



MEMORANDUM

TO: Robert Klein, Chair, and
Members of the ABC Board

DATE: September 13, 2017

FROM: Erika McConnell
Director, ABC Board

RE: Distillery Advisory—Interpretation of
AS 04.11.170(d) and (e)

In June of this year, AMCO's Enforcement Section received a complaint that a distillery was both serving mixed drinks and providing entertainment. On the mixed drinks issue, Enforcement conferred with me and AAG Milks to review the relevant statute. (The distillery received a Notice of Violation for providing entertainment.)

AS 04.11.170, Distillery license

(a) A distillery license authorizes the holder to operate a distillery where alcoholic beverages are distilled and bottled or barreled for sale.

(b) A distillery license authorizes the holder to sell alcoholic beverages in

- (1) quantities of not more than one gallon a day to a person who is present on the licensed premises for consumption off the premises;
- (2) any amount to a person who is licensed under this title or in another state or country.

(c) The biennial distillery license fee is \$1,000.

(d) The holder of a distillery license may permit a person to sample small portions of the distillery's product free of charge unless prohibited by AS 04.16.030.

(e) Unless prohibited by AS 04.16.030, a holder of a distillery license may sell not more than three ounces a day of the distillery's product to a person for consumption on the premises if

- (1) the distillery does not allow live entertainment, televisions, pool tables, dart games, dancing, electronic or other games, game tables, or other recreational or gaming opportunities on the premises where the consumption occurs;
- (2) the distillery does not provide seats at the counter or bar where the product is served; and
- (3) the room where the consumption occurs is not open before 9:00 a.m. and serving of the product ends not later than 8:00 p.m. (*Emphasis added.*)

There is a clear distinction between what a distillery is authorized to make (“alcoholic beverages”) and what a distillery is authorized to give away or sell for consumption on the premises (“the distillery’s product”). Other license types are authorized to sell various types of liquor for consumption on the premises, such as a beverage dispensary license (AS 04.11.090 “authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only”), a restaurant or eating place license (AS 04.11.100 “authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises”), and a club license (AS 04.11.110 “authorizes a club or organization to sell alcoholic beverages for consumption only on the licensed premises”). The phrasing of AS 04.11.170(d) and (e) is conspicuously different from these other license types, in that distilleries are authorized to give away samples and sell “the distillery’s product” for consumption on the licensed premises. There is nothing in the statutory language itself to suggest that a Bloody Mary, a martini, or a margarita qualifies as “the distillery’s product.”

Sections (d) and (e) were added by the legislature in 2014 in HB 309 (28th Legislature). The sponsor statement (attached) indicates that the purpose was

- To modernize distillery laws in Alaska;
- To bring small distillers on par with local wine and beer makers by allowing for tastings, small amounts for on premise consumption, and limited direct sales for off premise consumption;
- To help promote Alaskan-made products;
- To enable local industry to compete with imported goods.

Breweries are permitted to give free samples or sell “the brewery’s product” (AS 04.11.130(c) and (e) for consumption on the licensed premises. Wineries are permitted by statute to serve “small portions of the wine free of charge” (AS 04.11.140(c)) and by regulation to sell for consumption on the premises “the winery’s wine, mead, or cider” (3 AAC 304.380). Parity between breweries, wineries, and distilleries supports the interpretation of the applicable statutes that each manufacturer is allowed to provide for consumption on their premises of samples of the product manufactured at their facility.

Representative Tuck, the primary sponsor of HB 309, has provided a letter (attached) indicating that the intent of the bill sponsors was to allow mixed drinks to be served in the distillery’s tasting rooms. While I do not cast doubt on his statements, there is nothing in the legislative history, including available testimony (before House Labor and Commerce) and submitted supporting documents, that indicates that the words “the distillery’s product” as they appear in the text of the statute can reasonably be interpreted as “mixed drinks” or “cocktails.” I note, also, that of the several distilleries that submitted statements in support of the bill (attached), all expressed an interest in having the same opportunities to offer samples of their product that breweries and wineries have, and none of them mention cocktails or mixed drinks.

