

Kevin Meyer
Lieutenant Governor
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Anchorage, Alaska 99501
907.269.7460
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Amy Demboski
Department of Commerce Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: March 12, 2020

RE: Filed Permanent Regulations: Alcoholic Beverage Control Board

Alcoholic Beverage Control Board regulation re: when a petition is required under AS
04.11.460(a) and (b) (3 AAC 304.115; 3 AAC 304.615; 3 AAC 304.905(d))

Attorney General File: 2019104477

Regulation Filed: 3/12/2020

Effective Date: 4/11/2020

Print: 234, July 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis
Jane Sawyer, Regulations Specialist

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF ALCOHOLIC BEVERAGE CONTROL BOARD

The attached two pages of regulations, dealing with when petition is required by AS 04.11.460(b), are certified to be a correct copy of the regulation changes that the Alcoholic Beverage Control Board adopted at its January 21, 2020 meeting, under the authority of AS 04.06.090 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.

Although no public comments were received, 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: 1-30-2020



Glen Klinkhart, Interim Director

FILING CERTIFICATION

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

March ^{km} 12, 2020 at 2:35 P.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: April 11, 2020.

Register: 234, July 2020.

cc Publisher: Existing 3 AAC 304.115(a) and (b) are unchanged.)))

by adding new subsections)
3 AAC 304.115 is amended to read:

~~(a) If required by statute or regulation, a petition is a necessary part of an application for a new license, and for renewal, transfer, or relocation of an existing license. An application submitted without the required petition is incomplete. All petitions must be on forms prescribed by the board. Petition signatures must be obtained within the 90-day period immediately preceding the submission of the application. After an application has been filed, no additional signatures may be added to the petition, and no signatures may be withdrawn.~~

~~(b) A person signing a petition relating to a license must be 21 years of age or older and must be a permanent resident of the geographical area relevant to the petition. A person may have only one permanent residence.~~

3 AAC 304.115(c) is okay. XCH 3/11/2020

(c) Municipal boundaries shall be disregarded when gathering petition signatures.

~~(d) For purposes of AS 04.11.460(a), a petition is not required for transfer of location of a license when the new location is less than one mile from the current location, except that only two transfers of the location of the license are allowed without filing a petition.~~

(e) For purposes of AS 04.11.460(b), a petition is not required for

(1) transfer of ownership of a license;

(2) transfer of location of a license when the new location is less than one mile from the current location, except that only two transfers of the location of the license are allowed without filing a petition.

Disaffirmed. XCH 3/11/2020

(f) When submitting a petition under AS 04.11.460, an applicant shall assist in the determination of population by submitting the following information with the application:

cc Boldface and underlining unnecessary.)))

Redface and underlining unnecessary

(1) a graphic designation on a United States Geodetic Survey map with a scale of at least one inch to the mile showing the population within a circle of the applicable radius, and showing where petition signatures were obtained; and

(2) the population within the applicable area and a narrative of how the population was determined. (Eff. 11/29/81, Register 80; am 10/24/87, Register 104; am

4 / 11 / 2020, Register 234)

Authority: AS 04.06.100 AS 04.11.460

3 AAC 304.615 is repealed

3 AAC 304.615. Petitions. Repealed. (Eff. 11/29/81, Register 80; repealed 4 / 11 / 2020, Register 234)

3 AAC 304.905(d) is repealed

(d) Repealed 4 / 11 / 2020. (Eff. 4/28/84, Register 90; am 10/24/87, Register 104; am 4 / 11 / 2020, Register 234)

Authority: AS 04.06.080 AS 04.06.100 AS 04.11.460
AS 04.06.090

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

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

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

Date: March 11, 2020

File No.: 2019104477

Tel. No.: 465-3600

Re: Alcoholic Beverage Control Board
regulations re: when a petition is
required under AS 04.11.460(a) and
(b) (3 AAC 304.115; 3 AAC
304.615; 3 AAC 304.905(d))

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 have disapproved proposed 3 AAC 304.115(d) and (e). We find no legal problems with the rest of the regulations. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the rest of the attached regulations. The regulations were adopted by the Alcoholic Beverage Control Board after the close of the public comment period. Because regulations regarding petitions under AS 04.11.460 were scattered across 3 AAC 304, the Alcoholic Beverage Control Board made amendments to gather those regulations under 3 AAC 304.115, and made conforming repeals to 3 AAC 304.615 and 3 AAC 304.905(d).

