

3 AAC is amended by adding a new chapter to read:

Chapter 305. Alcoholic Beverage Control Board.

Article

1. Board; Administration; Licensing; Fees (3 AAC 305.010 – 3 AAC 305.160)

Article 1. Board; Administration; Licensing; Fees (document 2 of 2)

Section

30. Issuance of license and endorsement

35. Additional delegation of authority

40. When licenses become available

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3 AAC 305.040. When license becomes available. Except as provided in 3 AAC 305.100 (mutually exclusive and competing applications), an application will be denied if it is received by the board at a time when there are no available licenses of the type applied. In this chapter, a license becomes available

(1) on the date the director determines the relevant population under 3 AAC 305.900, because of an increase in the population during the preceding year;

(2) 30 days after a notice of expiration has been sent due to non-renewal to the licensee and no later than April 15 where the license becomes available based upon the count of the relevant population;

(3) on the conclusion of all appeals of the denial of renewal, revocation, or on waiver of appeal by the licensee, whichever is later, where the license becomes available because of the denial or revocation of another license and the license is available based upon the count of the relevant population;

(4) on the date determined by the board or the director in any other case. (Eff. ____/____/____, Register _____)

Authority:	AS 04.06.080	AS 04.11.320	Sec. 1, ch.8, SLA 2022
	AS 04.06.090	AS 04.11.340	Sec. 171, ch.8, SLA 2022
	AS 04.06.100	AS 04.11.400	

Editor's note: place holder - possible editor's note regarding the population vs number of license chart on our website.

3 AAC 305.045. Application for license and endorsement. (a) Excepting applicants for manufacturer direct shipment license issued under AS 04.09.370, an applicant for a new alcoholic beverage license or a new alcoholic beverage license with one or more endorsements or an applicant for an endorsement must file an application on a form the board prescribes, with the information and documentation described in this section, along with the application fee, license fee, and applicable endorsement fees under 3 AAC 305.145, and, for an applicant applying for a new license, the fingerprint cards required under AS 04.11.295 and fees required under 3 AAC 305.145. The application may be initiated and completed electronically.

(b) An application for a new alcoholic beverage license, a license with one or more endorsements, or an application for an endorsement must contain the information required by AS 04.11.260. If applicable, an application must also contain the information required under AS 04.11.295(a), and AS 04.11.310.

(c) In addition, an application for a new license must contain the following:

(1) written authorization for release of conviction and arrest records of a new applicant and that person's affiliates as defined at 3 AAC 305.960, to the director and the board along with a listing of the convictions of any of those individuals in any state or territory for a crime or for a violation of alcoholic beverage control laws;

(2) a statement that no one other than the applicant has a financial interest in the business to be licensed;

(3) the following business entity documents as applicable:

(A) if the applicant is a partnership or joint venture, a copy of its partnership or joint venture agreement.

(B) if the applicant is a corporation, a copy of its certificate of incorporation.

(C) if the applicant is a limited liability company, a copy of its articles of organization, certificate of organization, and operating agreement; [a statement of the applicant that the limited liability organization is in good standing]; or

(D) if the applicant is a limited liability partnership, a copy of its statement of qualification.

(4) a statement that the applicant and its affiliates as defined at 3 AAC 305.960 have read and are familiar with AS 04 and with this chapter;

(5) copies of deeds, lease agreements, or other documents that show right or title to, or interest in, land and buildings at the location of the business to be licensed;

(6) required biennial license fees and applicable endorsement fees as set forth at 3 AAC 305.145 must accompany an application for a new license or endorsement; and

(7) A non-refundable application fee as set forth at 3 AAC 305.145. (Eff. ____/____/____, Register _____)

Authority: AS 04.06.090 Sec. 1, ch.8, SLA 2022 Sec. 171, ch.8, SLA 2022
AS 04.06.100

3 AAC 305.050. Application for renewal of a license and endorsement. (a) Excepting applicants for renewal of a manufacturer direct shipment license issued under AS 04.09.370, an applicant for renewal of a license or a license with one or more endorsements must file an application on a form the board prescribes, along with the application fee and fees for renewal of

licenses and endorsements as set out at 3 AAC 305.145. The application may be initiated and completed electronically.

(b) An application for renewal of an alcoholic beverage license or a license with one or more endorsements must contain the information required under AS 04.11.270.

(c) In addition, an application for renewal of a license or renewal of a license with one or more endorsements must contain the following:

(1) a list of all convictions of the applicant of violations of AS 04 and this chapter, or an ordinance adopted under AS 04.21.010, that occurred in the preceding two calendar years,

(2) a written authorization for release of conviction and arrest records as required by the board, to the director and the board,

(3) a statement that no one other than the applicant has a financial interest in the business to be licensed,

(4) any change in business entity documents in the preceding two calendar years,

(5) any change to proof of possession in the preceding two calendar years,

(6) required biennial license fees and applicable endorsement fees as set forth at 3 AAC 305.145, and

(7) a non-refundable application fee as set forth at 3 AAC 305.145.

(d) For purposes of AS 04.11.270(b), a license renewal or a license renewal with one or more endorsements is timely and not delinquent if received along with payment of application and license fees on the board's online licensing system or at the board's main office on or before December 31 or if postmarked on or before December 31.

(e) For purposes of AS 04.11.540 (license and endorsement expiration), an application for renewal of a license or a license with one or more endorsements as described in that section is considered submitted by February 28 if the renewal application is received on the board's online licensing system or at the board's main office on or before February 28 or if postmarked on or before on or before February 28.

(f) If a mailed renewal application has an illegible postmark or an undated postmark, the postmark date is rebuttably presumed to be five calendar days before the application was received in the board's office.

(g) In this section, "postmark" means the official cancellation stamp used by the United States Postal Service that records the date and place of mailing.