Interpretation of AS 04.11.170(d) and (e)

ABC Board September 13, 2017

Page 3

At my direction, Enforcement staff drafted an advisory notice (3 AAC 304.525(a)(2)) to inform our nine distillery licensees that only the distillery's product may be given as samples or sold for consumption on the licensed premises, and that the service and/or sale of mixed drinks/cocktails must cease as it is not permitted by statute. The advisory was distributed on August 2, 2017, and a copy is attached.

I recommend that the board interpret AS 04.11.170(d) and (e) in accordance with a plain understanding of the language and uphold the advisory issued by AMCO. If the legislative intent was truly different, the legislature will need to amend statute to provide clarifying language.

Attachment: AMCO Distillery Advisory
HB 309 Sponsor Statement
HB 309 Sectional Analysis
Representative Tuck Letter
HB 309 Support Statements from Distilleries

Advisory Notice

(3AAC 304.525)

Date: 08/02/2017

Licensee: All Distillery Licenses

DBA:

License #/Type: Distillery

Address:

This is a notice to you as licensee that an incident has occurred or a defect is noted that could result in a violation of a statute, regulation or municipal ordinance.
Note: This is not an accusation or a criminal complaint.

Distillery Licensees,

It has been brought to our attention there may be some misinterpretation of the statute with regard to Distillery licenses and what is permitted. Enforcement has been made aware that along with the consumption of the distillery's product, additional non-alcoholic ingredients as well as alcohol which was not produced in/on the licensed premises is being served i.e. adding Vermouth (not distilled on premises) to Vodka (which was distilled on premises) in order to make a Martini, or cola mixed with rum.

AMCO Enforcement identifies this as a violation of AS 04.11.17 (d) & (e) of the Distillery License as shown below:

(d) The holder of a distillery license may permit a person to sample small portions of the distillery's product free of charge unless prohibited by AS 04.16.030.

(e) Unless prohibited by AS 04.16.030, a holder of a distillery license may sell not more than three ounces a day of the distillery's product to a person for consumption on the premises if [...]

Please regard this Advisory Notice as Enforcement's directive to cease selling or giving as samples drinks that are made by mixing your distilled product with other ingredients that are not produced on the licensed premises.

Issuing Investigator: S. Johnson

Received by:

SIGNATURE:

SIGNATURE:

Delivered VIA: Mail

Date:



Representative Chris Tuck

House Minority Leader

Alaska State Legislature

District 22 - Representing Dimond Estates, Foxridge, Taku, Campbell, Northwood and Windemere

Sponsor Statement House Bill 309 An Act Relating to Distillery Licenses

The purpose of HB 309 is to modernize the distillery laws in Alaska, which are outdated and fail to address the new trend in craft beverage production. This legislation brings Alaska's small distillers on par with local wine and beer makers by allowing for tastings, sales of small amounts for on premise consumption, and limited direct sales for off premise consumption. The ability to retail in-house allows a distillery to subsidize a visitor-friendly gift shop or hospitality room and increases the marketability of tours. This will help promote Alaskan-made products and enable this new local industry to compete with imported goods.

Alaska's small distilleries are attempting to enter a market and compete in a field that, since Prohibition ended, has been dominated by large manufacturing companies that have the economic benefit of extremely large-scale production. Allowing distilleries to cater to tourists helps offset the substantial competitive disadvantage that our local distillers have when competing with out-of-state distillers.

Small distilleries in Alaska purchase local agricultural products, create jobs, support their local economies, create export products for Alaska, and have the potential to significantly contribute to the tourism industry in Alaska.

Locally distilled spirits are part of an exciting growth in artisanal, small scale, domestic manufacturing. The current restrictions prevent the businesses producing these products from reaching their full potential in the state's tourism industry and to position themselves to compete on a national and global level.

The changes are on par with what breweries have done to promote regionally-based micro-breweries. Small-scale spirits producers need similar changes to allow them to innovate, create Alaskan-based manufacturing jobs, support Alaskan agriculture, support tourism through visitor centers and tasting rooms, and compete effectively in the marketplace with reasonably-priced handcrafted spirits.



