

Nancy Dahlstrom
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV




530 West 7th 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: Sara Chambers, Department of Commerce, Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: February 21, 2024

RE: Filed Permanent Regulations: Marijuana Control Board

Marijuana Control Board regulations re: Security interest transfers (3 AAC 306.049 - .080)

Attorney General File:	2023200341
Regulation Filed:	2/21/2024
Effective Date:	3/22/2024
Print:	249, April 2024

cc with enclosures: Colleen Bailey, Department of Law
Judy Herndon, LexisNexis
Jane P. Sawyer, Regulations Specialist
Kristina Serezhenkov, Regulations Specialist



THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

P.O. Box 110300
Juneau, Alaska 99811
Main: 907.465.3600
Fax: 907.465.2520

February 14, 2024

The Honorable Nancy Dahlstrom
Lieutenant Governor
State of Alaska
P.O. Box 110015
Juneau, AK 99811-0015

Re: *3 AAC 306.049 - .080: Marijuana Control Board - Security interest transfers*
Our file: 2023200341

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Marijuana Control Board against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This letter 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 Marijuana Control Board after the close of the public comment period.

The regulations address the process by which a licensee with a security interest in a marijuana establishment license previously transferred to another person may compel the retransfer of the license because of a default of payment. The regulations also establish that a license is not subject to foreclosure.

The November 22, 2023 public notice and the February 5, 2024 certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.060 is not required.

No technical corrections were necessary to conform the regulations in accordance with AS 44.62.060.

Sincerely,

TREG TAYLOR
ATTORNEY GENERAL

By: Rebecca C. Polizzotto
Digitally signed by
Rebecca C. Polizzotto
Date: 2024.02.14
14:52:27 -09'00'

Rebecca C. Polizzotto
Chief Assistant Attorney General
Legislation, Regulations, and
Legislative Research Section

RCP/SCW

CC w/enclosure: Kristina Serezhenkov, Regulations Specialist
Department of Commerce, Community and Economic Development

Kevin Higgins, Assistant Attorney General
Department of Law

Steven C. Weaver, Assistant Attorney General
Department of Law

APPENDIX J: Certification Order

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE MARIJUANA CONTROL BOARD

The attached ^{four} ~~eight~~ pages of regulations, dealing with security interest transfer, is certified to be a correct copy of the regulation changes that the Marijuana Control Board adopted at its January 31, 2024, meeting, under the authority of AS 17.38.121 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 Marijuana 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: 2/5/2024


Joan M. Wilson, Director

April Simpson for

FILING CERTIFICATION

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on February 21, 2024 at 4:19 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for 
Lieutenant Governor Nancy Dahlstrom

Effective: March 22, 2024.

Register: 249, April 2024.

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, NANCY DAHLSTROM, 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:

April Simpson, Regulations and Initiatives Specialist

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on May 15th, 2023.



A handwritten signature in blue ink, reading "Nancy Dahlstrom", is written over a horizontal dotted line.

**NANCY DAHLSTROM
LIEUTENANT GOVERNOR**

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.049. Foreclosures. A marijuana establishment license issued under AS 17.38 and this chapter is not subject to foreclosure and may not be used as collateral to secure a debt. If a license is transferred to another person, the transferor may secure payment for real and personal property conveyed to the transferee upon the promise of the transferee to transfer the license back to the transferor upon default in payment. (Eff. 3 / 22 / 2024, Register 249.)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306 is amended by adding new sections to read:

3 AAC 306.051. Application for return of a license to a person with a retained security interest. (a) A licensee who wishes to establish a security interest in a marijuana establishment license proposed for transfer to another person under 3 AAC 306.045 shall submit the following additional 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 Uniform Commercial Code financing statement in which a security interest in the license is claimed under 3 AAC 306.049, this section, and 3 AAC 306.080(d)(2)(B), containing the following statement: "Under the terms of 3 AAC 306.049, 3 AAC 306.051, and 3 AAC 306.080(d)(2)(B), the transferor/lessor retains a security interest in the marijuana 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 of the personal property must be sufficient for the board to determine that the license is not being used as collateral except as provided under 3 AAC 306.049; and

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

(b) The transferor must include in the published notice of transfer required by 3 AAC 306.025(b), the following statement: "Under the terms of 3 AAC 306.049, 3 AAC 306.051, and 3 AAC 306.080(d)(2)(B), the transferor/lessor retains a security interest in the marijuana 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 Uniform Commercial Code financing statement must be provided to the director before the transferred license may be operated.

(d) A security interest in a marijuana establishment 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 marijuana establishment license with an established security interest may not be transferred to another person unless all obligations under the security interest are satisfied before or as part of the transfer. The board may make an exception in the case of the death of a licensee.

(Eff. 3 / 22 / 2024, Register 249)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.052. Compelled transfer of a license to the prior licensee with a security interest in the license. (a) If a former licensee seeks to compel the transfer of a marijuana

establishment license because of a promise under 3 AAC 306.049 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 the creditors are not satisfied under 3 AAC 306.080(d)(2)(A), unless it clearly appears that

(1) the security interest was established in the previous transfer in accordance with 3 AAC 306.051; and

(2) 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 debt also secured by a promise under 3 AAC 306.049, a marijuana establishment license may not be retransferred without satisfaction of creditors under 3 AAC 306.080(d)(2)(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.

3 / 22 / 2024, Register 249)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

Register 249, April 2024 COMMERCE, COMMUNITY, AND EC. DEV.

3 AAC 306.080(d)(2) is amended to read:

(2) that the transferor has not paid all debts or taxes arising from the operation of the business licensed under this chapter unless

(A) the transferor gives security for the payment of the debts or taxes satisfactory to the creditor or taxing authority; or

(B) the transfer is under a promise given as collateral

(i) by the transferor to the transferee in the course of an earlier transfer of the license; and

(ii) that obliges the transferor to transfer the license back to the transferee in the event of default in payment for property conveyed as part of the earlier transfer of the license;

(Eff. 2/21/2016, Register 217; am 2/21/2019, Register 229; am 8/21/2019, Register 231; am 8/7/2021, Register 239; am 7/30/2022, Register 243; am 1/22/2023, Register 245; am 3 / 22 / 2024, Register 249)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121