The Alcoholic Beverage Control Board also proposed two entirely new subsections, 3 AAC 304.115(d) and (e), but they are not consistent with AS 04.11.460. Under specified circumstances, AS 04.11.460 (prior public approval) requires petitions with the signatures of nearby residents as a condition for approval of a new alcohol license or transfer of location of the license. The petition is required for premises outside the boundaries of a municipality, and the petition requirements vary by distance:

(a) A new license or the transfer of location of an existing license may not be approved by the board in an area outside but within 50 miles of the boundaries of a municipality unless a petition asking that the license be issued or transferred within the area containing signatures of a majority of the permanent residents residing within one mile of the proposed premises is filed with the board.

(b) A license may not be issued in an area that is 50 miles or more from the boundaries of a municipality unless a petition asking that the license be issued within the area containing the signatures of two-thirds of the permanent residents residing within a radius of five miles of the United States post office station nearest to the proposed licensed premises, is filed with the board. If there are two or more United States post office stations in the vicinity of the proposed licensed premises, the nearest to the premises constitutes the point of beginning under this subsection. If there is no United States post office station within a radius of five miles of the proposed licensed premises, the applicant must obtain the signatures of two-thirds of the permanent residents residing within a five mile radius of the proposed licensed premises. A petition is not required for the renewal of a license issued in accordance with this subsection unless specifically required by the board.

AS 04.11.460(a) and (b). The only stated exception from these requirements is the exception from AS 04.11.460(b) for renewal of a license.

Proposed 3 AAC 304.115(d) and (e) would have set out additional exceptions from AS 04.11.460(a) and (b). Under proposed 3 AAC 304.115(d), a petition for the transfer of a license's location under AS 04.11.460(a) would not be required if the new location were less than one mile from the current location, and if not more than two transfers of location had already occurred without a petition. Under proposed 3 AAC 304.115(e), a petition under AS 04.11.460(b) would not be required for the transfer of a license's ownership at all; and would not be required for a transfer of a license's location if the new location were less than one mile from the current location, and if not more than two transfers of location had already occurred without a petition.

Nothing in AS 04.11.460(a) provides the Alcoholic Beverage Control Board authority to establish additional exceptions by regulation. Moreover, even if authority existed, the exceptions appear to rely on unfounded assumptions, particularly about population densities. The exception from AS 04.11.460(a) seems to assume that a one-mile change of location would not change significantly the number of permanent residents living within the area and eligible to sign a petition. The assumption could easily be false. For instance, were the new location a block away from the licensee's current location, the new location may take in residents within a one-mile radius who nonetheless did not weigh in on the initial petition for the license, because those residents were outside of the original location's one-mile radius. That the licensee could change locations twice without a petition simply compounds the problem.

Similarly, AS 04.11.460(b) does not give the Alcoholic Beverage Control Board authority to establish additional exceptions by regulation. Though the express terms of AS 04.11.460(b) require a petition for "a license," and an argument perhaps exists that a transfer of ownership or location is not a license, the argument is weak in the face of the statute as a whole. The statute already gives the one exception explicitly, and that exception is for a license

renewal only. Because a transfer of ownership is not the same as a renewal of a license, the text of AS 04.11.460(b) does not sustain a blanket exception for transfers of ownership. Additionally, making an exception for certain transfers of location raises the same issues under AS 04.11.460(b) that it does for AS 04.11.460(a): without sufficient basis, the exception assumes that the a one-mile change of location would not significantly change the number of residents within the five-mile radii described in AS 04.11.460(b).

Accordingly, because the petition process in AS 04.11.460 does not sustain the exceptions that the Alcoholic Beverage Control Board proposes in its regulations, we have disapproved the proposed exceptions. We have marked the disapprovals on the attached copy of the regulation and re-lettered the remaining subsections accordingly.

The November 24, 2019 public notice and the January 30, 2020 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

Glen Klinkhart, Interim Director
Alcoholic Beverage Control Board

Amy Demboski, Assistant Commissioner and Regulations Contact
Department of Commerce, Community, and Economic Development

Jane Preston Sawyer, Regulations Specialist
Alcohol and Marijuana Control Office
Department of Commerce, Community, and Economic Development

Joan M. Wilson, Assistant Attorney General
Commercial, Fair Business, and Child Support Section

AFFIDAVIT OF BOARD ACTION

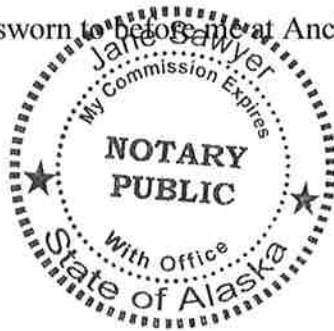
I, Glen Klinkhart, Interim Director, for the Alcoholic Beverage Control Board, being duly sworn, state the following:

The attached motion dealing with when petition is required by 04.11.460(b) was passed by the Alcoholic Beverage Control Board during its January 21, 2020, meeting.

