

Kevin Meyer  
Lieutenant Governor  
State Capitol  
Juneau, Alaska 99811  
907.465.3520  
WWW.LTGOV.ALASKA.GOV



530 West 7<sup>th</sup> Ave, Suite 1700  
Anchorage, Alaska 99501  
907.269.7460  
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**M E M O R A N D U M**

**TO:** Debbie Morgan  
Department of Commerce, Community and Economic Development

**FROM:** April Simpson, Office of the Lieutenant Governor  
465.4081

A handwritten signature in blue ink, appearing to read "April Simpson".

**DATE:** May 23, 2019

**RE:** Filed Permanent Regulations: Alcohol Beverage Control Board

Alcoholic Beverage Control Board regulations re: transfer of a security interest in a license (3 AAC 304.106; 3 AAC 304.107)

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|                        |                |
|------------------------|----------------|
| Attorney General File: | 2018200415     |
| Regulation Filed:      | 5/23/2019      |
| Effective Date:        | 6/22/2019      |
| Print:                 | 230, July 2019 |

cc with enclosures: Linda Miller, Department of Law  
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO  
REGULATIONS OF ALCOHOLIC BEVERAGE CONTROL BOARD

The attached 3 pages of regulations, dealing with security interest transfers, are certified to be a correct copy of the regulation changes that the Alcoholic Beverage Control Board adopted at its February 20, 2019, meeting, under the authority of AS 04.06.100 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:

3/14/19

Erika McConnell

Erika McConnell, Director

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

MAY 23, 2019 at 11:48 Am., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Kevin Meyer

Lieutenant Governor

Effective:

June 22, 2019.

Register:

230, July 2019

3 AAC 304 is amended by adding a new section to read:

**3 AAC 304.106. Security interest transfers.** (a) A licensee wishing to establish a security interest in a license being transferred to a new owner shall submit the following documents with the transfer application:

(1) a leasehold conveyance or contract of sale of real property made in the course of the license transfer;

(2) a list of personal property being conveyed from the transferor to the transferee, along with the value of the property and a draft UCC financing statement in which a security interest in the license is claimed under AS 04.11.670 and ~~AS~~ 04.11.360(4)(B), containing the following statement: "Under the terms of AS 04.11.670, AS 04.11.360(4)(B), and 3 AAC 304.106, the transferor/lessor retains a security interest in the liquor license that is the subject of this conveyance, and may, as a result, be able to obtain a retransfer of the license without satisfaction of other creditors."; the value <sup>(of the personal property must)</sup> shall be sufficient for the board to determine that the <sup>(except as provided under)</sup> license is not being used as collateral ~~as prohibited by~~ AS 04.11.670;

(3) all transaction and security documents relating to the lease or sale of real property <sup>and</sup> ~~and/or~~ sale of personal property in conjunction with the license transfer.

(b) The transferor must include in the published notice of transfer required by AS 04.11.310(a), the following statement: "Under the terms of AS 04.11.360(4)(B), AS 04.11.670, and 3 AAC 304.106, the transferor/lessor retains a security interest in the liquor license that is the subject of this conveyance, and may, as a result, be able to obtain a retransfer of the license without satisfaction of other creditors."

(c) After board approval, a copy of the recorded leasehold conveyance or contract of sale of real property, and the recorded UCC financing statement must be provided to the director (transferred license may be operated.) before the ~~transfer will be effectuated,~~

(d) A security interest in a license may not be established when the license transfer contemplates a transfer of less than 100% (percent) of the interest in the license.

(e) A license with an established security interest may not be transferred to a new owner unless all obligations under the security interest are satisfied before ~~prior to~~ or as part of the transfer, except that the board may make an exception in the case of the death of a licensee. (Eff.

6 / 22 / 2019, Register 230)

|                   |              |              |              |
|-------------------|--------------|--------------|--------------|
| <b>Authority:</b> | AS 04.06.090 | AS 04.11.260 | AS 04.11.290 |
|                   | AS 04.06.100 | AS 04.11.270 | AS 04.11.450 |
|                   | AS 04.11.050 | AS 04.11.280 | AS 04.11.670 |

3 AAC 304.107 is repealed and readopted to read:

**3 AAC 304.107. Compelled transfer of license; security interest.** (a) If the former licensee seeks to compel the transfer of a license because of a promise under AS 04.11.670 given as collateral by the current licensee to the former licensee in the course of an earlier transfer of the license, followed by a default in payment in connection with property conveyed or a lease made in the course of the previous transfer, the board will deny the transfer if creditors are not satisfied under AS 04.11.360(4)(A) unless it clearly appears that ~~it~~

(1) the security interest was established in the previous transfer in accordance with 3 AAC 304.106; ~~and~~

(2) the former licensee operated the license that was transferred for at least 240 hours and

(3) the term of a security interest in a license to secure payment for personal property did not exceed 10 years.

(b) The director may identify, in board meeting agendas, those applications for transfer of ownership that are secured as described in this section.

