the committee, appears to be very satisfactory and indicates the concentrated efforts for proper legislation which is beneficial to the residents of our state.

I have discussed this bill with Mr. Julius Brecht, Director of Banking and it is my understanding that he supports the commerce committees' recommendations. In addition, this bill has also been a subject for conversation with a colleague from the Alaska League of Insured Savings and Loan Associations, Mr. Lee Coffman, who indicated an amicable attitude toward this legislative effort.

The careful consideration of legislative needs for our new state industry, as exhibited by you and your committee members is greatly appreciated. If I can be of further service please let me know.

Sincerely,



Eddie J. Turner

EJT/jt

cc: Julius J. Brecht, Director  
L. C. Coffman  
File



Official Business

# Alaska State Legislature

## Senate

### Committee on Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 4, 1980

Mr. R. T. Hall  
Senior Vice President  
National Bank of Alaska  
Corporate Headquarters  
Box 600  
Anchorage, AK 99510

Dear Mr. Hall:

We appreciate your comments on Senate Bill 367. After going over this section with our various experts we do agree with you that "those powers generally possessed" are too vague and we have amended that to say "those powers possessed by state chartered associations in other states which the department determines have demonstrated accomplishment of this declaration of policy."

We will be having a Senate Commerce Committee hearing on this bill on March 11 at 8:30 a.m. in the Assembly Building, Room 106. We have numerous other amendments to this bill and we feel that this will satisfy most segments of this industry.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank P. Lee".

Frank P. Lee  
Administrative Assistant  
Senate Commerce Committee

bm



# PEOPLES BANK & TRUST

POUCH 7007 • 8TH AVENUE AND G STREET • ANCHORAGE, ALASKA 99510  
TELEPHONE (907) 279-7511

February 19, 1980

Honorable Brad Bradley, State Senator  
Chairman, Senate Commerce Committee  
Alaska State Legislature  
Pouch V  
State Capitol  
Juneau, Alaska 99811

Dear Mr. Bradley:

Thank you for your letter of February 13, 1980 together with proposed Senate Bill No. 367. I appreciate your bringing this to my attention as we are interested in all legislation that effects the banking industry.

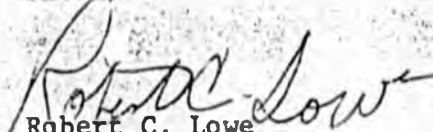
I have reviewed the proposed bill and the code sections which it effects.

With respect to savings and thrift institutions we as a commercial bank are primarily interested in the legislative trends which seem to be developing a double standard in the banking industry favoring the savings and thrift institutions with preferential rates so as to give them an advantage in the competitive market but at the same time expanding their powers so that the savings and thrift institutions are given all of the powers of the commercial banks. Like other commercial banks, we feel that if the savings and thrift institutions are going to have all the powers of commercial banks, then they should be placed on the same competitive level as commercial banks and not given the preferential interest rates and tax advantages that they now enjoy.

We do appreciate your advising us of this proposed bill and we do not have any comments with respect to it.

Very truly yours,

PEOPLES BANK & TRUST COMPANY

  
Robert C. Lowe  
Chairman

RCL:bwa  
0328



*Hackney*

December 27, 1979

Honorable Glenn Hackney  
1136 Sunset Drive  
Fairbanks, Alaska 99701

Re: (1) Budget For Division Of Banking, Securities and Corporations, (2) Changes In Chapter 30 (Savings Association Code), and (3) Recodification Of Banking And Savings Association Acts

Dear Sir:

I am Gerald E. Stinson, Chairman of the Board of Directors of Frontier Savings and Loan Association (in organization), a state-chartered stock savings and loan association. I will treat the captioned topics in sequential order after giving a brief background sketch of Frontier Savings and Loan which will establish our interest in seeking the relief (largely remedial) here sought.

Frontier was begun by twenty incorporators, all from Fairbanks. Its stock subscribed to date is subscribed to by approximately 80% Fairbanksans who, counting joint tenants, number over 200 individuals, and that number is growing. It is the first and (to-date) the only state-chartered stock association in Interior Alaska.

(1) You are probably no more eagle-eyed than I when it comes to increasing budget and personnel slots for a division or department of state government, but however biased against paying out more money we may be, I trust that we will guard against knee-jerk negative reaction in a given instance and instead study the supposed need with an open mind and have the courage and responsibility to spend more money if fairly warranted. For the past several months there have been severe shortages of both staff and budget in the Division of Banking brought about by increases in regulatory duties associated with the increasing number of newly filed applications for banking and savings association charters. The division has had to train some of its staff for new and expanded auditing responsibilities. The division has neither sufficient staff nor budget with which to do the job it was statutorily enjoined to do. I suggest that you review the situation with Mr. Brecht, Director of the Division of Banking, Securities and Corporations, when you go to Juneau in the next few weeks. He can detail the situation to you with more precision than I. From the point of view of Frontier and its shareholders, there is no more important division or department of state government than this division, and we are vitally interested in its funding and efficient operation. I therefore trust that you will find time to check this situation out with Mr. Brecht either before or early in the next session.