Date: 1-30-2020


Glen Klinkhart, Interim Director

Subscribed and sworn to before me at Anchorage, Alaska, on 1-30-2020.




Notary Public in and for the State of Alaska



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community, and Economic Development

Alcohol and Marijuana Control Office

550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

Alcoholic Beverage Control Board Meeting January 21-22, 2020, Excerpt from Unapproved Minutes

1. When Petition is Required TAB 105

Status: Public comment period closed January 03, 2020

Potential Board Actions: Vote to adopt; OR

Substantially amend and put out for public comment

*Director Klinkhart provides background information and summarizes the regulation changes. Glenn Brady motions to adopt. Charlie Cross seconds. No discussion. **None opposed, motion carries.***

NOTICE OF PROPOSED CHANGES ON WHEN A PETITION IS REQUIRED BY AS
04.11.460(b) IN THE REGULATIONS OF THE ALCOHOLIC BEVERAGE CONTROL
BOARD

The Alcoholic Beverage Control Board proposes to adopt regulation changes in 3 AAC 304 of the Alaska Administrative Code, dealing with death of a licensee, including the following:

- New subsection (c) is brought over from 3 AAC 304.615, which is then repealed.
- New subsection (d) proposes that for licenses located outside of but within 50 miles of the boundary of a municipality, petitions are not required for transfers of location when the new location is less than one mile from the old location, with the caveat that only two transfers may occur without filing a petition.
- New subsection (e) proposes that for licenses located outside of and 50 miles or more from the boundary of a municipality, petitions are not required for transfers of ownership, and petitions are not required for transfers of location when the new location is less than one mile from the old location, with the caveat that only two transfers may occur without filing a petition.
- New subsection (f) is brought over from 3 AAC 304.905(d), but subsection 905(d)(1) is proposed to be eliminated as duplicative. 3 AAC 304.905(d) is repealed.

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 Alcohol and Marijuana Control Office at 550 West 7th Avenue, Suite 1600, Anchorage AK 99501. Additionally, the Alcoholic Beverage Control Board will accept comments by email at 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 January 3, 2020.

You may submit written questions relevant to the proposed action to the Alcohol and Marijuana Control Office at 550 West 7th Avenue, Suite 1600, Anchorage, AK 99501 or to amco.regs@alaska.gov. The questions must be received at least 10 days before the end of the public comment period. The Alcohol and Marijuana Control Office 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 or (907) 269-0350 not later than December 24, 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 amco.regs@alaska.gov or (907)

269-0350.

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. Written comments received are public records and are subject to public inspection.

Statutory authority: AS 04.06.100; AS 04.11.460

Statutes being implemented, interpreted, or made specific: AS 04.11.460

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

The Alcohol and Marijuana Control Office keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the Alcoholic Beverage Control Board notices of proposed regulation changes. To be added to or removed from the list, send a request to the AMCO office at amco.regs@alaska.gov, giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

Date: November 20, 2019



Glen Klinkhart, Interim Director

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alcoholic Beverage Control Board
2. General subject of regulation: When Petition is Required by AS 04.11.460(b)
3. Citation of regulation (may be grouped): 3 AAC 304.115; 3 AAC 304.615; 3 AAC 304.905(d)
4. Department of Law file number, if any: 2019104477

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: none

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

A private person: none

Another state agency: none

A municipality: none

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

	Initial Year FY <u>20</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>
Other (identify)	\$ <u>0</u>	\$ <u>0</u>


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

Name: Jane P. Sawyer
Title: Regulations Specialist
Address: 550 W. 7th Ave., Ste. 1600, Anchorage, AK 99501
Telephone: 907-269-0490
E-mail address: jane.sawyer@alaska.gov

10. The origin of the proposed action:

☐ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change⁷
☒ Other (identify): Alcoholic Beverage Control Board

11. Date: November 20, 2019

Prepared by: 
Name (printed): Jane P. Sawyer
Title (printed): Regulations Specialist
Telephone: 907-269-0490

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 270221 ST OF AK/ALCOHOL AND MARIJUANA
CONTROL BOARD, ANCHORAGE, AK 99501

Order #: W0012476

Cost: \$453.22

STATE OF ALASKA THIRD JUDICIAL DISTRICT

Lisi Misa being first duly sworn on oath deposes and says that 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 afore-said 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


11/24/2019

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



Subscribed and sworn to before me
this 23rd day of January 2020.


