



To: Alcoholic Beverage Control Board  
Date: April 14, 2026  
From: Kevin Richard, Director  
RE: AMCO Director's Report

- **Introduction**
  - This report summarizes the activities of the Alcohol and Marijuana Control Office (AMCO) from the last board meetings held in February 2026.
- **Discussion Topics**
  - **Licensing**
    - Sonya Irwin will update you on the progress that has been made since the February 2026 board meetings. There are currently two vacant Licensing Examiner 2 positions in Anchorage.
  - **Enforcement**
    - Joe Bankowski will update you on the activities of the AMCO Enforcement Unit since the February board meetings. There are currently vacant Special Investigator positions in Fairbanks and Juneau.
  - **Administration**
    - AMCO is working to hire an Administrative Officer 1.
  - **AO 360**
    - AMCO has received an update that we're expecting AO 360 plan approval this month to allow us to start working on top priority regulations projects. The board will be updated as more information becomes available.
  - **Legislative Review**
    - **HB 155** Alcohol Sales: Local Option
      - **Sponsor:** Representative Foster
      - **Status:** House Rules
    - **HB 306** Provision of Alcohol: Civil Liability
      - **Sponsor:** Representatives Fiels, Himschoot
      - **Status:** House Labor and Commerce
    - **HB 363** Alcohol Sales by Patriotic Organizations
      - **Sponsor:** Representatives Stutes, Saddler
      - **Status:** House Rules
  - **WCAG Web Content**
    - Effective April 24, 2026, all documents that AMCO posts to their website will be required to conform with Web Content Accessibility Guidelines (WCAG 2.1). As a result, there will be a reduction in material that AMCO posts online before board meetings. AMCO will continue to publicly notice the meeting and provide an agenda as required by statute and



regulation. AMCO will no longer be posting completed applications on the website.

- As public records, license applications are still available to interested parties by submitting a public records request to AMCO under the Alaska Public Records Act in AS 40.25.100-AS 40.25.295.
- ***Zip Kombucha, et al. v. Kevin Richard, et al., 3AN-24-04842CI***
  - AMCO released an advisory notice related to the Superior Court's decision in the this matter and is available on AMCO's website.
- **Legislative Audit**
  - AMCO is currently participating in a routine legislative audit of both the Alcoholic Beverage Control Board and the Marijuana Control Board. The report will be released later this year.
- **Minors Working without Department of Labor and Workforce Development Permits**
  - AMCO is working on creating an advisory notice to remind licensees they're responsible for providing the appropriate work permits when employing minors in a licensed establishment.

Sincerely,

A handwritten signature in black ink, appearing to read "KR".

Kevin Richard  
Director

**HOUSE BILL NO. 155**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE FOSTER

Introduced: 3/26/25

Referred: Community and Regional Affairs, Labor and Commerce

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to alcohol; relating to local option elections; relating to the statewide  
2 database of alcohol purchases; relating to alcohol licenses, endorsements, and permits;  
3 relating to municipal regulation and taxation of alcoholic beverages; and providing for  
4 an effective date."

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

6 \* **Section 1.** AS 04.06.095(a) is amended to read:

7 (a) The board, after consulting with package store licensees, shall create and  
8 maintain a statewide database that contains a monthly record of the alcohol purchased  
9 by, and shipped to, a person who resides in a municipality or established village that  
10 has restricted the sale of alcoholic beverages under AS 04.11.491(a)(1), (2), [OR] (3),  
11 or (6) or (b)(1) or (2).

12 \* **Sec. 2.** AS 04.09.460(c) is amended to read:

13 (c) An endorsement holder may ship alcoholic beverages only to the purchaser  
14 and may ship alcoholic beverages only in response to an order. The endorsement

1 holder may not, in response to an order, ship alcohol to a purchaser at an address other  
 2 than the address where the purchaser resides or, if the purchaser resides in a  
 3 municipality or established village that has adopted a local option under  
 4 AS 04.11.491(a)(1), (2), [OR] (3), or (6) or (b)(1) or (2) for which a community  
 5 delivery site has been designated under AS 04.11.491(f), to an address other than that  
 6 community delivery site except as provided by AS 04.11.491(f)(1) and (2).

7 \* **Sec. 3.** AS 04.09.460(e) is amended to read:

8 (e) If a shipment is to an area that has restricted the sale of alcoholic beverages  
 9 under AS 04.11.491(a)(1), (2), [OR] (3), or (6) or (b)(1) or (2), an endorsement holder  
 10 may not ship to a purchaser more than 10.5 liters of distilled spirits or 24 liters or more  
 11 of wine, or either a half-barrel keg of brewed beverages or 12 gallons or more of  
 12 brewed beverages in individual containers in a calendar month, or a lower amount of  
 13 distilled spirits, wine, or brewed beverages if the municipality or established village  
 14 has adopted the lower amount by local option under AS 04.11.491(g). Before shipping  
 15 alcohol to a purchaser in a restricted area, an endorsement holder shall consult the  
 16 database maintained by the board under AS 04.06.095 for any alcoholic beverage  
 17 shipments made to the purchaser during that calendar month by a package store. An  
 18 endorsement holder may not ship an amount of alcoholic beverages to a purchaser in a  
 19 restricted area that, when added to the amount already shipped, exceeds the amount  
 20 authorized by this subsection. An endorsement holder shall immediately enter into the  
 21 database the date and the amount of alcoholic beverages shipped to the purchaser.

22 \* **Sec. 4.** AS 04.11.010(b) is amended to read:

23 (b) Except as provided in this subsection, a person may not solicit or receive  
 24 orders for the delivery of an alcoholic beverage in an area that has adopted a local  
 25 option under AS 04.11.491. If the area has adopted a local option under  
 26 AS 04.11.491(a)(1), (2), [OR] (3), or (6) or (b)(1) or (2), a package store licensee  
 27 outside of that local option area may receive orders as provided under a package store  
 28 shipping endorsement under AS 04.09.460 but may not solicit in that area or receive  
 29 orders through an agent or employee in that area. This subsection does not apply to a  
 30 package store licensee who operates a package store in an area that has adopted a local  
 31 option under AS 04.11.491(a)(2)(C), [OR] (3)(C), or (6)(C) or (b)(2)(C). A person

1 who violates this subsection is punishable upon conviction as provided under  
2 AS 04.16.200(a) or (b).

3 \* **Sec. 5.** AS 04.11.320(a) is amended to read:

4 (a) An application requesting issuance of a new license or endorsement shall  
5 be denied if

6 (1) the board finds, after review of all relevant information, that  
7 issuance of the license or endorsement would not be in the best interests of the public;

8 (2) issuance of the license is prohibited by AS 04.11.410, relating to  
9 location of premises near churches and schools;

10 (3) the application has not been completed in accordance with  
11 AS 04.11.260;

12 (4) issuance of the license or endorsement would violate the  
13 restrictions pertaining to the particular license or endorsement imposed under this title;

14 (5) issuance of the license is prohibited under this title as a result of an  
15 election conducted under AS 04.11.507;

16 (6) the requirements of AS 04.11.420 - 04.11.450 relating to zoning,  
17 ownership and location of the license, and the identity and financing of a licensee have  
18 not been met or the requirements of AS 04.11.430(b) relating to location of the  
19 endorsement have not been met;

20 (7) issuance of the license is prohibited under AS 04.11.400(a) or  
21 prohibition of issuance of the license is found necessary under AS 04.11.400(b);

22 (8) the application contains false statements of material fact;

23 (9) the license is sought for the sale of alcoholic beverages in a first or  
24 second class city where there are no licensed premises at the time of application unless  
25 a majority of the voters have voted not to approve a local option to restrict or prohibit  
26 the sale of alcoholic beverages under AS 04.11.491, have voted to approve a local  
27 option to allow the type of premises under AS 04.11.491(a)(2), [OR] (3), or (6), or  
28 have voted to remove a restriction or prohibition on the sale of alcoholic beverages  
29 under AS 04.11.495; or

30 (10) the license is sought for the sale of alcoholic beverages in an  
31 established village where there are no licensed premises at the time of application

1 unless a majority of the voters have voted not to approve a local option to restrict or  
 2 prohibit the sale of alcoholic beverages under AS 04.11.491, have voted to approve a  
 3 local option to allow the type of premises under AS 04.11.491(b)(2), or have voted to  
 4 remove a restriction or prohibition on the sale of alcoholic beverages under  
 5 AS 04.11.495.

6 \* **Sec. 6.** AS 04.11.320(b) is amended to read:

7 (b) An application requesting issuance of a new permit shall be denied if

8 (1) the board finds, after review of all relevant information, that  
 9 issuance of the permit would not be in the best interests of the public;

10 (2) the board finds that any of the statements made in the application  
 11 are untrue;

12 (3) the application has not been completed in accordance with  
 13 AS 04.11.260; or

14 (4) the permit is sought for the sale of alcoholic beverages in a first or  
 15 second class city or established village where there are no licensed premises at the  
 16 time of application unless a majority of the voters have voted not to approve a local  
 17 option to restrict or prohibit the sale of alcoholic beverages under AS 04.11.491, have  
 18 voted to approve a local option to allow the type of permit under AS 04.11.491(a)(2)  
 19 **or (6)** or (b)(2), or have voted to remove a restriction or prohibition on the sale of  
 20 alcoholic beverages under AS 04.11.495.

21 \* **Sec. 7.** AS 04.11.491(a) is amended to read:

22 (a) If a majority of the persons voting on the question vote to approve the  
 23 option, a municipality shall adopt a local option to prohibit

24 (1) the sale of alcoholic beverages;

25 (2) the sale of alcoholic beverages except by one or more of the  
 26 following listed on the ballot:

27 (A) a restaurant or eating place licensee;

28 (B) a beverage dispensary licensee;

29 (C) a package store licensee;

30 (D) a caterer holding a beverage dispensary caterer's permit  
 31 under AS 04.09.610 to sell alcoholic beverages at a site within the municipality

1 who is also licensed under a beverage dispensary license for premises outside  
2 of the municipality;

3 (E) a winery manufacturer licensee;

4 (F) a winery manufacturer licensee, except that sales may occur  
5 only to a person licensed under this title or in another state or country;

6 (G) an outdoor recreation lodge licensee; or

7 (H) a package store licensee limited to selling only beer and  
8 wine;

9 (3) the sale of alcoholic beverages except on premises operated by the  
10 municipality and under a type of licensed premises listed on the ballot, that may  
11 include one or more of the following:

12 (A) a restaurant or eating place license;

13 (B) a beverage dispensary license; or

14 (C) a package store license;

15 (4) the sale and importation of alcoholic beverages; [OR]

16 (5) the sale, importation, and possession of alcoholic beverages; or

17 **(6) the sale of alcoholic beverages except by one or more of the**  
18 **following listed on the ballot:**

19 **(A) a restaurant or eating place licensee;**

20 **(B) a beverage dispensary licensee;**

21 **(C) a package store licensee on premises operated by the**  
22 **municipality.**

23 \* **Sec. 8.** AS 04.11.491(d) is amended to read:

24 (d) The ballot for an election on the option set out in (a)(2)(A), (a)(3)(A), or  
25 (b)(2)(A) of this section must include a summary explanation of the authority to sell  
26 alcoholic beverages given to a restaurant or eating place under AS 04.09.210(a). The  
27 ballot for an election on the option set out in (a)(2)(B) or (D), (a)(3)(B), or (b)(2)(B) or  
28 (D) of this section must include a statement that a beverage dispensary license is  
29 commonly known as a "bar" and a summary explanation of the authority to sell  
30 alcoholic beverages given to a beverage dispensary licensee under AS 04.09.200. The  
31 ballot for an election on the option set out in (a)(2)(C), (a)(3)(C), **(a)(6)(C)**, or

1 (b)(2)(C) of this section must include a statement that a package store license is  
 2 commonly known as a "liquor store" and a summary explanation of the authority to  
 3 sell alcoholic beverages given to a package store licensee under AS 04.09.230.

4 \* **Sec. 9.** AS 04.11.491(f) is amended to read:

5 (f) A municipality or established village that has adopted a local option under  
 6 (a)(1), (2), [OR] (3), or (6) or (b)(1) or (2) of this section may designate a site for the  
 7 delivery of alcoholic beverages to individuals in the area or a site for a person to bring  
 8 alcoholic beverages if the alcoholic beverages are imported into the area. This  
 9 subsection does not apply to the delivery or importation of

10 (1) one liter or less of distilled spirits, two liters or less of wine, or one  
 11 gallon or less of malt beverages; or

12 (2) alcoholic beverages to a premises licensed under (a)(2), (3), or (6)  
 13 [(a)(2) - (3)] or (b)(2) of this section.

14 \* **Sec. 10.** AS 04.11.491(g) is amended to read:

15 (g) If a municipality or established village has adopted a local option under  
 16 (a)(1), (2), (3), [OR] (4), or (6) or (b)(1), (2), or (3) of this section, the municipality or  
 17 established village, as part of the local option question or questions placed before the  
 18 voters, may

19 (1) adopt an amount of alcoholic beverages that may be imported that  
 20 is less than the amounts set out in AS 04.09.460(e);

21 (2) adopt an amount of alcoholic beverages that would give rise to a  
 22 presumption that the person possessed the alcoholic beverages for sale; the amounts  
 23 adopted under this paragraph may be lower than those set out in AS 04.11.010(c);

24 (3) opt to not apply a class C felony to violations of AS 04.16.051 that  
 25 apply solely by reason of the municipality or established village adopting a local  
 26 option under this section.

27 \* **Sec. 11.** AS 04.11.503 is amended to read:

28 **Sec. 04.11.503. Effect on licenses of restriction on sale.** If a majority of the  
 29 voters vote under AS 04.11.491(a)(2) or (6) or (b)(2) to prohibit sale of alcoholic  
 30 beverages except by the type or types of licensees or permit holders listed on the  
 31 ballot, the board may not issue, renew, or transfer between persons or locations a

1 license for premises located within the boundaries of the municipality and in  
 2 unincorporated areas within five miles of the boundaries of the municipality or within  
 3 the perimeter of the established village, except the type or types of licenses listed on  
 4 the ballot. A license in effect within the boundaries of the municipality or perimeter of  
 5 the established village, and in unincorporated areas within five miles of the boundaries  
 6 of the municipality, except the type of license listed on the ballot, is void 90 days after  
 7 the results of the election are certified. A license that expires during the 90 days after  
 8 the results of a local option election are certified may be extended, until it is void  
 9 under this section, by payment of a prorated portion of the biennial license fee.

10 \* **Sec. 12.** AS 04.11.505 is amended to read:

11 **Sec. 04.11.505. Licensing after prohibition on sale except in premises**  
 12 **operated by municipality.** (a) If a majority of the voters vote under  
 13 AS 04.11.491(a)(3) or (6) to prohibit the sale of alcoholic beverages except on  
 14 premises operated by the municipality, the board may not issue, renew, or transfer  
 15 between persons or locations a license for premises located within the boundaries of a  
 16 municipality and in unincorporated areas within five miles of the boundaries of the  
 17 municipality, with the exception of the type of license listed on the ballot and operated  
 18 under a license held by the municipality. A license in effect is void 90 days after the  
 19 results of the election are certified. A license that expires during the 90 days after the  
 20 results of a local option election are certified may be extended, until it is void under  
 21 this subsection, by payment of a prorated portion of the biennial license fee.

22 (b) The local governing body of a municipality shall apply for a license to  
 23 operate the type of licensed premises listed on the ballot under AS 04.11.491(a)(3) or  
 24 (6)(C) and approved by a majority of the voters. The municipality shall operate the  
 25 premises subject to the conditions and fees applicable to the type of license. Nothing  
 26 in this section precludes a municipality from applying to be a licensee under other  
 27 provisions of this title.

28 \* **Sec. 13.** AS 04.21.010(a) is amended to read:

29 (a) A municipality may adopt ordinances governing the importation, barter,  
 30 sale, and consumption of alcoholic beverages within the municipality and may ban  
 31 possession of alcoholic beverages under AS 04.11.491(a)(5). An ordinance adopted

1 under this section may not be inconsistent with this title or regulations adopted under  
2 this title. In a municipality that has adopted a local option under AS 04.11.491(a)(1),  
3 (2), [OR] (3), or (6), an ordinance is not inconsistent with this title if it limits

4 (1) the monthly amounts of alcoholic beverages a person may import  
5 into the municipality;

6 (2) the percent of alcohol by volume that an alcoholic beverage may  
7 contain; a limit imposed under this paragraph may not be less than 40 nor more than  
8 76 percent alcohol by volume; or

9 (3) the type of alcoholic beverage container that may be possessed in  
10 the municipality.

11 \* **Sec. 14.** This Act takes effect January 1, 2026.