Authority: AS 04.06.090 Sec. 1, ch.8, SLA 2022 Sec. 171, ch.8, SLA 2022
AS 04.06.100

3 AAC 305.055. Reinstatement of license or license with one or more endorsements.

(a) For the purposes of AS 04.11.540, if a license or a license with one or more endorsements has expired for failure to file a complete application for renewal by February 28 or for failure to pay the required fees and penalty fees by that date, the board will consider a written request to reinstate the license or the license with one of more endorsements if the request is accompanied by

- (1) a complete renewal application;
- (2) a reinstatement fee of \$1000;
- (3) all other required fees and penalty fees; and

(4) proof of good cause for failure to file a renewal application by February 28.

(b) The board will deny a request for reinstatement submitted under (a) of this section if

(1) the license became available in accordance with 3 AAC 305.100 and the license was issued to a different applicant, unless the limit of licenses under AS 04.11.400 has not been reached; or

(2) the board finds that the failure to timely file or pay was caused by

(A) the applicant's failure to notify the board of a change of the applicant's email address;

(B) a transfer of ownership of the business for which the license was issued without written approval of the board in violation of AS 04.11.040;

(C) a lease of the licensed business to another person in violation of AS 04.11.450(c); or

(D) any other action of the applicant whether active or tacit that the board finds constitutes a failure to lawfully operate the business for which the license was issued. (Eff. ____/____/____, Register _____)

Authority: AS 04.06.090 AS 04.11.540 Sec. 1, ch.8, SLA 2022

AS 04.06.100 AS 04.11.680 Sec. 171, ch.8, SLA 2022

AS 04.11.270

3 AAC 305.060. Application for transfer of a license to another person. (a) Except for applicants for a manufacturer direct shipment license issued under AS 04.09.370, an applicant for transfer of a license or a license with one or more endorsements to another person under AS 04.11.280 must contain the same information about the transferee as is required of an applicant

for a new license or endorsement under AS 04.11.260 and 3 AAC 305.045. The application must also contain the information required under AS 04.11.295(a), and AS 04.11.310. The application may be initiated and completed electronically.

(b) In addition to including the information, statements, documentation, and fees required of a new applicant under AS 04.11.260 and 3 AAC 305.045, the application must include a statement, under oath, executed by the transferor, listing all debts of the business and all taxes due by the businesses. The office of the board will promptly notify each identified creditor of the application and the amount the transferor shows as owing to the creditor.

(c) If a license is automatically transferred under AS 04.11.280(c) and the office of the board subsequently receives criminal justice information and records obtained under AS 04.11.295 that is potentially disqualifying for the transferee, the director will file an accusation to suspend or revoke the license under 3 AAC 305.980 so the board may determine if the licensee meets the qualifications for transfer of a license or license with one or more endorsements. (Eff. ____/____/____, Register _____)

Authority: AS 04.06.090 Sec. 1, ch.8, SLA 2022 Sec. 171, ch.8, SLA 2022
AS 04.06.100

3 AAC 305.065. Application for return of a license to a person with a retained security interest. (a) A licensee wishing to establish a security interest in a license being transferred to another person under 3 AAC 305.060, 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 AS 04.11.670, 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 305.065, 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 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 AS 04.11.670;

(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 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 305.065, 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 Uniform Commercial Code financing statement must be provided to the director before the transferred license may be operated.

(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 another

person, unless all obligations under the security interest are satisfied before or as part of the transfer, except that the board may make an exception in the case of the death of a licensee. (Eff.

____/____/____, Register _____)

Authority: AS 04.06.080 AS 04.11.270 AS 04.11.670
AS 04.06.090 AS 04.11.280 Sec. 1, ch.8, SLA 2022
AS 04.11.050 AS 04.11.290 Sec. 171, ch.8, SLA 2022
AS 04.11.260 AS 04.11.450

3 AAC 305.070. Application for transfer of location. (a) An applicant to transfer an alcoholic beverage license or an alcoholic beverage license with one or more endorsements to a new location must file an application on a form the board prescribes with the information and documentation described in this section. The application may be initiated and completed electronically.

(b) An application to transfer an alcoholic beverage license or an alcoholic beverage license with one or more endorsement must contain for the new location the information required by AS 04.11.260 and be executed as described under AS 04.11.260(a). The application must also contain proof of public notice under AS 04.11.310 and 3 AAC 305.075 for the new location and any petitions required under AS 04.11.460.

(c) In addition, the application for transfer to a new location must contain the following:

(1) copies of deeds, lease agreements, or other documents that show right or title to, or interest in, land and buildings at the location of the business to be licensed;

(2) A statement of whether the transfer to a new location is subject to AS 04.11.400(k) and identification of the involved borough and incorporated city;

(3) A non-refundable application fee under 3 AAC 305.145

(d) If a transfer of a license to another location is subject to AS 04.11.400(k), the following steps will occur before the application is submitted to the board:

(1) Within 10 business days of deeming the application complete and determining the prerequisites of AS 04.11.400(k) are satisfied, the office of the board will notify the affected borough and incorporated city of the transfer of location application, and, if applicable, an accompanying transfer of license to another person. The notice will include the date the complete application was received by the office of the board, the license number, the present or previous business name of the license to be transferred, the names of the transferee and the transferor if an application to transfer an alcoholic beverage license or an alcoholic beverage license with one or more endorsements to another person is also requested, and the proposed new location of the license.

(2) The borough and incorporated city affected by the transfer request under AS 04.11.400(k) may respond to the notice under (a) of this section within 60 days after receipt or the notice. The borough and incorporated city may request an extension of time to respond. The board may grant a request for extension up to 120 additional days.