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

STATE OF ALASKA
NOTARY
PUBLIC
Jada L. Nowling

MY COMMISSION EXPIRES

7/14/2020

NOTICE OF PROPOSED CHANGES ON WHEN A PETITION IS REQUIRED BY AS 04.11.460(b) IN THE REGULATIONS OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

The Alcoholic Beverage Control Board proposes to adopt regulation changes in 3 AAC 304 of the Alaska Administrative Code, dealing with death of a licensee, including the following:

- New subsection (c) is brought over from 3 AAC 304.615, which is then repealed.

- New subsection (d) proposes that for licenses located outside of but within 50 miles of the boundary of a municipality, petitions are not required for transfers of location when the new location is less than one mile from the old location, with the caveat that only two transfers may occur without filing a petition.

- New subsection (e) proposes that for licenses located outside of and 50 miles or more from the boundary of a municipality, petitions are not required for transfers of ownership, and petitions are not required for transfers of location when the new location is less than one mile from the old location, with the caveat that only two transfers may occur without filing a petition.

- New subsection (f) is brought over from 3 AAC 304.905(d), but subsection 905(d)(1) is proposed to be eliminated as duplicative. 3 AAC 304.905(d) is repealed.

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 Alcohol and Marijuana Control Office at 550 West 7th Avenue, Suite 1600, Anchorage AK 99501. Additionally, the Alcoholic Beverage Control Board will accept comments by email at 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 January 3, 2020.

You may submit written questions relevant to the proposed action to the Alcohol and Marijuana Control Office at 550 West 7th Avenue, Suite 1600, Anchorage, AK 99501 or to amco.regs@alaska.gov. The questions must be received at least 10 days before the end of the public comment period. The Alcohol and Marijuana Control Office 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 or (907) 269-0350 not later than December 24, 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 amco.regs@alaska.gov or 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 amco.regs@alaska.gov or (907) 269-0350.

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. Written comments received are public records and are subject to public inspection.

Statutory authority: AS 04.06.100; AS 04.11.460

Statutes being implemented, interpreted, or made specific:
AS 04.11.460

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

The Alcohol and Marijuana Control Office keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the Alcoholic Beverage Control Board notices of proposed regulation changes. To be added to or removed from the list, send a request to the AMCO office at amco.regs@alaska.gov, giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

Date: November 20, 2019

By: /s/ Glen Klinkhart, Interim Director

Published: November 24, 2019

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Glen Klinkhart, Interim 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 304.115, when petition is required by 04.11.460(b), 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).

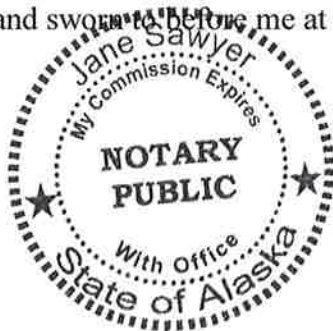
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.


Date: 1-30-2020



Glen Klinkhart, Interim Director

Subscribed and sworn to before me at Anchorage, Alaska on 1-30-2020.





Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

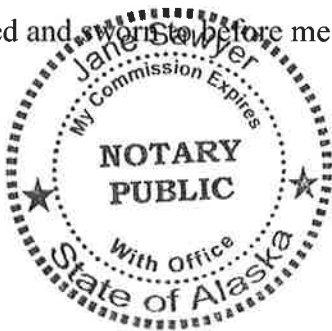
I, Glen Klinkhart, Interim Director, for the Alcoholic Beverage Control Board, being duly sworn, state the following:


The Alcoholic Beverage Control Board did not receive any factual or other substantive information that was submitted in writing or orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Alcoholic Beverage Control Board regulation on when petition is required by 04.11.460(b).

Date: 1-30-2020


Glen Klinkhart, Interim Director

Subscribed and sworn to before me at Anchorage, Alaska on 1-30-2020.




Notary Public in and for the State of Alaska