**HOUSE BILL NO. 306**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVES FIELDS, Himschoot**

**Introduced: 2/13/26**

**Referred: Labor and Commerce, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to civil liability of persons providing alcoholic beverages."**

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

3 \* **Section 1.** AS 04.21.020(a) is amended to read:

4 (a) Except as provided under (b) and (d) of this section, a person who provides  
5 alcoholic beverages to another person may not be held civilly liable for injuries  
6 resulting from the intoxication of that person unless the person who provides the  
7 alcoholic beverages holds a license authorized under AS 04.09.020 - 04.09.370 or is  
8 an agent or employee of a licensee and

9 (1) the alcoholic beverages are provided to a person under 21 years of  
10 age in violation of AS 04.16.051, unless the licensee, agent, or employee secures in  
11 good faith from the person a signed statement, liquor identification card, or driver's  
12 license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the  
13 person is 21 years of age or older; or

14 (2) **as established by clear and convincing evidence,** the alcoholic  
15 beverages are

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**(A) knowingly sold, given, or bartered to a drunken person  
in violation of AS 04.16.030(a)(1);**

**(B) provided to a drunken person in violation of  
AS 04.16.030(a)(2) - (4); or**

**(C) knowingly sold, given, or bartered to a person at an  
establishment after the lawful hours of operation of the establishment  
have concluded [AS 04.16.030].**

**CS FOR HOUSE BILL NO. 363(MLV)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

Offered: 3/20/26

Referred: Labor and Commerce

Sponsor(s): REPRESENTATIVES STUTES, Saddler

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the sale of alcohol; relating to the sale or dispensing of alcoholic**  
2 **beverages by patriotic organizations; relating to club licenses; and providing for an**  
3 **effective date."**

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

5 \* **Section 1.** AS 04.09.220(d) is amended to read:

6 (d) Alcoholic beverages sold under a club license may be purchased only by

7 (1) members of the club and their families;

8 (2) widows or widowers of deceased members of the club who have  
9 been accorded club privileges;

10 (3) military personnel on active duty who are extended the privilege by  
11 patriotic organizations; and

12 (4) members of a patriotic organization licensed under this section  
13 [THAT HAS A RECIPROCITY AGREEMENT WITH ANOTHER PATRIOTIC  
14 ORGANIZATION LICENSED UNDER THIS SECTION].

1 \* **Sec. 2.** AS 04.09.220(i) is amended to read:

2 (i) The holder of a club license may not

3 (1) solicit public patronage of the club premises, except as approved by  
4 the board **or at a permitted event under AS 04.09.630, 04.09.660, or 04.09.670;**

5 (2) distribute income from the sale of alcoholic beverages under the  
6 license to a member, director, or officer;

7 (3) sell or serve alcoholic beverages in club rooms outside the portion  
8 of the club rooms that are part of the licensed premises.

9 \* **Sec. 3.** AS 04.09.660(a) is amended to read:

10 (a) A nonprofit organization event permit authorizes the holder to sell or  
11 dispense brewed beverages or wine for consumption at an event organized by the  
12 nonprofit organization, **except that a holder that is a patriotic organization may**  
13 **also sell or dispense other alcoholic beverages for consumption at an event**  
14 **organized by the patriotic organization.**

15 \* **Sec. 4.** AS 04.09.660(e) is amended to read:

16 (e) The nonprofit organization shall ensure that all profits derived from the  
17 sale of brewed beverages, [OR] wine, **or other alcoholic beverages, as applicable,**  
18 under a nonprofit organization event permit are paid to the organization that holds the  
19 permit and not to an individual.

20 \* **Sec. 5.** AS 04.21.080(b) is amended by adding a new paragraph to read:

21 (31) "patriotic organization" includes the American Legion, Veterans  
22 of Foreign Wars, and American Veterans organizations.

23 \* **Sec. 6.** AS 04.09.220(j) is repealed.

24 \* **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).



**ALCOHOL AND MARIJUANA CONTROL OFFICE ADVISORY NOTICE:**  
***Zip Kombucha, et al. v. Kevin Richard, et al., 3AN-24-04842CI***

**Statutes or Regulations**

- AS 04.09.320
- AS 04.09.330
- AS 04.09.340
- AS 04.09.700

**Advisory**

The Alcohol and Marijuana Control Office (“AMCO”) is tasked with enforcing statutes enacted by the state legislature under Title 4 and regulations adopted by the Alcoholic Beverage Control Board. In 2022, the state legislature enacted Senate Bill 9, which imposed restrictions on brewery and winery retailer licensees with respect to live music, entertainment, and other activities on licensed premises where alcohol consumption occurs.

On January 14, 2026, the Alaska Superior Court issued a decision in *Zip Kombucha, et al. v. Kevin Richard, et al.*, 3AN-24-04842CI, declaring “AS 04.09.320(e)(1), 04.09.320(g)(1), AS 04.09.330(e)(1), and AS 04.09.330(g)(1) unconstitutional in part, and AS 04.09.700 as unconstitutional in entirety pursuant to the First Amendment of the United States Constitution and Article 1, Section 5 of the Alaska Constitution.” A copy of the court’s decision is attached.

Please be advised that, although the superior court’s decision is controlling law, the relevant statutory provisions have not been amended by the state legislature to reflect that ruling. Nevertheless, as explained in footnote 92 of the court’s decision, certain portions of the statutory language have been invalidated. Those portions are therefore no longer enforceable.

The court’s decision did not consider or rule on the constitutionality of the mirror restriction on speech under AS 04.09.340, which applies to distillery retail licenses. However, the Department of Law has advised that the reasoning of the superior court’s decision in *Zip Kombucha* would also apply to any case involving a distillery retail license.

Furthermore, the superior court observed that “there may be some ‘organized games or tournaments’ that remain valid under the act because they are not speech or expressive conduct, but qualify as ‘activities that directly promote or educate customers about the [licensee’s] products, processes, or establishment.’” The Department of Law has advised that the restriction on such activities would need to be considered in the future on a case-by-case basis with



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Department of Commerce, Community,  
and Economic Development**

ALCOHOL AND MARIJUANA CONTROL OFFICE

550 W 7<sup>TH</sup> AVENUE, STE 1600  
Anchorage, AK 99501  
Main: 907.269.0350

particular consideration given to whether the proposed activity directly or indirectly promotes or educates about products, processes, or the licensed establishment.

A copy of Department of Law's legal memorandum is attached and will be used to inform AMCO's implementation of superior court's decision in the *Zip Kombucha* case.

Therefore, AMCO will no longer be accepting or requiring a permit or fees for live music or entertainment events held by breweries, wineries, or distilleries. In addition, AMCO will not pursue enforcement action against licensees based on the portions of AS 04.09 that were deemed unconstitutional by the Alaska Superior Court.

Sincerely,

A handwritten signature in black ink, appearing to read "KR".

Kevin Richard  
Director

# MEMORANDUM

# State of Alaska

## Department of Law

TO: Alcoholic Beverage Control Board  
Alcohol and Marijuana Control Office

DATE: February 27, 2026

THRU: Dana Walukiewicz, Chair  
Kevin Richard, Director

FILE NO: 2024200085

FROM: Kevin A. Higgins  
Assistant Attorney General  
Commercial and Fair Business  
Section

SUBJECT: Implementing the superior court's order in *Zip Kombucha* and consideration regarding activities allowed at distillery retail licenses

This memorandum provides confirmation that the State of Alaska will not appeal the superior court's order granting summary judgment in *Zip Kombucha, et al. v. Kevin Richard, et al.*, 3AN-24-04842CR.<sup>1</sup> Because the order concludes that various sections of statutes that affect the powers and duties of the Alcoholic Beverage Control Board and Alcohol Marijuana Control Office (AMCO) are unconstitutional, this memorandum provides brief advice on how the agency should implement that decision, including considerations for regulating activities at a distillery retail licensed premises.

The superior court's order concluded that mirror restrictions on activities under AS 04.09.320, which applies to brewery retail licenses, and AS 04.09.330, which applies to winery retail licenses, violate the licensee's right to free speech, as does AS 04.09.700, which relates to live music and entertainment permits. The final judgment in this case will prohibit the board and AMCO from enforcing these provisions of title 4. Although the superior court's decision is the law, it does not actually amend the Alaska Statutes. However, footnote 92 of the order illustrates that it should be interpreted to strike the following language:

(e) Except as provided under (g) of this section ~~and AS 04.09.700~~, the holder of a [brewery/winery] retail license may not (1) ~~allow live music or performances, disc jockeys, karaoke, televisions,~~ pool tables, dart games, or organized games or tournaments on the premises where the consumption occurs;

(g) The holder of a [brewery/winery] retail license may allow on the premises where the consumption occurs (1) ~~activities, presentations, television or video displays, or other~~

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<sup>1</sup> Order Granting Plaintiffs' Motion for Summary Judgment in Part and Denying Defendants' Motion for Summary Judgment, Jan. 14, 2026 ("Order").

~~displays~~ that directly promote or educate customers about the [brewery's/winery's] products, processes, or establishment[.]<sup>2</sup>

In implementing this order, neither the board nor AMCO should take or threaten to take any enforcement action against a brewery or winery that allows televisions or live music or performances, including DJs or karaoke, where consumption occurs. And AMCO should not accept applications or fees for permits for live music or entertainment events. If AMCO receives an application for or a question about such a permit, it should explain that a permit is not needed.

The court observed that “there may be some ‘organized games or tournaments’ that remain valid under the act because they are not speech or expressive conduct, but qualify as ‘activities that directly promote or educate customers about the [licensee’s] products, processes, or establishment.’”<sup>3</sup> Any future question about such an activity would have to be considered on the facts presented with particular consideration given to whether the proposed activity directly or indirectly promotes or educates about products, processes, or the establishment.

The court’s decision did not consider or rule on the constitutionality of the mirror restrictions on speech under AS 04.09.340, which applies to distillery retail licenses. But the legislative history of these restrictions establishes the State’s interest in regulating these activities at a distillery was the same as at a brewery or winery. Therefore, the reasoning of the court’s order in *Zip Kombucha* would apply to any case involving a distillery retail license, and it would be unconstitutional to enforce the restrictions on “live music or performances, disc jockeys, karaoke, televisions . . . on the premises where the consumption occurs.” Applying the court’s conclusion to AS 04.09.340 would lead to an interpretation that strikes the following language

(e) Except as provided under (g) of this section ~~and AS 04.09.700~~, the holder of a distillery retail license may not (1) ~~allow live music or performances, disc jockeys, karaoke, televisions,~~ pool tables, dart games, or organized games or tournaments on the premises where the consumption occurs;

(g) The holder of a distillery retail license may allow on the premises where the consumption occurs (1) activities, ~~presentations, television or video displays, or other~~ ~~displays~~ that directly promote or educate customers about the distillery’s products, processes, or establishment[.]

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<sup>2</sup> *Id.* at 23, fn. 92.

<sup>3</sup> *Id.* at 23 (edits in original).

The fact that this statute has not been challenged leaves the board in an awkward position where it is supposed to administer and enforce title 4 but it also knows that doing so for AS 04.09.340(e)(1) and (g)(1) would be subject to an immediate constitutional challenge. As likely as it is that such a challenge would succeed, I cannot point to dispositive authority that authorizes the board and AMCO to affirmatively disregard those restrictions.

However, there is what I believe would be persuasive authority that the board would be justified in not enforcing the speech restrictions at a distillery if the question were ever to be presented to a court. In *O'Callaghan v. State, Director of Elections*, the Alaska Supreme Court determined that “the executive branch may abrogate a statute which is clearly unconstitutional under a United States Supreme Court decision dealing with a similar law, without having to wait for another court decision specifically declaring the statute unconstitutional.”<sup>4</sup> Here, we are considering “a statute which is clearly unconstitutional under a [superior court] decision dealing with a [nearly identical] law.” But unlike the division of elections in *O'Callaghan*, which had to determine how to operate an election in light of what were clearly unconstitutional procedures, the board here is considering whether and how to enforce unconstitutional restrictions on speech at a distillery. While it seems like this same reasoning would apply in this case, these distinctions (U.S. Supreme Court v. superior court and to administer election v. disciplinary enforcement), suggest some caution is warranted.

As uncomfortable as this position is, the board and AMCO are left to exercise discretion on a case-by-case basis when considering how to administer and enforce the speech restrictions in AS 04.09.340 while also administering and enforcing the rest of title 4. If the board or AMCO has questions about the exercise of this discretion, please let us know.

cc: Janice Hill, Doug Moore, Diane Thompson, Jane Sawyer, Joseph Bankowski, Rebecca Hattan, Andrew Bocanumenth

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<sup>4</sup> *O'Callaghan v. State, Director of Elections*, 888 P.2d 1302, 1304 (Alaska 1995), supplemented sub nom *O'Callaghan v. State*, 914 P.2d 1250 (Alaska 1996).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ZIP KOMBUCHA LLC, *et al.*,

Plaintiffs,

v.

KEVIN RICHARD, *et al.*,

Defendants.

Case No. 3AN-24-04842CI

**ORDER GRANTING PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT IN PART AND DENYING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Zip Kombucha LLC, Sweetgale Meadworks & Cider House LLC, and Grace Ridge Brewing Company hold brewery and winery retail licenses and do business in the State of Alaska.<sup>1</sup> Defendants are the Alaska Alcoholic Beverage Control Board (“ABC Board”) and Kevin Richard, Director of the Alcohol and Marijuana Control Office (“AMCO”).

On February 1, 2024, Plaintiffs filed a Complaint against Defendants claiming that the restrictions on live music, entertainment, and other activities imposed on brewery and winery retail licensees enacted by Senate Bill (“SB”) 9 violate their 1<sup>st</sup> Amendment rights to free speech pursuant to the Alaska and United States Constitutions.<sup>2</sup> On June 17, 2025,

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<sup>1</sup> Compl. for Declaratory and Injunctive Relief, ¶¶ 7-9, 38, 46, 49 (Zip Kombucha LLC holds manufacturing and retail licenses as both a brewery and a winery, Sweetgale Meadworks & Cider House LLC holds both winery manufacturing and retail licenses, and Grace Ridge Brewing Co. holds only a brewery retail license).

<sup>2</sup> Compl. for Declaratory and Injunctive Relief ¶¶ 56-96; Pls.’ Opp’n to Defs.’ Mot. for Summ. J. at 1, n. 1 (Plaintiffs’ Complaint also claimed that the restrictions violated the equal protection clause of the Alaska Constitution, however, that claim was withdrawn, leaving only the issue of the First Amendment challenge before this Court).

Defendants filed a Motion for Summary Judgment claiming that the speech restrictions are content-neutral and pass intermediate scrutiny.<sup>3</sup> On June 18, 2025, Plaintiffs filed a Motion for Summary Judgment claiming that the speech regulations are content-based and fail under strict scrutiny.

For the following reasons, Plaintiffs' Motion for Summary Judgment is **GRANTED** in part and Defendants' Motion for Summary Judgment is **DENIED**.

### **Background**

The State's regulation of the alcohol industry largely depends on whether the licensee falls under the category of manufacturer, wholesaler, or retailer.<sup>4</sup> Historically, as manufacturers, brewery and winery licensees were allowed to give small, free samples of their product to patrons, but were not permitted to hold a retail license or sell product for consumption on the premises.<sup>5</sup> Over time, the Legislature loosened the distinctions between manufacturers and retailers, while prohibiting some manufacturers from having onsite entertainment, including televisions, dancing, and games.<sup>6</sup>

Prior to the passage of SB 9 in 2022,<sup>7</sup> a holder of one license type generally could not simultaneously hold another license type, thereby maintaining a three-tiered system with distinct roles for industry actors.<sup>8</sup> SB 9 largely left in place existing limitations on

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<sup>3</sup> Def.'s Mot. for Summ. J.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> In 1988, the Legislature permitted brewpubs to serve their own beer. In 2006, the Legislature permitted some manufacturers to sell limited amounts of product during limited hours, but prohibited "live entertainment, televisions, pool tables, dart games, dancing, electronic or other games, game tables, or other recreational or gaming opportunities." In 2017, the Legislature included winery license holders in the latter reform. *Id.* at 4-5.

<sup>7</sup> SB 9 went into effect January 1, 2024. Pls.' Opp'n to Defs.' Mot. for Summ. J. at 2.

<sup>8</sup> Defs.' Mot. for Summ. J. at 4-5.

operating hours,<sup>9</sup> quantity of product sold for consumption, and live entertainment imposed on brewery and winery licensees, but allowed them to obtain a “manufacturer sampling endorsement” or overlap their brewery or winery retail license with another retail license.<sup>10</sup> Brewery and winery retail licensees that obtain a sampling endorsement or hold an additional, qualifying license are not subject to the limitations for onsite entertainment.<sup>11</sup>

Brewery and winery retail licensees in Alaska are subject to strict regulation of onsite entertainment, including a prohibition on “live music or performances, disc jockeys, karaoke, televisions, pool tables, dart games, or organized games or tournaments on the premises,” except for “activities, presentations, television or video displays, or other displays that directly promote or educate customers about the [licensee’s] products, processes, or establishment” (herein “activities and displays”).<sup>12</sup> These restrictions are unique to brewery and winery retail licensees.<sup>13</sup>

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<sup>9</sup> *Id.* at 6-7 (SB 9 extended allowable operating hours by one hour, until 9:00pm).

