

# Title 4 Review: 2017 Update

## JANUARY 2017 UPDATE TO THE ABC BOARD

*Sent on behalf of the Title 4 Review Steering Committee*

January 24, 2017

To Chair Bob Klein and members of the Alcoholic Beverage Control Board:

Below is a summary and status update of the Title 4 Review project, as a supplement to the full summary report dated February 2015. This document provides a brief overview of the Title 4 Review process and its goals, the various stakeholders involved, the policy work that has taken place since publication of the original report, and some highlights of the anticipated legislative bill that will, if passed by the Alaska Legislature, enact the recommendations made through this process.

Title 4 Review project staff will prepare a more detailed update of the Title 4 Review report to accompany the new bill, including more information about recommendations developed since 2015. Please note that while most of the information in the original report is still accurate, several changes have been made to the recommendations, and new recommendations made, since its writing. Until the new set of recommendations is finalized and the report is updated, its contents should be considered informational only, and subject to change. Where this 2017 update differs from the 2015 report, this document should be considered the most recent and accurate information.

## WHY REVIEW TITLE 4?

Much of this chapter of Alaska law has not been updated since 1980. Over time, incremental updates to the statutes, inconsistent interpretation of the rules, and changing industry trends have reduced the effectiveness of Title 4 for businesses, communities and regulators alike. A systematic review of the statutes helps the Board carry out its mission and will benefit organizations and individuals whose work, community or business is affected by alcohol laws and regulations.

## GOALS OF TITLE 4 REVIEW

Stakeholders in this process established shared goals as the foundation for all recommendations:

### **Promote a fair business climate and protect public health and safety.**

- Create rational regulation for all tiers of the state's alcohol industry.
- Limit youth access to alcohol.
- Promote responsible alcohol use and reduce the harms of overconsumption.

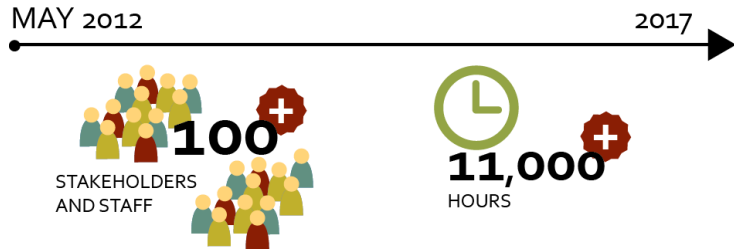
### **Make Title 4 a clear and consistent legal framework for the ABC Board, licensees and law enforcement.**

- Increase swiftness, proportionality and consistency of penalties.
- Increase local Title 4 law enforcement.
- Increase licensee accountability before the ABC Board for Title 4 violations.

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### AN INCLUSIVE, STAKEHOLDER-DRIVEN PROCESS

Since 2012, stakeholders representing the alcohol industry, public health, local governments, law enforcement, public safety, education, and community advocacy sectors have dedicated over 11,000 hours to date to craft recommendations to improve Title 4. This group, working with the Title 4 Review Steering Committee, has remained involved in the process throughout, helping to refine recommendations and analyze new ideas brought forward since the original set of recommendations were put forward.



### Over 70 Participating Organizations

Representatives from many organizations have contributed to the success of this work:

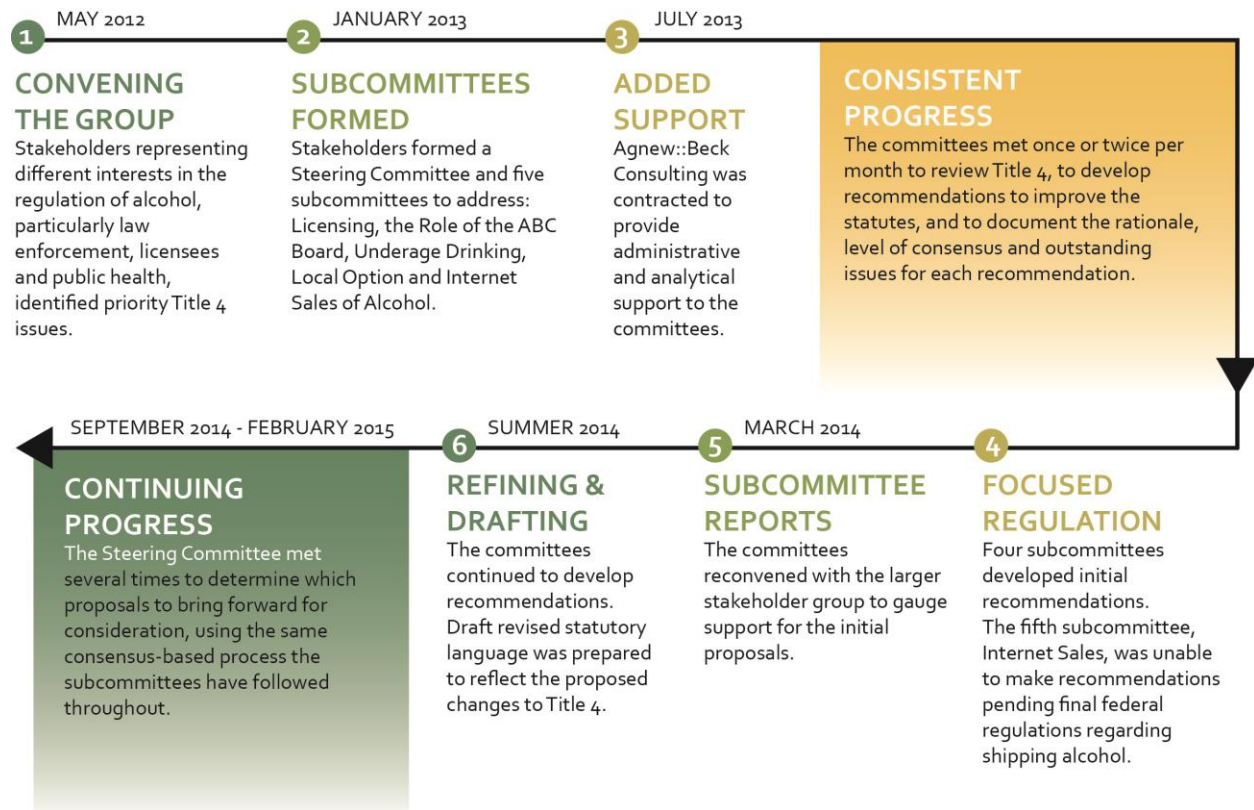
49th State Brewing *	Eagles Lodge *
ABC Board	Fairbanks North Star Borough
Alaska Berries *	FedEx
Alaska Board on Alcohol and Drug Addiction	First Alaskans Institute
Alaska Cache Liquor *	Glacier Brewhouse + Orso *
Alaska CHARR	Gold Hill Liquor *
Alaska Mental Health Trust Authority	Haines City and Borough
Alaska Municipal League	Holland America *
Alaska State Fair *	Hooligans *
Alaska State Troopers	HottStixx *
Alaskan Brewing *	Hughes Gorski Seedorf Odsen & Tervooren
Alcohol and Marijuana Control Office (AMCO)	Humpy's Alaskan Alehouse *
Alaska Wine & Beer Wholesalers Association	Justice Improvement Solutions
Alyeska Resort *	K & L Distributors *
Anchorage Hospitality Retailers Association	Kenai Peninsula Borough
Anchorage Distillery *	Mat-Su Health Foundation
Anchorage Golf Course *	Mat-Su Borough School District
Anchorage Police Department	Midnight Sun Brewing *
Bear Tooth Grill + Broken Tooth Brewing *	Municipality of Anchorage
Brewers Guild of Alaska	NCADDJ
Brown Jug *	Odom Corporation *
Chilkoot Charlie's *	Rasmuson Foundation
Chilkoot Trail Outpost Lodge *	Recover Alaska
City and Borough of Juneau	SEARHC
City of Soldotna	Silver Gulch Brewing *
City of Wasilla	Sitnasuak Native Corporation
Department of Commerce, Comm. & Econ. Dev.	Stellar Wines Distributing *
Department of Education & Early Development	Tony's Bar *
Department of Health & Social Services	University of Alaska Anchorage
Department of Public Safety	University of Alaska Fairbanks *
Department of Revenue	UPS
Distillers Guild of Alaska	Village Public Safety Officers
Dorsey & Whitney	Volunteers of America
Double Shovel Cider *	Wine Institute

\* denotes Alaska license holder

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### PROJECT TIMELINE: FIVE YEARS OF WORK

As detailed in the 2015 report, the Title 4 Review recommendations are the product of an extensive stakeholder process which has continued through the present. Following the timeline graphic is an update on what has happened in the last two years.



**April 2015** | Senator Peter Micciche introduced Senate Bill 99, which included the legislative language to enact all of the Title 4 Review recommendations. While efforts were made to thoroughly review the language for accuracy according to the group's intent, the bill had several flaws. At 100 pages, the bill also required more time than the 2015 session allowed. Sen. Micciche and the group determined to improve the bill during the interim and re-introduce in the following year.