(3) Within the notification period, the borough and the municipality must provide to the office of the board written notification that they agree to the transfer under AS 04.11.400(k) to be approved. The board will not approve a transfer of location if the notification required by this paragraph is not received within the time allowed under (d)(2) of this section. If

it is received, the board may consider whether to approve the relocation under 3 AAC 305.130.

(Eff. ____/____/____, Register _____)

Authority: AS 04.06.090 AS 04.11.260 AS 04.11.450
AS 04.06.100 AS 04.11.270 AS 04.11.670
AS 04.11.045 AS 04.11.280 Sec. 1, ch.8, SLA 2022
AS 04.11.050 AS 04.11.290 Sec. 171, ch.8, SLA 2022

3 AAC 305.075. Public notice. (a) After initiating an application for a new or license or transfer of a license, the applicant must give notice of the application to the public by

(1) posting a copy of the application for 10 days at

(A) the location of the proposed licensed premises; and

(B) one other conspicuous location in the area of the proposed premises

accessible to the general public;

(2) publishing an announcement once a week for three consecutive weeks in a newspaper of general circulation as defined in (c) of this section or arrange for broadcast announcements on a radio station serving the local area where the proposed licensee seeks to operate twice a week for three successive weeks during triple A advertising time. The newspaper or radio notice must state

(A) the name of the applicant;

(B) the name and location of the proposed premises;

(C) the type of license applied for along with a citation to a provision of this chapter authorizing that type of license; and

(D) a statement that any comment or objection may be submitted to the board;

(b) If the board considers it necessary to provide adequate public notice, or if the director is requested to do so by a local governing body or village council, the director will require that the announcement described in (a) of this section be given in the language predominant in the village as well as in English.

(c) The public notice must be given within the 90 days immediately preceding the filing of the application.

(d) In this section, “newspaper of general circulation” means a publication that;

(1) is published in print or electronic newspaper format;

(2) is distributed at least bi-weekly each year within the judicial district where the proposed licensed premises is located, excluding a period when publication is interrupted by a casualty that the publisher cannot control;

(3) is not published primarily to distribute advertising; and

(4) is not intended primarily for a particular professional or occupational group.

(Eff. ____/____/____, Register _____)

Authority: AS 04.06.090 AS 04.11.260 Sec. 1, ch.8, SLA 2022

AS 04.06.100 AS 04.11.310 Sec. 171, ch.8, SLA 2022

3 AAC 305.080. Petitions for licenses. (a) If required by AS 04.11.460, a petition is a necessary part of an application. 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. However, signatures may be added to the petition before an application has been deemed complete.

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

(c) 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:

(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 narrative of how the population was determined. (Eff. ____/____/____, Register ____)

Authority: AS 04.06.100 Sec. 1, ch.8, SLA 2022 Sec. 171, ch.8, SLA 2022
AS 04.11.460

3 AAC 305.085. Local governing body protest. (a) To protest an application to issue, renew, transfer location, or transfer to another person, an alcoholic beverage license, an alcoholic beverage license with one or more endorsement, or an endorsement, or to protest the continued operation of a license, a local governing body must set out its reasons in a written protest filed with the board and copied to the applicant. The reasons stated by a local governing body must be logical grounds for opposing the application or continued operation of the license and have a reasonable basis in fact. The local governing body may protest the continued

operation of a license or endorsement during the second year of the biennial license period only if it sends the board and the licensee a protest and the reasons for the protest by January 31 of the second year of the license. If the location or proposed location of a license is within the boundaries of more than one local government, each local governing body may protest the issuance, renewal, transfer of location or transfer to another person.

(b) The board will not take final action upon an application until at least

(1) 60 days after the receipt of the notice required by AS 04.11.520 by a local governing body, unless it advises the director in writing before the end of the 60 days that it is waiving its right to protest the application; and

(2) 15 days after completion of public notice of the application.

(c) A protest received after the 60-day period may not be accepted by the board, and in no event may a protest cause the board to reconsider an approved renewal, transfer of location, or transfer to another person.

(d) A local governing body that protests an application shall allow the applicant a reasonable opportunity to defend the application before a meeting of the local governing body.

(e) A local governing body protest may be based upon facts that render the particular application objectionable to the local body or may be based upon a general public policy. If based on a general public policy, the policy must have a reasonable basis in fact, may not be contrary to law, and may not be patently inapplicable to the particular application being

protested. The board will not substitute its judgment for that of the local governing body on matters of public policy that have reasonable factual support.

(f) If the application is denied because of the protest and the applicant requests a hearing, the local governing body must, at the board's request, appear or otherwise meaningfully participate in the hearing and must assist in or undertake the defense of its protest.

(g) In addition to the other grounds for protest set out in this section, a local governing body may protest the:

(1) renewal or transfer of a license based on nonpayment of delinquent taxes or fees whether single or in combination, of at least \$1000 arising in whole or in part from the conduct of the licensed business; and

(2) transfer of a license if the

(A) local governing body has adopted an ordinance under which it may estimate the amount of taxes the amount of taxes due in the tax year of the proposed transfer and arising in whole or in part from the conduct of the licensed business, and require the licensee to pay the estimated amount; and

(B) licensee fails to pay that amount or give security under AS 04.11.360.

(h) The board may uphold a protest of an application or continued operation with an initial abeyance period not to exceed 180 days if the local governing body indicates that the protest is subject to rescission and that it will be withdrawn if the applicant meets conditions set by the local governing body. If the local governing body notifies the board within the period of

the abeyance that the protest has been removed, the application or continued operation is approved when all other applicable requirements have been met. If the local governing body has not notified the board within the period of the abeyance that it has removed the protest, the application or continued operation is denied. (Eff. ___/___/___, Register ___)

Authority:	AS 04.06.090	AS 04.11.360	AS 04.11.520
	AS 04.06.100	AS 04.11.480	Sec. 1, ch.8, SLA 2022
	AS 04.11.330	AS 04.11.510	Sec. 171, ch.8, SLA 2022

3 AAC 305.090. Procedure for action on a license or endorsement application. (a)

The board will decide whether to grant or deny an application not later than 90 days after receiving the complete application. However, the board will not grant or deny the application before the time allowed for a protest under 3 AAC 305.085(b), unless the local governing body waives its right to protest.