<sup>10</sup> Licenses that can be held simultaneously with a brewery or winery license include a beverage dispensary license, restaurant license, seasonal restaurant license, or beverage dispensary tourism license.

<sup>11</sup> Defs.’ Mot. for Summ. J. at 6-9.

<sup>12</sup> AS 04.09.320(e) provides, “Except as provided under (g) of this section and AS 04.09.700, the holder of a brewery retail license may not (1) allow live music or performances, disc jockeys, karaoke, televisions, pool tables, dart games, or organized games or tournaments on the premises where the consumption occurs”; AS 04.09.320(g) provides:

The holder of a brewery retail license may allow on the premises where the consumption occurs (1) activities, presentations, television or video displays, or other displays that directly promote or educate customers about the brewery’s products, processes, or establishment; and (2) other community organizations or businesses to provide presentations, classes, or product displays or host fundraisers;

AS 04.09.330(e) and (g) apply the exact same speech restrictions under 320(e) and (g) to winery retail licensees.

<sup>13</sup> Compl. for Declaratory and Injunctive Relief at ¶ 21, 32-34.

Brewery and winery retail licensees without a sampling endorsement or non-restrictive overlapping license are otherwise permitted to host live entertainment events up to four times a year if they obtain a Live Music or Entertainment (“LME”) Permit from the ABC Board.<sup>14</sup> AMCO does not consider the content of the entertainment when considering the application.<sup>15</sup>

The Director of AMCO has authority to enforce Alaska law governing the control of alcoholic beverages, including regulations promulgated by the ABC board.<sup>16</sup> The ABC board enforces alcohol commerce laws through its licensure regime.<sup>17</sup> Failure to comply with the terms of an alcoholic beverage retailer license constitutes a violation.<sup>18</sup> The ABC Board may respond to violations by issuing fines, revoking or suspending a license, denying license renewal, placing a license on probation, and placing conditions or restrictions on a license or future permit.<sup>19</sup>

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<sup>14</sup> AS 04.09.700 provides:

(a) A live music or entertainment permit authorizes the holder of a brewery retail license, winery retail license, or distillery retail license to allow live music or other entertainment on the licensed premises where consumption occurs. (b) The director may not issue more than four live music or entertainment permits to a licensee in a calendar year. The director may issue a live music or entertainment permit only for designated premises for a specific occasion and for a limited period during a single day between the hours of 9:00 a.m. and 9:00 p.m., as specified in the application;

The ABC Board delegated authority to act on permit applications to the AMCO Director but retains ultimate authority on LME Permit decisions. The permit application must be submitted at least three days before the event with a \$100 fee. Applications that are submitted within three days of the event that are approved are subject to a \$200 fee. There is no limit for events under a separate, non-profit special event permit. The annual event limit is stackable per license, so an establishment with both a brewery and a winery license may apply for up to eight LME permits annually. Compl. for Declaratory and Injunctive Relief at ¶ 23-27, 43-44.

<sup>15</sup> Aff. of Kevin Richard in Supp. of Defs.’ Mot. for Summ. J. ¶ 11.

<sup>16</sup> Compl. for Declaratory and Injunctive Relief ¶ 10-11.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at ¶ 35.

<sup>19</sup> *Id.* at ¶ 35-36.

## **Legal Standard**

### *1. Motions for summary judgment*

Summary judgment is appropriate when “there is no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter of law.”<sup>20</sup> The non-moving party is only required to show “that a genuine issue of material fact exists to be litigated”<sup>21</sup> and that “the party could produce admissible evidence that reasonably would demonstrate to the court that a triable issue of fact exists.”<sup>22</sup>

Summary judgment must rely upon admissible evidence.<sup>23</sup> Assertions of fact in pleadings and memoranda are not admissible and cannot be relied upon for purposes of summary judgment.<sup>24</sup> All reasonable inferences must be drawn in favor of the non-moving party, and facts must be viewed in the light most favorable to the non-prevailing party.<sup>25</sup>

### *2. Government restrictions on speech*

The First Amendment of the United States Constitution and Article I, Section 5 of the Alaska Constitution prohibit laws that abridge the freedom of speech.<sup>26</sup> “The free speech clause of the Alaska Constitution...was meant to be *at least* as protective of expression as the First Amendment to the United States Constitution[,]” and protects

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<sup>20</sup> AK. R. CIV. P. 56.

<sup>21</sup> *Id.*

<sup>22</sup> *Burnett v. Covell*, 191 P.3d 985, 991 (Alaska 2008).

<sup>23</sup> *Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough*, 527 P.2d 447 (Alaska 1974); *Brock v. Rogers & Babler, Inc.*, 536 P.2d 778 (Alaska 1975).

<sup>24</sup> *Concerned Citizens of South Kenai Peninsula*, 527 P.2d at 450.

<sup>25</sup> *Lewis v. State, Dep't of Corr.*, 139 P.3d 1266, 1268-69 (Alaska 2006).

<sup>26</sup> U.S. CONST. AMEND. I provides that “Congress shall make no law...abridging the freedom of speech”; ALASKA CONST. ART. I, § 5 provides that “[e]very person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.”

speech “in a more explicit and direct manner.”<sup>27</sup> Regarding the Alaska Constitution, this Court “[is] not bound by decisions of the United States Supreme Court on similar federal provisions but may determine that Alaska provides greater protection for individual rights.”<sup>28</sup>

First Amendment jurisprudence extends beyond written and spoken word to include other mediums of expression including music, video, and live performances.<sup>29</sup> Entertainment, broadly speaking, “fall[s] within the First Amendment guarantee.”<sup>30</sup> Hosts, promoters, and vendors of such expressive activities are entitled to First Amendment protections as “clearinghouse[s]” of expression that “ensure public access to live musical entertainment.”<sup>31</sup>

*a. Strict scrutiny*

Content-based government restrictions on speech “are presumptively unconstitutional and may be justified only if the government proves that they are *narrowly tailored to serve compelling state interests.*”<sup>32</sup> The narrow tailoring requirement requires the “least-restrictive-means” of serving the interest and that there be no available

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<sup>27</sup> *Mickens v. City of Kodiak*, 640 P.2d 818, 820 (Alaska 1982) (emphasis added); *Messerli v. State*, 626 P.2d 1, 3 (Alaska 1982).

<sup>28</sup> *Club SinRock, LLC v. Municipality of Anchorage, Office of the Municipal Clerk*, 445 P.3d 1031, 1036-37 (Alaska 2019).

<sup>29</sup> Mem. in Supp. of Pls.’ Mot. for Summ. J. at 16 (citing *Green v. Miss United States of America, LLC*, 52 F.4th 773, 780 (9th Cir. 2022)); *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989); *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 65-66 (1981).

<sup>30</sup> *Mickens v. City of Kodiak*, 640 P.2d 818, 820 (Alaska 1982) (including “motion pictures,” “programs broadcast by radio and television,” and “live entertainment, such as musical and dramatic works” as examples of entertainment protected by the First Amendment).

<sup>31</sup> *Id.* at 16-17 (quoting *Cinevision Corp. v. City of Burbank*, 745 F.2d 560, 567-68 (9th Cir. 1984)).

<sup>32</sup> *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) (emphasis added).

alternatives that would not infringe on speech.<sup>33</sup> A narrowly tailored regulation of speech must be “actually necessary to the solution.”<sup>34</sup>

A law is content-based when it applies “because of the topic discussed or the idea or message expressed.”<sup>35</sup> Restrictions that are not facially content-based may nevertheless be content-based when they: (1) “define[] regulated speech by its function or purpose”; (2) cannot be “justified without reference to the content of the regulated speech”; or (3) when they were adopted “because of disagreement with the message [the speech] conveys” or another “impermissible purpose or justification.”<sup>36</sup> The fact that a law makes a distinction based on the speaker does not “automatically render the distinction content neutral.”<sup>37</sup> Restrictions based on the identity of the speaker are nevertheless content-based when “laws favoring some speakers over others” reflect an underlying content preference by the legislature.<sup>38</sup> The ultimate question is whether the restrictions are “based on the message a speaker conveys...”<sup>39</sup>

*b. Intermediate scrutiny*

Content neutral, i.e., time, place, and manner government restrictions on speech are subject to intermediate scrutiny.<sup>40</sup> Speech restrictions pass intermediate scrutiny when

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<sup>33</sup> *Meinecke v. City of Seattle*, 99 F.4th 514, 524-525 (9<sup>th</sup> Cir. 2024) (internal citations omitted).

<sup>34</sup> *Twitter, Inc. v. Garland*, 61 F.4th 686, 698 (9<sup>th</sup> Cir. 2023) (quoting *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 799 (2011)).

<sup>35</sup> Defs.’ Mot. for Summ. J. at 18 (quoting *City of Austin v. Reagan National Advertising of Texas, Inc.*, 596 U.S. 61, 69 (2022) (quoting *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015))).

<sup>36</sup> *Reed v. Town of Gilbert, Ariz.*, 576 U.S. at 163-64 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *City of Austin, Texas v. Reagan Nat’l Advertising of Austin, LLC*, 596 U.S. 61, 76 (2022)).

<sup>37</sup> *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 170 (2015).

<sup>38</sup> *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 658 (1994).

<sup>39</sup> *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015).

<sup>40</sup> Defs.’ Mot. for Summ. J. at 16-17 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

“[they] are justified without reference to the content of the regulated speech, [] [they] are narrowly tailored to serve a significant governmental interest, and [] they leave open ample alternative channels for communication of the information.”<sup>41</sup> Intermediate scrutiny does not require the government choose the least restrictive means of achieving their interest.<sup>42</sup> Content neutral restrictions on speech need only “promote[] a substantial government interest that would be achieved less effectively absent the regulation.”<sup>43</sup>

## **Discussion**

Because the restrictions imposed on brewery and winery licensees differ depending on the form of speech or conduct, this Court addresses them in three parts: (1) the speech restrictions on activities and displays; (2) the speech restrictions on live music and entertainment, and; (3) restrictions on conduct not protected under the First Amendment.

1. *The speech restrictions on activities and displays are facially unconstitutional because they violate the State and Federal Constitution as a matter of law.*
  - a. *Speech restrictions on activities and displays are content-based regulation of speech and subject to strict scrutiny.*

“[The] commonsense meaning of the phrase ‘content based’ requires a court to consider whether a regulation of speech ‘on its face’ draws distinctions based on the message a speaker conveys.”<sup>44</sup> Under the statute in question, breweries and wineries are free to use activities and displays so long as they do so for the purposes of promoting

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<sup>41</sup> *Id.* (citing *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

<sup>42</sup> *Id.* at 782-83.

<sup>43</sup> *Id.*

<sup>44</sup> *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) (citing *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565 (2011)).

their product or educating patrons on their process or establishment.<sup>45</sup> This is facial content-based regulation of speech because it applies when the content of the message is for any purpose other than promoting their product. For example, a brewery or winery is prohibited from playing a documentary on WWII for its patrons, but it is permitted to play a documentary about the history of the brewery or winery.

Even if a court found that the speech restrictions on activities and displays are not facially content-based, strict scrutiny should still apply because the regulated speech cannot be justified without referencing the content of the speech.<sup>46</sup> Following the above example, to justify its use of audio-visual displays, a licensee would have to show how the video is in fact a documentary about the history of the brewery or winery, not WWII (or any other topic). Similarly, if the licensee participated in a promotional pub-crawl activity, they would need to reference the content of bingo-like stamp cards to prove it was not an organized game or tournament subject to the speech restrictions.<sup>47</sup> Therefore, the restrictions on activities and displays are subject to strict scrutiny.

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<sup>45</sup> AS 04.09.320(g)(1); AS 04.09.330(g)(1).

<sup>46</sup> *Supra*, note 36.

<sup>47</sup> Defendants are correct in citing *City of Austin, Texas v. Reagan National Advertising of Austin, LLC* and asserting that not every law that requires referencing the content of the speech is subject to strict scrutiny, but the speech restrictions in *City of Austin* are distinct from those imposed here on brewery and winery retail licensees. In *City of Austin*, the Supreme Court held that regulation of outdoor signs advertising a business, person, activity, goods, or services not located on the site where the sign is installed was not subject to strict scrutiny despite the fact that the content and the speaker must be identified to determine whether the regulations apply. However, in *City of Austin*, the speakers were not also prohibited from using displays for purposes other than promotion of their product, which is commercial speech and de facto subject to intermediate scrutiny. For example, the Plaintiffs in *City of Austin* may not be permitted to use signs to advertise their products if the signs are not located where the products are sold, but they are, however, permitted to use signs on their property to indicate support for a given political candidate. Here, the opposite is true. The regulations on activities and displays *permits* commercial speech and *prohibits* non-commercial speech. Allowing an establishment to use various forms of speech only to advertise their product but not to convey another message is content-based regulation of speech and subject to strict scrutiny. *City of Austin, Texas v. Reagan National Advertising of Austin, LLC*, 596 U.S. 61, 64-65, 73-74 (2022) (citing *Metromedia, Inc. v. San Diego*, 493 U.S. 490 507-512 (1981)).

*b. The speech restrictions on activities and displays fail strict scrutiny.*

Defendants claim the speech restrictions are intended to serve two state interests: (1) promoting the health and safety of the people in the state by protecting them from “grave and harmful effects” posed by the alcohol industry, and (2) “regulating the market conditions regarding the consumption of alcohol on licensed premises.”<sup>48</sup> Defendants apply intermediate scrutiny in their pleadings and assert that these are “significant” state interests.<sup>49</sup> Defendants state that the purpose of the speech restrictions is to “prevent[] alcoholic beverage manufacturers from encroaching into the market for retail sale for onsite consumption,” “limit the ways in which the manufacturer may compete,” and achieve political compromise.<sup>50</sup>

In their motion for summary judgment, Defendants stress the legislative history of the speech restrictions, noting they were enacted not exclusively for public safety reasons, but also as a part of a grand compromise in a years-long turf war waged amongst the various alcoholic beverage retailer licensees.<sup>51</sup> Defendants further explain that SB 9 emerged from “friction with traditional retail license holders who saw the development

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<sup>48</sup> Defs.’ Mot. for Summ. J. at 2 (citing legislative declaration of policy for title 4, which provides that “controlling the manufacture, distribution, barter, possessions, and sale of alcoholic beverages in the state is *necessary to promote the health and safety of the people in the state*”) (emphasis added); *Id.* at 21.

<sup>49</sup> *Id.* at 20-21.

<sup>50</sup> *Id.* at 2-3, 21-22 (quoting the Sponsor Statement for SB 9, which described the legislation as “the product of a nine-year, unprecedented collaboration of over 100 stakeholders...”); Pls.’ Mot. for Summ. J., Ex. F (“Defs.’ Resp. to Interrogatories”) at 35.

<sup>51</sup> Defs.’ Mot. for Summ. J. at 2-6.

[(growth of “tasting rooms”)] as the encroachment of manufacturers into the retail market with no benefit to traditional retailers.”<sup>52</sup> Due to the rising success of tasting rooms:

[s]kirmishes flared over the boundaries of products offered for sale and activities allowed where consumption occurred, including bar-lodged complaints about drinks served at manufacturers’ tasting rooms and strong opposition to an attempt to limit by regulation the activities allowed at tasting rooms. This conflict between the established and the emerging was part of the background against which SB 9 developed and was passed. And SB 9 frequently was referred to as a compromise.<sup>53</sup>

*i. The restrictions on activities and displays are not narrowly tailored to serve public health and safety.*

In enacting the challenged speech restrictions through the passage of SB 9, the Legislature issued the following legislative findings:

It is the policy of the state that controlling the manufacture, distribution, barter, possession, and sale of alcoholic beverages in the state is necessary to promote the health and safety of the people of the state. It is the purpose of this title to carry out the state’s policy in the public interest. The legislature finds that observance of this title, regulations adopted by the board, and other applicable laws, local ordinances, and regulations is in the interest of the public, people holding license of permits under this title, and the alcoholic beverage industry in general.<sup>54</sup>

Public health and safety are compelling state interests.<sup>55</sup> However, the government does not pass strict scrutiny merely by declaring a compelling state interest is at play – it must establish some connection between the regulation of speech itself and the compelling interest.<sup>56</sup> Defendants fail to present evidence establishing a connection

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<sup>52</sup> *Id.* at 5-6.

<sup>53</sup> *Id.* at 6.

<sup>54</sup> Sec. 1, ch. 8, SLA 2022 (adding AS 04.06.005).

<sup>55</sup> *Meinecke v. City of Seattle*, 99 F.4th 514, 524 (9th Cir. 2024); Public health may also constitute a compelling state interest. *Hoye v. City of Oakland*, 653 F.3d 835, 853 (9th Cir. 2011) (holding that “ensuring access to women’s health care may well be a sufficiently compelling state interest for purposes of strict scrutiny”).