(2) As you know, Title 06, Chapter 30 (the savings association act) was amended session before last to permit the formation of state-chartered stock savings and loan associations. Hitherto all had been mutuals. The amendment was good, but as are many amendments engrafted on old statutes, the old and the new parts don't always mesh well, but whether they do or not, frequently

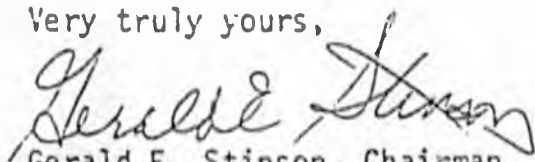
an unintended incidental injustice will occur. Thus the savings association act (Chapter 30, does not contain language which would permit state-chartered stocks to involve themselves in NOW (negotiable orders of withdrawal) accounts. Such language does exist in the mutual banking code (Title 06, Chapter 15), however, and thus state-chartered associations such as Frontier are (though I'm sure it was unintended) at a severe competitive disadvantage in attracting savings when a mutual savings bank (in our case - Mt. McKinley Mutual) is doing business in the same Alaskan community. I am told that this could be corrected by using the counterpart language of the mutual bank code found at AS 06.15.360 to amend the savings association act, or perhaps by other language of amendment designed to serve as a base for a more liberal regulation which would allow savings associations to be competitive with mutual savings banks in attracting savings dollars. I recommend that this matter of concern to us be likewise addressed to Mr. Brecht when you go to Juneau next month.

(3) The last item above captioned would involve a substantial expenditure of legislative time and effort, particularly in committee(s), but needs to be done. Band-aid amendments such as I propose above, though absolutely necessary to prevent injustice, have their limitations. With some exceptions, the provisions of the acts are financial horse and buggy vehicles in a jet age, of poor design and integration, and in need of major overhaul or replacement. Perhaps some model act could serve as a starting point from which committee hearings would tailor it to Alaska's specific situation. Recodification is necessary as the current statutory language, unlike wine, will not improve with age, and since it must be done sometime I suggest we initiate the process next session. As with the other two items, I believe Mr. Brecht can be very helpful to you in selection of a model code (and appropriate amendments thereto for introduction) and accordingly suggest that you discuss this matter with him prior to or early in the next session.

The suggestions set forth to you in this letter are essentially housekeeping matters not susceptible to partisan points of view. I trust that each of you can and will support and implement such suggestions into concrete legislative action.

If you have any questions pertaining to this letter, please feel free to write or call me (456-6617) at any time.

Very truly yours,

  
Gerald E. Stinson, Chairman  
FRONTIER SAVINGS AND LOAN ASSOCIATION

*Ex. Character. of industry  
similar to mutual  
Banking code*

cc: Julius J. Brecht, Director  
Division of Banking and Securities  
Charles Parr, Representative  
L. W. Stinson, Director  
Robert Bettisworth, Representative  
William Gordon, Director

06.15.010

*Plus 0015 200*

SECTION ANALYSIS OF CS FOR SB 367 BY TOM BISS REPRESENTING PENN. SAVINGS.

SECTION ONE: VESTS THE DEPT OF COMMERCE WITH REGULATORY POWERS TO PROMULGATE REGULATIONS EXISTING IN OTHER STATES FOR STATE CHARTERED SAVINGS AND LOAN ASSOCIATIONS.

SECTION TWO: EMPOWERS THE COMMISSIONER OF COMMERCE TO ISSUE REGULATIONS UNDER THIS ACT.

SECTION THREE: PROVIDES REGULATORY POWER TO THE DEPT. OF COMMERCE TO ALLOW NEGOTIABLE AND NONNEGOTIABLE ORDERS OF WITHDRAWAL (NOW) ACCOUNTS.

SECTION FOUR: AMENDS SEC. 06.30.295 TO ALLOW FOR NOW ACCOUNTS.

SECTION FIVE: ALLOWS DEPT. OF COMMERCE TO ESTABLISH NOW ACCOUNTS BY REGULATION ALLOWS WITHDRAWALS FROM INTEREST BEARING ACCOUNTS AND GIVES THE DEPOSITOR THE RIGHT TO EARNINGS.

SECTION SIX: EXPANDS AUTHORITY FOR PAYMENT OF DIVIDENDS FROM JUST SAVINGS ACCOUNTS TO VARIOUS ACCOUNT CLASSIFICATIONS. ALLOWS DIVIDENDS TO BE PAID ON NOW ACCOUNTS.

SECTION SEVEN: ESTABLISHES AUTHORITY OF DEPT. OF DEPT. OF COMMERCE TO ESTABLISH INTEREST RATES TO BE PAID TO NOW ACCOUNT HOLDERS. RE-CLASSIFIES DIVIDENDS AS EARNINGS AND EXPANDS PAYMENTS ON EARNINGS FOR SAVINGS ACCOUNTS TO COVER ALL CLASSIFICATIONS OF ACCOUNTS.

SECTION EIGHT: REWRITES AS 06.30.460 TO ALLOW FOR NOW ACCOUNTS.

SECTION NINE: PROVIDES SAVINGS AND LOANS ASSOCIATIONS THE AUTHORITY TO AMEND THEIR BY-LAWS TO ALLOW FOR NOW ACCOUNTS

SECTION TEN: REDEFINES ORDER OF WITHDRAWAL TO ACCOMMODATE NOW ACCOUNTS.