(b) Not later than seven days before the date set for board action on applications, the director shall post a meeting agenda on the office of the board's website listing the matters scheduled for action at that meeting. The director will send written notification through its online licensing system or by email to the email address identified by the application informing the applicant the application is on the upcoming agenda. The board may review an application without additional notice to the applicant.

(c) The board will consider any written objection, protest, suggested condition, or petition, and also will consider any testimony received at a hearing on public protest held under 3 AAC 305.095 when it considers the application. The director shall retain the written objection, protest, or suggested condition or petition, and the hearing record as part of the permanent record

of the board's review of an application. (Eff. ____/____/____, Register _____)

Authority: AS 04.06.090 AS 04.11.340 AS 04.11.480
AS 04.06.100 AS 04.11.360 Sec. 1, ch.8, SLA 2022
AS 04.11.320 AS 04.11.370 Sec. 171, ch.8, SLA 2022
AS 04.11.330

3 AAC 305.095. Procedure on objection or protest; appeals. (a) If the board receives an objection described in AS 04.11.470, a protest described in AS 04.11.480(a) and 3 AAC 305.085, or a protest described in AS 04.11.480(b), the board will follow the following procedures:

(1) In the case of an objection described in AS 04.11.470, the board will, at the first meeting at which it considers the application after the objection is received, determine whether it is appropriate to hold a public hearing under AS 04.11.510(b)(2) to ascertain the reaction of the public or a local governing body to the application. If the board determines that it is appropriate to hold a public hearing, the board will follow the procedures in (b) of this section.

(2) If the board receives a protest of an application from a local governing body described in AS 04.11.480(a), the board will review the protest at its first regular meeting at which it considers the application after the protest is received. If the board has any indication that the protest might be arbitrary, capricious, or unreasonable, the board will first determine whether the protest is based on a question of law. If the protest is found to be based in whole or in part on a question of law, the board will schedule the matter for a public hearing under (b) of this section and AS 04.11.510(b)(4). Unless a hearing is required by another provision of law, if the protest is found not to be based on a question of law the board will, in its discretion, and if appropriate,

conduct a public hearing under (b) of this section to ascertain the reaction of the public or a local governing body to the application in question. If the board has no indication that the protest is arbitrary, capricious, or unreasonable, it will, in its discretion, vote to uphold the protest, and the applicant and the board will follow the procedure set in AS 04.11.510(b)(1). If the board decides to overrule the protest, the local governing body may appeal the board's decision under AS 44.62.

(3) If a protest is received as described in AS 04.11.480(b), the board will, under (a) this section, conduct a public hearing as required by AS 04.11.510(b)(3).

(b) A public hearing under this subsection will, in the board's discretion, be conducted, after proper notice to interested parties and members of the public, by the board's staff or the board sitting alone. The board shall exercise all other powers relating to the conduct of the hearing.

(c) A hearing conducted under this section will, in the discretion of the director, be recorded by a qualified court reporter or the board's staff.

(d) A hearing required to be held under AS 44.62 is delegated to a hearing officer alone, unless the board decides to sit along with a hearing officer for a specific matter. (Eff.

___/___/___ Register ___)

Authority: AS 04.06.090 Sec. 1, ch.8, SLA 2022 Sec. 171, ch.8, SLA 2022
AS 04.06.100

3 AAC 305.100. Procedure for mutually exclusive and competing applications. (a)

When the board receives applications for more licenses of a type than can be supported by the population under AS 04.11.400(a), so that the board is required to deny one or more applications, the applications are "mutually exclusive" under this section.

(b) The board will consider, and grant or deny, mutually exclusive applications in the order in which they are received. However, all "competing applications," as defined under (c) of this section, will be treated as if they were received at the same time, and will be considered together.

(c) For purposes of this section, "competing applications" are those mutually exclusive applications for licenses, whether or not an endorsement attaches,

(1) inside a unified municipality, organized borough, or incorporated city that,

(A) if the applications are for one or more licenses which have become available because of a change of local option or a change in population, are received during the 30-day period beginning on the date the license or licenses first become available; or

(B) if the applications are for the last available license other than a license described in (A) of this paragraph, are received within the same 30-day period beginning on the date the board received the first application for the license; and

(2) outside a unified municipality, organized borough, or incorporated city, that are received 30 days or less after the immediately preceding application for the license.

(d) Nothing in this section may be interpreted to allow the 90-day time limit for a decision on an application set by AS 04.11.510, to be exceeded. (Eff. ____/____/____, Register ____)

Authority:	AS 04.06.080	AS 04.11.320	Sec. 1, ch.8, SLA 2022
	AS 04.06.090	AS 04.11.340	Sec. 171, ch.8, SLA 2022
	AS 04.06.100	AS 04.11.400	

3 AAC 305.105. Selection among mutually exclusive and competing applications. (a)

Within an incorporated city, organized borough, or unified municipality, all competing applications, as defined in 3 AAC 305.100(c) will be considered together by the board under this section.

(b) If affiliates, or persons who are related by birth or marriage, have filed competing applications for premises at a single location, the board will, in its discretion, deny all but one of those applications.

(c) The board will deny any competing applications which are required to be denied under AS 04.11.320, AS 04.11.340, AS 04.11.480, or 3 AAC 305.110.

