

Alcohol Sale and Importation

1. Changes in Alaska Statute Title IV: Definition of “manufacture”

Statement of Need: To provide additional information to juries in the form of a definition of “manufacture” specifically for alcohol.

Option: see attachment #1.

Rational for Option: Even though AS 04.11.010 prohibits the manufacture of alcohol, the provisions of Title IV do not define manufacture. The definition in Title XI only relates to controlled substances.

Impact Statement: A definition will make it easier for juries to make informed decisions in carrying out their responsibility.

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2. Changes in Alaska Statute Title IV: Expansion of the forfeiture provisions

Statement of Need: To provide the means and method of additional forfeitures for firearms and items from illicit profits, and clarify the procedure for forfeitures.

Option: see attachment #2.

Rational for Option: Present forfeiture provisions do not cover violations of transportation by common carrier and do not provide for forfeiture of firearms and items of value purchased from illicit proceeds, or provide for the means of forfeiture proceedings.

Impact Statement: These forfeitures will provide additional deterrence and redirects the profits from bootlegging to supplement enforcement.

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3. Changes in Alaska Statute Title IV: Changes to Consistency of quantity to 10.5 liters of distilled spirits
Statement of Need: To provide consistency of amounts to make the provisions less confusing.

Option: see attachment #3.

Rational for Option: Current there is an inconsistency in the amount of alcohol that triggers presumptive sale (12 L) and felony importation (10.5 L). This is confusing for law enforcement.

Impact Statement: This change will make enforcement and prosecution easier.

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4. Regional Option Election

Statement of Need: To support those “dry” local option communities which continue to receive a flood of illicit alcohol imported from nearby “damp” communities.

Option: Regional option election to provide an opportunity for the greater regional community to address and determine the alcohol option status for the entire region.

Rational for Option: Reduce the amount of bootleg alcohol imported into “dry” villages from “damp” locations and provide a forum for discussion of the local option issues and the domino-effect one community can have towards another.

Impact Statement: Help keep alcohol out of “dry” communities and provide forum for discussions between communities about the regional issue.

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5. Federal and State Enforcement Cooperation and Collaboration: Cross-deputization

Statement of Need: To increase ability to intercept alcohol shipments at rural post offices.

Option: Cross-designation with Troopers doing interdiction on Postal Service properties or in facilities.

Rational for Option: Currently Troopers can't intercept or work on Federal Postal Facilities. Principal problem is few number of Federal Postal Inspectors and the difficulty of rural Alaska travel.

Impact Statement: This will result in more efficient, cost effective enforcement and increase alcohol seizures.

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6. Federal and State Enforcement Cooperation and Collaboration: TSA relationship

Statement of Need B: To provide an opportunity for law enforcement to intercept alcohol headed to rural airports in local option communities.

Option: Develop collaborative relationship between TSA and troopers to ensure referrals of suspicious transport (keep clear of 4th Amendment issues).

Rational for Option: TSA is currently not required to notify Troopers or local enforcement of alcohol traffic.

Impact Statement: This will result in more efficient, cost effective enforcement and increase alcohol seizures.

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7. Alcoholic Beverage Control Board (ABC Board)
regulation changes: Aircraft freight transit inspection
by law enforcement.

Statement of Need: To promote the ability of law enforcement to inspect freight on ABC licensed air carriers and other air carriers.

Option: ABC Board could, by regulation, make access a condition for obtaining or renewing an ABC common carrier license, for example ERA and Alaska Airlines. For other air carriers a statutory change would be required. An additional option would be to change package store licensing to require use of carriers that allow access to shipments.

Rational for Option: Currently since carriers are private businesses, they are not under obligation to provide access to law enforcement to inspect freight.

Impact Statement: This will result in seizing more illegally shipped alcohol.

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8. Alcoholic Beverage Control Board (ABC Board) regulation statute changes: ABC Board to run “alcohol written-order” statewide, compatible data base (when alcohol is shipped, the order is electronically entered to track serial purchasing)

Statement of Need: To coordinate the records of purchases from liquor stores, so that liquor stores can determine whether a proposed written order purchaser has already purchased their monthly legal limit, and to help ensure that prohibited individuals can not make the purchases.

