

Kevin Meyer
Lieutenant Governor
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907.465.3520
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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: June 4, 2021

RE: Filed Permanent Regulations: Alcoholic Beverage Control Board

Alcoholic Beverage Control Board regulations re: death of a licensee (3 AAC 304.215 – 3 AAC 304.217)

Attorney General File:	2019200733
Regulation Filed:	6/4/2021
Effective Date:	7/4/2021
Print:	239, October 2021

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

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF ALCOHOLIC BEVERAGE CONTROL BOARD

The attached three pages of regulations, dealing with death of a licensee are certified to be a correct copy of the regulation changes that the Alcoholic Beverage Control Board adopted at its March 30, 2021, 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: APRIL 15, 2021


Glen Klunkhart, Director

FILING CERTIFICATION

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

June 4, 2021 at 3:23 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

April Simpson
for Lieutenant Governor *Kevin Meyer*

Effective: July 4, 2021.

Register: 239, October 2021.

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**




.....

**KEVIN MEYER
LIEUTENANT GOVERNOR**

² (Words in boldface and underlined indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 304.215 is repealed and readopted to read:

3 AAC 304.215. Death of a sole licensee. (a) Upon the death of an individual who is the

sole owner of a license or the sole owner of the licensed entity, the business operating the license

shall cease operation unless ^{and} until an administrator or executor of the estate files ^{with the director} written proof

⁷⁽¹⁾ of the administrator or executor's authority to act on behalf of the licensee or the estate of the

deceased ^(b) along with a written request to continue operations ^{the director's validation} with the director. Upon receipt of

² written proof of the administrator or executor's authority and validation of the authority and as

conclusion that the director has not filed or will not file an accusation seeking long as the license is not subject to any other action permitting suspension or revocation of the

license, the director will grant permission ^{to the administrator or executor} to operate the business

upon the licensed premises as permitted under AS 04.11.030. That permission expires upon legal

appointment of a different administrator or executor of the estate ^{upon} approval of an

application for transfer of the license submitted in accordance with 3 AAC 304.175 ^{or} ^{7(3) license} upon

forfeiture in accordance with AS 04.11.030(b). ~~A notice of violation or inspection report should~~

~~not prevent the director for providing permission.~~

^(c) (b) An application for transfer of the license from the deceased licensee must be made in

compliance with the time limitations set out ⁱⁿ at AS 04.11.030(b). Failure to do so forfeits the

license, unless the board approves ~~an extension of the time limits upon the filing of a written~~

request from ^A petition by the administrator or executor to extend the applicable deadline. ^{request} All written petitions

to extend the applicable deadline must be submitted before the expiration of applicable deadline,

unless the board approves a ^{request} petition submitted after the deadline for good cause and the license is

still available for transfer.

Register 239, October 2020, COMMERCE, COMMUNITY AND EC. DEV.

(d) In

(e) For purposes of this section and 3 AAC 304.216, "administrator or executor" includes an administrator, executor, agent, or personal representative within the meaning given in AS 13.06.050. (Eff.

11/29/81, Register 80; am 7 / 4 / 2021, Register 239)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.030

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

3 AAC 304.216. Death of an individual with a controlling interest in a license issued

to a business entity. (a) Upon the death of an individual who owns a controlling interest in a partnership, including a limited partnership, a limited liability company, or a corporation that

holds a license under this title, the business entity may continue to operate the licensed business AS 04 and chapter, not later than 90 days after the individual's death and 3 AAC 304.175 or a time extension request under (b) of this section, but shall file a transfer application as required under AS 04.11.040 within 90 days of the death of the individual. If a transfer application or time extension request is not filed by the 90-day

deadline, the business shall cease operation until the transfer application is filed.

(b) Upon receipt of a time extension request, the board may grant an extension not to exceed one year. A written request to extend the applicable deadline must be submitted before the expiration of the applicable deadline, unless the board approves a request submitted after the deadline for good cause and the license is still available for transfer. Additional extensions may be granted by the board only for good cause. (Eff. 7 / 4 / 2021, Register 239)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.030

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

3 AAC 304.217. Death of an individual with less than a controlling interest in a license issued to a business entity. (a) Upon the death of an individual who owns less than a controlling interest in a partnership, including a limited partnership, a limited liability company, or a corporation that holds a license under this title, the business entity may continue to operate AS 04 and chapter, not later than 90 days after the individual's death, (1) report, as applicable, the licensed business but shall report a change of ownership under AS 04.11.045, 04.11.050, or 04.11.055, (2) and 3 AAC 304.175 or a time extension request under (b) of this section, or shall file a transfer application if required by AS 04.11.040, a time within 90 days of the death of the individual.

(b) Upon receipt of an extension request, the board may grant an extension not to exceed one year. A request All written petitions to extend the applicable deadline must be submitted before the expiration of applicable deadline, unless the board approves a request petition submitted after the deadline for good cause. Additional extensions may be granted by the board only for good cause.

(Eff. 7 / 4 / 2021, Register 239)

Authority: AS 04.06.090

AS 04.06.100

AS 04.11.030

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: June 2, 2021

File No.: 2019200733

Thru:

Tel. No.: 465-3600

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

Re: Alcoholic Beverage Control Board
regulations re: death of a licensee
(3 AAC 304.215 - 3 AAC 304.217)

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. I have reviewed this project under a delegation dated March 23, 2020 from the regulations attorney. 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. The regulations provide additional clarification to the conditions under which, during the period between the death of a liquor licensee and a request for transfer of the license under AS 04.11.030 and 3 AAC 304.175, an executor or administrator may operate with the license of the deceased sole licensee; and the conditions under which a business with a liquor license may continue operations once a licensee with a controlling interest or a licensee with less than a controlling interest has died, between the death of that licensee and a request for transfer of the license under AS 04.11.040(c) and 3 AAC 304.175.