(d) If the denial of one or more competing applications under (b) or (c) of this section causes any other competing applications to cease to be mutually exclusive, the board will, in its discretion, approve the applications which are no longer mutually exclusive.

(e) If there continue to be competing applications after the steps in (b), (c), and (d) of this section are taken, the board will, in its discretion, grant any applications the board considers most in the public interest. The factors the board will, in its discretion, consider in determining the public interest include the safety, suitability, and proximity to other licensed premises of the location of the proposed premises; the size of the proposed premises; community amenities associated with the premises, including entertainment, dining facilities, and tourist accommodations; and preferences or priorities expressed by the local governing body.

(f) If there continue to be competing applications after the steps in (b), (c), (d), and (e) of this section are taken, the board will, in its discretion, conduct a drawing to determine which remaining competing applications to approve.

(g) A competing application not granted under this section will be denied without prejudice to future application.

(h) A license with or without an endorsement granted under this section will be issued after the time within which unsuccessful competing applicants may appeal the denial of their applications, and after all statutory requirements are met by the successful applicant. (Eff.

____/____/____, Register _____)

Authority: AS 04.06.090 AS 04.11.340(2) AS 04.11.560
AS 04.06.100 AS 04.11.400(a) Sec. 1, ch.8, SLA 2022
AS 04.11.260 AS 04.11.480 Sec. 171, ch.8, SLA 2022
AS 04.11.320(a) AS 04.11.510

3 AAC 305.110. Factors for consideration; denial of application. (a) The board may consider, as applicable to an application for an alcoholic beverage license, an alcoholic beverage license with one or more endorsement, or an endorsement, the following factors:

(1) the applicant's and the applicant's affiliates' histories of conviction of a felony in this state, the United States, or another state or territory during the fifteen (15) years immediately preceding the date of application;

(2) the applicant's or the applicant's affiliates

(A) violation of AS 04 or regulations adopted by the board; or

(B) violation of the alcoholic beverage control laws of another state, as a licensee of that state;

(3) whether the applicant or the applicant's affiliates are untrustworthy, unfit to conduct a licensed business, or a potential source of harm to the public;

(4) whether the applicant or the applicant's affiliates have permitted, on licensed premises belonging to that person, the occurrence of sexual contact between persons; for the purpose of this paragraph, "sexual contact" is as defined at AS 11.81.900(b)(61);

(5) whether the application is not complete as required by an applicable provision of AS 04 and this article or contains a false or misleading statement;

(6) whether the license or endorsement would violation any requirement of the license or endorsement under AS 04 or this chapter;

(7) whether the license or endorsement would violate any particular restriction applicable to the particular license or endorsement authorized under AS 04 or this chapter;

(8) whether the license or endorsement is prohibited under this chapter as a result of an ordinance or election conducted under AS 04.11.491;

(8) whether a protest by the local governing body is not arbitrary, capricious, or unreasonable;

(10) all other factors identified in AS 04.11.320 that are present and of concern; and

(11) all other factors the board in its discretion determines relevant to the public

interest.

(b) if an application for renewal or consideration of continued operation, in addition to all other applicable factors identified in paragraph (a), whether

- (1) the license or endorsement has been operated in violation of a condition or restriction the board previously imposed;
- (2) the applicant has lost right to possession of the licensed premises;
- (3) the applicant has satisfied the minimum operating requirements;
- (4) the applicant is delinquent in the payment of taxes due in whole or in part from operation of the licensed business; and
- (5) other factors identified at AS 04.11.330 are present and of concern.

(c) if an application is for transfer to another person, in addition to all other applicable factors identified in paragraph (a), whether:

- (1) the transferor has not paid all debts or taxes arising from the operation of the business licensed under this chapter unless the transferor gives security for the payment of the debts or taxes satisfactory to the creditor or taxing authority;
- (2) the transfer of the license to another person would result in violation of the provisions of AS 04 and this chapter relating to identity of licensees and financing of licensees;
- (3) the prospective transferee does not have the qualifications of an original applicant required under AS 04 or this chapter; and
- (4) other factors identified at AS 04.11.360 are present and of concern.

(d) if an application is for transfer of location, in addition to all other applicable factors, whether

(1) the new location whether the license or endorsement would violate any requirement of the license or endorsement under AS 04 or this chapter;

(2) whether the license or endorsement in its requested location would violate any particular restriction applicable to the particular license or endorsement authorized under AS 04 or this chapter;

(3) whether the license or endorsement in its requested location is prohibited under this chapter as a result of an ordinance or election conducted under AS 04.11.491; and

(4) other factors identified at AS 04.11.340 are present and of concern.

(e) A local governing body may properly protest an application under AS 04.11.480 and 3 AAC 305.085 using the factors set out in (a) of this section.

(f) The board may deny an application if the board finds that any of the applicable discretionary factors identified in paragraphs (a) through (d) of this section do not support approval of the application. The board will deny an application if approving the application would violate any mandatory provision of or restriction under AS 04 or this chapter, if denial is required under AS 04.11.320, AS 04.11.330, AS 04.11.340, and AS 04.11.360, if denial is required under 3 AAC 305.090, 3 AAC 305.100, 3 AAC 305.120-.130 or 3 AAC 305.160, or if the board concludes a protest of a local governing body is not arbitrary, capricious, or unreasonable.

(g) The board has discretion to approve a license application but deny an endorsement application for the approved license. (Eff. ____/____/____, Register ____)

Authority: AS 04.06.090 AS 04.11.340 AS 04.11.480

AS 04.06.100

AS 04.11.360

Sec. 1, ch.8, SLA 2022

AS 04.11.320

AS 04.11.370

Sec. 171, ch.8, SLA 2022

AS 04.11.330

3 AAC 305.115. Consideration of endorsement. (a) An endorsement is valid only in conjunction with a license. An endorsement may be transferred to another person only if the license for which the endorsement was issued is also transferred to that person. An endorsement expires if the licensed premises are relocated, the license expires, or the license is revoked.