SB

511

(9)

# COMMITTEE REPORT

## HOUSE

4/24/80

FURTHER: FINANCE

Date: \_\_\_\_\_

Mr. Speaker:

The Committee on JUDICIARY has had CSSB 511am

"An Act relating to the criminal laws of the state; 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**

P. R. E. H. H. H. - D.P.

George Martin

John A. Anderson

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

Robert G. O'Brien

Ed. ...

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CHAIRMAN

Rep. Malone  
(pls. bring this  
with you - to  
Judiciary on  
Fri. May 16)

COMMENTARY AND SECTIONAL ANALYSIS  
FOR THE 1980 AMENDMENTS TO  
ALASKA'S REVISED CRIMINAL CODE

Thanks!  
Sandra)

Committee Substitute for Senate Bill 511

SENATE JUDICIARY COMMITTEE

Senator Robert H. Ziegler, Sr., Chairman

Senator M. E. Dankworth, Vice Chairman

Senator Don Eennett

Senator H. D. Meland

Senator Bill Ray

If you have any questions about any of  
the sections, please give me a call at  
465-3429.

Larry Stern



## INTRODUCTION

In 1978 the Alaska Legislature enacted a comprehensive revision of the state's criminal law. (Ch. 166 SLA 1978). The bill adopting the revised criminal code provided for an eighteen month delayed effective date and became law on January 1, 1980.

During this eighteen month period the code was reviewed in conjunction with a comprehensive training program to identify possible problem areas so that any necessary corrective amendments could be made during the 1980 legislative session. CSSB 511 contains a total of 40 amendments. Three categories of amendments are included.

The overwhelming majority of the amendments in the bill clarify particular provisions to more adequately reflect legislative intent. Included in this category are sections that correct drafting errors and oversights.

The second category includes two amendments, one to the homicide statutes and one to the assault statutes, which are designed to conform code provisions with decisions of the Supreme Court of Alaska announced simultaneously with or since adoption of the code.

The third category includes amendments which make substantive changes in the law. These amendments have been kept to a minimum and have only been made when particularly compelling reasons exist for the amendment.

The following material is a section by section analysis of the bill including a discussion of the effect of each amendment and why it is necessary. The analysis is organized in accordance with each chapter and article set out in the revised criminal code. Where no amendment has been made with respect to a particular chapter or article, a notation to that effect is included.

CHAPTER 16. PARTIES TO CRIME

No amendment proposed.

CHAPTER 31. ATTEMPT AND SOLICITATION

Section 1. AS 11.31.100. Attempt.

Section 2. AS 11.31.110. Solicitation.

Section 1 and section 2 of the bill contain identical amendments which provide that the Code's general attempt and solicitation statutes are to apply to unclassified crimes defined outside Title 11. Through an oversight, the Code's present attempt and solicitation statutes now only apply to crimes defined in Title 11 and classified crimes defined outside Title 11.

The amendments provide that the maximum penalty for an attempt or solicitation to commit a crime outside Title 11 will ordinarily be one-half the maximum punishment for the crime that is attempted or solicited. This penalty structure is identical to the punishment provided for attempts under the repealed attempt statute, AS 11.05.020.

CHAPTER 41. OFFENSES AGAINST THE PERSON

ARTICLE 1. HOMICIDE

Section 3. AS 11.41.115. Defenses to Murder.

This section constitutes a conforming amendment to subsection (e) of AS 11.41.115 and is discussed in conjunction with Section 40 of the bill which repeals AS 11.41.115(d).

ARTICLE 2. ASSAULT AND RECKLESS ENDANGERMENT.

Section 4. AS 11.41.210. Assault in the Second Degree.

This amendment makes two changes to the Assault in the Second Degree statute in order to conform those sections pertaining to assaults with a dangerous instrument to conduct included under the former law. Amended paragraph (1) covers the situation when a person intentionally causes physical injury by means of a dangerous instrument. Under the old law this conduct was the felony crime of Assault with a Dangerous Weapon, a felony. Under the new code, however, this conduct would only be included under Assault in the Third Degree, a misdemeanor, absent the presence of an intent to cause serious physical injury. The amendment closes this obvious gap in coverage.

The amendment also provides that Assault in the Second Degree under new paragraph (3) can be committed "recklessly", "knowingly" and "intentionally" (See AS 11.81.610(c)) instead of only "intentionally". The effect of this amendment is to restore what is commonly referred to as "ADW" (Assault with a Dangerous Weapon) to a general intent crime from a specific intent crime.

Providing specifically that an assault with a dangerous instrument is a general intent crime is consistent with Menard v. State, 578 F.2d 996 (Alaska 1978), a decision published by the Supreme Court during the final days of the legislature's consideration of the Code. In Menard, the court held that a "jury did not have to find any specific intent to do any particular kind or degree of harm to the victim in order to find [the defendant] guilty of assault with a dangerous weapon." Id. at 970. With the addition of the word "recklessly" the Code provision is consistent with the court's prior interpretation of the repealed "ADW" statute in Menard and would restore "ADW" to a general intent crime.

Section 5. AS 11.41.230(a)(1). Assault in the Third Degree.

Because of the general rule regarding proof of higher forms of culpable mental states in AS 11.81.610(c) (proof of a higher form of culpability establishes a lower form) this amendment deleting the unnecessary words "intentionally or" has been made.