<sup>56</sup> *Club SinRock, LLC v. Municipality of Anchorage, Office of the Municipal Clerk*, 445 P.3d 1031, 1038-39 (Alaska 2019) (declaring a content-based restriction on speech unconstitutional because the government presented “no

between the restrictions on use of activities and displays in breweries and wineries and public health and safety. Instead, Defendants assert that the restrictions were necessary to achieve a grand “compromise” for market regulation in a highly competitive and quickly evolving industry, and that their purpose is to limit the competitiveness of brewery and winery retail spaces.<sup>57</sup>

No mention is made of the influence curtailing entertainment in breweries and wineries where alcohol is consumed has on public health or safety. Concerning public safety, Defendants merely cite legislative findings for the entirety of title 4 and conclude that restricting the speech rights of breweries and wineries serves those interests. At best, Defendants imply that increased on-site (public) consumption of alcohol may result in an increase in activity that threatens public safety. However, “it is not permissible to suppress constitutionally protected forms of expression in order to curb the lawless conduct of some of those who are reacting to it, unless other law enforcement techniques which do not infringe first amendment freedoms are unavailable or likely to be ineffective.”<sup>58</sup>

Furthermore, the speech restrictions fail strict scrutiny because they are not “actually necessary” for furthering those interests and many alternatives that would not

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evidence, direct or indirect, connecting” the restrictions with a compelling interest); *Mickens v. City of Kodiak*, 640 P.2d 818, 822 (1982) (declaring restrictions on nude dancing unconstitutional because while enacted in response to public concerns of criminal activity, “[t]he City has not demonstrated that the increase in police calls originating at Tony’s Place has been caused by anything other than an increase in the volume of business there. While this, in turn, may well be the result of nude dancing, there is no reason to suppose that other forms of entertainment, not involving nudity, would not also increase business and therefore police calls”).

<sup>57</sup> Defs.’ Mot. for Summ. J. at 6, n. 21 (citing minutes from the House Legislative Finance Committee) (describing SB 9 as “emerging” from “the encroachment of manufacturers into the retail market with no benefit to traditional retailers”).

<sup>58</sup> *Mickens v. City of Kodiak*, 640 P.2d 818, 822 (Alaska 1982).

infringe on speech exist.<sup>59</sup> The Legislature can protect the public from the threats to health and safety posed by consumption at breweries and wineries, but limiting entertainment and suppressing free speech in these spaces is by no means necessary to achieving that goal, nor has there been any showing as to how limiting these activities protects public health or safety. The Legislature has, and can further address public health and safety risks associated with alcohol consumption in breweries and wineries by limiting the amount of product that can be served, the hours during which they can operate, or by reducing the cap for the number of brewery or winery licenses allowed in a given community.<sup>60</sup> Additionally, the legislature could, as it has in the past, prohibit manufacturers from serving anything beyond small, free samples of their product for on-site consumption.

*ii. Regulation of activities and displays fail strict scrutiny because market protectionism is not a compelling state interest.*

Citing *North Dakota v. U.S.*, Defendants claim that the speech restrictions serve “the significant government interest in regulating the market conditions regarding the consumption of alcohol on licensed premises,” an integral part of the state’s “three-tier system of licensing” alcohol retailers which is “unquestionably legitimate.”<sup>61</sup> They claim that the restrictions fall under the State’s 21<sup>st</sup> Amendment powers to regulate the alcohol industry because they act to “recalibrate[e] the balance” of interests between holders of

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<sup>59</sup> *Twitter, Inc. v. Garland*, 61 F.4th 686, 698 (9<sup>th</sup> Cir. 2023) (quoting *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 799 (2011)).

<sup>60</sup> See generally AS 04.09.320 and AS 04.09.330 (prohibiting bar seating, limiting tasting room hours to 9:00am – 9:00pm, and limiting the volume of product that can be served to an individual patron daily).

<sup>61</sup> Def.’s Mot. for Summ. J. at 21 (quoting *North Dakota v. U.S.*, 495 U.S. 423, 432 (1990)).

manufacturer licenses and retail licenses” with those of the public and the industry at large.<sup>62</sup> Defendants claim that the speech restrictions are narrowly tailored to achieve this interest because without them “tasting rooms could become largely indistinguishable from a traditional bar.”<sup>63</sup> Plaintiffs assert that the legislature enacted the speech restrictions on purely economic protectionist grounds, which is an impermissible purpose and therefore requires the application of strict scrutiny.<sup>64</sup>

Maintaining a tiered-market system that ensures separation between the production, handling, and final sale of alcoholic beverages is a substantial, but not a compelling state interest.<sup>65</sup> Additionally, this substantial interest is distinct from that of promoting temperance, public health or public safety.<sup>66</sup> As both parties claim, the State’s general interest in regulating the alcohol industry does not rise to the level of being a “compelling” state interest, and therefore fails under strict scrutiny.

Furthermore, this Court addresses Defendants’ argument that the speech restrictions are in part justified under the 21<sup>st</sup> amendment. The Alaska Constitution affords its people greater 1<sup>st</sup> Amendment protections than the United States Constitution in this arena. The State constitution prohibits “restricting, in places where liquor is sold,

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 21-22.

<sup>64</sup> Pls.’ Opp’n to Defs.’ Mot. for Summ. J. at 9-10.

<sup>65</sup> *Retail Digital Network, LLC v. Prieto*, 861 F.3d 839, 844-44 (9th Cir. 2017).

<sup>66</sup> *Id.* at 851 (holding that California law reducing the quantity of advertising from manufacturers and wholesalers seen in retail establishments indirectly advanced temperance, but failed to meet the narrow tailoring requirements under intermediate scrutiny).

forms of expression which would otherwise be protected under the First Amendment.”<sup>67</sup>

As explained in *Mickens v. City of Kodiak*:

The Alaska constitution contains no clause similar to the twenty-first amendment which might be said to justify prohibiting otherwise protected forms of expression where liquor is sold. Our state constitution, like that of Massachusetts, “draws no distinction between free speech in a bar and free speech on a stage, and no provision of our Constitution gives a preferred position to regulation of alcoholic beverages.”<sup>68</sup>

Therefore, while the State has a substantial government interest in regulating the alcohol industry, this Court treats the regulation of speech on the premises where alcohol is consumed the same as it would in any other private forum.

*c. Even if the speech restrictions on activities and displays are subject to intermediate scrutiny, they still violate the First Amendment.*

Even if the restrictions on activities and displays were subject to intermediate scrutiny, they would nevertheless be unconstitutional under the 1<sup>st</sup> Amendment. To pass intermediate scrutiny, Defendants need only show that the interest “would be achieved less effectively” absent the regulation.<sup>69</sup> Defendants claim this standard is met because the speech restrictions effectively distinguish breweries and wineries from other licensees, thereby furthering its interest in maintaining the structure of a three-tiered industry.<sup>70</sup> However, Defendants fail to show that speech restrictions serve any purpose

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<sup>67</sup> *Mickens v. City of Kodiak*, 640 P.2d 818, 821 (Alaska 1982).

<sup>68</sup> *Id.* (quoting *Commonwealth v. Sees*, 374 Mass. 532, 536-37 (1978)).

<sup>69</sup> *Rock Against Racism*, 491 U.S. 781, 782-83 (1989).

<sup>70</sup> Defs.’ Mot. for Summ. J. at 22 (arguing that the prevention of manufacturers’ “encroachment” on the retail market is more effectively achieved by limiting live music and entertainment because without the regulation “tasting rooms could become largely indistinguishable from a traditional retail bar”).

beyond their utility as a political bargaining chip to ease industry tensions or their effect in reducing the competitiveness of breweries and wineries in the retail market.

While market regulation of the alcohol industry may constitute a significant government interest under intermediate scrutiny, Defendants openly indicate that their interest in these speech restrictions is for the purpose of controlling the retail market to explicitly favor traditional alcohol retailers and disadvantage brewery and winery retail licensees. The state does not have a substantial government interest in so burdening interstate commerce.<sup>71</sup>

2. *The speech restrictions on live music and entertainment are facially unconstitutional because they violate the State and Federal Constitution as a matter of law.*
  - a. *The Act's regulation of live music and entertainment is content neutral and subject to intermediate scrutiny.*

Unlike the restrictions on activities and displays, the challenged restrictions on live music and entertainment imposed by the LWE permit structure are facially content-neutral. While they restrict specific *kinds* of expressive speech and entertainment in breweries and wineries without endorsement or additional license, they apply regardless of the message conveyed.

Plaintiffs claim that because the speech restrictions “target[] these specific activities based on their entertainment *function or purpose*,” they are content-based and subject to

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<sup>71</sup> *Tennessee Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 528 (2019) (citing *Railroad Co. v. Husen*, 95 U.S. 465, 472 (1878)).

strict scrutiny.<sup>72</sup> However, Plaintiffs’ argument overlooks precedent that allows the state to regulate live entertainment in a content-neutral manner.<sup>73</sup> Time, place, and manner restrictions that apply only to live music and entertainment are still content-neutral despite only applying to live music and entertainment.<sup>74</sup>

Plaintiffs further argue that strict scrutiny should apply because the statutes “also discriminate[] based on *who* is speaking,” and “laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference.”<sup>75</sup> Speaker-based speech restrictions are subject to strict scrutiny when they cross the threshold from regulating the speaker to regulating a viewpoint itself.<sup>76</sup> Here, while evidence suggests the Legislature enacted the speech restrictions to enforce an *economic* preference for one industry actor over another, neither the language in the act nor the legislative history indicates a preference for the actual *content* of the entertainment regulated by the LME permit structure.<sup>77</sup>

Therefore, the speech restrictions on live music and entertainment under the act are content neutral and intermediate scrutiny applies. Although they codify a clear speaker-preference for other alcohol retailers over brewery and winery licenses, it does not effectively favor one viewpoint over another.

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<sup>72</sup> Pls.’ Opp’n to Defs.’ Mot. for Summ. J. at 5 (relying on *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163-64 (2015) (providing that government regulation of speech is content-based even when it is not facially apparent if the regulated speech is defined “by its function or purpose”).

<sup>73</sup> *Cinevision Corp. v. City of Burbank*, 745 F.2d 560, 572 (9th Cir. 1984).

<sup>74</sup> *Id.*

<sup>75</sup> Pls.’ Opp’n to Defs.’ Mot. for Summ. J. at 6 (citing *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 658 (1994)).

<sup>76</sup> *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011) (quoting *R.A.V. v. St. Paul*, 505 U.S. 377, 391 (1992)).

<sup>77</sup> Aff. of Kevin Richard in Supp. of Mot. for Summ. J. ¶ 11 (content of entertainment is not considered when AMCO issues decisions on LME permit applications).

*b. The regulations of live music and entertainment fail intermediate scrutiny because Defendants fail to show they are narrowly tailored to serve a significant government interest.*

For the same reasons described with respect to the Act’s regulation of activities and displays, the speech restrictions on live music and entertainment fail intermediate scrutiny and are therefore unconstitutional. The restrictions on live music and entertainment fail intermediate scrutiny because they are not narrowly tailored to serve a significant government interest. Defendants claim that the restrictions are narrowly tailored to the interests of public health and safety, and regulating conditions of the alcohol industry. Defendants’ argument fails with respect to public health and safety because the restrictions are not significantly tailored. Defendants’ argument fails with respect to its interest in regulating the alcohol industry because “bare economic protectionism” and “granting favors to politically important actors” are not legitimate state interests.<sup>78</sup>

Defendants fail to establishing how the speech restrictions on live music and entertainment in brewery and winery retail spaces impact public health and safety concerns. This is insufficient under intermediate scrutiny to show that public health and safety goals would be achieved less effectively without limiting live entertainment in breweries in wineries, as is required under intermediate scrutiny.

Lastly, this Court disagrees with Defendants’ claims that the restrictions on live music and entertainment further the State’s substantial interest in regulating the alcohol

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<sup>78</sup> *Allied Concrete and Supply Co. v. Baker*, 904 F.3d 1053, 1064 (9<sup>th</sup> Cir. 2018).

industry under the 21<sup>st</sup> amendment. Both the legislative history and Defendants' pleadings reflect an unapologetic motivation of pure protectionism – each time there is mention of a “three-tiered system” or “orderly market conditions,” it is for the ultimate purpose of establishing a market preference for traditional retailers over brewery and winery retailers. This is not a legitimate interest which justifies so restricting creative expression protected under the First Amendment.

3. *The Act contains conduct that is not protected by the First Amendment and therefore survives Plaintiffs' First Amendment challenge.*

Only speech and conduct that is “inherently expressive” is protected under the First Amendment.<sup>79</sup> Here, the Act restricts breweries and wineries from engaging in or facilitating speech in the form of “live music or performance, disc jockeys, karaoke, [and] televisions” and prohibits “presentations...or other displays” that do not “directly promote or educate customers about the [licensee’s] products, processes, or establishment.”<sup>80</sup> However, the Act also restricts breweries and wineries from engaging in conduct that may or may not qualify as speech, such as general “activities” and “organized games or tournaments.”<sup>81</sup> The Act additionally restricts conduct clearly not protected by the 1<sup>st</sup> Amendment, including use of pool tables and dart games.<sup>82</sup>

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<sup>79</sup> *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 63-66 (2006) (holding that a law school’s decision to invite or prohibit recruiters from a given organization was not “inherently expressive” conduct, unlike flag burning, parades or protest marches, or compelled publication in a newsletter or newspaper, all of which were found to be “inherently expressive” conduct protected under the First Amendment) (internal citations omitted); *see also Wong v. Bush*, 542 F.3d 732, 736 (9<sup>th</sup> Cir. 2008).

<sup>80</sup> AS 04.09.320(e)(1); AS 04.09.330(e)(1); AS 04.09.320(g)(1); AS 04.09.330(g)(1).

<sup>81</sup> *Id.*

<sup>82</sup> AS 04.09.320(e)(1); AS 04.09.330(e)(1).

Because Plaintiffs withdrew their equal protection claim, only their First Amendment claims remain before this Court.<sup>83</sup> While this Court holds that several provisions of the challenged statute are unconstitutional on First Amendment grounds, it also holds that the provision prohibiting pool tables and dart games survive Plaintiffs' First Amendment claims because they are not speech, and the provisions prohibiting "activities" that do not "directly promote or educate customer about the brewery's products, processes, or establishment" as well as "organized games or tournaments" survive the First Amendment challenge to the extent that they do not regulate actual speech or purely expressive conduct. Plaintiffs have failed to establish the remaining restrictions fall under the category of protected speech.

*a. The unconstitutional provisions of SB 9 are severable from the constitutional provisions of the Act.*

Since the speech and conduct restrictions under the challenged statutes are unconstitutional in part, but not in their entirety, this Court is limited in its ability to reconstrue the challenged laws because of "the constitutionally decreed separation of powers which prohibit[] this court from enacting legislation or redrafting defective statutes."<sup>84</sup> Title 4 does not have a severability clause, however, AS 01.10.030 provides for a presumption in favor of severability in all Alaska statutes.<sup>85</sup> Before striking down

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<sup>83</sup> Pls.' Opp'n to Defs.' Mot. for Summ. J. at 1, n. 1.

<sup>84</sup> *State v. Campbell*, 536 P.2d 105, 111 (Alaska 1975), *overruled on other grounds by Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska 1978).

<sup>85</sup> AS 01.10.030 provides that "[a]ny law heretofore or hereafter enacted by the Alaska legislature which lacks a severability clause shall be construed as though it contained the clause in the following language: 'If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby'" (effective 2024).

the offending provisions, this Court applies the severability test provided in *Lynden Transport* which has two parts: (1) whether “legal effect can be given” to the remaining provisions, and (2) if the remaining provisions are “independent and complete in itself so that it may be presumed that the Legislature would have enacted the valid parts without the invalid part.”<sup>86</sup>

Whether legal effect can be given to a severed statute hinges on whether the remaining provisions “require[] action” or are “merely a statement of public policy.”<sup>87</sup> For example, this Court could not strike all of title 4 except for the legislative findings.<sup>88</sup> “This is a relative low threshold test that merely requires an enforceable command to implement the law.”<sup>89</sup> Striking only the offending provisions of the challenged statute leaves enforceable law on the books prohibiting pool tables and dart games, as well as some “activities” and “organized games or tournaments” that do not qualify as protected free speech. Therefore, the first part of the *Lynden Transport* test is satisfied.

The presumption in favor of severability established by the blanket severability clause under AS 01.10.030 is overcome when there is a “clear probability” that after striking the offending statute “the Legislature would not have been satisfied with what remains.”<sup>90</sup> A presumption of severability does not give this Court authority to give the

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<sup>86</sup> *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 211-12 (Alaska 2007).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 211.