(c) After the foreclosure of real property that secures payment of a debt also secured by a promise under AS 04.11.670, a license may not be retransferred without satisfaction of creditors under AS 04.11.360(4)(A) unless

(1) the board approved an application for retransfer before the foreclosure; or

(2) the amount owed to the former licensee for the real property at the time of foreclosure exceeds the fair market value of the property; the former licensee carries the burden of proof to show that the fair market value is less than the amount owed. (Eff. 7/30/89, Register 111; am 5/1/94, Register 130; am 6 / 22 / 2019, Register 230 )

|                   |              |              |              |
|-------------------|--------------|--------------|--------------|
| <b>Authority:</b> | AS 04.06.090 | AS 04.11.260 | AS 04.11.290 |
|                   | AS 04.06.100 | AS 04.11.270 | AS 04.11.450 |
|                   | AS 04.11.050 | AS 04.11.280 | AS 04.11.670 |

# MEMORANDUM

## State of Alaska Department of Law

**To:** The Honorable Kevin Meyer  
Lieutenant Governor

**Date:** May 20, 2019

**File No.:** 2018200415

**Thru:** Susan R. Pollard *SRP*  
Chief Assistant Attorney General  
and Regulations Attorney  
Legislation and Regulations Section

**Tel. No.:** 465-3600

**From:** Steven C. Weaver *SCW*  
Senior Assistant Attorney General  
and Assistant Regulations Attorney  
Legislation and Regulations Section

**Re:** Alcoholic Beverage Control Board  
regulations re: transfer of a security  
interest in a license (3 AAC 304.106;  
3 AAC 304.107)

The Department of Law has reviewed the attached regulations of the Alcoholic Beverage Control Board against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. 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 regulations were adopted by the Alcoholic Beverage Control Board after the close of the public comment period. Interpreting the limited "carve-out" in AS 04.11.670 to the prohibition on using a liquor license as collateral, the updated regulations express more plainly what a licensee must do to establish a security interest in a liquor license that the licensee intends to transfer with the property, and express what a licensee must do to get the secured license back if the transferee defaults.

The January 3, 2019 public notice and the March 14, 2019 certification of adoption 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.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SCW

cc: Honorable Julie Anderson, Commissioner  
Department of Commerce, Community, and Economic Development

Erika McConnell, Director  
Alcoholic Beverage Control Board

Debbie Morgan, Regulations Contact  
Department of Commerce, Community, and Economic Development

Fred Parady, Special Assistant  
Department of Commerce, Community, and Economic Development

Jedediah Smith  
Alcohol and Marijuana Control Office  
Department of Commerce, Community, and Economic Development

Harriet Dinegar-Milks  
Senior Assistant Attorney General  
Commercial, Fair Business, and Child Support Section

NOTICE OF PROPOSED CHANGES ON SECURITY INTEREST TRANSFERS AND  
COMPELLED TRANSFER OF A LICENSE IN THE REGULATIONS OF THE ALCOHOLIC  
BEVERAGE CONTROL BOARD

The State of Alaska Alcoholic Beverage Control Board proposes to adopt regulation changes in 3 AAC 304 of the Alaska Administrative Code, dealing with security interest transfers and compelled transfers of alcohol licenses, including the following:

3 AAC 304.106 is new language on required documentation for security interest transfers of alcohol licenses.

3 AAC 304.107 is proposed to clarify requirements for compelled transfers of alcohol licenses with security interests.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to the Alcohol and Marijuana Control Office at 550 West 7<sup>th</sup> Avenue, Suite 1600, Anchorage, AK 99501. Additionally, the Alcoholic Beverage Control Board will accept comments by electronic mail at [amco.regs@alaska.gov](mailto:amco.regs@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. The comments must be received not later than 4:30 pm on February 8, 2019.

You may submit written questions relevant to the proposed action to Alcoholic Beverage Control Board by email at [amco.regs@alaska.gov](mailto:amco.regs@alaska.gov) or at 550 West 7<sup>th</sup> Avenue, Suite 1600, Anchorage, AK 99501. The questions must be received at least 10 days before the end of the public comment period. The Alcoholic Beverage Control Board will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and AMCO Website.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact the Alcohol and Marijuana Control Office at [amco.regs@alaska.gov](mailto:amco.regs@alaska.gov) or call (907) 269-0350 not later than January 28, 2019, to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting the Alcohol and Marijuana Control Office at (907) 269-0350 or [amco.regs@alaska.gov](mailto:amco.regs@alaska.gov).

