

Byron Mallott
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520 465.5400 Fax
WWW.LTGOV.ALASKA.GOV




530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460 269.0263
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Micaela Fowler, Department of Commerce, Community and Economic Development

FROM: Scott Meriwether, Office of the Lieutenant Governor 
465.4081

DATE: November 17, 2016

RE: Filed Permanent Regulations: Alcoholic Beverage Control Board
Regulation re: management agreements (3 AAC 304.980(b))

Attorney General File:	JU2016200419
Regulation Filed:	November 16, 2016
Effective Date:	December 16, 2016
Print:	220, January 2017

cc with enclosures: Linda Miller, Department of Law
Dianne Blumer, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

The attached two pages of regulations, dealing with Management Agreements, is certified to be a correct copy of the regulation changes that the Alcoholic Beverage Control Board adopted at its July 20, 2016 meeting, under the authority of AS 04.06.090(a) and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Alcoholic Beverage Control Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

Date:

10/27/2016


Cynthia A. Franklin, Director

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on

11/16/, 2016 at 1:42 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Byron Mallott, Lieutenant Governor

Effective:

December 16, 2016

Register:

220, January 2017

~~3 AAC 304.980. Prohibited Financial Interest~~~~3 AAC 304.980 Article 8 "Prohibited Financial Interest; representative or owner" is~~~~amended to add new numbering (a) and (b) and a new section (b) as follows, and to amend~~~~the title of the section to "Prohibited Financial Interest";~~

Publiser: To reflect the addition of new 3 AAC 304.980 (b), please designate the existing text of 3 AAC 304.980 as "(a)".

The section heading of 3 AAC 304.980 is changed to read:

(((ex. 0.5" tab)))

lowercase
3 AAC 304.980 Prohibited Financial Interest

representative or owner; management agreements.

~~(a) Representative or owner [insert text of current regulation here]~~

3 AAC 304.980 is amended by adding a new subsection to read:

~~(b) Management agreements~~

(b) (1) When a liquor licensee *may* enters into a management agreement with a person who

does not have an ownership interest in the liquor license, for the purpose of giving

that person responsibility for the day-to-day operations of a liquor license, *A management*

under this section agreement must be in writing and signed by a licensee whose name is required to

be provided with an application for a new license under AS 04.11.260, and by the

non-licensee agreeing to manage the operation of the business.

(2) A copy of the signed, written management agreement must be filed with the board.

The licensee who signs the to be placed in the license file. When a management agreement *must notify the* has expired or

board of any change to the management agreement, including expiration, *been terminated, or is amended, or a new agreement is entered into, notice of the*

termination, or amendment, not later than

after change must be filed with the board to be placed in the license file within 10 days

management of the change to the agreement.

shall review a management agreement

(3) A management agreement must be reviewed by the director of the board for

compliance with this section, and any errors or omissions must be corrected by

not later than the licensee *after* within 10 days of receipt of notification of the error or omission. *The director may declare void a management*

(4) A management agreement must comply with AS 04.11.450(a), 04.21.030, and 3

AS that does not comply with this section.

as changing incident

AAC 302.205 and contain language that indicates both parties to the agreement have read and understand those statutes and regulations and agree to comply with them.

~~(5) A management agreement may not contain language that is contrary to any of the statutes or regulations set forth in section (4) above.~~

(6) A management agreement may not create a mechanism for a manager who is not a licensee to derive profit from the sale of alcohol in violation of AS 04.11.450, including ~~but not limited to~~ an agreement for a manager to keep all profit above a certain amount of income when ~~such~~ ^{that} profit may be derived from the sale of alcoholic beverages. (Eff. 7/25/2012, Register 203; am 12/16/2016,

Register 220)

Authority: AS 04.11.090 AS 04.11.150 AS 04.11.450

MEMORANDUM


State of Alaska
Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: November 15, 2016

File No.: JU2016200419

Tel. No.: 465-3600

From: Steven C. Weaver 
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Regulation re: management
agreements (3 AAC 304.980(b))

We have reviewed the attached regulations from the Alcoholic Beverage Control Board against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated November 14, 2016 from the regulations attorney. The regulations establish procedures and requirements regarding a management agreement between a liquor licensee and a person who does not have an ownership interest in the liquor license, for the purposes of giving that person responsibility for the day-to-day operations of the liquor license.