**Summer – Fall 2015** | Alaska CHARR's Government Affairs Committee and several other industry stakeholders conducted a complete review of the bill language, identifying areas where more work may be needed and submitting comments, suggestions or new proposals. Staff for the Title 4 Review project met regularly with representatives to discuss each issue with the bill language, and the Steering Committee began revision of some aspects of the recommendations, ensuring that the changes still reflected the stakeholders' overall goals for the process and balanced in the interest of all sides.

**December 2015** | Recognizing that the package still needed significant work, and knowing that the 2016 legislative session would be focused on large policy issues like the state's fiscal crisis, the Steering Committee recommended a new, two-track process for Title 4 rewrite. The Steering Committee worked with Sen. Micciche to craft a streamlined bill (SB 165) with some priority recommendations that could be implemented sooner than the more complicated changes to licenses and permits. A new version of the comprehensive package would come forward the following session.

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**February 2016** | Sen. Micciche introduced SB 165, with proposed changes to ABC Board composition, changes to Minor Consuming Alcohol (MCA) and Minor on Premises penalties. See the following section for more information about SB 165.

**July 2016** | After several committee hearings, passage of the bill in both the House and Senate, and reconciliation between the two versions of the bill, SB 165 was signed into law by Governor Walker on July 6, 2016!

**August 2016** | Sen. Micciche re-affirmed his commitment to work with the Title 4 Review group to prepare a new version of the comprehensive bill. Sen. Micciche and the Steering Committee convened interested members of the stakeholder group to refine the contents of the comprehensive bill, starting with the language in SB 99, for introduction in the 2017 legislative session. Stakeholders submitted items for further discussion, as well as technical changes to the bill that were overlooked previously.

**Fall 2016** | Stakeholders met regularly to discuss each item brought for consideration, coming to consensus as much as possible on each issue. Additionally, the Internet Sales recommendations were further developed and refined with a group including Alaska stakeholders, representatives from major shipping carriers and a representative for out of state wineries.

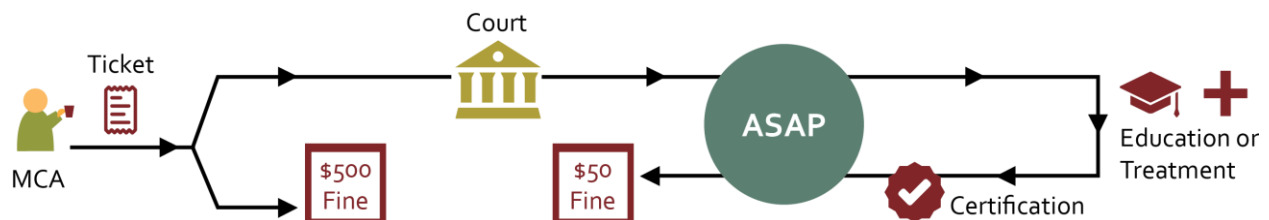
**November 2016 – January 2017** | Following direction from the discussions throughout the fall, Title 4 Review staff worked with Sen. Micciche’s staff and Legislative Legal Services to draft new bill language based on the original work, and updated to reflect the current set of recommendations. While the group anticipates further discussion throughout the legislative process, the goal for the new draft bill is to ensure that it accurately reflects the intent of the group’s work and addresses any drafting issues from the previous bill. At the time of writing, the stakeholder group is awaiting a complete draft for final review prior to its introduction during this 2017 session.

### SB 165: PRIORITY RECOMMENDATIONS ENACTED IN 2016

The first set of recommendations included in SB 165 have become law, including needed changes to the penalties imposed on minors who are found possessing or consuming alcohol (AS 04.16.050), or who enter licensed premises illegally (AS 04.16.049). The changes enacted in SB 165 are supported by a state plan, *Alaska’s Strategies to Prevent Underage Drinking*, the work of a number of state agencies and departments, including the Department of Health and Social Services, the Alcoholic Beverage Control Board, the Division of Juvenile Justice, the Alaska Native Justice Center, the University of Alaska Anchorage Justice Center, the Alaska Mental Health Trust Authority, and the Alaska Court System.