ARTICLE 3. KIDNAPPING AND RELATED OFFENSES.

Section 6. AS 11.41.300(a)(1). Kidnapping

This amendment clarifies that "restraint" (defined in AS 11.41.370(3)) of a victim with intent to commit a

sexual assault is kidnapping. While such conduct is already generally covered under AS 11.41.300(a)(1)(E), it is preferable to specifically prohibit this particularly serious form of conduct in the kidnapping statute.

It should be noted that this amendment would not turn a restraint that was merely incidental to a sexual assault into kidnapping. For example, a defendant who forces a victim who is jogging along a bike path into woods a few feet from the bike path in order to commit a sexual assault has not committed kidnapping. The "restraint" of the victim was too closely related to the sexual assault, both in time and the degree of movement, to qualify as a separate crime. However, if the victim was forced into the defendant's car and then driven a block to a nearby deserted house and sexually assaulted, or sexually assaulted while his accomplice was driving the car, kidnapping has occurred. In this situation the restraint was specifically done to facilitate the commission of the felony and there was significant confinement or movement of the victim beyond that necessary to commit the sexual assault. (See generally Levshakoff v. State, 565 P.2d 504 (Alaska 1977)).

Section 7. AS 11.41.410. Sexual Assault in the First Degree.

Section 8. AS 11.41.440. Sexual Abuse of a Minor.

Section 7 amends the Sexual Assault in the First Degree statute to provide that causing or inducing a child

under 13 to engage in sexual penetration with another person (regardless of age) is prohibited in the same manner as actually engaging in sexual penetration with the child.

Similarly, section 8 amends the statute on Sexual Abuse of a Minor to cover causing or inducing children under 16 and 13 to engage in acts of sexual penetration and contact, respectively. Also prohibited is causing or inducing a child to engage in conduct described in paragraphs (2)-(6) of the Unlawful Exploitation of a Minor statute (AS 11.41.455(a)), even though no commercial purpose can be established. Paragraph (1) of AS 11.41.455(a), covering sexual penetration, is not included since this conduct has already been covered either in section 7 if the child is under 13, or under paragraphs (1) and (2) of section 8.

#### ARTICLE 5. ROBBERY.

No amendment proposed.

#### CHAPTER 46. OFFENSES AGAINST PROPERTY

#### ARTICLE 1. THEFT AND RELATED OFFENSES

Section 9. AS 11.46.210. Theft By Failure to Make Required  
Disposition of Funds Received or Held.

This amendment makes no substantive change in this statute but conforms language in subsection (b) to the

Code's consolidated theft statute. The amendment clarifies that a person who engages in conduct described in AS 11.46.210 is prosecuted for "Theft" under AS 11.46.120-150 and not for "Theft by Failure to Make Required Disposition of Funds Received or Held" (See AS 11.46.110).

Section 10. AS 11.46.220. Concealment of Merchandise.

This amendment makes two changes to the Concealment of Merchandise statute. The first is a technical one and clarifies the intent element in language that more closely parallels the general theft provisions. See AS 11.46.100(1). While the definition of "intent to deprive" (AS 11.46.990(2)) is broad enough to include conduct included within the definition of "intent to appropriate" (AS 11.46.990(1)), it is preferable to closely parallel the general language of the theft statutes in the Concealment of Merchandise statute.

The second change is to provide that the concealment of any firearm, regardless of value, is a class C felony. This amendment is intended to conform the Concealment of Merchandise statute with the general theft statutes which provide that the theft of any firearm is a class C felony. See, AS 11.46.130(a)(2).

ARTICLE 2. BURGLARY AND CRIMINAL TRESPASS

Section 11. AS 11.46.320. Criminal Trespass in the First Degree.

This amendment clarifies that a trespass on land with intent to commit a crime is covered specifically as a class A misdemeanor. While this section of the trespass statute was intended by the legislature to only apply to trespasses on land, the term "real property" has traditionally included both land and buildings. (However, note the definition of "premises" in AS 11.81.900(b)(42) which treats "building" and "real property" as distinct categories). To avoid potential overlapping coverage with the Burglary in the Second Degree statute, which specifically covers an unlawful entry into a building with intent to commit a crime, this technical amendment is required.

ARTICLE 3. ARSON, CRIMINAL  
MISCHIEF, AND RELATED OFFENSES

Section 12. AS 11.46.482. Criminal Mischief in the Second  
Degree.

The legislature adopted an approach to "joyriding" that aggravates the misdemeanor crime to a felony when the vehicle taken was damaged or the owner incurred expenses in an amount of \$500 or more. As drafted, the statute seems to require that either \$500 in damage or \$500 in expenses result. The situation, for example, where the vehicle is damaged in an amount of \$300 and the owner incurs \$300 in rental expense would not appear to be a felony since even though the total loss was in excess of \$500, neither the damages or the expenses exceeded \$500. Although this particular

question was not specifically considered by the legislature in 1978, it would seem consistent with the overall statutory scheme to impose felony penalties under these circumstances. Additionally, this amendment clarifies that strict liability is imposed on the defendant as to the element of causing damage to the car or expenses for the owner and allows the element of damage to be satisfied by any damage to property of another and not only damage to the propelled vehicle. Thus, the defendant who takes a propelled vehicle of another and damages property of another in an amount exceeding \$500 with the vehicle commits a class C felony.