<sup>90</sup> *Carter v. Carter Coal Co.*, 298 U.S. 238, 312 (1936).

remaining statute “an effect altogether different from that sought by the measure viewed as a whole.”<sup>91</sup>

While much of the legislative intent to distinguish brewery and winery licensees from traditional alcohol retailers is thwarted by this Court finding many of its provisions invalid as unconstitutional regulation of speech, striking only the offending provisions would allow several of these distinctions to stand, protecting legislative intent to the greatest extent allowable under our State Constitution. The Legislature may be unhappy with this result, however, it should not be dissatisfied with a decision that permits restricting entertainment in breweries and wineries, as was their intent, to the full extent possible under SB 9 and our constitution. Neither does this Court give the remaining provisions an altogether different effect from that sought by the provisions as a whole – it merely narrows the scope of “entertainment” governed under the Act.

Therefore, having passed the test for severability, this Court finds that it may declare the challenged statutes unconstitutional in part, pursuant to its findings above. Accordingly, in line with both constitutional protections on free speech and the legislative intent of the challenged statutes enacted by SB 9, the following language of subsection (e)(1) of AS 04.09.320 and AS 04.09.330 is void: “...allow live music or performances, disc jockeys, karaoke, televisions...” The provisions restricting “organized games or tournaments” are permissible to the extent that they do not include speech and expressive conduct protected by the First Amendment. The following language of

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<sup>91</sup> *Railroad Retirement Board v. Alton R. Co.*, 295 U.S. 330, 362 (1935).

subsection (g)(1) of AS 04.09.320 and AS 04.09.330 is void: "...presentations, television or video displays, or other displays..." The provisions regarding "activities" under this subsection are permissible to the extent that they do not include speech and expressive conduct protected by the First Amendment. Again, Plaintiffs failed to demonstrate that the remaining restrictions fall within protected speech, and so these restrictions must survive. Lastly, AS 04.09.700 is stricken in its entirety because it only regulates live music and entertainment, which clearly qualify as constitutionally protected speech.<sup>92</sup>

This Court notes that given the Legislature's choice of including the broad term of promotional "activities" in conduct exempt from the restrictions, there may be some "organized games or tournaments" that remain valid under the act because they are not speech or expressive conduct, but qualify as an "activities that directly promote or educate customers about the [licensee's] products, processes, or establishment."<sup>93</sup> Additionally, the exemptions under 320(g)(2) and 330(g)(2) remain.

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<sup>92</sup> AS 04.09.320(e)(1) and AS 04.09.330(e)(1) now reads:

(e) Except as provided under (g) of this section and ~~AS 04.09.700~~, the holder of a [brewery/winery] retail license may not

(1) allow ~~live music or performances, disc jockeys, karaoke, televisions,~~ pool tables, dart games, or organized games or tournaments on the premises where the consumption occurs;

AS 04.09.320(g) and AS 04.09.330(g) now reads:

(g) the holder of a [brewery/winery] retail license may allow on the premises where the consumption occurs

(1) activities, ~~presentations, television or video displays, or other displays~~ that directly promote or educate customers about the brewery's products, processes, or establishment; and

(2) other community organizations or businesses to provide presentations, classes, or product displays or host fundraisers.

<sup>93</sup> *Id.*

## **Conclusion**

The parties do not dispute any material facts. The Defendants fail to present sufficient evidence demonstrating a connection between the challenged speech restrictions and a substantial government interest. The speech restrictions fail the tests of strict and intermediate scrutiny, and such suppression of speech by the state cannot stand.

This Court recognizes that the challenged speech restrictions were once a critical piece of a grand compromise achieved in the passage of broad reform to our state’s alcohol industry. Additionally, this Court appreciates that in negotiating this compromise, “the legislature aimed to balance ‘the interest of the public, people holding licenses or permits under this title, and the alcoholic beverage industry in general.’”<sup>94</sup> However, political compromise is not recognized as a substantial government interest for the purposes of restricting speech under the First Amendment. Neither is the codification of preference for one industry actor over another.<sup>95</sup> Accordingly, this Court declares AS 04.09.320(e)(1), 04.09.320(g)(1), AS 04.09.330(e)(1), and AS 04.09.330(g)(1) unconstitutional in part, and AS 04.09.700 as unconstitutional in entirety pursuant to the First Amendment of the United States Constitution and Article 1, Section 5 of the Alaska Constitution.

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<sup>94</sup> Defs.’ Mot. for Summ. J. at 21 (quoting AS 04.06.005).

<sup>95</sup> *Id.* at 21-22; *Tennessee Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504, 528 (2019) (citing *Railroad Co. v. Husen*, 95 U.S. 465, 472 (1878)).

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment is **GRANTED** in part and Defendants' Motion for Summary Judgment is **DENIED**.

**IT IS SO ORDERED.**

**DATED** at Anchorage, Alaska this 14<sup>th</sup> day of January, 2026.

A handwritten signature in black ink, appearing to read "Adolf V. Zeman", written over a horizontal line.

ADOLF V. ZEMAN  
Superior Court Judge

# Alaska Trial Courts

## Certificate of Distribution

Case Number: 3AN-24-04842CI

Case Title: ZIP KOMBUCHA LLC VS. JOAN WILSON, DIR. OF ALASKA AMCO, IN HER OFFICIAL

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The Alaska Trial Courts certify that the Order Granting Motion Case Motion #6: Plaintiffs' Motion for Summary Judgment was distributed to:

Donna Matias	Email	1/14/2026
David Hoffa	Email	1/14/2026
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# Alaska Trial Courts

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David Hoffa	Email	1/14/2026
Spencer Wilson	Email	1/14/2026
Kevin Higgins	Email	1/14/2026



**ALCOHOL AND MARIJUANA CONTROL OFFICE ADVISORY NOTICE:**

**Employment of Minors without Department of Labor and Workforce Development Permits**

**Regulations:**

AS 04.16.049 Access of persons under the age of 21 to licensed premises,  
AS 04.16.052 Furnishing of alcoholic beverages to persons under the age of 21 by licensees.  
AS 04.16.150 Licensee responsible for violations

**Advisory:**

The Alcohol and Marijuana Control Office has been asked to provide an advisory notice regarding the employment of people under 18 years of age in certain alcohol-licensed establishments.

AMCO has seen an increase in the number of violations of AS 04.16.049, AS 04.16.052, and AS 04.16.150 by alcohol licensees employing persons under the age of 18 without a valid Department of Labor and Workforce Development work permit.

If an alcohol licensee is authorized to employ people 16 or 17 years of age, the licensee must have a valid and current Department of Labor and Workforce Development work permit on file. Not having the permit on file could incur disciplinary action from the Alcoholic Beverage Control Board to include civil fines, probation, and suspension or revocation of the alcohol license.

Alcohol licensees are encouraged to familiarize themselves with the Title 4 requirements for the employment of minors and the process to apply for a work permit. Work permit information can be found on the [Department of Labor and Workforce Development Labor Standard and Safety Division](#) website. Copies of the DLWD work permit application form and [Pamphlet 200: Employment of Children](#) are included in this advisory notice.

If you are intending to employ persons under 18 years of age, and are unclear of the statutory or regulatory requirements, please e-mail [alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)

A handwritten signature in black ink, appearing to read "Kevin Richard".

Kevin Richard  
Director



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## EMPLOYERS PLEASE NOTE:

### OCCUPATIONS PROHIBITED TO ALL MINORS UNDER 18:

1. Occupations in manufacturing, handling, or use of explosives.
2. Occupations of motor vehicle driver or helper (limited exceptions.)
3. Mining operations including coal.
4. Logging or occupations in the operations of any sawmill, lath mill, shingle mill or cooperage.
5. Operations of power-driven woodworking machines.
6. Occupations with exposure to radioactive substances and to ionizing radiation.
7. Occupations involving exposure to bloodborne pathogens.
8. Operation of elevators or other power-driven hoisting apparatus.
9. Operation of power-driven metal forming, punching, and shearing machines.
10. Occupations involving slaughtering, meatpacking or processing, or rendering.
11. Occupations involved in the operation and cleaning of power-driven bakery machines.
12. Occupations involved in the operation of power-driven paper products machines.
13. Occupations involved in the manufacture of brick, tile, and kindred products.
14. Occupations involved in the operation and cleaning of circular saws, band saws and guillotine shears.
15. Occupations involved in wrecking, demolition, and shipbreaking operations.
16. Occupations involved in roofing operations.
17. Occupations involved with excavation operations.
18. Electrical work with voltages exceeding 220, or outside erection or repair, and meter-testing, including telegraph and telephone lines.
19. Occupations involved in canvassing, peddling, door-to-door solicitation, or sales.

### IF UNDER 16 THESE ADDITIONAL OCCUPATIONS ARE ALSO PROHIBITED:

1. Occupations in manufacturing, mining, or processing, including work rooms or places where goods are manufactured, mined, or otherwise processed.
2. Occupations involved in operation of hoisting or power-driven machinery other than office machines.
3. Operation of motor vehicle or service as helper on motor vehicle.
4. Public messenger service.
5. Occupations in or about canneries, seafood plants, including cutting, slicing, or butchering, or the operation of any floating plant and including loading or unloading.
6. Work performed in or about boilers, engine rooms, or retorts.
7. Work involved with maintenance or repair of the establishment's machines or equipment.
8. Occupations that involve working from window sills, ladders, scaffolds, or their substitutes.
9. Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repair of power-driven food slicers, grinders, choppers, cutters, and bakery-type mixers.
10. Work in freezers, meat coolers, or preparation of meat for sale.
11. Loading or unloading to and from trucks, railroad cars, or meat conveyors.
12. Occupations in warehouses except office and clerical work.
13. Occupations involving use of sharpened tools.
14. Occupations in transportation of persons or property, warehousing and storage, construction (including demolition and repair) except office or sales work in connection with these occupations.

The federal prohibition on the hours 14 and 15 year old minors may be allowed to work is stricter than Alaskan law. Due to this conflict, an employer of 14 or 15 year old minors may find that they are in compliance with State law, but in violation of federal law. For example:

#### Federal Law

Children 14 and 15 years old may only work:

1. Outside school hours.
2. No more than 40 hours in any one week when school is not in session.
3. Not more than 18 hours in any week when school is in session.
4. Not more than 8 hours in any one day when school is not in session.
5. Not more than 3 hours in any one day when school is in session.
6. Between 7 a.m. and 7 p.m. in any one day except during the summer (June 1 through Labor Day), when the evening hours will be 9 p.m.

#### State Law

Children 14 and 15 years old may work:

1. A total of 9 hours of school and work combined in one day.
2. Only between the hours of 5 a.m. to 9 p.m.
3. No more than 23 hours per week outside of school hours (domestic work and babysitting excepted).
4. No more than 6 days per week.

There are certain exceptions to the federal law; for example, children in work-study programs through their schools are exempt from some or all of the hour restrictions. For further information on the federal law, contact the United States Department of Labor, Wage and Hour Division, Telephone: 1-866-487-9243. Or in Anchorage: (907) 271-2867

### TITLE 4 ALCOHOLIC BEVERAGES and MARIJUANA/CANNABIS-- ALASKA STATUTES

AS 04.16.049. Access of persons under the age of 21 to licensed premises.

(a) A person under 21 years of age may not knowingly enter or remain in premises licensed under this title unless

- (1) accompanied by a parent, guardian, or spouse who has attained 21 years of age;
- (2) the person is allowed to enter and remain on the premises under a 76 restaurant or eating place license issued under AS 04.09.210, seasonal restaurant or eating place tourism license issued under AS 04.09.360, or restaurant endorsement issued under AS 04.09.450;
- (3) the person is permitted on the premises under a club license issued AS 04.09.220(g) or former AS 04.11.110(g); or
- (4) otherwise provided under (c), (d), or (g) of this section.

(b) Notwithstanding (a) of this section, a license or an agent or employee of the licensee may refuse entry to a person under 21 years of age to that part of licensed premises in which alcoholic beverages are sold, served, or consumed, may refuse service to a person under 21 years of age, or may require a person under 21 years of age to leave the portion of the licensed premises in which alcoholic beverages are sold, served, or consumed.

(c) Notwithstanding any other provision in this section, a person 16 or 17 years of age may enter and remain within the licensed premises of a hotel or motel, large resort, golf course, general wholesaler, limited brewed beverage and wine wholesaler, common carrier dispensary, outdoor recreation lodge, or restaurant in the course of employment if

- (1) the employment does not involve the serving, mixing, delivering, or dispensing of alcoholic beverages;
- (2) the person has the written consent of a parent or guardian; and
- (3) an exemption from the prohibition of AS 23.10.355 is granted by the Department of Labor and Workforce Development.

### TOBACCO and PULL-TABS

AS 11.76.106 restricts access to areas where tobacco and tobacco products are sold. Minors under 19 years may not sell tobacco or tobacco products in the course of their employment. 15 AAC 160.480(b) prohibits the sale of pull-tabs by anyone under the age of 21.

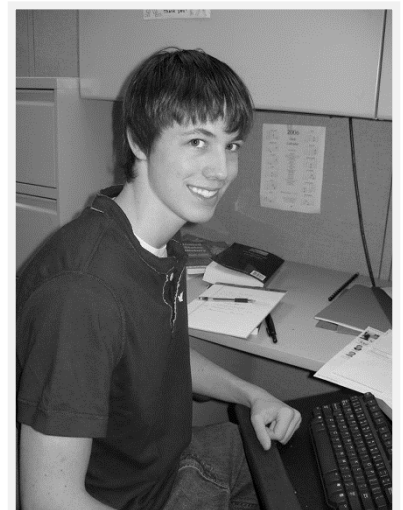
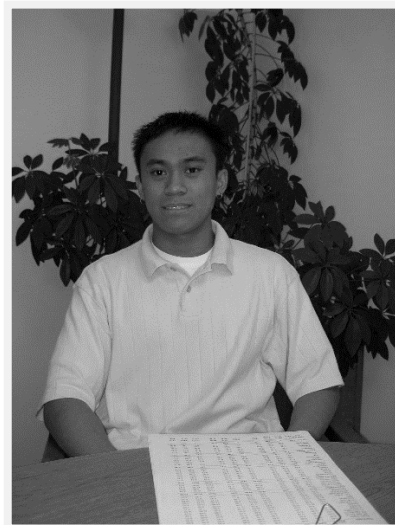
THIS FORM IS AVAILABLE ON THE INTERNET AT: [www.labor.state.ak.us/lss/forms/workpermit.pdf](http://www.labor.state.ak.us/lss/forms/workpermit.pdf)

# Employment of Children

**Statutes and Regulations**

**Wage and Hour Administration  
Pamphlet 200  
November 2018**

**Alaska Department of Labor and Workforce Development  
Labor Standards and Safety Division**



**ALASKA DEPARTMENT OF LABOR  
& WORKFORCE DEVELOPMENT**

## Anchorage

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Wage and Hour Administration  
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If you would like to receive Wage and Hour Administration **regulation notices** or **publications information**, they are available via electronic mail, by signing up in the GovDelivery System, <https://public.govdelivery.com/accounts/AKDOL/subscriber/new> and selecting topics *LSS – Wage and Hour – Forms and Publications* or *LSS – Wage and Hour Regulations*.

*Publications* are also available online at <http://labor.alaska.gov/lss/lssforms.htm>

Alaska's youth embody the future of the State and are its most valuable resource. The Alaska Department of Labor and Workforce Development's mission is to protect workers under the age of 18 in Alaska's workplace settings. Several of the protections are based on the fact that various workplaces and activities are hazardous for young workers whose physical coordination and decision-making capacity is not fully developed. Other protections are aimed at optimizing the environment for educational success. This publication, *Pamphlet 200, Employment of Children*, is designed to assist employers, minor employees and their parents by providing the applicable laws and regulations with regard to workers under the age of 18.

The pamphlet consists of two sections: the Alaska Statutes (pages 1-3) and the Alaska Administrative Code or Regulations (pages 3-14). The index of topics (pages 15-16) will provide assistance in locating a particular child labor topic. When reviewing the subjects contained in this pamphlet, keep in mind that the statutes carry the greatest weight. The State regulations have been established to further clarify and interpret language used in the statute.

Child labor law can be confusing. Please take advantage of the cost-free counseling services offered by the Department to clarify your questions. For questions regarding this pamphlet and Alaska's child labor laws, you may call or come in to the nearest Wage and Hour Administration office Monday through Friday during regular business hours, and a Wage and Hour Investigator will be happy to assist you. Addresses and phone numbers for these offices are listed on the inside cover page of this pamphlet.

For additional information, visit the Alaska Labor Standards and Safety Division website at: <http://labor.alaska.gov/lss/>

**Note to Readers:** The statutes and administrative regulations listed in this publication were taken from the official codes, as of the effective date of the publication. However, there may be errors or omissions that have not been identified and changes that occurred after the publication was printed. **This publication is intended as an informational guide only and is not intended to serve as a precise statement of the statutes and regulations of the State of Alaska. To be certain of the current laws and regulations, please refer to the official codes.**



# Employment of Children

Pamphlet 200: Statutes and Regulations

November 2018

State of Alaska

Alaska Department of Labor and Workforce Development

The Alaska Wage and Hour Administration

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Wage and Hour Administration offices .....inside front cover

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## ALASKA STATUTES

## TITLE 23. Labor and Workers' Compensation

## CHAPTER 10. Employment Practices and Working Conditions

## Article 4. Employment of Children

## Section

- 325. Purpose
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**Sec. 23.10.325. Purpose.**

It is the purpose of AS 23.10.325 - 23.10.370 to establish protective standards for child labor to the end that their health, morals, education, and future welfare will be protected during the formative years and to the further end that any abuses or unjust exploitation of this labor will be effectively prohibited.