#### Minor on Premises [AS 04.16.049] and Minor Consuming Alcohol, MCA [AS 04.16.050]

The new legislation restores Minor Consuming Alcohol to a true violation, with the process for reducing the fine outlined in the graphic below:



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- Each offense carries a fine of \$500, regardless of the number of prior convictions.
- If the youth appears in court, the fine may be reduced upon completion of a state-approved alcohol education or treatment program or community diversion panel within six months of the court hearing. For first and second convictions, the fine is reduced to \$50; for subsequent convictions, the fine is reduced to \$250. The fine reduction creates an incentive for the minor to seek education or treatment.
- The state's Alcohol Safety Action Program (ASAP) /Juvenile Alcohol Safety Action Program (JASAP) office would refer the young person to qualifying programs, certify completion of the program, and forward certification to the Court for the fine reduction.
- Removed from statutory penalties: mandatory completion of alcohol education or treatment, community work service, potential jail time, and suspension or revocation of driver's license.
- No information about convictions under AS 04.16.049 or -.050 will appear in the individual's record on CourtView, regardless of the outcome of the case or the age of the individual.
- If a violation is unpaid and the individual does not appear in court, the fine will be deducted from the minor's Permanent Fund Dividend. This is also a financial incentive against repeat offenses, since it requires education or treatment to get a fine reduction again.

The same penalty applies for Minor on Licensed Premises (04.16.049), which was previously a Class A Misdemeanor in Title 4, the default penalty for most violations of that title. This new process is intended to ensure swift and consistent enforcement of laws limiting youth access to alcohol, without a long-term stigma for a person for their behavior as a minor.

### Composition of the ABC Board [AS 04.06.020]

Alcohol affects many aspects of life in Alaska, and good regulation depends on balanced perspectives and consideration of how the ABC Board's decisions impact businesses, communities, and individuals. The Title 4 Review process recognizes the important role of the Board in carrying out the intent of Title 4, and recommended that balanced representation on the Board is necessary.

The five-member board previously had three designated seats, two for members of the alcohol industry and one for a member of the public representing a rural area; the other two seats were for members of the public. Rather than adding new seats to the Board, SB 165 changes the composition of the board as follows: the two designated industry seats are retained, as is the rural public member. One of the public seats is now designated for someone representing the public safety sector, which may include someone from law enforcement, the legal system, and others involved in this field. The original recommendation included a designated seat for a member of the public health field, but this was changed during the legislative process to instead retain one seat for a public member.

## SUMMARY OF DRAFT UPDATED RECOMMENDATIONS

As noted above, the updated Title 4 Review recommendations are still being finalized as of January 2017. In lieu of an exhaustive list and detailed information about each, below is a list of highlights and changes from the 2015 report. More information about the entire set of recommendations will be available soon, including new recommendations brought through the most recent stakeholder review process.

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### Examples of Changes to Previous Recommendations

- **Reduce penalties overall, and ensure that penalties are roughly proportional to the seriousness of the offense.** This recommendation is generally still intact, but several individual penalties have been adjusted further to ensure they are easy to implement and reflect the gravity of the offense. The group previously recommended per-unit penalties, e.g., a \$50 fine “for each alcoholic drink consumed in violation.” On further reflection, the group concluded that a single fine for a single violation is preferable. Additionally, the changes implemented from SB 165 for Minor on Licensed Premises and Minor Consuming Alcohol, allowing a minor to receive a fine reduction on completion of alcohol prevention education or treatment, will also be applied to an equivalent statute, Minor Purchasing or Attempting to Purchase (AS 04.16.060), whose penalty is currently a Class A Misdemeanor, like most of Title 4. Court data, and anecdotal evidence from law enforcement and the courts, have shown that offenses with excessively high penalties tend to be dismissed, or a violation is not issued in the first place.
- **Phase out existing Public Convenience licenses: instead, convert existing licenses to regular Restaurant or Eating Place licenses (AS 04.11.400).** The system of obtaining a restaurant license through a petition process intended to “serve public convenience” is widely acknowledged to be difficult to complete as an applicant, unnecessarily complex to administer by the Board and staff, and undermines the intent of the population limits on the number of outlets. The previous proposal to “phase out” existing licenses with limited transfers was controversial and not supported by Sen. Micciche or some of the stakeholders, since it would have negatively impacted existing businesses. The group has now proposed conversion of these licenses to be the same as other restaurant licenses, including transferability. Future demand for more restaurant licenses in smaller communities who serve a larger population would be addressed with a new proposal, outlined below.
- **Manufacturers allowed to own retail licenses (AS 04.11.450).** An important aspect of the three-tier system for alcohol control is separation between businesses who manufacture, distribute, and sell alcohol, designed to prohibit monopolies and known in Title 4 as Prohibited Financial Interest. The original recommendation would have allowed a brewery or winery to own a restaurant license, if one was available in their community according to the population limits; the new recommendation is to allow a brewery, winery or distillery to own any retail license, if one is available. The group recognizes that this does not strictly follow the three-tier system, but also recognizes that the rise in craft production is an important part of the changing industry. Wholesale licensees would still be prohibited from owning a business in the other tiers.