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



**Statutory authority:** AS 04.06.090; AS 04.11.260; AS 04.11.290; AS 04.06.100; AS 04.11.270; AS 04.11.450; AS 04.11.050; AS 04.11.280; AS 04.11.670

**Statutes being implemented, interpreted, or made specific:** AS 04.11.360; AS 04.16.220;

**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

Date: December 31, 2018



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Erika McConnell, Director  
Alaska Alcohol and Marijuana Control Office

ADDITIONAL REGULATION NOTICE INFORMATION  
(AS 44.62.190(d))

1. Adopting agency: Alcoholic Beverage Control Board
2. General subject of regulation: Security Interest Transfers
3. Citation of regulation (may be grouped): 3 AAC 304.106; 3 AAC 304.107
4. Department of Law file number, if any: JU2018200415

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): \_\_\_\_\_  
(x) Development of program standards  
( ) Other (identify): \_\_\_\_\_

6. Appropriation/Allocation: \_\_\_\_\_

7. Estimated annual cost to comply with the proposed action to:

A private person: \$0 \_\_\_\_\_  
Another state agency: \$0 \_\_\_\_\_  
A municipality: \$0 \_\_\_\_\_

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

|                               | Initial Year<br>FY <u>18</u> | Subsequent<br>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/<br>program | \$ <u>0</u>                  | \$ <u>0</u>         |
| Other (identify)              | \$ <u>0</u>                  | \$ <u>0</u>         |

9. The name of the contact person for the regulation:

Name: Jedediah Smith  
Title: Local Government Specialist  
Address: 550 West 7<sup>th</sup> Ave, Suite 1600 Anchorage, AK 99501  
Telephone: (907) 269-0350  
E-mail address: amco.regs@alaska.gov

10. The origin of the proposed action:

☐ Staff of state agency  
☐ Federal government  
☐ General public  
☐ Petition for regulation change  
☒ Other (identify): Alcoholic Beverage Control Board

11. Date: December 31, 2018

Prepared by: 

Name (printed): Jedediah Smith  
Title (printed): Local Government Specialist  
Telephone: (907) 269-0350

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION  
AND FURNISHING OF ADDITIONAL INFORMATION

I, Erika McConnell, Director of the Alcoholic Beverage Control Board, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 3 AAC 304.106-107 has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (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).

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 (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 3/14/19

Erika McConnell  
Erika McConnell, Director

Subscribed and sworn to before me at Anchorage, Alaska, on 3/14/19.



[Signature]  
Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Erika McConnell, Director of the Alcoholic Beverage Control Board, being duly sworn, state the following:

In compliance with AS 44.62.215, the Alcoholic Beverage Control Board 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 Alcoholic Beverage Control Board regulation on security interest transfers.

Date: 3/14/19

Erika McConnell

Erika McConnell, Director  
Alcoholic Beverage Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 3/14/19.  
(date)



[Signature]  
Notary Public in and for the State of Alaska

# ANCHORAGE DAILY NEWS

## AFFIDAVIT OF PUBLICATION

Account #: 270221

ST OF AK/ALCOHOL AND MARIJUANA  
CONTROL BOARD  
550 W 7TH AVE #1600  
ANCHORAGE AK 99501

Order#

0001432673

Cost

\$353.58

Product

ADN-Anchorage Daily News

Placement

0300

Position

0301

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

Sarah Jennett

being first duly sworn on oath deposes and says that he/she is a representative of the Anchorage Daily 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

January 03, 2019

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

Sarah Jennett

Subscribed and sworn to before me  
this 3rd day of January, 2019

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

MY COMMISSION EXPIRES

2/23/2019

Notary Public  
BRITNEY L. THOMPSON  
State of Alaska

My Commission Expires Feb 23, 2019

### NOTICE OF PROPOSED CHANGES ON SECURITY INTEREST TRANSFERS AND COMPELLED TRANSFER OF A LICENSE IN THE REGULATIONS OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

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Statutory authority: AS 04.06.090; AS 04.11.260; AS 04.11.290; AS 04.06.100; AS 04.11.270; AS 04.11.450; AS 04.11.050; AS 04.11.280; AS 04.11.670

Statutes being implemented, interpreted, or made specific: AS 04.11.360; AS 04.16.220;

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: December 31, 2018

McConnell, Director

AFFIDAVIT OF BOARD ACTION

I, Erika McConnell, Director of the Alcoholic Beverage Control Board, being duly sworn, state the following:

The attached motion dealing with security interest transfers was passed by the Alcoholic Beverage Control Board during its February 20, 2019 meeting.

Date: 3/14/19

Erika McConnell

Erika McConnell, Director  
Alcoholic Beverage Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 3/14/19.  
(date)



[Signature]  
Notary Public in and for the State of Alaska





**Alcoholic Beverage Control Board  
Excerpt Draft Meeting Minutes  
February 19-20, 2019  
First Judicial District  
Alaska State Library  
395 Whittier Street  
Juneau, Alaska**

● **REGULATIONS**

**10:02 am**

**Public Comments Received**

**1. Security Interest Transfers/Involuntary Retransfers**

**Status:** Public comment period closed February 8, 2019

**Potential Board Actions:** Vote to adopt; OR  
Substantially amend and put out for public comment

*Erika McConnell summarizes the Memo for Tab 123.*

*Brady motions to adopt the regulation changes as presented.*

*Sarah Erickson seconds the motion.*

*4-0 Motion passes. Bobby Evans excused*