(§ 1 ch 73 SLA 1949)

**Sec. 23.10.330. Exempted employment.**

(a) AS 23.10.325 - 23.10.370 do not prohibit employment of a child under the direct supervision of a parent in a business owned and operated by the parent or the work of a child on a boat owned and operated by the parent of the child.

(b) Notwithstanding AS 23.10.335 - 23.10.350, a minor of any age may be employed as a performer in the entertainment industry. The provisions of AS 23.10.335 - 23.10.350 and AS 23.10.360(a) and 23.10.360(c) concerning times, hours, or days of work do not apply to the employment of a minor as a performer in the entertainment industry. The department may adopt regulations to implement this subsection. In this subsection, a "performer in the entertainment industry" means a performer in advertisements and television, film, radio, and theater productions but does not include employment on the premises of a business offering any form of adult entertainment under AS 23.10.350(f) regardless of the nature of the work performed by the minor.

(§ 1 ch 73 SLA 1949; am § 1 ch 86 SLA 1992; am § 2 ch 18 SLA 1995)

**Sec. 23.10.332. Authorization for children under 17 to work.**

(a) Except for employment exempted under AS 23.10.330 and other employment specifically exempted by regulations adopted by the department, a minor under 17 years of age may not be employed or allowed to work without the written authorization of the commissioner unless authorized under AS 23.10.360 or under (c) of this section.

(b) The department shall adopt regulations necessary to implement this section.

(c) An employer may employ a minor who is at least 14 years of age to perform a specific job consisting of listed duties without the written authorization of the commissioner under (a) of this section if the employer has, in advance, secured the approval of the commissioner for a minor to perform that job and the employer files the written consent from the minor's parent or guardian described in (d) of this section. The employer may not change any of the listed duties of a job to be performed by a minor without prior approval of the commissioner.

(d) A written consent from a parent or guardian filed under (c) of this section

(1) is valid only for the job and listed duties specified on the consent;

(2) must be filed with the commissioner within seven calendar days after the minor begins working the job specified in the consent

(3) is valid for the calendar year in which it is executed or, in the case of a written consent executed in December, for that calendar year, the next calendar year, or both, depending on the terms of the written consent;

(4) shall be on a form provided by the department; the department may use the same form that it uses to issue work permits under (a) of this section to secure parental signatures under this subsection; and

(5) must be signed by a parent or legal guardian of the minor before the date the minor begins working the job specified in the consent.

(§ 3 ch 112 SLA 1976; am § 1, 2ch 76 SLA 2002)

**Sec. 23.10.335. Employment of children under 14.**

A minor under 14 years of age may not be employed or allowed to work in an occupation outside school hours except in domestic employment, baby-sitting, and handiwork in and about private homes; newspaper delivery or sales; or canneries in warehouse work casing cans under competent supervision. (§ 1 ch 73 SLA 1949)

**Sec. 23.10.340. Employment of children under 16.**

(a) A minor under 16 years of age may not be employed for more than a combined total of nine hours school attendance and employment in one day. If employed, the minor's work may be performed only between 5 a.m. and 9 p.m. Employment outside school hours may not exceed 23 hours in one week, domestic work and babysitting excepted.

(§ 1 ch 73 SLA 1949; § 3 ch 73 SLA 1949; am § 2 ch 28 SLA 1951; am § 7 ch 112 SLA 1976; am § 1 ch 55 SLA 1981)

**Sec. 23.10.350. Employment of person under 18.**

(a) A minor under 18 years of age may not be employed or allowed to work

(1) more than six days a week;

(2) in hazardous excavation, or underground in mines, or as hoisting engineer in mines; or

(3) in an occupation dangerous to life or limb or injurious to the health of the minor.

(b) If the commissioner determines that the duties to be performed by the minor would not unduly endanger the life, limb, or health of the minor and if the employment meets the conditions of wages and hours prevailing for the majority of the employees in the industry at the time of employment, the commissioner may grant an exemption in writing from (a) of this section for a minor 16-18 years of age to work at those duties

(1) outside school hours, or while on school vacation, if the minor is attending school; or

(2) if the minor is no longer attending school.

(c) Except as provided in (e) of this section, a person under 18 years of age who is scheduled to work for six consecutive hours or more is entitled to a break of at least 30 minutes during the course of the work shift. The break required by this subsection may be scheduled at the convenience of the employer but must occur after the first hour and a half of work and before the beginning of the last hour of work. A person under 18 years of age who works for five consecutive hours without a break is entitled to a break of at least 30 minutes before continuing to work. This subsection may be modified by the terms of a collective bargaining agreement that covers the employment of the person under 18. This subsection may be modified on occasion by mutual agreement between the employer and the employee.

(d) Notwithstanding AS 23.10.055(11), failure to provide the unpaid break periods required by (c) of this section creates a minimum wage liability under AS 23.10.065 for the break that the employee did not receive or received late. A claim for minimum wage in lieu of the unpaid break is enforceable under AS 23.10.110.

(e) The provisions of (c) of this section do not apply to

(1) an individual employed in the catching, trapping, cultivating or farming, netting, or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

(2) an individual employed by a member of the individual's family; in this paragraph, "member of the individual's family" means the individual's spouse, parent, step-parent, grandparent, step-grandparent, great grandparent, step-great grandparent, brother, sister, uncle, aunt, great-uncle, or great-aunt, whether of the whole or half blood or by adoption or by marriage.

(f) A minor under the age of 18 may not be employed or allowed to work in any capacity on the premises of a business that offers adult entertainment. In this subsection, "business that offers adult entertainment" means a business in which one or more individuals are employed or contracted to, wholly or in

part, or permitted to entertain others by

(1) removing clothes or other items that clothe or hide the person's body;

(2) dancing or in any other manner exhibiting the individual's body in a completely or almost completely unclothed state;

(3) participating in an actual or simulated illegal, indecent, or lewd exhibition, act, or practice including

(A) sexual penetration;

(B) the lewd exhibition or touching of a person's genitals, anus, or breast; or

(C) bestiality.

(§§ 2, 3 ch 73 SLA 1949; am §§ 1, 2 ch 28 SLA 1951; § 4 ch 73 SLA 1949; am § 84 ch 127 SLA 1974; am § 4 ch 112 SLA 1976; am § 2 ch 86 SLA 1992; am § 3 ch 18 SLA 1995)

**Sec. 23.10.355. Employment of persons under 21.**

A person under 21 may not be employed or allowed to sell or serve alcoholic beverages or to work on a licensed premise, except as provided in AS 04.16.049. (§ 3 ch 73 SLA 1949; am § 2 ch 28 SLA 1951; am § 24 ch 245 SLA 1970; am § 5 ch 112 SLA 1976; am § 58 ch 59 SLA 1982; am § 17 ch 109 SLA 1983)

**Sec. 23.10.360. Regulations for minimum standards and work opportunities.**

(a) The department may, from time to time after public notice and hearing, adopt regulations and issue orders establishing minimum standards for safety, working conditions, kind and extent of work in various phases of the respective fields of employment, maximum hours for the day and week, and minimum rates of pay, and other reasonable safeguards compatible with the welfare of all minors covered by AS 23.10.325 - 23.10.370.

(b) The department shall make cooperative arrangements with other state and federal agencies and shall adopt the regulations that are necessary to provide opportunities for work experience in safe and healthful occupations for minors.

(c) The department shall, after notice and hearing, adopt regulations authorizing the employment of minors under 18 years of age and exempting appropriate employers from the requirement to secure the commissioner's written authorization under AS 23.10.332(a).

(§ 5 ch 73 SLA 1949; am § 6 ch 112 SLA 1976; am § 3 ch 76 SLA 2002)

**Sec. 23.10.365. Enforcement.**

The department shall enforce AS 23.10.325 - 23.10.370. (§ 6 ch 73 SLA 1949)

**Sec. 23.10.370. Penalty.**

(a) Except as provided in (b) of this section, a person who violates a provision of AS 23.10.325 - 23.10.370 is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500,

(b) or by imprisonment for not more than 90 days, or

(c) by both.

(d) A person who employs a minor in violation of AS 23.10.350(f) is guilty of a class A misdemeanor for the first offense and a class C felony for the second and each subsequent offense.

(§ 7 ch 73 SLA 1949; am §§ 4, 5 ch 18 SLA 1995)

## TITLE 11. Criminal Law

### CHAPTER 66. Offenses Against Public Health and Decency

#### Article 3. Adult Entertainment Business

##### Section

300. Prohibiting Minors from Being Present at an Adult Entertainment Business

#### Sec. 11.66.300. Prohibiting minors from being present at an adult entertainment business.

(a) The owner or an agent or employee of the owner of a business that offers adult entertainment may not with criminal negligence allow a person under the age of 18 years to enter and remain within premises where adult entertainment is offered.

(b) In this section, "business that offers adult entertainment" has the meaning given in AS 23.10.350(f).

(c) A person who violates this section is guilty of a class A misdemeanor. Each violation is a separate offense. (§ 1 ch 18 SLA 1995)

## TITLE 4. Alcoholic Beverages

### CHAPTER 16. Regulation of Sales and Distribution

#### Article 1. Prohibited Acts

#### Sec. 04.16.049. Access of persons under the age of 21 to licensed premises.

(a) A person under 21 years of age may not knowingly enter or remain in premises licensed under this title unless

(1) accompanied by a parent, guardian, or spouse who has attained 21 years of age;

(2) the person is at least 16 years of age, the premises are designated by the board as a restaurant for the purposes of this section, and the person enters and remains only for dining;

(3) the person is under the age of 16 years of age, is accompanied by a person over the age of 21 years of age, the parent or guardian of the underaged person consents, the premises are designated by the board as a restaurant for the purposes of this section, and the person enters and remains only for dining.

(4) the person is permitted on the premises under a club license issued under AS 04.11.110(g); or

(5) otherwise provided under (c), (d), or (g) of this

section.

(b) Notwithstanding (a) of this section, a licensee or an agent or employee of the licensee may refuse entry to a person under the age of 21 years of age to that part of licensed premises in which alcoholic beverages are sold, served, or consumed, may refuse service to a person under the age of 21 years, or may require a person under the age of 21 years to leave the portion of the licensed premises in which alcoholic beverages are sold, served, or consumed.

(c) Notwithstanding any other provision in this section, a person 16 or 17 years of age may enter and remain within the licensed premises of a hotel, golf course, or restaurant, or eating place in the course of employment if (1) the employment does not involve the serving, mixing, delivering, or dispensing of alcoholic beverages; (2) the person has the written consent of a parent or guardian; and (3) an exemption from the prohibition of AS 23.10.355 is granted by the Department of Labor and Workforce Development. The board, with the approval of the governing body having jurisdiction and at the licensee's request, shall designate which premises are hotels, restaurants, or eating places for the purposes of this subsection.

(d) Notwithstanding any other provision in this section, a person 18, 19, or 20 years of age may be employed within the licensed premises of a hotel, golf course, or restaurant, or eating place, may enter and remain within those premises for the purpose of employment, but may not, in the course of employment, sell, serve, deliver, or dispense alcoholic beverages.

(e) A licensee may bring a civil action against a person who violates this section if the violation occurs on the premises of that licensee. If judgment is entered in favor of the licensee, the court shall award civil damages in the amount of \$1,500 and award reasonable costs and reasonable attorney fees allowed under the Alaska Rules of Civil Procedure.

(f) A person under 21 years of age does not violate this section if the person enters or remains on premises licensed under this title at the request of a peace officer, if the peace officer accompanies, supervises, or otherwise observes the person's entry or remaining on premises, and the purpose for the entry or remaining on premises is to assist in the enforcement of this section.

(g) Notwithstanding any other provision in this section, a person under 21 years of age may be present on licensed premises on a golf course for the purpose of playing golf or attending golf-related activities if the person

(1) is at least 16 years of age; or

(2) is under 16 years of age and

(A) the person is accompanied by a person who is at least 21 years of age; and

(B) a parent or guardian of the underaged person consents.

(h) A person under 21 years of age who knowingly enters or remains on premises licensed under this title except as allowed in this section commits the offense of

(i) unauthorized presence by a person under 21 years of age on licensed premises.

(j) Unauthorized presence by a person under 21 years of age on licensed premises is a violation, punishable by a fine of \$500. The violation must be charged and filed with the court as a separate case and may not be combined or joined with any other minor offense or criminal charge in one action at the time of filing. A court may reduce the fine to \$50 for a person who has not more than one previous violation or to \$250 for a person who has two or more previous violations if the person provides the court, not later than six months after a judgment of conviction is entered, with proof of completion of

1. an alcohol safety action program or a juvenile alcohol safety action program developed, designated, or approved by the Department of Health and Social Services under AS 47.37; or

2. a community diversion panel.  
 (§ 3 ch 131 SLA 1980; am § 16 ch 28 SLA 1981; am §§ 4-7 ch 109 SLA 1983; am § 1 ch 87 SLA 2001; am §§ 1-2 ch 174 SLA 2004; am § 1 ch 72 SLA 2005; am § 1 86 SLA 2010; am § 3 ch 101 SLA 2014; am §§ 4-8 ch 32 SLA 2016)

**ALASKA ADMINISTRATIVE CODE**

**TITLE 8. Labor and Workforce Development**

**PART 1. Industrial Welfare**

**CHAPTER 05. Child Labor**

Article

- 1. Employment of Minors 14 and 15 Years of Age (8 AAC 05.010 - 8 AAC 05.030)
- 2. Employment of Minors Under 18 Years of Age (8 AAC 05.040 - 8 AAC 05.265)
- 3. Certificates of Age (8 AAC 05.270 - 8 AAC 05.280)
- 4. (Repealed)
- 5. Entertainment Industry (8 AAC 05.300 - 8 AAC 05.340)
- 10. General Provisions (8 AAC 05.900)

**Article 1.**

**Employment of Minors 14 and 15 Years of Age**

**Section**

- 10. Prohibited occupations
- 20. Permissible occupations
- 30. Periods and conditions of employment

**8 AAC 05.010. Prohibited Occupations.**

Employment of minors 14 and 15 years of age is prohibited in the following occupations:

(1) manufacturing, mining, or processing occupations, including occupations requiring the

performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

(2) occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(3) the operation of motor vehicles or service as helpers on such vehicles;

(4) Repealed 4/23/77;

(5) public messenger service;

(6) occupations in or about canneries or other seafood processing plants or establishments involving cutting, slicing, or butchering; work involved in the operation of any floating plant, which includes the loading and unloading of boats, barges, or scows;

(7) work performed in or about boiler or engine rooms or retorts;

(8) work in connection with maintenance or repair of the establishments, machines, or equipment;

(9) outside window washing that involves working from windowsills, and all work requiring the use of ladders or scaffolds or their substitutes;

(10) occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters, and bakery-type mixers;

(11) work in freezers and meat coolers and all work in the preparation of meats for sale;

(12) loading and unloading goods to or from trucks, railroad cars, or conveyors;

(13) all occupations in warehouses except office and clerical work;

(14) occupations involving the use of sharpened tools;

(15) except for office or sales work in connection with these occupations, which work is permitted, occupations in connection with

(A) transportation of persons or property by rail, highway, air, water, pipeline, or other means;

(B) warehousing and storage;

(C) communications and public utilities;

(D) construction (including demolition and repair). (Eff. 10/27/73, Register 48; am 4/23/77, Register 62; am 6/4/82, Register 82)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.020. Permissible Occupations.**

Employment of minors 14 and 15 years of age is permitted in the following:

(1) office and clerical work, including the operation of office machines;

(2) cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping;

(3) price marking and tagging by hand or by machine, assembling orders, packing, and shelving;

(4) bagging and carrying out customer orders;

(5) errand and delivery work by foot, bicycle, and public transportation;

(6) clean-up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds including the use of power-driven monofilament cutters, but not including the use of power-driven mowers or power-driven cutters with metal blades;

(7) work in connection with cars and trucks if confined to the following: dispensing gasoline and oil, courtesy service, car cleaning, washing and polishing, and other occupations permitted by this section, but not including work involving

(A) the use of a pit, rack, or power-operated lifting apparatus;

(B) the operation of a pneumatic tire machine;

(C) the inflation of any tire mounted on a rim equipped with a removable retaining ring; or

(D) dispensing propane;

(8) cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing, and stocking goods. (Eff. 10/27/73, Register 48; am 6/4/82, Register 82; am 7/30/99, Register 151; am 3/2/2008, Register 185)

Authority: AS 23.10.350 AS 23.10.360

### **8 AAC 05.030. Periods and Conditions of Employment.**

(a) Except for enrollees in work training, apprenticeship, vocational education and other programs approved by the commissioner, employment of minors aged 14 or 15 must be confined to the periods and limitations set forth in AS 23.10.340.