(b) An endorsement is valid for the duration of the license and renews concurrently with the license.

(c) The board will consider the factors identified in 3 AAC 305.105 when determining whether to grant or deny an application for an endorsements.

(d) The board may approve an application for a license, but deny an application for an endorsement from the license holder. (Eff. ____/____/____, Register ____)

Authority: AS 04.06.090 Sec. 1, ch.8, SLA 2022 Sec. 171, ch.8, SLA 2022
AS 04.06.100

3 AAC 305.120. Waiver of annual operating requirement and minimum operating requirements. (a) Except as provided in this section, the board will deny an application for renewal of a license or a license with one or more endorsements if the licensed premises were not operated for the time required under AS 04.11.330(a)(3) or (d).

(b) A licensee may apply to the board, requesting that the board waive the operating requirement of AS 04.11.330 (a)(3) or (d). Under AS 04.11.330(a)(3), the board will determine whether, through no fault of the licensee or because the premises are under construction, the licensed premises could not be operated for the required time during the preceding calendar year.

(c) An application for waiver for a calendar year must be made in writing to the board and must be accompanied by the non-refundable application of:

(1) an amount equal to one-half the applicable biennial license fee if a waiver application was not made for the previous year; or

(2) double the amount of the fee paid for the previous year's waiver application.

(d) In an application for waiver, the licensee must explain why the licensed premises were not operated. Additionally, the licensee must provide a copy of the application to the local governing body, if any, having jurisdiction over the license and licensed premises.

(e) The board may, in its discretion, deny a third or subsequent, consecutive application for waiver, unless the licensee clearly shows that the licensed premises were not operated, because the premises were condemned or substantially destroyed by any cause. If the premises identified on an applicant's license are not leased or owned by the licensee, the third or subsequent application will, in the board's discretion, be denied. Additionally, a third or subsequent consecutive application for waiver that does not identify a licensed premises location will, in the board's discretion, be denied.

(f) The board may in its discretion, impose conditions along with the approval of an application for waiver.

(g) If an application for waiver is denied, an application for license renewal for the succeeding license period will be denied by the board under AS 04.11.330(a)(3).

(h) In addition to the application fee under (c) of this section, the applicant shall pay \$1,000 for an application that is received too late for board consideration at its last meeting of the calendar year for which waiver is requested.

(i) In circumstances of death of a licensee, destruction of the premises, or comparable circumstances showing extraordinary hardship, the board may, in its discretion, waive the fees under (c) and (h) of this section.

(j) If a license is exercised only to satisfy the minimum operating requirement under AS 04.11.330(a)(3) or 3 AAC 305.110, a licensee shall operate in a similar fashion to other licensed premises of the same type by meeting the following operating requirements if appropriate for the license type:

(1) provide signage, of sufficient size and visibility to show that the premises is open for business, stating business name and hours of operations;

(2) offer for sale at the licensed premises, as appropriate to the type of license, a variety of malt beverages, wines, and distilled spirits;

(3) visibly display the alcoholic beverages stock in a licensed package store premises;

(4) provide seating in beverage dispensary licensed premises for at least one-half of the maximum number allowed by the occupancy permit;

(5) comply with all state or municipal health, fire, and zoning laws or ordinances required for the operation of business;

(6) maintain a record of all purchases of alcoholic beverages for resale on the licensed premises; and

(7) record sales with a cash register or point of sale system that retains a record of transactions.

(k) The licensee has the burden of proof to show that the licensed premises was operated for the minimum required period of time and met the operating requirements under (j) of this section. The licensee may provide receipts, invoices, photographs, permits, timecards, and other records to meet the burden of proof. If the licensee fails to provide proof that one or more of the operating requirements was met, the board may consider additional documentation provided by the licensee to determine whether the licensee has met the burden of proof.

(l) If a new license is issued between November 20 and December 31, the licensee is exempt from filing a waiver of annual operating requirement for that year. (Eff.

____/____/____, Register _____)

Authority: AS 04.06.090 AS 04.11.330 Sec. 171, ch.8, SLA 2022

AS 04.06.100 Sec. 1, ch.8, SLA 2022

3 AAC 305.125. Compelled transfer of license to the prior licensee with a security interest in the license. (a) If a former licensee seeks to compel the transfer of a license or a license with one or more endorsements 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 the creditors are not satisfied under AS 04.11.360(4)(A), unless it clearly appears that

(1) the security interest was established in the previous transfer in accordance with 3 AAC 305.065.

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

(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 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. ____/____/____,

Register _____)

Authority:	AS 04.06.090	AS 04.11.270	AS 04.11.670
	AS 04.06.100	AS 04.11.280	Sec. 1, ch.8, SLA 2022
	AS 04.11.050	AS 04.11.290	Sec. 171, ch.8, SLA 2022
	AS 04.11.260	AS 04.11.450	

3 AAC 305.130. Consideration of transfer of location of licenses under AS

04.11.400(k). (a) An application to transfer under AS 04.11.400(k), with or without

endorsements, a beverage dispensary license under AS 04.09.200 to a restaurant, eating place, or hotel, motel, resort, or similar business that contains a restaurant or eating place, a package store license under AS 04.09.230, a brewery retail license under AS 04.09.320, a winery retail license under AS 04.09.330, or a distillery retail license under AS 04.09.340 in a borough with a population of 50,000 or more into or within an incorporated city in the borough must comply with the requirements for notice under AS 04.11.280 and 04.11.290, and with 3 AAC 305.070(d), as applicable. The criteria for denial of relocation under AS 04.11.340, and for denial of transfer of a license to another person under AS 04.11.360 apply to a transfer under AS 04.11.400(k).