We find no legal problems with the regulations. Though the attached affidavit of agency record refers to the Alcohol and Marijuana Control Office keeping the record of use or rejection of public comments, that office serves as support staff to the Alcoholic Beverage Control Board: the agency that considers public comments and formally keeps the record of public comments. The certification order indicates that the board considered public comments for this project. The informal reference in the affidavit to the board's support staff is not a substantive violation of the Administrative Procedure Act. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The May 17, 2016 public notice and the October 27, 2016 certification order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Hon. Byron Mallott, Lieutenant Governor
Our file: JU2016200419

November 15, 2016
Page 2

We have made some technical corrections to the regulations in accordance with AS 44.62.125, as shown on the attached copy.

SCW

cc w/enc: (via email)

Cynthia Franklin, Executive Director
Alcoholic Beverage Control Board and Marijuana Control Board

Micaela Fowler, Regulations Contact
Department of Commerce, Community, and Economic Development

Sarah Oates
Alcohol and Marijuana Control Office
Department of Commerce, Community, and Economic Development

Harriet Dinegar Milks, Assistant Attorney General
Commercial and Fair Business Section

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: November 14, 2016

FILE NO.: JU2016200419

TELEPHONE NO.: 465-3600

FROM: Susan R. Pollard *SRPollard*
Chief Assistant Attorney General
& Regulations Attorney
Legislation/Regulations Section

SUBJECT: Specific delegation of authority
regarding regulations review on
Alcoholic Beverage Control
Board regulations re: manage-
ment agreements (3 AAC
304.980)

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/enc: Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

Steven C. Weaver
Sr. Assistant Attorney General &
Assistant Regulations Attorney
Legislation/Regulations Section—Juneau

AFFIDAVIT OF BOARD ACTION

I, Cynthia Franklin, Director for the Alcoholic Beverage Control Board, being duly sworn, state the following:

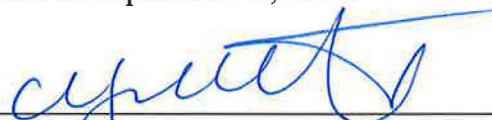
The attached motion, reflected in the attached board minutes of the Alcoholic Beverage Control Board dealing with the Management Agreement requirements in 3 AAC 304.980 was passed by the Alcoholic Beverage Control Board during its July 20, 2016 regular meeting.

Date: September 21, 2016



Cynthia Franklin, Director

Subscribed and sworn to before me at Anchorage, Alaska on September 21, 2016.



Notary Public in and for the State of Alaska





**Alcoholic Beverage Control Board
Meeting Minutes
July 20, 2016
Fourth Judicial District
Department of Environmental Conservation Building
610 University Drive, Conference Room B & C
Fairbanks, Alaska**

***Meeting minutes are 37 minutes fast (actual start time is 9:15am)**

Board Members Present:

Bob Klein, Chair, Industry Member
Ellen Ganley, Vice Chair, Public Member
Marvin Yoder, Public Member
Bobby Evans, Rural Member (telephonic)
Thomas Manning, Industry Member

Staff Members Present:

Cynthia Franklin, Director
Sarah Oates, Program Coordinator

Legal Counsel Present:

Harriet Milks, Assistant Attorney General (telephonic)

Call to Order

9:52:46 AM

● **DIRECTOR BRIEFING**

A. Director's Report

9:53:54 AM **TAB 1**

Bob Klein thanks the Administration for waiving the travel restriction for this board meeting.

10:00:37 AM

Cynthia Franklin specifically thanks Commissioner Hladick for acknowledging the importance of meeting in-person and supporting the travel for this meeting.

Bob Klein thanks John Calder for his work.

B. Common Carrier

3:36:01 PM

1. Draft **TAB 44**

2. Public Comments Received **TAB 45**

Cynthia Franklin informs the board that original draft language is missing language that addresses the issue of minors on the premises of common carriers.

Dale Fox, Alaska CHARR, reiterates the written public comment that he had submitted regarding the draft.