Option: ABC Board to develop and oversee an “alcohol written-order” statewide database, which would include prohibitions of purchases based on court proceedings.

Rational for Option: To reduce the ability of bootleggers to buy their ‘legal’ monthly limit from many package stores. All alcohol sales need to be tracked statewide by sale point database entry linked to purchaser. Track all alcohol written-order sales statewide to prevent serial purchases.

Impact Statement: This will decrease the ability of bootleggers to buy alcohol.

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9. Ban Written Order Sales to Residents of Dry Communities

Statement of Need: Presently residents of dry communities can take delivery of alcohol in areas where it is legal to receive alcohol – damp communities.

Option: Ban Written Order Sales to Residents of Dry Communities

Rationale for Option: Residents of dry communities pick-up alcohol in damp locations and bring it into the dry community.

Impact Statement: This will help dry communities be dry. (see bill SB229 introduced May 17, 2003)

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10. Alcohol distribution sites

Statement of Need: To make it easier to account for alcohol going into damp communities and to control who receives that alcohol and the amount they receive.

Option: Alcohol distribution sites

- a. Require hub communities (those that serve as points of entry for two or more villages or have a state or federally funded airport) within a region served by the hub airport, where at least 20% of the villages are either “dry” or “damp” sites (and that are “damp” themselves), to have community alcohol distribution sites. Deadline for initial establishment of these sites should be set by state at one year. If community does not set up the community alcohol distribution site, the ABC Board will.
- b. Permits to pick up liquor from the community alcohol distribution sites must be held by residents of the damp community only.
- c. The computerized data base (not public information but available to law enforcement) at each site shall be linked to the state data base (see number 4 below).

Rational for Option: Without a central distribution site it is difficult to track alcohol volume and sales to individuals in rural communities. Preventing multiple orders and sales to prohibited persons is currently difficult.

Impact Statement: This would provide for more efficient, cost effective enforcement and help keep alcohol out of dry communities.

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11. Banning the shipping of plastic bottles by air except to community distribution sites

Statement of Need: There is a need to make it easier to detect illegal shipments of alcohol to rural Alaska.

Option: Banning the shipping of plastic bottles by air except to community distribution sites

Rational for Option: It is presently hard to detect illegal shipments of alcohol to rural Alaska, especially alcohol in plastic containers. Glass bottles increase shipping weight, facilitate detection, increase clinking, and increase chance of breakage.

Impact Statement: This will result in the reduction of illicit alcohol in rural Alaska and improved enforcement of alcohol importation. This container change will provide positive reinforcement for using local distribution centers.

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12. Expansion of therapeutic court model.

Statement of Need: Many people who commit crimes under the influence of alcohol are not screened for abuse or dependency and not appropriately mandated to therapeutic treatments. People who enter treatment voluntarily can drop out before treatment is completed.

Option: Expansion of therapeutic court model.

Rational for Option: Where therapeutic courts are used, they have proved effective at getting people to complete treatment. People who complete treatment are more likely to be and remain sober.

Impact Statement: This will help reduce alcohol demand and related crimes.

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13. Child protection proceedings as a trigger for screening and alcohol treatment for parents.

Statement of Need: Currently we may miss opportunities for getting alcohol abusing parents into treatment.

Option: Use child protection as a trigger for alcohol screening and treatment for parents.

Rational for Option: This provides an additional opportunity to get people into alcohol treatment.

Impact Statement: People who complete treatment are more likely to get and remain sober. Sober parents will retain custody of their children. Fewer children will have to be placed in foster care.

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14. Increased Access to Treatment

Statement of Need: There is a need for more treatment programs at the local level, programs that can accommodate family treatment, and programs that are culturally based.

Option: Support the development of local treatment programs, family-oriented programs, and culturally-based treatment programs.

Rationale for Option: Because reducing the supply of alcohol to rural Alaska can only go so far to reduce alcohol abuse, reduction in the demand for alcohol must also play a part. Demand reduction includes both preventing people from becoming alcohol abusers and treating people who have become abusers. Treatment programs have proven most effective when the programs are located near the person's home and when the programs can address the needs of the entire family and are culturally relevant.

Impact Statement: People who successfully complete treatment and remain sober do not commit alcohol-related crimes.