(b) If the board approves the transfer under AS 04.11.400(k) of a beverage dispensary license, the license becomes a license of the municipality where it is relocated. The license may be transferred to a new location and new person within the receiving municipality. If a license is transferred with a security interest under AS 04.11.360(4)(B) and 04.11.670, the retransfer back to the previous owner may not be made to the location of the former municipality.

(c) A license that is located in a municipality as a result of annexation is not counted as a new license for purposes of AS 04.11.400(k).

(d) When the board receives applications for a transfer that exceeds the number allowed per decade under AS 04.11.400(k), the board will approve the completed application that the board received first, if the application meets other applicable requirements of AS 04 and this chapter. (Eff. ___/___/____, Register _____)

Authority: AS 04.06.090 AS 04.11.400 Sec. 171, ch.8, SLA 2022
AS 04.06.100 Sec. 1, ch.8, SLA 2022

3 AAC 305.135. Permits. (a) With the exception of conditional contractor's permits issued under AS 04.09.690, to apply for a permit, an applicant must submit to the office the proper application form, together with the application fee and permit fee not less than three business days before the first day of the event. The application must include a description of the proposed premises, a drawing designating which areas are for storage, service, and consumption, a statement of the specific hours of intended operation, a copy of the approval from the proper local authority, a statement that every person who will serve or sell alcohol or check identification of a patron during the event will have successfully completed an approved alcohol server education course before the first day of the event, and other information required by the application form.

(b) To apply for a conditional contractor's permit, an applicant must submit to the office the proper application form, together with the written permission from the commanding officer of the military or naval reservation and the prime contractor of the remotely situated site and the application and permit fees. The application must include a description of the proposed premises, a drawing designating which areas are for storage, service, and consumption, a statement of the specific hours of intended operation. All other conditions for approval, removal, and expiration are set out at AS 04.09.690.

(c) The director will approve or deny all applications for permits. If an application is denied, the applicant may appeal the denial to the board.

(d) Permits are not transferable. However, the holder of an approved permit subject to paragraph (a) may submit a written amendment no less than three business days before the first date of the event to change the event date, site, designated area, or designated time. Any

submission must include approval of the law enforcement agency having jurisdiction over the site. Except for conditional contractor permits issued under AS 04.09.690, a permit may not be renewed.

(e) The holder of a permit shall comply with all statutes, ordinances, and regulations pertaining to the possession and sale of alcoholic beverages as it applies to the permit or the licensed premises of the alcoholic beverage licensee to which the permit attaches. (Eff.

____/____/____, Register _____)

Authority: AS 04.06.080 AS 04.11.260 Sec. 1, ch.8, SLA 2022

AS 04.06.100 AS 04.11.320 Sec. 171, ch.8, SLA 2022

3 AAC 305.140. Application for and board consideration of common carrier

approval. (a) An applicant for a common carrier approval to transport and deliver alcoholic beverages to a person in the state must file an application on a form the board prescribes, with the information and documentation described in this section, along with the application fee and approval fee. A common carrier described under this section must certify it will meet the requirements of AS 04.09.750(c) and (d).

(b) The board will approve a common carrier who meets the definition of common carrier under AS 04.09.750(g) and who provides the certifications required under AS 04.09.750(c) and (d).

(c) The board may remove a previously approved common carrier under this section from the list maintained by the board as required in AS 04.09.750(e) if the common carrier transports or delivers alcoholic beverages in violation of AS 04.09.750(c) or (d). (Eff. ____/____/____, Register _____).

Authority: AS 04.06.090 Sec. 1, ch.8, SLA 2022 Sec. 171, ch.8, SLA 2022
AS 04.06.100

3 AAC 305.145. License and endorsement application and biennial fees. (a) A non-refundable application fee of \$500.00 must accompany an application for a new license, a new license with one or more endorsement, a relocation, or a transfer of an existing license or license with one or more endorsements.

(b) A non-refundable application fee of \$300.00 must accompany an application to renew a license or a license with one or more endorsements.

(c) Except for an application for a multiple fixed counter endorsement application, a non-refundable application fee of \$25.00 must accompany an application for a new endorsement when it is not submitted as part of a new, renewal, or transfer application. The initial non-refundable application fee for a multiple fixed counter endorsement is set out at AS 04.09.420(c).

(d) The biennial license fees are as follows:

- (1) Brewery manufacturer license: the amount set out at AS 04.09.020(b);
- (2) Winery manufacturer license: the amount set out at AS 04.09.030(b);
- (3) Distillery manufacturer license: the amount set out at AS 04.09.040(b);
- (4) General Wholesale License: the amount set out at AS 04.09.100(b);
- (5) Limited Wholesale Brewed Beverage and wine License: the amount set out at AS 04.09.110(b);

- (6) Brewery retail license: the amount set out at AS 04.09.320(b);
- (7) Winery retail license: the amount set out at AS 04.09.330(b);
- (8) Distillery retail license: the amount set out at AS 04.09.340(b);
- (9) Brewery dispensary tourism license: the amount set out at AS 04.09.350(b);
- (10) Beverage dispensary license: the amount set out at AS 04.09.200(b);
- (11) Restaurant or eating place license: the amount set out at AS 04.09.210(b);
- (12) Club license: the amount set out at AS 04.09.220(b);
- (13) Package store license: the amount set out at AS 04.09.230(b);
- (14) Pub license: the amount set out at AS 04.09.240(b);
- (15) Theater license: the amount set out at AS 04.09.250(b);
- (16) Common carrier dispensary license: the amount set out as AS 04.09.260(b)
or AS 04.09. 260(c);
- (17) Sporting activity or event license: the amount set out at AS 04.09.270(b);
- (18) Outdoor recreation lodge license: the amount set out at AS 04.09.280(b);
- (19) Fair license: the amount set out at AS 04.09.290(b);
- (20) Golf course license: the amount set out at AS 04.09.300(b);
- (21) Destination resort license: the amount set out at AS 04.09.310(b);

(22) Seasonal restaurant or eating place tourism license: the amount set out at AS 04.09.360(b);

(23) Manufacturer direct shipment license: the amount set out at AS 04.09.370(b).