The board members discuss the public comments and voice concerns about the verbiage used and the staterooms.

Ellen Ganley motions to move the common carrier regulation to the October, 2016 meeting and ask staff if the language today can use some tweaking based on the public comments received and if the staff can add language that addresses the minors on premises issue.

Marvin Yoder seconds the motion.

Motion carries unanimously.

C. Distillery

3:51:26 PM

1. Draft **TAB 46**

2. Public Comments Received **TAB 47**

Bob Klein states, for the record, that he played no part in this drafting, and that this came forward due to concerns of the enforcement staff.

Bob Klein hands the gavel to Ellen Ganley and recuses himself.

Cynthia Franklin recommends adding language, as seen in her memo, to the draft regulation. The board considers the public comments received.

Marvin Yoder motions to adopt the regulation with the added language in the memo, which would add a new subsection (b) between the two existing subsections that reads *"At least 80% of the final product offered for sale by the distillery must be distilled on the licensed premises in Alaska"*.

Tom Manning seconds the motion.

Motion carries unanimously (4-0, Bob Klein recused).

Ellen Ganley passes the gavel back to Bob Klein.

4:01:16 PM

D. Management Agreements

4:03:23 PM

1. Draft **TAB 48**

2. Public Comments Received **TAB 49**

The board considers the public comments received and discusses the draft language.

Marvin Yoder motions to adopt the regulation with the amendment that 3 AAC 304.980(b)(1) to replace *"the licensee, a majority shareholder of a corporate licensee, or a majority member of a LLC licensee"* with *"a licensee whose name is required to be provided with an application for a new license under AS 04.11.260"*.

Ellen Ganley seconds the motion.

Motion carries unanimously.

Tom Manning motions to open a regulation project to clarify [4:22:59 PM](#)
some of the parameters around AS 04.11.400(d) tourism licenses.

Ellen Ganley seconds the motion.

Motion carries unanimously.

E. Alternating Premises

[4:25:28 PM](#)

1. Draft

TAB 50

2. Public Comments Received

TAB 51

The board discusses public comments received and discusses the draft language.

Ellen Ganley motions to adopt the regulation.

Tom Manning seconds the motion.

Motion carries unanimously.

F. Restaurant Designation Permit

[4:35:41 PM](#)

1. Draft (no public comments received)

TAB 52

Cynthia Franklin informs the board that no public comments were received.

Marvin Yoder motions to adopt the regulation.

Tom Manning seconds the motion.

Motion carries unanimously.

● **NOTICES OF VIOLATION**

[4:37:46 PM](#)

A. Notices of Violation Issued and Licensee Responses

TAB 53

No Action

● **NEXT ABC BOARD MEETING**

[4:38:11 PM](#)

Wednesday, October 26, 2016 in Nome.

● **ADJOURN**

[4:41:06 PM](#)

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Cynthia A. Franklin, Director of the Alcohol and Marijuana Control Office, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 3 AAC 304.980 has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Labor and Commerce Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: _____

9/21/16

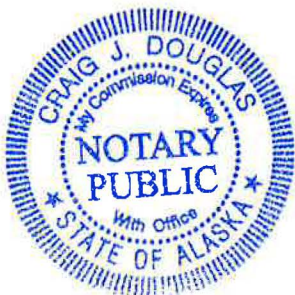


Cynthia A. Franklin, Director

Subscribed and sworn to before me at Anchorage, Alaska on 9.21.16.



Notary Public in and for the State of Alaska



AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Cynthia A. Franklin, Director for the Alcohol and Marijuana Control Office, being duly sworn, state the following:

In compliance with AS 44.62.215, the Alcohol and Marijuana Control Office has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Alcohol and Marijuana Control Office regulation on Management Agreement requirements.

Date: October 27, 2016



Cynthia A. Franklin, Director

Subscribed and sworn to before me at Anchorage, Alaska on October 27, 2016



Notary Public in and for the State of Alaska



NOTICE OF PROPOSED REGULATIONS
REGARDING MANAGEMENT AGREEMENTS AND PROHIBITED FINANCIAL
INTEREST
ALCOHOLIC BEVERAGE CONTROL BOARD

The Alcoholic Beverage Control Board proposes to adopt regulations to amend 3 AAC 304.980. These proposed regulations relate to management agreements and prohibited financial interest.