(b) Work training during school hours will be permitted for minors aged 14 through 17 if the employer has on file an unrevoked written statement from the minor's school coordinator or the coordinator's representative setting out the periods during which the minor may work and certifying that the employment will be confined to those periods and will not interfere with the health and well-being of the minor. The writing must also contain a statement signed by the principal of the minor's school stating that the employment will not interfere with the minor's schooling. (Eff. 10/27/73, Register 48; am 4/23/77, Register 62; am 7/30/99, Register 151)

Authority: AS 23.05.060 AS 23.10.350  
AS 23.10.360

## **Article 2.**

### **Employment of Minors Under 18 Years of Age**

#### **Section**

- 40. General
- 45. Work Permits
- 50. Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components
- 60. Motor vehicle driver and outside helper
- 70. All occupations in connection with mining
- 80. Logging occupations
- 90. Occupations in the operation of a sawmill, lath mill,

- shingle mill, or cooperage-stock mill
- 100. Occupations involved in the operation of power-driven wood working machines
- 110. Exposure to radioactive substances and to ionizing radiations
- 115. Occupations involving exposure to bloodborne pathogens
- 120. Occupations involved in the operation of power-driven hoisting apparatus
- 130. Occupations involved in the operations of power-driven metal forming, punching and shearing machines
- 140. Occupations involving slaughtering, meat packing or processing, or rendering
- 150. Occupations involved in the operation of bakery machines
- 160. Occupations involved in the operation of paper-products machines
- 170. Occupations involved in the manufacture of brick, tile and kindred products
- 180. Occupations involved in the operations of circular saws, band saws, and guillotine shears
- 190. Occupations involved in wrecking, demolition, and shipbreaking operations
- 200. Occupations in roofing operations
- 210. Occupations in excavation operations
- 220. (Repealed)
- 230. Occupations in connection with the installation, operation or maintenance of electrical equipment, outside erection and repair of electrical wires, and meter testing
- 240. (Repealed)
- 250. (Repealed)
- 260. Permissible occupations on fishing boats
- 265. Occupations involved in canvassing, peddling, door-to-door solicitation or sales

### **8 AAC 05.040. General.**

(a) Nothing in this section authorizes noncompliance with any federal or state law or regulation, or municipal ordinance establishing a higher standard. If more than one standard within this section applies to a single activity the higher standard is applicable.

(b) An exception for apprentices applies only when

(1) the apprentice is employed in a craft recognized as an apprenticeable trade;

(2) the work of the apprentice in the occupations declared particularly hazardous is incidental to the training;

(3) that work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and

(4) the apprentice is registered by the United States Department of Labor, Office of Apprenticeship, or is registered by a state agency as employed in accordance with the standards of state apprenticeship and training approved by the commissioner of labor and

(5) workforce development, or is employed under a written apprenticeship agreement and conditions that are found by the commissioner of labor and workforce development to conform substantially with those federal or state standards.

(c) An exemption for student-learners applies when

(1) the student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school; and

(2) the student-learner is employed under a written agreement which provides that

(A) the work of the student-learner in the occupations declared particularly hazardous will be incidental to the training;

(B) the work will be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(C) safety instructions will be given by the school and correlated by the employer with on-the-job training; and

(D) a schedule of organized and progressive work processes to be performed on the job will have been prepared; and

(3) each written agreement contains the name of the student-learner, and is signed by the employer and the school coordinator or principal.

(d) Copies of each agreement covered by (c) of this section must be kept on file by both the school and the employer. This exemption for the employment of student-learners will, in the department's discretion, be revoked in any individual case if it is found that reasonable precautions have not been observed for the safety of minors employed under the agreement. A high school graduate who has completed training as provided in (c) of this section as a student-learner, may be employed in that occupation in which the student-learner training was completed, even though the graduate is not yet 18 years of age.

(e) The state, political subdivisions of the state, and employers who only employ minors enrolled in work-training apprenticeship, vocational education, and other programs approved by the commissioner are exempt from the requirements of AS 23.10.332.

(f) Minors who have been emancipated for general purposes under AS 09.55.590 are exempt from the requirements of AS 23.10.332.

(g) The wage prescribed for minors who work less than 30 hours in a workweek may not be less than the prevailing federal minimum wage. This provision, however, is not applicable to those exemptions otherwise provided for in AS 23.10.055(1) - (10). (Eff. 10/27/73, Register 48; am 6/4/82, Register 82; am 7/30/99, Register 151; am 8/12/2018, Register 227))

Authority: AS 23.10.332 AS 23.10.350  
AS 23.10.360

**Editor's note:** Information on apprentices registered by the Office of Apprenticeship as specified in 8 AAC 05.040 is available from the United States Department of Labor, Office of Apprenticeship, 605 West 4<sup>th</sup> Avenue, Room G-30, Anchorage, Alaska 99501.

#### 8 AAC 05.045. Work permits.

(a) Except as provided in AS 23.10.332(c), and in (b) and (c) of this section, a minor under 17 years of age may not be employed until a work permit has been issued to the minor by the commissioner under this section. An applicant for a work permit under this subsection must submit

(1) a completed application on a form provided by the department;

(2) repealed 11/16/2012;

(3) proof of legal guardianship if the form is signed by a person other than the minor's parent.

(b) Under AS 23.10.332(c), instead of complying with (a) of this section an employer may submit a request, on a form provided by the department, to the commissioner for a written authorization of the commissioner for specific job duties to be performed by a minor who is at least 14 years of age, but under 17 years of age. The request must include

(1) a description of the job, including tools, equipment, or machinery to be used by the minor;

(2) a list of specific duties to be performed by the minor;

(3) a declaration of the age groups to be employed by the employer;

(4) a description of the hours during which a minor may be employed by the employer; and

(5) any other applicable information required by the commissioner to determine that the proposed job duties are permitted.

(c) If specific job duties are authorized by the commissioner under (b) of this section, the employer may hire a minor in the age group for which the duties have been authorized without the minor obtaining a work permit under (a) of this section if

(1) before the minor begins work, the employer obtains a written consent from the minor's parent or guardian on a form provided by the department; the written consent must include proof of legal guardianship if it is signed by a person other than the minor's parent;

(2) within seven calendar days after hiring the minor, the employer submits to the department a copy of the written consent of the parent or guardian; the employer must maintain a copy of the written consent at the physical location where the minor is employed; and

(3) the duties are not changed unless prior written authorization has been obtained from the commissioner.

(d) Under this section, proof of legal guardianship includes a

(1) general power of attorney appointing guardianship of the minor to an individual;

(2) power of attorney to an individual that

specifically includes authorization regarding employment of the minor;

(3) marriage license and proof that the spouse of the minor is at least 18 years of age;

(4) state court award of guardianship of the minor to an individual; court order making the minor a ward of the state.

(Eff. 11/23/2003, Register 168; am 11/16/2012, Register 204)

Authority: AS 23.10.332 AS 23.10.350  
AS 23.10.360

**Editor's note:** The forms referred to in 8 AAC 05.045 may be obtained by writing the Department of Labor and Workforce Development, Wage and Hour Administration, 1251 Muldoon Road, Suite 113, Anchorage, Alaska 99504. The forms are also available at the Juneau and Fairbanks regional Wage and Hour offices and at this address:  
<http://labor.alaska.gov/lss/forms/workpermit.pdf>.

**8 AAC 05.050. Occupations in or about Plants or Establishments Manufacturing or Storing Explosives or Articles Containing Explosive Components.**

(a) Occupations, including sales, in or about plants or establishments manufacturing, selling, or storing fireworks, explosives, ammunition, or articles containing explosive components are dangerous and prohibited to minors.

(b) Notwithstanding (a) of this section, minors may be employed on the premises of a retail establishment that sells ammunition or articles containing explosive components if the employment does not involve the handling, stocking, or sales of these items. (Eff. 10/27/73, Register 48; am 6/4/82, Register 82; am 7/30/99, Register 151)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.060. Motor vehicle driver and outside helper.**

(a) The occupations of motor vehicle driver and outside helper are dangerous and prohibited to minors. Minors may not, in the course of their employment, drive automobiles or trucks on public roadways, in or about any

(1) mine, including an open pit or quarry;

(2) place where logging or sawmill operations are located; or

(3) excavation.

(b) Notwithstanding (a) of this section, minors who are 17 years of age may drive automobiles or trucks on public roadways in the course of their employment only if the

(1) driving is restricted to daylight hours;

(2) minor holds a state license valid for the type of driving involved in the job performed and has no records of a violation of traffic laws, excluding equipment violations, at the time of hire or during the period of employment;

(3) minor has successfully completed a driver education course approved by the state under AS 28.17;

(4) automobile or truck is equipped with seat belts for the driver and passengers and the minor's employer has instructed the minor that the seat belts must be used by the driver and passengers when driving the automobile or truck in the course of employment;

(5) the minor's automobile or truck does not exceed 6,000 pounds of gross vehicle weight;

(6) driving does not involve

(A) the towing of vehicles;

(B) route deliveries or route sales;

(C) the transportation for hire of

(i) property, including goods, or

(ii) passengers;

(D) urgent, time-sensitive deliveries;

(E) except for transporting of employees of the employer, more than two trips away from the minor's primary place of employment in a single day for each of the following purposes of

(i) delivering property, including goods, of the minor's employer to a customer that are not urgent time-sensitive deliveries; or

(ii) transporting passengers, if the transportation is not for hire;

(F) transporting more than three passengers, including employees of the employer; or

(G) driving beyond a 30-mile radius from the minor's place of employment; and

(7) driving is only occasional and incidental to the minor's employment.

(c) In this section, unless the context requires otherwise

(1) "occasional and incidental" means no more than one-third of a minor's work time in a workday and no more than 20 percent of a minor's work time in a workweek;

(2) "traffic laws" means statutes, regulations, and municipal ordinances governing the driving or movement of vehicles. (Eff. 10/27/73, Register 48; am 7/30/99, Register 151)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.070. All occupations in connection with mining.**

All occupations in connection with mining are considered dangerous and prohibited to minors except the following:

(1) work in offices, in the warehouse or supply house, in the change house, in the laboratory, and in repair or maintenance shops not located underground;

(2) work in the operation and maintenance of living quarters;

(3) work outside the mine in surveying, in the repair and maintenance of roads, and in general clean-up about the mine property such as clearing brush and digging drainage ditches. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.080. Logging occupations.**

All occupations in logging are dangerous and prohibited to minors, except the following:

(1) work in offices or in repair or maintenance shops;

(2) work in the construction, operation, repair, or maintenance of living and administrative quarters of logging camps;

(3) work in timber cruising, surveying, or logging-engineering parties; work in the repair or maintenance of roads, railroads, or flumes; work in forest protection, such as clearing fire trails or roads, piling and burning trash, maintaining fire-fighting equipment, constructing and maintaining telephone lines, or acting as fire lookout or fire patrol. The provisions of this paragraph shall not apply to the felling or bucking of timber, the collecting or transplanting of logs, the operation of power-driven machinery, the handling or use of explosives, and work on trestles. (Eff. 10/27/73, Register 48; am 7/30/99, Register 151)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.090. Occupations in the operation of a sawmill, lath mill, shingle mill, or cooperage-stock mill.**

(a) All occupations in the operation of a sawmill, lath mill, shingle mill, or cooperage-stock mill are dangerous and prohibited to minors, except the following:

(1) work in office or in repair or maintenance shops;

(2) straightening, marking, or tallying lumber on the dry chain or the dry shop sorter;

(3) pulling lumber from the dry chain;

(4) cleanup in the lumberyard;

(5) piling, handling, or shipping of cooperage-stock in yards or storage sheds other than operating or assisting in the operation of power-driven equipment;

(6) clerical work in yards or shipping sheds, such as done by ordermen, tallymen, and shipping clerks;

(7) cleanup work outside shake and shingle mills, except when the mills are in operation;

(8) splitting shakes manually from pre-cut and split blocks with a froe and mallet, except inside the mill building or cover;

(9) packing shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, except inside the building or cover;

(10) manual loading of bundles of shingles or shakes into trucks or railroad cars, if the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury.

(b) The exceptions in this section do not apply to a portable sawmill the lumberyard of which is used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained. (Eff. 10/27/73, Register 48; am 7/30/99, Register 151)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.100. Occupations involved in the operation of power-driven woodworking machines.**

The following occupations involving the operations of power-driven woodworking machines are dangerous and prohibited to minors:

(1) the occupation of operating power-driven woodworking machines, including supervising or controlling the operation of these machines, feeding material into these machines, and helping the operator to feed material into these machines, but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding;

(2) the occupations of setting up, adjusting, repairing, oiling, or cleaning power-driven woodworking machines;

(3) the occupations of off-bearing from circular saws and from guillotine-action veneer clippers. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.110. Exposure to radioactive substances and to ionizing radiations.**

Occupations involving exposure to radioactive substances and to ionizing radiations are dangerous and prohibited to minors. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.115. Occupations involving exposure to bloodborne pathogens.**

Occupations in hospitals, clinics, dental, orthodontic, or other medical or dental offices that involve exposure to bloodborne pathogens are hazardous and prohibited to minors, unless the minor is

(1) at least 16 years of age and is enrolled in or has successfully completed a state-certified nursing training course or a health care career program in conjunction with a high school, either as part of the curriculum or through a school-to-work partnership between the school district and an employer or group of employers; or

(2) 17 years of age and is enrolled in or has successfully completed a health care career program approved by the commissioner that is offered by a training facility other than a school. (Eff. 7/30/99, Register 151; am 3/2/2008, Register 185; am 8/12/2018, Register 227)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.120. Occupations involved in the operation of power-driven hoisting apparatus.**

The following occupations involved in the operation of power-driven hoisting apparatus are dangerous and prohibited to minors:

(1) operating an elevator, crane, derricks, hoist, or high-lift truck, except operating an unattended automatic passenger elevator or an electric or air-operated hoist not exceeding one ton capacity;

(2) work which involves riding on a manlift or on

a freight elevator, except a freight elevator operated by an assigned operator;

(3) assisting in the operation of a crane, derrick, or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.130. Occupations involved in the operations of power-driven metal forming, punching and shearing machines.**

The following occupations are dangerous and prohibited to minors:

(1) the occupations of operator of or helper on the following power-driven metal forming, punching, and shearing machines

(A) all rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls, and hot or cold rolling mills;

(B) all pressing or punching machines, such as punch presses except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies, power presses, and plate punches;

(C) all bending machines, such as apron brakes and press brakes;

(D) all hammering machines, such as drop hammers and power hammers;

(E) all shearing machines, such as guillotine or squaring shears, alligator shears, or rotary shears; and

(F) in welding, brazing or the operation of abrasive wheels.

(2) the occupations of setting-up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.140. Occupations involving slaughtering, meat packing or processing, or rendering.**

Occupations in or about slaughtering and meat packing establishments, rendering plants, or wholesale, retail or service establishments are dangerous and prohibited to minors. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.150. Occupations involved in the operation of bakery machines.**

The following occupations involved in the operation of power-driven bakery machines are dangerous and prohibited to minors:

(1) the occupations of operating, assisting to operate, or setting-up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer, batter mixer, bread dividing, rounding, or molding machine, dough brake, dough sheeter; combination bread slicing and wrapping machine, or cake cutting band saw;

(2) the occupation of setting up or adjusting a

cookie or cracker machine. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.160. Occupations involved in the operation of paper products machines.**

The following occupations are dangerous and prohibited to minors:

(1) the occupations of operating or assisting to operate any of the following power-driven paper products machines:

(A) arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single-or-double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter;

(B) platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine;

(2) the occupations of setting-up, adjusting, repairing, oiling, or cleaning these machines including those which do not involve hand feeding. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.170. Occupations involved in the manufacture of brick, tile and kindred products.**

Occupations involved in the manufacture of clay construction products and of silica refractory products are dangerous and prohibited to minors. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.180. Occupations involved in the operations of circular saws, band saws, and guillotine shears.**

The following occupations are dangerous and prohibited to minors:

(1) the occupations of operator of or helper on the following power-driven fixed or portable machines except machines equipped with full automatic feed and ejection:

(A) circular saws;

(B) band saws;

(C) guillotine shears;

(2) the occupations of setting-up, adjusting, repairing, oiling, or cleaning circular saws, band saws, and guillotine shears. (Eff. 10/27/73, Register 48; am 6/4/82, Register 82)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.190. Occupations involved in wrecking, demolition, and shipbreaking operations.**

All occupations in wrecking, demolition, and shipbreaking operations are dangerous and prohibited to minors. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.200. Occupations in roofing operations.**

All occupations in roofing operations are dangerous and prohibited to minors. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.210. Occupations in excavation operations.**

The following occupations in excavation operations are dangerous and prohibited to minors: excavating, working in, or backfilling (refilling) trenches except

(A) manually excavating or manually backfilling trenches that do not exceed four feet in depth at any point; or

(B) working in trenches that do not exceed four feet in depth at any point;

(2) excavating for buildings or other structures or working in such excavations, except

(A) manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation; or

(B) working in an excavation not exceeding such depth; or

(C) working in an excavation where the side walls are shored or sloped to the angle of repose;

(3) working within tunnels prior to the completion of all driving, and shoring operations;

(4) working within shafts prior to the completion of all sinking and shoring operations. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.230. Occupations in connection with the installation, operation or maintenance of electrical equipment, outside erection and repair of electrical wires, and meter testing.**

Work in connection with the installation, operation or maintenance of electrical equipment energized at voltages exceeding 220, the outside erection and repair of any electrical wires including telegraph and telephone lines, and meter testing is dangerous and prohibited to minors. (Eff. 10/27/73, Register 48)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.260. Permissible occupations on fishing boats.**

Employment of minors between 16 and 17 years of age is permitted aboard fishing boats unless otherwise prohibited under this chapter or AS 23.10.350. (Eff. 10/27/73, Register 48; am 6/4/82, Register 82)

Authority: AS 23.10.350 AS 23.10.360

**8 AAC 05.265. Occupations involved in canvassing, peddling, door-to-door solicitation or sales.**

Occupations involved in canvassing, peddling, solicitation of door-to-door contributions, or acting as an "outside salesman" as defined in 8 AAC 15.910, from house to house are dangerous and prohibited to minors. (Eff. 5/13/89, Register 110)

Authority: AS 23.10.350 AS 23.10.360

**Article 3.  
Certificates of Age****Section**

270. Repealed

280. Certificates of age

**8 AAC 05.280. Certificates of age.**

Every person employing a minor shall obtain and have on file proof of the minor's age acceptable to the commissioner. Examples of acceptable proof of age include, but are not limited to, a copy of

(1) birth certificate;

(2) Bureau of Indian Affairs census record;

(3) passport;

(4) driver's license;

(5) authenticated school records;

(6) federal age certificate;

(7) baptismal certificate;

(8) military dependent identification;

(9) family court records;

(10) affidavit of physician.