(e) The biennial fee for an endorsement is as follows:

(1) Manufacturer Sampling Endorsement: the amount set out at AS 04.09.410(b);

(2) Multiple fixed counter endorsement: the amount set out at AS 04.09.420(b);

(3) Hotel or motel endorsement: the amount set out at AS 04.09.430(b);

(4) Large resort endorsement: the amount set out at AS 04.09.440(b);

(5) Restaurant endorsement: the amount set out at AS 04.09.450(b);

(6) Package store shipping endorsement: the amount set out at AS 04.09.460(b);

(7) Package store delivery endorsement: the amount set out at AS 04.09.470(b);

(8) Package store repackaging endorsement: the amount set out at AS 04.09.480(b);

(9) Package store sampling endorsement: the amount set out at AS 04.09.490(b);

(10) Bowling alley endorsement: the amount set out at AS 04.09.500(b);

(11) Golf course endorsement: the amount set out at AS 04.09.510(b); and

(12) Brewery repackaging endorsement: the amount set out at AS 04.09.520(b).

(Eff. ___/___/_____, Register _____)

Authority: AS 04.06.090 Sec. 1, ch.8, SLA 2022 Sec. 171, ch.8, SLA 2022
AS 04.06.100

3 AAC 305.150. Permits and common carrier approval fees. (a) Permit fees are as follows:

(1) A beverage dispensary caterer's permit issued under AS 04.09.610 is \$100 for up to two days. \$50 for each additional day.

(2) A restaurant caterer's dining permit issued under AS 04.09.620 is \$100 for up to two days. \$50 for each additional day.

(3) A club caterer's permit issued under AS 04.09.630 is \$100 for up to two days. \$50 for each additional day.

(4) An art exhibit event permit issued under AS 04.09.640 is \$100 for up to two days. \$50 for each additional day.

(5) A music festival permit issued under AS 04.09.645 is \$100 for up to two days. \$50 for each additional day.

(6) A nonprofit organization event permit issued under AS 04.09.650 is \$100 for up to two days. \$50 for each additional day.

(7) An alcoholic beverage auction permit issued under AS 04.09.660 is \$50 per day.

(8) A package store tasting event permit issued under AS 04.09.670 is \$100 for up to two days. \$50 for each additional day.

(9) The fee for an inventory resale permit is set out in AS 04.09.680.

(10) A live music or entertainment permit issued under AS 04.09.685 is \$100 per event.

(11) The fee for a conditional contractor's permit is set out in AS 04.09.690.

(b) If an application for a permit described in paragraph (a) is subject to AS 04.09.600(b) and is received less than three days before the first day of the event, it is within the discretion of the director to consider that application for approval. If the application is considered, the fee is twice the amount set out in paragraph (a) of this section.

(c) The fee for a common carrier approval issued under AS 04.09.750 is a one-time fee per business entity of \$1,250.

(d) The board will review the fees specified in AS 04 and this chapter as required under AS 04.06.080(g). (Eff. ____/____/____, Register _____)

Authority: AS 04.06.090 Sec. 1, ch.8, SLA 2022 Sec. 171, ch.8, SLA 2022
AS 04.06.100

3 AAC 305.155. General wholesale and limited wholesale additional fees. (a) In addition to the biennial license fee set out in AS 04.09.100(b) and 3 AAC 305.145, the holder of a general wholesale license shall pay the biennial declaration fee as described in AS 04.09.130(b) and an annual fee based on total business transacted as set out in AS 04.09.100 and AS 04.09.120.

(b) In addition to the biennial license fee set out in AS 04.09.110(b) and 3 AAC 305.145, the holder of a limited wholesale brewed beverages and wine license shall pay the biennial declaration fee as described at AS 04.09.130 and annual fee based on the total business transacted as set out in AS 04.09.110 and AS 04.09.120. (Eff. ____/____/____, Register _____)

Authority: AS 04.06.090 Sec. 1, ch.8, SLA 2022 Sec. 171, ch.8, SLA 2022
AS 04.06.100

3 AAC 305.160. Processing fees for renewals after late payment of taxes. (a) A licensee shall pay the following additional fee for renewal of a license after a local governing body protests a renewal under 3 AAC 305.085(g)(1):

(1) if the delinquent taxes are paid after the local governing body files a protest with the board and before the board denies license renewal under AS 04.11.510(a), \$50;

(2) if the delinquent taxes are paid, after protest, but before appointment of a hearing officer to hear an appeal of the board's denial of license renewal, \$500;

(3) if the delinquent taxes are paid, after appointment of a hearing officer, but before an administrative hearing on the appeal of the board's denial of license renewal, \$1,000; or

(4) if the delinquent taxes are paid, after an administrative hearing, but before the board adopts a hearing officer's recommendation to deny license renewal, \$2,000.

(b) A fee under (a) of this section will not be charged or will be refunded if the board finds that the local governing body has withdrawn the protest on the basis that the protest was made in error.

(c) Failure to remit fees under this section within 10 days following receipt of written notice from the director is additional grounds for the board to deny an application for renewal.

(Eff. ____/____/____, Register _____)

Authority:	AS 04.06.090	AS 04.11.480(a)	Sec. 1, ch.8, SLA 2022
	AS 04.06.100	AS 04.11.510	Sec. 171, ch.8, SLA 2022
	AS 04.11.330(b)		