#### ARTICLE 4. FORGERY AND RELATED OFFENSES

No amendment proposed.

#### ARTICLE 5. BUSINESS AND COMMERCIAL OFFENSES

##### Section 13. AS 11.46.600. Scheme to Defraud.

Because of a drafting error, a scheme to obtain \$10,000 from one or more persons was made a class B felony regardless of whether criminal intent was present. This amendment corrects this problem by specifying the applicable intent requirement.

##### Section 14. AS 11.46.620. Misapplication of Property.

This amendment allows for the possibility of felony prosecution when the value of the property misapplied is \$500 or more. Currently, all cases involving the misapplication of property (usually by a fiduciary) are classified as class A misdemeanors regardless of whether the value of the property misapplied was \$25 or \$25,000. Because of the

possibility of significant pecuniary losses caused by misapplication of property, higher penalties should be authorized.

In providing for felony penalties when the property involved is \$500 or more, the statutory scheme is consistent with the penalty structure applicable to theft offenses.

#### CHAPTER 51. OFFENSES AGAINST THE FAMILY

##### Section 15. AS 11.51.130. Contributing to the Delinquency of a Minor.

The Alaska Bar Association Criminal Law Committee has noted that the code's contributing statute is overbroad because of the inclusion of the word "permits". This amendment strikes the word "permits" from paragraphs (1)-(4) of the statute and uses the uniform language "aids, induces, causes or encourages" in describing the acts sufficient to constitute the crime. Former paragraph (2) has been deleted since the conduct described is already covered under paragraph (1). Additionally, a new paragraph (4) has been added which covers aiding, inducing, causing or encouraging a child under 16 to absent himself from the lawful custody of a parent or from school. This conduct was included under the former contributing statute. See, AS 11.40.130 and AS 11.40.150(4). It should be noted, however, that the offense does not occur when the child has "just cause" to be absent from custody.

CHAPTER 56. OFFENSES AGAINST PUBLIC ADMINISTRATION

ARTICLE 1. BRIBERY AND RELATED OFFENSES

No amendment proposed.

ARTICLE 2. PERJURY AND RELATED OFFENSES

No amendment proposed.

ARTICLE 3. ESCAPE AND RELATED OFFENSES

Section 16. AS 11.56.310. Escape in the Second Degree.

Section 17. AS 11.56.320. Escape in the Third Degree.

Section 18. AS 11.56.330. Escape in the Fourth Degree.

Section 19. AS 11.56.370. Permitting an Escape.

Sections 17 and 18 provide that if a person commits an Unlawful Evasion (failure to return to a correctional facility following temporary leave) and leaves or attempts to leave the state the crime is Escape in the Third Degree, a class C felony and not Escape in the Fourth Degree, a class A misdemeanor. The penalties for escape under the new code were intended to closely parallel the penalties for escape provided in former AS 11.30.095, the escape statute enacted in 1976. Because of an oversight in drafting, the penalty for the conduct described in AS 11.56.320(a)(2) was

reduced from a felony to a misdemeanor. This change is inconsistent with the remainder of the statutory scheme on escape which provides that an unlawful evasion without leaving the state is itself a class A misdemeanor.

Additionally, sections 16-19 replace the words on "a charge of" with the word "for". This amendment is required to make clear that escape and permitting an escape can occur when a person has been arrested for a crime, though not necessarily formally charged with a crime by way of complaint, indictment or information.

ARTICLE 4. OFFENSES RELATING  
TO JUDICIAL AND OTHER PROCEEDINGS

No amendment proposed.

ARTICLE 5. OBSTRUCTION OF PUBLIC ADMINISTRATION

No amendment proposed.

CHAPTER 61. OFFENSES AGAINST PUBLIC ORDER

ARTICLE 1. RIOT, DISORDERLY  
CONDUCT, AND RELATED OFFENSES

No amendment proposed.

ARTICLE 2. WEAPONS AND EXPLOSIVES

Sections 20 and 21. AS 11.61.210. Misconduct Involving  
Weapons in the Second Degree.

Section 20 amendment provides that the standard for determining whether a person's possession of a firearm while intoxicated is unlawful is whether the defendant was "under the influence" and not whether he was "substantially impaired". Section 21 defines the term "substantially impaired" consistent with existing jury instructions. The "substantially impaired" language was included in the Commission's draft of the code because the statute applied to all deadly weapons (such as knives and explosives) and not only to firearms. Because of the expanded range of instruments covered by the statute, it was felt that the test for determining impairment should be made more restrictive. In the legislature the statute was amended to apply only to firearms. However, the standard for determining impairment was not specifically addressed.

The "under the influence" standard is identical to the test under the former statute, AS 11.55.070, and has the benefit of previously accepted jury instructions which define when a person is "under the influence". Additionally, the "substantially impaired" standard is not defined by the code.

Section 22. AS 11.61.220(b)(1). Misconduct Involving Weapons  
in the Third Degree.

