

Department of Commerce, Community, and Economic Development

ALCOHOL AND MARIJUANA CONTROL OFFICE

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

MEMORANDUM

TO: Robert Klein, Chair, and DATE: November 13, 2017

Members of the Board

FROM: Erika McConnell, Director RE: Regulations Project: Bona Fide

Restaurant; Tribal Identification;

Background Checks

The board voted these three regulations projects out for public comment at the July meeting. The public comment on the projects closed on September 11. Public comment has been received on the Bona Fide Restaurant project and the Tribal Identification summary and is attached.

These projects are packaged together for administrative purposes; the board may amend or remove any portion of the text it deems appropriate. Should the board decide to amend one project and put it back out for public comment but adopt another project, the projects will be separated.

Bona Fide Restaurant Summary

This draft regulation clarifies guidelines and criteria for determining "bona fide" restaurant by adding new language to Article 8 of 3 AAC 304. A restaurant would need to demonstrate the minimum standards for a kitchen provided in 18 AAC 31.040(c), which states:

- (c) Except if plans are for a temporary food service subject to 18 AAC 31.600, plans submitted under this section must include
 - (1) a plot plan of the entire premises showing the location of buildings, the refuse storage site, the potable water supply, the wastewater disposal system, and access for deliveries;
 - (2) a detailed to-scale drawing of the food establishment showing the type, model, and location of equipment, and plumbing fixtures such as sinks and toilets;
 - (3) a plumbing schematic that depicts hot and cold water lines, wastewater lines, floor drains, and grease traps;
 - (4) the construction and design specifications for equipment;
 - (5) the finish materials specifications for floors, walls, and ceilings;
 - (6) types and location specifications for lighting and ventilation;
 - (7) a description of
 - (A) food items to be served or sold;
 - (B) projected volumes;
 - (C) methods of preparation and processing, including whether foods will be ready-to-eat, cook-and-serve, complex, or a combination; in this subparagraph, "complex" means cooked, cooled, and reheated; and
 - (D) styles of service;

Regulations Project: Bona Fide Restaurant; Tribal ID; Background Checks ABC November 13, 2017 Page 2

- (8) the seating capacity;
- (9) a description of equipment used to maintain temperatures during transportation, display, and service; and
- (10) the plan review fee required by 18 AAC 31.050.

Additionally, a menu must be submitted, to include evidence that a majority of the food served is prepared on the premises.

These regulations are proposed to implement the intent of the statute that a business holding a restaurant or eating place license has the primary and full function of making and serving food, and the service of alcohol is an enhancement to that primary function.

Tribal Identification Summary

This proposed regulation adds to the list of acceptable forms of identification an ID issued by a federally recognized Tribe. The regulation still requires the Tribal ID to conform to standards listed in AS 04.21.050, which require an ID to be made of or encased in plastic, contain a photograph of the card holder, and contain a statement of age or date of birth.

Background Checks Summary

In certain circumstances, when a licensee is a corporation that is not based in Alaska or even in the United States, it can be difficult to obtain fingerprints for background checks. This regulation would still require criminal background checks, but allows for exceptions for officers of certain corporations, and only if the corporation is not based in Alaska and the majority of the officers listed with the corporation hold primary residence outside of the United States. The regulation would require a signed affidavit in lieu of the criminal background check.

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

Background Checks for Applications

- 3 AAC 304.105(b) is amended to read:
- (b) An application for a new license or for renewal, relocation, or transfer of an existing license, must contain the information required by AS 04.11.260 04.11.290. In addition, as appropriate, the application must contain the following:
- (1) written authorization <u>on a form prescribed by the board</u> for release of conviction and arrest records of a new applicant or transferee, and that person's affiliates, 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 liquor laws;
- (2) if the new applicant or transferee is a corporation, written authorization for release of the conviction and arrest records of each officer <u>required to be listed under AS</u>

 4.11.260 [AND DIRECTOR], <u>except as provided under (3) of this section</u>, unless the applicant is a corporation described in AS 04.11.050(c), of each individual shareholder owning 10 percent or more of the corporation's stock;
- (3) if the applicant or transferee is a corporation, an affidavit may be submitted on a form prescribed by the board, in lieu of the requirement under (2) of this section, for officers whose primary residencies are outside of the United States, listing any act described in 3 AAC 304.180(a)(1), only if:
 - (A) the corporation's home state is not Alaska;
 - (B) the corporation has ten or more officers listed with the Alaska