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15. Alcohol Abuse Prevention

Statement of Need: There is a need to reduce communities' tolerance of alcohol abuse and the number of young people who 'learn' this tolerance from their communities.

Options: Support a variety of prevention programs that include:

- Programs geared to helping young people learn to make healthy choices
- Healthy community and cultural activities that link youth and adults.
- Alcohol/Drug Information Schools for first time misdemeanor alcohol/drug related offenses.
- Programs that promote community responsibility for preventing and addressing alcohol related problems.

(All programs need to reflect and respect the culture of the local community.)

Rational for Options: Reducing the supply of alcohol to rural Alaska can only go so far to reduce alcohol abuse. Reduction in the demand for alcohol must also play a part. Demand reduction includes both preventing young people from becoming alcohol abusers and treating people who have become abusers. This recommendation addresses prevention.

Impact Statement: Fewer young people will become alcohol abusers, with a corresponding reduction in alcohol related violence, crime and intentional and unintentional injuries.

Attachment 1: Manufacturing

The suggested statutory changes are as follows.

Put in AS 04.21.080(b) alcohol definition section:

"manufacture" of alcoholic beverages means to use the fermentation process with natural or artificial sugar and yeast, or the distillation process, to create alcoholic content.

The statutes currently do not have a definition for “manufacture” as it relates to alcohol, but below are the definitions of Title 4 “alcoholic beverage” and Title 11.71 drug cases “manufacture”.

AS 04.21.080(b)(1) "alcoholic beverage" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage and that contains one-half of one percent or more of alcohol by volume, whether produced commercially or privately; however, in an area that has adopted a local option under AS [04.11.491](#), "alcoholic beverage" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage by the person who possesses or attempts to possess it and that contains alcohol in any amount if the liquid is produced privately, or that contains one-half of one percent or more of alcohol by volume, if the liquid is produced commercially;

AS 11.71.900(13) "manufacture"

- (A)** means the production, preparation, propagation, compounding, conversion, growing, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; however, the growing of marijuana for personal use is not manufacturing;
- (B)** includes the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance or its container unless done in conformity with applicable federal law
 - (i)** by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
 - (ii)** by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

Attachment 2: Forfeiture

Below are the current provisions of the forfeiture statute as applies to alcohol offenses. Added in **bold** are the suggested statutory changes.

AS 04.16.220

(a) The following are subject to forfeiture:

(1) 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; alcoholic beverages possessed, stocked, warehoused, or otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages transported into the state and sold to persons not licensed under this chapter in violation of AS 04.16.170(b); **alcoholic beverages transported in violation of AS 04.16.125.**

(2) materials and equipment used in the manufacture, sale, offering for sale, possession for sale, barter or exchange of alcoholic beverages for goods and services in this state in violation of AS 04.11.010; materials and equipment used in the stocking, warehousing, 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 in violation of a local option adopted under AS 04.11.491;

(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 04.11.499;

(4) alcoholic beverages found on licensed premises that 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;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions, **or items of value purchased from the proceeds** derived from activity prohibited under AS 04.11.010 or in violation of a local option adopted under AS 04.11.491; **and**

(7) **a firearm which is visible, carried during, or used in furtherance of a violation of Title 4.**

(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 prior judgment in favor of the state;

or

(3) there is probable cause to believe that the property is subject to forfeiture under (a) of this section; except for alcoholic beverages possessed on violation of AS [04.11.501](#) or an ordinance adopted under AS [04.11.501](#), property seized under this paragraph may not be held over 48 hours or until an order of forfeiture is issued by the court, whichever is earlier.

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

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

(1) upon conviction of a person for a violation of AS [04.11.010](#) , [04.11.499](#), AS [04.21.060](#) , or AS [04.11.501](#) or an ordinance adopted under AS [04.11.501](#), or AS **04.16.125** ; or

(2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section. **Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings. Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant.**

(e) The owner of property subject to forfeiture under (a) or (i) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under

(d) of this section, the owner shows that the owner

(1) was not a party to the violation;

(2) had no actual knowledge or reasonable cause to believe that the property was used or was to be used in violation of the law; and

(3) had no actual knowledge or reasonable cause to believe that the person committing the violation had

(A) a criminal record for violating this title; or

(B) committed other violations of this title.