This amendment clarifies that a defendant has an affirmative defense to the carrying a concealed weapon prohibition of the weapons statute if he is in his dwelling or on land owned or leased by him which is appurtenant to his dwelling. As drafted, the defense applied when the defendant was in his dwelling or on "property" appurtenant to his dwelling. This amendment clarifies the provision consistent with the legislative intent expressed at the time the Code was enacted.

The proposed amendment makes it clear that the defense should only apply to situations where the person is in his back yard or on any other land owned or leased by him directly attached to his dwelling. Additionally, it avoids the possibility that a bar owner or other merchant will claim that possession of a concealed weapon while on business premises attached to his dwelling was authorized by this provision.

CHAPTER 66. OFFENSES AGAINST  
PUBLIC HEALTH AND DECENCY

No amendment proposed.

CHAPTER 76. MISCELLANEOUS OFFENSES

No amendments proposed.

CHAPTER 81. GENERAL PROVISIONS

ARTICLE 1. GENERAL PURPOSES

No amendments proposed.

ARTICLE 2. APPLICABILITY OF CRIMINAL STATUTES

No amendments proposed.

ARTICLE 3. CLASSIFICATION OF OFFENSES

No amendments proposed.

ARTICLE 4. GENERAL PRINCIPLES OF JUSTIFICATION

Section 23. AS 11.81.300. Justification: Defense.

Because of the specification of AS 11.81.400(a)(2) as an affirmative defense (discussed in conjunction with sec. 23, infra) this conforming amendment is required.

Section 24. AS 11.81.400. Justification: Use of Force in  
Resisting Arrest.

This amendment makes two changes to the statute describing when a person may resist an unlawful arrest. Subsection (c) makes the defense an affirmative one which the defendant must prove by a preponderance of the evidence. The defense provided for is one that should be appropriately made an affirmative defense consistent with other provisions of the code because it exists only as a matter of legislative policy and involves a matter that is subjectively in the possession of the defendant. Additionally, because this defense expands the current rule of law with respect to the circumstances when resistance is allowed, shifting the burden of proof on the issue is clearly permissible.

Subsection (d) provides that the issue of whether there was probable cause to arrest is a question of law that is to be determined by the court. While the current provision would undoubtedly be interpreted to include this provision consistent with other similar provisions in the criminal law, it is preferable to specifically set out this procedure.

ARTICLE 5. GENERAL PRINCIPLES OF CRIMINAL LIABILITY

Section 25. AS 11.81.600. General Requirements of Culpability.

This amendment makes two changes regarding the

code's general rules on culpability. The first is to clarify the general rule concerning culpability and to make clear that, with certain specified exceptions, a culpable mental state must be proven for every crime. For example, to commit Burglary in the Second Degree the state must establish that the defendant entered or remained unlawfully in a building with intent to commit a crime. The culpable mental state in this case is the intent to commit a crime. If the state establishes a voluntary act by the defendant in entering or remaining in a building, and in addition shows he acted with the intent to commit a crime, the crime of Burglary in the Second Degree has been established.

The second change provides that culpability need not be established if a legislative intent to dispense with the culpability requirement appears. While the decision to eliminate the culpable mental state requirement must comport with constitutional due process guarantees, the courts should be specifically authorized to consider the legislature's intent (and most importantly, the commentary accompanying passage of the code) in determining whether the legislature intended to dispense with the culpability requirement.

Section 26. AS 11.81.620. Effect of Ignorance or Mistake  
Upon Liability.

This amendment emphasizes that in order for a

defendant's mistake of fact to constitute a defense to a crime the mistake must be a reasonable one. While the reasonableness requirement is probably already included in this statute, this amendment is desirable to avoid potential litigation in the area.

#### ARTICLE 6. DEFINITIONS

##### Section 27. AS 11.81.900(b)(11). Definition of "dangerous instrument."

This amendment is required in order to make it specifically clear that all "deadly weapons" (including unloaded firearms) are "dangerous instruments" consistent with the legislative intent expressed with enactment of the code.

##### Section 28. AS 11.81.900(b)(12), Definition of "deadly force".

During the legislature's consideration of the justifiable use of force, the issue whether deadly force could be threatened in situations when its actual use would be improper was frequently discussed. Because of the possibility that such threats could tragically escalate a conflict, the legislature concluded that only peace officers making an arrest should have the authority to threaten deadly force in situations where the actual use of deadly force was not justified. See AS 11.81.370.

While making this specific change in AS 11.81.370 no corresponding change was made in the definition of "deadly force". While it can be argued that because of the express inclusion in AS 11.81.370 of the phrase "a peace officer may use nondeadly force and may threaten to use deadly force" nondeadly force does not include a threat of deadly force, the definition of deadly force appears to provide otherwise. This amendment provides that pointing a firearm in the direction of another person as well as intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument constitutes deadly force.

Section 29. AS 11.81.900(b)(21). Definition of "Firearm".

This amendment is included to correct a potential drafting oversight and clarifies that an inoperable firearm is included within the definition of firearm. While it would seem to be the case that inoperable firearms are already included within paragraph (B) of the current definition of firearm ("any weapon, whether loaded or unloaded, designed for discharging a shot capable of causing death or serious physical injury"), it is preferable to specifically state that inoperable firearms are included in order to avoid unnecessary issues being raised during trials.

Section 30 . AS 11.81.900(b)(49). Definition of "Serious  
Physical Injury".