The Alcoholic Beverage Control Board proposes to adopt regulations in Title 3 of the Alaska Administrative Code, dealing with management agreements and prohibited financial interest.

3 AAC 304.980 --Prohibited financial interest; representative or owner regulations are proposed as follows:

Rules creating requirements for management agreements to be in writing, rules regarding notice to the board of management agreements and any changes to management agreements, rules regarding director review of management agreements and rules regarding prohibited financial interests as related to management agreements.

You may comment on the proposed regulations, including the potential costs to private persons of complying with the proposed regulations, by submitting written comments to John Calder, Alcoholic Beverage Control Board at 550 W. 7th Ave, Suite 1600, Anchorage, AK 99501. Additionally, the Alcoholic Beverage Control Board will accept comments by electronic mail at john.calder@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the "comment" link. Please indicate the article and section number to which each comment refers, if applicable. **Please indicate in the subject line that you are commenting on "Management Agreements". The comments must be received no later than 4:30 p.m. on June 18, 2016.**

You may submit written questions relevant to the proposed regulations to John Calder by email and physical address. Please do not submit questions through the Alaska Online Public Notice System. The questions must be received at least 10 days before the end of the public comment period, by June 8, 2016 at 4:30 p.m. The Alcoholic Beverage Control Board will aggregate its response to substantially similar questions and make the questions and responses available on the Alcoholic Beverage Control Board website. The Alcoholic Beverage Control Board may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact John Calder at (907) 269-0350 no later than June 8, 2016 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulations is available through the electronic link to the complete text on the Alaska Online Public Notice System, on the Alcohol & Marijuana Control Office website at <https://www.commerce.alaska.gov/web/amco/> and by contacting John Calder at 550 W. 7th Ste 1600, Anchorage, AK 99501.

After the public comment period ends, the Alcoholic Beverage Control Board will either adopt the

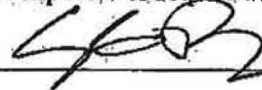
proposed regulations or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

Statutory Authority: AS 04.06.090, AS 04.06.100, AS 04.11.450

Statutes Being Implemented, Interpreted, or Made Specific: AS 04.11.450

Fiscal Information: The proposed regulations are not expected to require an increased appropriation.

DATE: May 16, 2016

A handwritten signature in black ink, appearing to read 'C. Franklin', is written over a horizontal line.

Cynthia A. Franklin, Director
Alcoholic Beverage Control Board

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alcoholic Beverage Control Board
2. General subject of regulation: Management Agreements and Prohibited Financial Interest
3. Citation of regulation (may be grouped): 3 AAC 304.980
4. Department of Law file number, if any: JU2016200419

5. Reason for the proposed action:
☐ Compliance with federal law or action (identify): _____
☐ Compliance with new or changed state statute
☐ Compliance with Federal or state court decision (identify): _____
☒ Development of program standards
☐ Other (identify): _____

6. Appropriation/Allocation: _____

7. Estimated annual costs in the aggregate to comply with the proposed action to:
Private Persons: \$0
Other State Agencies: \$0
Municipalities: \$0

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>16</u>	Subsequent Years
Operating Cost	<u>\$ 0</u>	<u>\$ 0</u>
Capital Cost	<u>\$ 0</u>	<u>\$ 0</u>
1002 Federal receipts	<u>\$ 0</u>	<u>\$ 0</u>
1003 General fund match	<u>\$ 0</u>	<u>\$ 0</u>
1004 General fund	<u>\$ 0</u>	<u>\$ 0</u>
1005 General fund/ program	<u>\$ 0</u>	<u>\$ 0</u>
1037 General fund/ mental health	<u>\$ 0</u>	<u>\$ 0</u>
Other	<u>\$ 0</u>	<u>\$ 0</u>

9. The name of the contact person for the regulations:
Name: Cynthia A. Franklin
Title: Director, Marijuana Control Board

