



# LAWS OF ALASKA

1986

**Source**

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**Chapter No.**

80

**AN ACT**

Relating to regulation of alcoholic beverages and enactment of municipal ordinances.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 5, 1986  
Actual Effective Date: September 3, 1986

AN ACT

Relating to regulation of alcoholic beverages and enactment of municipal ordinances.

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

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

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

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

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

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

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

(7) in communities that have chosen to ban the sale and importation of alcohol, most drinking takes place in private homes;

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

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

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

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

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

28 (c) If a majority of the voters of an established village vote  
29 "yes" on the question set out in (a) of this section and the sale of  
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1 alcoholic beverages, or the sale and importation of alcoholic beverages,  
2 has not been previously prohibited in the established village in  
3 accordance with AS 04.11.490 or 04.11.494, a person, beginning 90 days  
4 after certification of the results of the election, may not knowingly  
5 possess an alcoholic beverage in the established village, unless the  
6 person is licensed by the board or the alcoholic beverage is wine to  
7 be used for bona fide religious purposes based on tenets or teachings  
8 of a church or religious body, is limited in quantity to the amount  
9 necessary for religious purposes, and is dispensed only for religious  
0 purposes by a person by the church or religious body as authorized to  
1 dispense the wine. The board shall be notified immediately after  
2 certification of the results of the election and thereafter may not  
3 issue, renew, or transfer between holders or locations a license for  
4 licensed premises located within the perimeter of the established  
5 village as defined in AS 04.21.080(b)(8). Licenses that may not be  
6 renewed because of a local option election held under this section are  
7 void 90 days after the results of the election are certified. A  
8 license that will expire during the 90 days after the results of a  
9 local option election under this section are certified may be extended  
0 until it is void under this section, by payment of a prorated portion  
1 of the annual license fee.

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

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

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

(f) If a majority of the voters vote "no" on the question set out in (a) of this section or vote "yes" on the questions set out in AS 04.11.492 or 04.11.500 in an election conducted in accordance with AS 04.11.502 after an election in which the voters voted "yes" on the question set out in (a) of this section, the prohibition on the possession of alcoholic beverages is removed effective 90 days after the results of the election are certified except as those prohibitions continue to be imposed in accordance with the results of the subsequent election.

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

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

(c) A petition filed with the local governing body of a municipality in accordance with (a) of this section, which places on the ballot the question set out in AS 04.11.498, shall constitute a proposed ordinance of the municipality.

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

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

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

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

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

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

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

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

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

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

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

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

(f) If the person fails to pay the bail amount established under (c) of this section, or fails to provide proof of performance as specified in (d)(1) of this section to the court, the citation is considered a summons.

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

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

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

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

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

13 (a) The following are subject to forfeiture:

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

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

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

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

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

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

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

(4) alcoholic beverages found on licensed premises that [WHICH] do not bear federal excise stamps if excise stamps are required under federal law;

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

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

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

- (1) the seizure is incident to a valid arrest or search;
- (2) the property subject to seizure is the subject of a

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1 prior judgment in favor of the state; or

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

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

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

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

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

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

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

29 \* Sec. 9. AS 04.21.010(a) is amended to read:  
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(a) A municipality may adopt ordinances governing the barter, sale, and consumption of alcoholic beverages within the municipality as necessary for the orderly conduct of the business of selling alcoholic beverages within the municipality and may ban possession of alcoholic beverages under AS 04.11.498(d) or (e). An ordinance adopted under this section may not be inconsistent with this title or regulations adopted under this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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