This amendment provides that serious injury to a body member as well as a body organ will specifically qualify as serious physical injury. This amendment is identical to the definition of "great bodily injury" appearing in the former aggravated assault statute, AS 11.15.225, which was enacted in 1976 and which the legislature intended to parallel in the definition of "serious physical injury". However, because of a drafting oversight, the word body member did not appear in the definition of "serious physical injury".

Section 31 . AS 12.25.180. When Peace Officer has Option to Take  
Person Before Judge or Magistrate.

Though the criminal code provided for noncriminal offenses called violations (e.g., littering) it did not provide a specific enforcement mechanism for dealing with a suspect who has committed a violation. This amendment authorizes the use of citations and provides that a peace officer will ordinarily issue a suspect a citation for a violation consistent with the provisions in existing AS 12.25.190 -- AS 12.25.220. However, if the suspect refuses to identify himself or refuses to accept the citation, authority is given to the officer to bring the suspect directly before a judge or magistrate.

Section 32. AS 12. 30.025. Release in Cases Involving Domestic  
Violence.

This section of the bill adds a new provision to the bail statutes applicable to cases involving domestic violence. It is intended to emphasize to the court that in cases involving domestic violence certain conditions for release on a person's own recognizance, or conditions for release on bail, should be considered and applied as the court considers appropriate.

Section 33. AS 12.30.040. Release After Conviction.

This amendment makes conforming amendments in the statute prohibiting bail upon conviction for four specified crimes. The names of the four crimes have been changed to reflect the corresponding new names for the crimes under the Code.

Section 34. AS 12.55.015. Authorized Sentences.

AS 12.55.015(b) lists three circumstances when a judge is required to impose imprisonment in situations where a nonincarcerative alternative is not otherwise precluded. Because the presumptive sentencing scheme will usually require the imposition of some period of imprisonment for repeat felons, absent mitigating factors or extraordinary circumstances, this section is of particular importance in the sentencing of misdemeanants and first time felons.

The amendment changes paragraph (3) to more narrowly define the circumstances when imprisonment is required. The amendment addresses the specific concerns expressed by the Advisory Committee on Minority Judicial Sentencing Practices and eliminates the possibility that imprisonment will be required whenever a court on a single occasion in the past has imposed a sentence of lesser severity on the defendant. The amendment additionally conforms this provision to the underlying legislative intent that accompanied enactment of presumptive sentencing.

Section 35. AS 12.55.045. Restitution.

As presently drafted, the code requires that before a court may order restitution the victim of the crime must be notified. Several judges have criticized this provision as unduly burdensome since in many cases the location of the victim will not be known by the court. This amendment eliminates the necessity of notifying the victim every time restitution is ordered. While notification will occur as a matter of course in most cases, the failure to provide notification should not prevent the court from imposing a sentence of restitution.

Section 36. AS 12.55.155(c)(8). Modification of Aggravating Factor.

In response to a further suggestion by the Advisory Committee on Minority Judicial Sentencing Practices, this amendment more narrowly describes the aggravating factor that the defendant has a prior criminal history of assaultive behavior, including misdemeanor convictions.

Section 37. AS 12.55.155(c). Aggravating Factors Added.

This amendment adds four aggravating factors that a judge may consider in imposing a presumptive sentence. The first treats the presence of three or more prior felony convictions as an aggravating factor. This amendment is required since the Code recognizes that two or more prior felony convictions will place the defendant in the most serious category for purposes of presumptive sentencing. However, no provision specifically allows the judge to consider the fact that the defendant may have, for example, six prior felonies as opposed to only two. This amendment allows the judge to consider prior felonies beyond those necessary to place the defendant in the most serious category of presumptive sentencing as an aggravating factor.

The second and third additional factors are intended to be applicable in the sentencing of "white-collar" criminals. These include the fact that the defendant intended to obtain substantial gain under circumstances where the risk of prosecution and subsequent punishment were minimal and the fact that a defendant's crime was part of a continuing series of offenses in furtherance of an illegal business from which the defendant derives substantial income.

The fourth additional aggravating factor is applicable to crimes involving domestic violence. Its scope is restricted to crimes against the person (AS 11.41) directed against

a spouse, a former spouse or a member of the social unit comprised of those living together in the same dwelling as the defendant. Its addition reflects a legislative determination that crimes against the person involving domestic violence represent one of the more serious criminal justice problems in Alaska.

Section 38. AS 12.55.155(d). Mitigating Factor Added.

This section adds an additional factor that can be used to reduce a presumptive sentence. This mitigating factor allows the judge to consider that the aggregate harm caused by the defendant's criminal conduct, including his prior offenses, was consistently minor and inconsistent with a substantial period or imprisonment. One situation where this factor might be applicable is when the defendant has committed a number of felony property offenses, such as check forgeries, but they all involve relatively small amounts of money. This amendment is also proposed in response to the suggestions and recommendations of the Advisory Committee on Minority Judicial Sentencing Practices.

Section 39. AS 12.80.040. Violations and Infractions.

This amendment should be considered in conjunction with section 30 of the bill discussed supra. It allows peace officers to arrest a person for a violation or an infraction if the person refuses to identify himself or to accept a citation.

Section 40 . AS 28.35.135(a). Conforming Amendment to Motor  
Vehicle Law.