The November 4, 2020 public notice and the April 15, 2021 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 w/enc: Glen Klinkhart, 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, Senior Assistant Attorney General
Commercial, Fair Business, and Child Support Section

NOTICE OF PROPOSED CHANGES ON DEATH OF A LICENSEE
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:

3 AAC 304.215 is repealed and readopted: subsection (a) clarifies that this subsection applies to sole proprietors and sole owners of entities, (b) sets out the steps an administrator or executor must follow upon the death of a licensee and (c) outlines what “administrator or executor” means for this purpose.

3 AAC 304.216 is a new section to address the death of a licensee with a controlling interest in a license issued to a business entity. (a) sets out the requirements of the surviving licensee or licensees to follow upon the death of the licensee who owns controlling interest in the entity. (b) would allow the board to approve an extension request not to exceed one year as long as the extension request is submitted before the expiration of the applicable deadline, unless the board approves a petition submitted after the deadline for good cause and the license is still available for transfer.

3 AAC 304.217 is a new section to address the death of a licensee with less than a controlling interest in a license issued to a business entity. (a) sets out the requirements of the surviving licensee or licensees to follow upon the death of a licensee who owns less than controlling interest in the entity. (b) would allow the board to approve an extension request not to exceed one year as long as the extension request is submitted before the expiration of the applicable deadline, unless the board approves a request submitted after the deadline for good cause.

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 4:30pm on December 11, 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) 269-0490 not later than November 27th, 2020, 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) 269-0490.

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 04.06.090 AS 04.06.100 AS 04.11.030

Statutes being implemented, interpreted, or made specific: AS 04.11.030

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 2, 2020



Jane P. Sawyer, Regulations Specialist
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: Death of a licensee
3. Citation of regulation (may be grouped): 3 AAC 304.215-.217
4. Department of Law file number, if any: 2019200733

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: DCCED/Alcohol and Marijuana Control Office

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

A private person: none known

Another state agency: none known

A municipality: none known

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

	Initial Year FY <u>21</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 West 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 change
☒ Other (identify): Alcoholic Beverage Control Board

11. Date: November 2, 2020

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 #: W0018770

Cost: \$493.06

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

11/04/2020

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

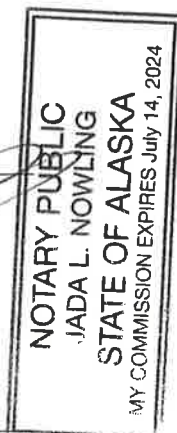


Subscribed and sworn to before me
this 5th day of November 2020.

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

MY COMMISSION EXPIRES

7/14/2024



NOTICE OF PROPOSED CHANGES ON DEATH OF A LICENSEE IN THE REGULATIONS OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

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3 AAC 304.217 is a new section to address the death of a licensee with less than a controlling interest in a license issued to a business entity. (a) sets out the requirements of the surviving licensee or licensees to follow upon the death of a licensee who owns less than controlling interest in the entity. (b) would allow the board to approve an extension request not to exceed one year as long as the extension request is submitted before the expiration of the applicable deadline, unless the board approves a request submitted after the deadline for good cause.

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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) 269-0490 not later than November 27th, 2020, 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) 269-0490.

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 04.06.090 AS 04.06.100
AS 04.11.030

Statutes being implemented, interpreted, or made specific:
AS 04.11.010; AS 04.11.030

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 2, 2020
By: /s/ Jane P. Sawyer,
Regulations Specialist
Alcohol and Marijuana Control Office

Published: November 4, 2020

AMCO

NOV - 7 2020

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Jane P. Sawyer, Regulations Specialist, 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 server education courses 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: April 15, 2021

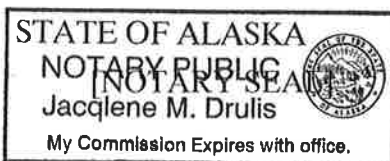



Jane P. Sawyer, Regulations Specialist

Subscribed and sworn to before me at Anchorage on

4/15/21

(date)





Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Glen Klinkhart, 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's regulation on death of a licensee.

Date: APRIL 15, 2021


Glen Klinkhart, Director

Subscribed and sworn to before me at Anchorage on

April 15, 2021
(date)




Notary Public in and for the State of Alaska

AFFIDAVIT OF BOARD ACTION

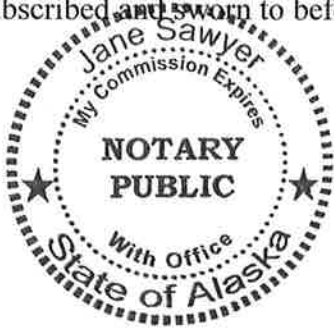
I, Glen Klinkhart, Director, for the Alcoholic Beverage Control Board, being duly sworn, state the following:


The attached motion dealing with death of a licensee was passed by the Alcoholic Beverage Control Board during its March 30, 2021, meeting.

Date: APRIL 15, 2021


Glen Klinkhart, Director

Subscribed and sworn to before me at Anchorage, Alaska, on April 15, 2021.




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 March 30, 2021, excerpt from zoom meeting

1. Public Comment Period Closed

A. Death of a Licensee

TAB 56

Status: Public comment closed December 11, 2020. ~~October 9, 2020. One comment received.~~

Potential Board Actions: Vote to adopt; amend draft and put out for public comment; send back to staff for more work; close project without action.

*Dana Walukiewicz and Jane Sawyer provide a summary of the regulation project. Discussion regarding the process after the board votes. **David Koch motions to amend the existing language to add friendly amendment. Diane Thompson seconds. None opposed, motion passes. David Koch motions to adopt regulation as amended. Diane Thompson seconds. None opposed, motion passes.***