Representative Chris Tuck

Alaska State Legislature

District 29 - Representing Dimond Estates, Foxridge, Taku
Southwood Manor, Campbell, and Independence Park

Sectional for CSHB 309 (L&C) An Act relating to distillery licenses

Section 1.

Amends subsection (b) of AS 04.11.170, titled "Distillery license" to:

- (1) Allow sales of less than a gallon of product directly to the public. Previously a distiller could only sell to a holder of one of the several state licenses relating to alcohol.
- (2) Lift a prohibition upon selling less than five gallons of product to a licensed individual.

Section 2.

Adds two new subsections to AS 04.11.170 titled "Distillery license" which:

- (d) Allow distillers to give samples free of charge.
- (e) Allow distillers to sell three ounces of product or less for consumption on the premises. This subsection also lays out provisions to ensure that distilleries cannot act as de facto bars.

Section 3.

Amends AS 04.11.025, titled "Alcohol server education course" to require distillery licensees and their employees to take a board certified alcohol education course.

Section 4.

Amends AS 04.11.065, titled "Posting of warning signs" to require distilleries which provide samples to the list of licensees which must post signs informing people that: drinking and smoking during pregnancy can lead to birth defects, a person providing alcohol to someone under 21 can receive up to five years in prison and a fine of \$50,000, and that a person under 21 entering the premises in violation of law could be liable for a fine of \$1,000.

Year-Round

Phone (907) 269-0240

Toll-free (866) 465-2095

Rep.Chris.Tuck@legis.state.ak.us

May-December

716 W. 4th Ave

Anchorage, AK 99501

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January-April

State Capitol Bldg. Rm 426

Juneau, AK 99801

Fax (907) 465-3810

Alaska State Legislature

Official Business



State Capitol
Juneau, Alaska
99801-1182

August 15, 2017

Erika McConnell
Director, Alaska Alcohol & Marijuana Control Office
550 West 7th Ave, Suite 1600
Anchorage, AK 99501

Dear Director McConnell,

It has come to our attention the Alaska Alcohol & Marijuana Control office has issued an advisory notice to Alaska's distillers regarding distillery licenses and what practices are permitted in their tasting rooms.

In the 28th Alaska Legislature we sponsored HB 309 which clarified that distillers can sell and give away samples of their product under certain conditions.

We can assure you there has been no misinterpretation of the statute by the distillers and they are acting in accordance with the Legislature's intentions. Considering that many of the products sold by the distillers are intended to be mixed with other ingredients before consumption, it was assumed any sales or free samples would likely be mixed with other ingredients as well.

The Legislature worked closely with Alaska's distillers in crafting this legislation and they are well aware of what the law intends. We would also draw your attention to the well-publicized celebration ceremony of the new statute, when samples of mixed drinks using Alaska's craft spirits were provided without question.

Alaska's distillers have been making honest efforts to comply with the law as they understand it. This apparent sudden reversal of policy by your office does a great disservice to their business efforts and the intent of the law as it was passed.

Erika McConnell, Director
Alaska Alcohol and Marijuana Control Office
August 15, 2017
Page 2

Thank you for your attention to this matter. Please feel free to contact our offices directly if you have further questions.

Sincerely,



Harriet Drummond
Alaska State Representative



Scott Kawasaki
Alaska State Representative



Jonathan Kreiss-Tompkins
Alaska State Representative



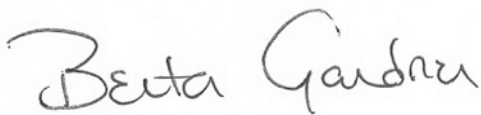
Chris Tuck
Alaska State Representative



Click Bishop
Alaska State Senator



Dennis Egan
Alaska State Senator



Berta Gardner
Alaska State Senator



Peter Micciche
Alaska State Senator

cc:

All Alaska distilleries



March 17, 2014

Toby Foster
Founder/ CEO

www.alaskadistillery.com

[Facebook.com/ AlaskaDistillery](https://www.facebook.com/AlaskaDistillery)

[twitter.com/ AK_Distillery](https://twitter.com/AK_Distillery)

Dear Alaska Legislature,

Alaska Distillery fully supports HB309. The changes and additions to existing legislation will allow Alaska Distillery and other Alaska based distilleries to engage in commerce in a more equitable and profitable manner.