(f) A person other than the owner holding, or the assignee of, a lien, mortgage, conditional sales contract on, or the right to possession to property subject to forfeiture under (a) or (i) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under (d) of this section, the person shows that the person

- (1) was not a party to the violation subjecting the property to forfeiture; and
- (2) had no actual knowledge or reasonable cause to believe that the property was to be used in violation of the law; and
- (3) had no actual knowledge or reasonable cause to believe that the person committing the violation had
 - (A) a criminal record for violating this title; or
 - (B) committed other violations of this title.

(i) Upon conviction for a violation of AS 04.11.010 or 04.11.499, if an aircraft, vehicle, or watercraft is subject to forfeiture under (a) of this section, the court shall, subject to remission to innocent parties under this section,

- (1) order the forfeiture of an aircraft to the state;
- (2) order the forfeiture of a vehicle or watercraft if
 - (A) the defendant has a prior felony conviction for a violation of AS 11.41 or a similar law in another jurisdiction;
 - (B) the defendant is on felony probation or parole;
 - (C) the defendant has a prior conviction for violating AS 04.11.010 or 04.11.499; or
 - (D) the quantity of alcohol transported in violation of this title was twice the presumptive amounts in AS 04.11.010(c).

(j) Notwithstanding (i) of this section, a court is not required to order the forfeiture of a vehicle or watercraft if the court determines that

- (1) the vehicle or watercraft is the sole means of transportation for a family residing in a village;
- (2) the court may impose conditions that will prevent the defendant's use of the vehicle or watercraft; and
- (3) either
 - (A) a member of the family would be entitled to remission under this section if the family member were an owner of or held a security interest in the vehicle or watercraft; or
 - (B) if a member of the family would not be entitled to remission, the family member was unable as a practical matter to stop the violation making the vehicle or watercraft subject to forfeiture.

(k) When forfeiting property under (a), (d), or (i) of this section, a court may award to a municipal law enforcement agency that participated in the arrest or conviction of the defendant, the seizure of property, or the identification of property for seizure, (1) the property if the property is worth \$5,000 or less and is not money or some other thing that is divisible, or (2) up to 75 percent of the property or the value of the property if

the property is worth more than \$5,000 or is money or some other thing that is divisible. In determining the percentage a municipal law enforcement agency may receive under this subsection, the court shall consider the municipal law enforcement agency's total involvement in the case relative to the involvement of the state.

- (1) In this section, "village" means a community of fewer than 1,000 persons located off the interconnected state road system.

Current forfeiture provisions relating to controlled substances below

AS 17.30.110. Items Subject to Forfeiture.

The following may be forfeited to the state:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS [11.71](#);

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS [11.71](#);

(3) property which is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles, or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS [11.71](#); however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS [11.71](#) was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS [11.71](#) was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS [11.71](#);

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS [11.71](#); and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS [11.71](#).

AS 17.30.116. Procedure For Forfeiture Action.

(a) Within 20 days after a seizure under AS [17.30.110](#) - [17.30.126](#), the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal, or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and

distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS [11.71](#), regardless of their value.

(b) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

(c) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant under this chapter or AS [11.71](#).

Attachment 3: Quantity Consistency

The most common item bootlegged is R&R whiskey (distilled spirits). The quantity of 14 bottles (750 ml size) equals 10 and one half liters. (16 –750 ml bottles equals 12 liters.) As seen below, the quantity amounts for malt beverages and wine are essentially equivalent for presumptive sale, felony importation and allowable shipping to a sale-restricted location.

The suggested statutory change would make the quantity in AS 04.11.010 consistent if stated **“10 and one half liters or more of distilled spirits”**.

Currently, the statutes provide:

AS 04.11.010 presumptive amount for sale is possession **more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages.**

AS 04.16.200(e)(2) amount that makes importation into a dry location a felony is **10 and one half liters or more of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages.**

AS 04.11.140(g) package store license permits shipping monthly to a damp (restriction of sale) location **10 and one half liters of distilled spirits, less than 24 liters of wine, or less than 12 gallons of malt beverages.**