AS 28.35.135(a) deals with false statements on forms required under Title 28. The penalty for this conduct has been classified as unsworn falsification, rather than perjury, since the statements referred to under AS 28.35.135(a) will include statements not made under oath.

Section 41. Repeal of AS 11.41.115(d), and 11.81.610(a).

This amendment repeals two provisions in the criminal code. The first is AS 11.41.115(d) which provides that an unreasonable but honest belief as to the circumstances giving rise to a defense of justification (e.g., self-defense) will mitigate what would otherwise be murder to manslaughter. This section was not recommended by the Criminal Code Revision Commission but was added by the legislature subsequent to a discussion during committee consideration that it correctly stated the applicable law in Alaska.

In a recent decision, Houston v. State, \_\_\_\_\_ P.2d \_\_\_\_\_, Op. No. 1970 (Nov. 16, 1979) the Alaska Supreme Court noted that the law in effect in Alaska at the time did not recognize the defense of unreasonable belief as to justification. The effect of the repeal of AS 11.41.115(d) is to make the

Code consistent with the law that existed prior to January 1, 1980 and to provide that only reasonable beliefs as to the right of justification will excuse what would otherwise be a murder. Note also that a conforming amendment has also been made in sec. 3 of the bill reflecting the elimination of AS 11.41.115(d).

The second amendment repeals AS 11.81.610 (a) which provides that the use of one culpable mental state in a statute rebutably presumes that the mental state applies to all elements of the crime. This rule is inappropriately broad and ignores the fact that, by definition, particular mental states only apply to particular elements of a crime. For example, "intentionally" only applies to elements of crimes that can be classified as "results" as opposed to "circumstances" or "conduct" to which the culpable mental "knowingly" applies. Because of the requirement set forth in Section 24 that ordinarily only one culpable mental state is required to be established for each crime, this section is superfluous and misleading.

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(e); 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)
04.16.060 -----	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

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 an 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).

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).

### 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~~. 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)

Table of Contents

Page

CHAPTER 6. ALCOHOLIC BEVERAGE CONTROL BOARD AND DIRECTOR.

Sec. 10.	Board Establishment and Term.....	1
Sec. 20.	Vacancy.....	1
Sec. 30.	Compensation.....	2
Sec. 40.	Chairman and Meetings.....	2
Sec. 50.	Powers and Duties.....	2
Sec. 60.	Director.....	3
Sec. 70.	Scope of Regulations.....	3

CHAPTER 11. LICENSING.

Article 1. Restrictions.

Sec. 10.	Control.....	4
Sec. 20.	Financial Interest and Responsibility...	5
Sec. 30.	Nonresidents' Manufacturer's and Wholesale Licenses.....	5
Sec. 40.	Beverage Dispensary or Retail Package Store Restrictions.....	5

Article 2. Population Limitations, Public Notice,  
Protest and Consent.

Sec. 50.	Population Limitations on License Issuance or Transfer.....	6
Sec. 60.	Public Notice.....	7
Sec. 70.	Protest by Municipality.....	8
Sec. 80.	Individual Protest.....	9
Sec. 90.	Review by Director and Appeal to Board..	9
Sec. 100.	Public Consent to New License.....	10

Article 3. License and Certificate to Operate.

Sec. 110.	License as Property.....	10
Sec. 120.	Certificate to Operate.....	10
Sec. 130.	Interim Certificate.....	11

Article 4. Classification of Licenses.

Sec. 140.	Licenses.....	12
Sec. 145.	Permits.....	15
Sec. 150.	Community Liquor License.....	16

Article 5. Fees and Terms.

Sec. 160. License Term.....16  
Sec. 170. License Fees.....16  
Sec. 175. Permit Fees.....19  
Sec. 180. Refund of Fee.....19

Article 6. Applications.

Sec. 190. Contents of License or Permit  
Application.....19  
Sec. 200. Omissions and Misstatements.....20  
Sec. 210. Licensing Criteria.....20  
Sec. 220. Public Hearings.....22

Article 7. Renewals, Transfers, Suspensions,  
Revocations.

Sec. 230. License Renewal.....22  
Sec. 240. Transfer of Location under License.....24  
Sec. 250. Suspension and Revocation of Right  
to Operate Business under License.....24

CHAPTER 14. LOCAL OPTION.

Sec. 10. Elections in Cities.....25  
Sec. 20. Local Option Election Mandatory in  
Certain Cities.....27  
Sec. 30. Local Option Election in Certain  
Unincorporated Areas.....28  
Sec. 40. Sale in Violation of Local Option.....28  
Sec. 50. Seizure, Forfeiture and Sale of  
Conveyance.....29  
Sec. 60. Appearance by Person Having Interest  
in Conveyance.....30

CHAPTER 16. REGULATION OF SALES AND DISTRIBUTION.

Article 1. Operation of Premises.

Sec. 10. Posting of License and Inspection of  
Premises.....30  
Sec. 20. Hours of Sale.....30  
Sec. 30. Sales on Election Day.....31  
Sec. 40. Unauthorized Class of Beverages.....31  
Sec. 50. Visibly Intoxicated Persons.....31

Article 2. Minors.

Sec. 60. Minors on Premises.....32  
Sec. 70. Minors' Possession or Consumption.....32