(Eff. 10/27/73, Register 48; am 6/4/82, Register 82)

Authority: AS 23.10.350 AS 23.10.360

**Article 5.  
Entertainment Industry****Section**

300. Permits to work

305. Denial of permit

310. Revocation

315. Supervision by studio teachers

320. Hours of work

330. Working conditions

340. Prohibited practices

**8 AAC 05.300. Permits to work.**

(a) Except as provided in (d) of this section, an employer in the entertainment industry desiring to employ children must obtain a permit from the department to employ children. In order to obtain a permit, a parent or guardian and the employer must complete an application for each job on a form provided by the department. A talent or casting agency may obtain a provisional permit as the employer of record by submitting the information listed in (b) (1) - (5) of this section. Within 72 hours of sending the child to a specific job call, the talent or casting agency, as employer of record, shall submit to the department the information required in (b) (6) - (10) of this section. If the talent or casting agency has obtained a provisional permit and sent the child to a job, the agency is responsible for compliance with this section.

(b) An application to employ a child shall contain

(1) the legal and professional name of the child;

(2) the date of birth of the child;

(3) the written consent of the parent or guardian;

(4) the name and permanent address of the parent or guardian and the name of the parent, guardian,

or representative who will accompany the child to rehearsals and performances;

(5) if the child has a legal guardian, proof of guardianship;

(6) the nature, time, duration, dates, and number of rehearsals and performances involving the child, with identification of the location and nature of those rehearsals and performances;

(7) the maximum combined rehearsal and performance times per day and per week involving the child;

(8) the rate of pay the child will receive for performing;

(9) a detailed description of the child's role, including each activity to be performed; the description shall include an excerpt from the script that contains the child's dialogue and action; and

(10) any other information the department may request for clarification of items listed in (1) - (10) of this subsection.

(c) The application must be accompanied by adequate proof of age for the child as indicated in 8 AAC 05.280 and proof of workers' compensation coverage valid in this state as required by AS 23.30.075.

(d) An appearance of a child in any of the following activities for no compensation is not considered employment as a performer in the entertainment industry under AS 23.10.330:

(1) church, school, or community entertainment;

(2) entertainment for charity or for children for which no admission is charged; or

(3) radio or television broadcasting exhibition consisting of a single performance by the child lasting not more than one hour and for which no admission fee is charged; an exhibition includes an appearance in a concert or choral presentation or as a member of an audience, panel, or gallery.

(e) Under this section, proof of legal guardianship includes a

(1) general power of attorney appointing guardianship of the minor to an individual;

(2) power of attorney to an individual that specifically includes authorization regarding employment of the minor;

(3) marriage license and proof that the spouse of the minor is at least 18 years of age;

(4) state court award of guardianship of the minor to an individual;

(5) court order making the minor a ward of the state. (Eff. 7/2/95, Register 135; am 7/30/99, Register 151; am 11/23/2003, Register 168)

Authority: AS 23.10.330 AS 23.10.360

**Editor's note:** Permit application forms may be obtained by writing the Department of Labor and Workforce Development, Wage and Hour Administration, 1251 Muldoon Road, Suite 113, Anchorage, Alaska 99504. The forms are also available at the Juneau and Fairbanks Regional Wage and Hour

offices and at this address:

<http://labor.alaska.gov/lss/forms/workpermit.pdf>.

As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

#### **8 AAC 05.305. Denial of permit.**

The department will, in its discretion, deny a permit under 8 AAC 05.300 if the department finds that the denial serves the best interests of the health, development, education, or welfare of the child. The department will keep a record of denials of permits, including its findings supporting the denials. A denial under this section may be appealed in writing to the commissioner within 30 days of the date of issuance of the denial. (Eff. 7/2/95, Register 135)

Authority: AS 23.10.325 AS 23.10.330  
AS 23.10.360

#### **8 AAC 05.310. Revocation.**

No child may perform in the entertainment industry except as provided in law and the permit. No permit may be issued for the exhibition, rehearsal, or performance of a child that is harmful to the health, development, education, or welfare of the child. The department will, in its discretion, revoke a permit for violation of law or a term or condition specified in the permit, if that violation endangers the health, development, education, or welfare of the child. If a parent or guardian withdraws consent for the child to perform and informs the department of the withdrawal, the department will revoke the permit. Revocation of a permit will take effect immediately upon service in person or through the mail to the employer who requested the permit. A revocation of a permit issued under 8 AAC 05.300 may be appealed in writing to the commissioner within 30 days of the date of issuance of the revocation. (Eff. 7/2/95, Register 135)

Authority: AS 23.10.325 AS 23.10.330  
AS 23.10.360

#### **8 AAC 05.315. Supervision by studio teachers.**

(a) Except as provided in (f) of this section, as a condition of receiving a permit under 8 AAC 05.300, an employer must provide a studio teacher for a child from the age of birth to 16 years of age, and for a child from 16 to 18 years of age when required for the education of the child. Except as provided in (d) and (e) of this section, a studio teacher must possess an appropriate endorsement on a valid and current Type A Alaska teaching certificate to instruct the age level of the children in the teacher's care and exhibit a working knowledge of the child labor laws of this state. One studio teacher must supervise each group of 10 or fewer children, from the age of birth to 16 years of age, except that on Saturdays, Sundays, holidays, or during

school vacation periods, one studio teacher may supervise each group of 20 or fewer of those aged children.

(b) Notwithstanding (a) of this section, if babies between the ages of birth to six weeks are employed, one nurse and one studio teacher must be provided for each group of three or fewer babies. If infants from age six weeks to six months are employed, one nurse and one studio teacher must be provided for each group of 10 or fewer infants. One studio teacher who also possesses a license or certification as a registered nurse, advanced nurse practitioner, physician assistant, emergency medical technician, or mobile intensive care paramedic, or who meets the requirements of a primary community health aide as set out at AS 18.28.100(5), may fulfill both requirements.

(c) In addition to teaching, the studio teacher shall also have responsibility for the health, development, and welfare of children under 16 years of age while the children are at the place of employment in the entertainment industry. The studio teacher will ensure compliance with the law and the permit. The studio teacher may refuse to allow a child to work on a set or location and may remove the child from the set or location if, in the judgment of the studio teacher, conditions present a danger to the health, development, education, or welfare of the child.

(d) If the teacher does not hold a valid and current Type A Alaska teaching certificate, a studio teacher accompanying one or more non-resident children must satisfy the studio teacher requirements in the state of origin of the children and have a working knowledge of child labor laws of this state. If the state of origin of the children does not have studio teacher requirements, the studio teacher must have a valid and current teaching certificate from the state of origin of the children to instruct the age level of the child, and have a working knowledge of child labor laws in this state.

(e) If the commissioner finds that a studio teacher who meets the requirements of (a) of this section is not available in the geographic location of the child's employment in this state, the commissioner will, in the commissioner's discretion, waive the requirement of the studio teacher exhibiting a working knowledge of the child labor laws of this state so long as the child's health, development and welfare are not jeopardized and the studio teacher holds a valid and current Type A Alaska teaching certificate. A waiver granted under this section expires when the employment of the child ends or at the close of 90 calendar days from the date that the waiver was granted, whichever occurs first.

(f) A studio teacher is not required if the employment of a minor in the entertainment industry does not conflict with the schooling of the minor, the employment occurs in or near the minor's home, school, or from a fixed location used by the employer in the employer's regular course of business, and the employment does not pose recognized serious hazards to the minor, such as employment in

- (1) dinner shows;
- (2) cultural dance exhibitions;
- (3) theatrical productions; and
- (4) television, film, and photography productions

where the total time of the minor's employment is less than 24 hours.

(g) For the purposes of (f) of this section, to ensure that the employment of a minor in the entertainment industry will not conflict with the schooling of the minor, the department may require written authorization from school officials if the employment occurs during school hours. (Eff. 7/2/95, Register 135; am 7/30/99, Register 151; am 3/2/2008, Register 185; am 8/12/2018, Register 227)

Authority: AS 23.10.330 AS 23.10.360

### 8 AAC 05.320. Hours of work.

(a) A child under 18 years may not be permitted to work in the entertainment industry before 5 a.m. or after 10 p.m. on any day preceding a school day. A child under 18 years may not work later than 12:30 a.m. on any other day.

(b) If the consent of the commissioner is first obtained, a child between 8 and 18 years of age may be permitted to work as an actor or a performer after 10 p.m. but not later than midnight on a night preceding a school day if the performance begins before 10 p.m.

(c) The amount of time that a child is permitted at the place of employment in the entertainment industry within a 24-hour period is limited by age as follows:

(1) babies and infants from birth to six months are limited to two hours per day, with actual work time not to exceed 20 minutes per day;

(2) infants and children age from six months to two years are limited to four hours per day, with actual work time not to exceed two hours;

(3) children age from two years to six years are limited to six hours per day, with actual work time not to exceed three hours;

(4) children age from six years to nine years are limited to eight hours per day, with actual work time not to exceed four hours, except that when school is not in session, actual work time may be increased to six hours; when school is in session, an eight hour day must include at least three hours of schooling;

(5) children age from nine years to 16 years are limited to nine hours per day, with actual work time not to exceed five hours, except that when school is not in session, work time may be increased to seven hours; when school is in session, a nine-hour day must include at least three hours of schooling;

(6) children age from 16 years to 17 years are limited to 10 hours per day, with actual work time not to exceed six hours, except that when school is not in session, work time may be increased to eight hours; when school is in session, children age 16 through 17 years who are enrolled in school must receive at least three hours of schooling in a 10-hour day.

(d) The hours listed in (c)(1) - (c)(6) of this section

that a child may work at the place of employment do not include a meal period. The working day for the child may be extended by no more than one-half hour for a meal period.

(e) For the purposes of computing total time at the place of employment, travel time to and from a location will be included as time at the place of employment. The time spent in make-up or hairdressing with the assistance of studio personnel in the child's home is considered work time for the child. Twelve hours must elapse between the time the child is dismissed on one day and the time make-up or hairdressing begins on the following day.

(f) Twelve hours must elapse between the child's time of dismissal and time of call on the following day. If the child's regular school starts less than 12 hours after the child's dismissal time, the child must be schooled the following day at the employer's place of business.

(g) The commissioner or the commissioner's designee may alter or waive a provision of this section if the provision makes it impossible to legally employ the child. An employer may request, in writing, an alteration or a waiver from the commissioner or the commissioner's designee. These requests must provide specific information about the employer's needs and the circumstances involved and must substantiate that no alternatives are feasible. The commissioner or the commissioner's designee may issue an alteration or a waiver if it is demonstrated that the

- (1) employment will not be detrimental to the health, development, or welfare of the child;
- (2) child will be supervised adequately; and
- (3) education of the child will not be neglected.

(Eff. 7/2/95, Register 135; am 7/30/99, Register 151)

Authority: AS 23.10.325 AS 23.10.330  
AS 23.10.360

#### **8 AAC 05.330. Working conditions.**

(a) A parent or guardian of a child under 16 or the parent's or guardian's representative must accompany and remain with the child on the set or location. An employer must, at any time, allow parents or guardians or their representatives' access to the child.

(b) An employer must provide

- (1) a safe, secure, and suitable place for children to rest and play; and
- (2) suitable nursery facilities, if a child age 3 years or younger is employed on the set or location.

(c) A baby or infant under six months of age may not be exposed to lights of greater than 100 foot candlelight intensity for more than 30 seconds at a time.

(d) Transportation to the closest medical facility providing emergency services must be available at all times while children are present at the place of employment.

(e) On location, the employer shall provide the child with return transportation to the child's living quarters in an adequate vehicle promptly upon

completion of allowable work time. (Eff. 7/2/95, Register 135)

Authority: AS 23.10.330 AS 23.10.360

#### **8 AAC 05.340. Prohibited practices.**

A person may not employ or allow a child under 18 years of age to work in the entertainment industry in

- (1) a practice, exhibition, or situation that places the child in clear and present danger to the health, development, or welfare of the child; or
- (2) an illegal, an indecent, or a lewd exhibition or practice, including the following actual or simulated acts:

(A) acts described as unlawful exploitation of a minor under AS 11.41.455;

(B) sexual masochism or sadism. (Eff. 7/2/95, Register 135; am 7/30/99, Register 151; am 3/2/2008, Register 185)

Authority: AS 23.10.325 AS 23.10.330  
AS 23.10.360

#### **Sec. 11.41.455. Unlawful exploitation of a minor.**

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio recording, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child's genitals; or
- (7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio recording, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct.

(c) Unlawful exploitation of a minor is a

- (1) class B felony.
- (2) class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.

(d) In this section, "audio recording" means a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc. (§ 3 ch 166 SLA 1978; am § 1 ch 57 SLA 1983; am §§ 1

- 3 ch 161 SLA 1990; am § 8 ch 79 SLA 1992; am §§ 1, 2 ch 65 SLA 2000; am § 1 ch 131 SLA 2004)

**Article 10.  
General Provisions**

**Section 900. Definitions**

**8 AAC 05.900. Definitions.**

(a) In this chapter and in AS 23.10.325 - 23.10.370, unless the context requires otherwise,

(1) "commissioner" means the commissioner of labor and workforce development;

(2) "department" means the Department of Labor and Workforce Development;

(3) "division" means the labor standards and safety division of the Department of Labor and Workforce Development;

(4) "power-driven woodworking machines" means all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer;

(5) "sharpened tools" means knives and implements used for butchering, boning, gilling, filleting, and other meat and fish processing functions; and axes, machetes, scythes, brush hooks, or other implements determined by the commissioner, on a case-by-case basis, to be hazardous;

(6) "community entertainment" means a local performing arts group or association established to serve a certain locale that is staffed primarily by volunteers drawn from the people it serves;

(7) "entertainment industry" includes an organization or individual using the services of a child in motion pictures of any type, using any format, by any medium, including film, videotape, commercial documentary, theater, television, or videocassette; modeling; photography; recording; theatrical productions; publicity; rodeos; circuses; musical performances; and any other live or recorded performances or rehearsals where a child performs to entertain the public;

(8) "guardian" means an individual who, by testamentary or court appointment, has the legal responsibilities for the care and management of the person and the estate of the child during the child's minority;

(9) "nurse" means a registered nurse, advanced nurse practitioner, physician assistant, emergency medical technician, mobile intensive care paramedic, or primary community health aide;

(10) "parent" means biological parent, adoptive parent, or step parent;

(11) "outside helper" means an individual, other than a driver, whose work includes riding on a vehicle outside the cab of the vehicle for the purpose of assisting in transporting or delivering property, including goods.

(b) In 8 AAC 05.300 - 8 AAC 05.340 and in AS 23.10.330 and 23.10.360, unless the context otherwise requires, "child" means a natural person under the age of 18 who has not been emancipated by the court. (Eff. 4/23/77, Register 62; am 6/4/82, Register 82; am 7/2/95, Register 135; am 7/30/99, Register 151)

Authority: AS 23.05.060 AS 23.10.330  
AS 23.10.350 AS 23.10.360

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