Address: 550 W. 7th Avenue, Suite 1600
Anchorage, AK 99501

Telephone: (907)269-0350
E-mail address Cynthia.franklin@alaska.gov

10. The origin of the proposed action:

- ☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify) _____

11. Date: 05/16/2016

Prepared by: 
[signature]

Name (printed): Cynthia A. Franklin
Title (printed): Director, Marijuana Control Board
Telephone: (907)269-0350

270221
0001386321
\$403.40

AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Kayla Lavea
being first duly sworn on oath deposes and
says that he/she is a representative of the
Alaska Dispatch News, a daily newspaper.
That said newspaper has been approved
by the Third Judicial Court, Anchorage,
Alaska, and it now and has been published
in the English language continually as a
daily newspaper in Anchorage, Alaska, and
it is now and during all said time was
printed in an office maintained at the
aforesaid place of publication of said
newspaper. That the annexed is a copy of
an advertisement as it was published in
regular issues (and not in supplemental
form) of said newspaper on

May 17, 2016

and that such newspaper was regularly
distributed to its subscribers during all of
said period. That the full amount of the fee
charged for the foregoing publication is not
in excess of the rate charged private
individuals.

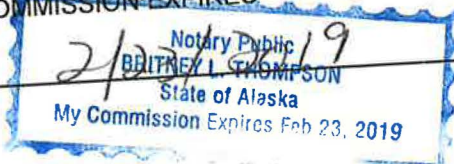
Signed

Kayla Lavea

Subscribed and sworn to before me
this 17th day of May, 2016

Britney Thompson

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES



NOTICE OF PROPOSED REGULATIONS REGARDING MANAGEMENT AGREEMENTS AND PROHIBITED FINANCIAL INTEREST ALCOHOLIC BEVERAGE CONTROL BOARD

The Alcoholic Beverage Control Board proposes to adopt regulations to amend 3 AAC 304.980. These proposed regulations relate to management agreements and prohibited financial interest.

The Alcoholic Beverage Control Board proposes to adopt regulations in Title 3 of the Alaska Administrative Code, dealing with management agreements and prohibited financial interest.

3 AAC 304.980 -Prohibited financial interest; representative or owner regulations are proposed as follows:

Rules creating requirements for management agreements to be in writing, rules regarding notice to the board of management agreements and any changes to management agreements, rules regarding director review of management agreements and rules regarding prohibited financial interests as related to management agreements.

You may comment on the proposed regulations, including the potential costs to private persons of complying with the proposed regulations, by submitting written comments to John Calder, Alcoholic Beverage Control Board at 550 W. 7th Ave, Suite 1600, Anchorage, AK 99501. Additionally, the Alcoholic Beverage Control Board will accept comments by electronic mail at john.calder@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the "comment" link. Please indicate the article and section number to which each comment refers, if applicable. **Please indicate in the subject line that you are commenting on "Management Agreements".** The comments must be received no later than 4:30 p.m. on June 18, 2016.

You may submit written questions relevant to the proposed regulations to John Calder by email and physical address. Please do not submit questions through the Alaska Online Public Notice System. The questions must be received at least 10 days before the end of the public comment period, by June 8, 2016 at 4:30 p.m. The Alcoholic Beverage Control Board will aggregate its response to substantially similar questions and make the questions and responses available on the Alcoholic Beverage Control Board website. The Alcoholic Beverage Control Board may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact John Calder at (907) 269-0350 no later than June 8, 2016 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulations is available through the electronic link to the complete text on the Alaska Online Public Notice System, on the Alcohol & Marijuana Control Office website at <https://www.commerce.alaska.gov/web/amco/> and by contacting John Calder at 550 W. 7th Ste 1600, Anchorage, AK 99501.

After the public comment period ends, the Alcoholic Beverage Control Board will either adopt the proposed regulations or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.**

Statutory Authority: AS 04.06.090, AS 04.06.100, AS 04.11.450

Statutes Being Implemented, Interpreted, or Made Specific:
AS 04.11.450

Fiscal Information: The proposed regulations are not expected to require an increased appropriation.

DATE: May 16, 2016

Cynthia A. Franklin, Director
Alcoholic Beverage Control Board

Published: May 17, 2016