Best Regards,

Toby Foster
CEO & Founder
Alaska Distillery





March 15, 2014

Bare Distillery Alaska, LLC.
6310 A St.
Anchorage AK, 99518
(907) 440-0569
kyle@baredistillery.com

To The Alaska Legislature:

We at Bare Distillery Alaska, LLC. fully support the version of HB309 regarding the ability for Alaskan based distilleries to operate in a fashion that supports their craft. This is more in line with existing brewery and winery standards, and gives our businesses the opportunity to grow to create more jobs, allow for larger volume, and provide sustained growth in our economy. We support this bill, and look forward to working together to create a stronger economy and more jobs for Alaskans!

Thank you,

A handwritten signature in blue ink, appearing to read 'Kyle Ryan', is written over a horizontal line.

Kyle Ryan
President and Founder
Bare Distillery Alaska, LLC.

HIGH MARK DISTILLERY

March 18, 2014

Attention to all Alaskan Legislatures:

We at High Mark Distillery, Inc. in Sterling/Soldotna, Alaska fully support HB309.

HB309- the distillery bill- will achieve a necessary alignment of industry standards that have been enjoyed by breweries and wineries throughout Alaska for many years, and now our distilleries.

HB309 will allow Alaskan based distilleries to grow by creating more jobs, allow for larger volume production, provide sustained financial growth in the Alaskan economy, and create new export products for the state of Alaska.

High Mark Distillery is a thriving one year old small business operating in Sterling, Alaska, a rural area of the Kenai Peninsula. We are a very tourist based community, dependent upon the ability to welcome tourists to our Tasting Room, offer them a tour of our distillery, and allow them to sample and purchase our Alaskan made products. HB309 will create this opportunity for all distilleries across Alaska to enjoy these necessary elements of the distillery experience for our customers.

Thank you for your necessary support.

Respectfully yours,

Felicia Keith-Jones, Owner
High Mark Distillery, Inc.



37200 Thomas St.
Sterling, Alaska 99672

P.O. Box 3334
Soldotna, Alaska 99669

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Port Chilkoot Distillery
PO Box 1248
34 Blacksmith St.
Haines, Alaska 99827
907-766-3434
www.portchilkootdistillery.com

March 17, 2014

Dear Alaska Legislature:

As owners of Port Chilkoot Distillery LLC, we support the HB309 Distillery Bill. We are a new small business operating in a rural area of Southeast Alaska. Our ability to contribute to the economy, create new jobs, and properly market our Alaskan-made products depends on us being able to welcome tourists to our facility and to provide them with an experience that highlights the ingenuity and creativity of small Alaskan manufacturers.

HB309 would allow us to compete with out-of-state imports and operate with the same abilities that Alaskan breweries and wineries already have.

Thank you for your support,

A handwritten signature in black ink that reads "Heather Shade and Sean Copeland". The signature is written in a cursive, flowing style.

Heather Shade and Sean Copeland
Owners
Port Chilkoot Distillery
Haines, Alaska

Ursa Major Distilling
PO Box 81204
Fairbanks, AK 99708



907-455-6811
www.ursamajordistilling.com
sales@ursamajordistilling.com

March 16th, 2014

Alaska Legislature,

We are writing this letter to show our full support of HB309, and believe that it will have a very positive impact on our state.

This legislation will put us on par with the existing brewery and winery statutes, and will substantially promote growth in our fledgling industry. Growth in our industry means growth in many other Alaskan industries such as agriculture and tourism.

Distillers in Alaska are artists, crafting some very fine spirits that are beginning to be known on a national level. This legislation will help us foster a more positive, personal relationship with our consumers that is more in line with what the "Alaska dream" is all about.

Thank you for your time and consideration of HB309.

Respectfully,

A handwritten signature in black ink, appearing to read "Rob and Tara Borland". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rob and Tara Borland
Owners
Ursa Major Distilling
Fairbanks, AK