### Selected New Recommendations

- **Cider, still classified as wine for licensing purposes, treated similar to beer.** Cider is technically defined as a “wine” in both federal and state law, because it is made from a fruit. In terms of marketing and typical percent alcohol by volume (ABV), however, it is more like beer. Similarly, sake (a fermented rice beverage) is classified as a “brewed beverage” but has typical alcohol content closer to wine. The ounce limits on sales and sampling for manufacturers and package stores is intended to provide equivalent limits for products with different potencies, therefore these limits have been applied as appropriate for these products that do not fit the

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mold of their category. While the license type for each product will remain as defined in current law, cider under 8.5% ABV will be allowed to follow the sampling and sales limits for beer, while sake will have limits following those of wine.

- **Replacement for Public Convenience: a city may request a number of additional restaurant licenses from the Board.** As noted above, the Public Convenience process for obtaining a license is cumbersome for both the applicant and the Board. Public Convenience licenses have been concentrated in a few communities whose resident population is relatively small, affording them a limited number of restaurant licenses, but who tend to serve a much larger population of surrounding residents, visitors, tourists and/or seasonal workers. Some of these cities requested more input on the number of licenses they can be issued, pointing out that they have the law enforcement, zoning, and health resources to properly manage any negative effects of increased alcohol outlets in their community. A new proposal would allow certain communities with no available restaurant licenses to ask for an additional number of restaurant licenses from the Board, without changing the underlying population limits. These licenses would not be tied to a particular application, but would increase the number available in that community until they were all issued to future businesses.
- **Regulation of Internet sales of alcohol directly to consumers.** One major issue identified in the Title 4 Review process, but not addressed in the previous recommendations, is regulation of Internet sales: a business selling and shipping alcoholic beverages directly to a consumer. Most states prohibit online sales of alcohol, except wine from a winery or, in some states, a retailer. A new proposal would establish a Winery Direct Shipment License to allow consumers to purchase wine from a business in or out of state, and a shipment must be delivered in person to an adult by a common carrier approved by the ABC Board to transport alcohol. All sales to Alaska consumers would be subject to the state's excise tax, already paid on products made or imported into the state by Alaska manufacturers and wholesalers. This will provide for a level playing field between Alaska manufacturers, whose product prices already include the cost of the tax, and out of state manufacturers, who do not currently collect Alaska excise tax on products sold directly to consumers in Alaska.

### Local Option Recommendations Need More Work

Most of the Title 4 Review recommendations produced in 2015 are ready to move forward, but one significant portion of the work has been tabled until the next phase: recommended changes to Local Option laws. Despite several efforts to work further with rural communities and other stakeholders on the proposed changes, the group was not successful in completing another thorough review of this work, and recommends not implementing changes that have not had sufficient input from the communities they will impact. One of the recommendations in particular, increasing fines for bootlegging activity, was not in keeping with other changes to the criminal justice system enacted in SB 91 in 2016. The group acknowledges the profound impacts that existing high penalties for alcohol-related crimes have in Local Option areas, and some stakeholders are interested in exploring future recommendations to improve the Local Option system as a tool for communities to reduce the negative impacts of alcohol. This exploration needs to include Local Option communities at the table for careful deliberation about the best solution.

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The proposal to regulate Internet Sales is expected to have some benefits for Local Option communities: there is no available data to estimate how much alcohol may be shipped into these areas from direct-to-consumer sales, which bypass the existing written order database established in AS 04.06.095 to allow the ABC Board, and individual package stores serving rural areas, to enforce the monthly purchase limits in place in Local Option areas. The proposed Winery Direct Shipment License would prohibit sales to consumers located in Local Option areas, and other online alcohol sales would be clearly illegal in statute. However, current law allows an Alaska package store to serve customers via mail, including in Local Option areas, provided that they consult the written order database prior to filling the order and recording the customer's order into the database. This purchase option will still be available to rural customers, while ensuring that all alcohol sales to Alaska consumers are taxed, documented, and compliant with the law.

### NEXT STEPS

Stakeholders are reviewing the draft legislation that reflects the updated set of recommendations that are based on consensus developed among the Steering Committee and the statewide stakeholder group. Once the draft is complete, Sen. Micciche plans to introduce the new bill.

For more information about the draft legislation, please contact:

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