Division of Corporations; and

(C) the majority of the corporation's officers have primary residency outside of the United States. Each officer whose primary residency is within the United States must submit a complete copy of the form required under (2) of this section;

- [3] (4) a statement that no one other than the applicant has a financial interest in the business to be licensed;
- [4] (5) if the new applicant or transferee is a partnership or joint venture, a copy of its partnership or joint venture agreement, or, if the new applicant or transferee is a corporation, a copy of its certificate of incorporation and a statement of the applicant that the corporation is in good standing;
- [5] <u>(6)</u> a statement that the applicant or its principals have read and are familiar with AS 04 and with this chapter;
- [6] (7) 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; and
- [7](8) if the new applicant or transferee is a limited liability organization, a statement of the applicant that the limited liability organization is in good standing, and if it is a
- (A) limited liability company, a copy of its articles of organization, certificate of organization, and operating agreement; or
 - (B) limited liability partnership, a copy of its statement of qualification.
- (c) The required biennial license fee must accompany an application for a new license or permit, or for renewal of an existing license or permit.
- (d) A non-refundable application fee of \$100 must accompany an application for a new license, relocation, or transfer of an existing license. A non-refundable application fee of \$200 must accompany an application for license renewal.

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(e) A	an application that is	incomplete or that is n	ot accompanied by the required fees will
be returned to	o the applicant. (Eff.	11/29/81, Register 80); am 10/4/87, Register 104; am 7/30/89,
Register 111;	; am 5/1/94, Register	130; am 5/11/96, Reg	rister 138; am 6/13/2003, Register 166;
am//	, Register		
Authority:	AS 04.06.090	AS 04.11.260	AS 04.11.290
	AS 04.06.100	AS 04.11.270	AS 04.11.450
	AS 04.11.045	AS 04.11.280	AS 04.11.670
	AS 04.11.050		

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Bona Fide Restaurant Definition

3 AAC 304.990 is amended by adding a new section to read:

3 AAC 304.990. Restaurant definintion (b) The board shall use the following guidelines when

determining what qualifies as bona fide restaurant or eating place:

(1) The applicant demonstrates minimum standards for a kitchen to prepare food

onsite, in accordance with 18 AAC 31.040(c), and include a detailed to-scale drawing of the food

establishment showing the type, model, and location of kitchen equipment;

(2) The license applicant shall provide a menu of food items, including entrees, that

are regularly sold, along with written methods of preparation that demonstrate the majority of

food is prepared on the premises from basic ingredients.

(3) The establishment has sufficient employees for cooking, preparing and serving

meals for consumption at tables or counters in a dining area on the premises.

(4) The applicant includes a detailed security plan to prevent access by minors and

introduction or removal of alcoholic beverages. (Eff. 11/29/81, Register 80; am 6/25/88, Register

106; am 5/1/94, Register 130; am 5/11/96, Register 138; am 9/11/98, Register 147; am

|--|

Authority:

AS 0406.090

AS 04.06.100

AS 04.11.100

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Tribal IDs

3 AAC 304.425 is amended to read:

3 AAC 304.425 Determining age of patron. (a) It is the responsibility of the licensee to

obtain a statement of proof-of-age form[s] required under AS 04.21.050. Licensees must retain

completed forms for 90 days and make them available upon request for inspection by the board

and peace officers.

(b) A valid identification card as used in AS 04.21.050 means an unexpired, unaltered

passport, an identification card issued by a federally recognized tribe, or an unexpired,

unaltered driver's license or identification card issued by a federal or state agency authorized to

issue driver's licenses or identification cards that meet the requirements under AS 04.21.050(b).

If a licensee or an agent or employee of a licensee has reason to believe that the identification

card presented by a person is fraudulent, the licensee, agent, or employee shall refuse entrance to

licensed premises and shall refuse service or sale to that person. (Eff. 11/29/81, Register 80; am

5/22/92, Register 122; am 5/11/2012, Register 202, am __/___, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.21.050

From: Dale Fox

To: <u>CED AMCO REGS (CED sponsored)</u>

Subject: Comments on 3 AAC 304.990 definition of a bona fide restaurant for the purpose of alcohol licensing

Date: Tuesday, August 22, 2017 10:42:01 AM

Attachments: <u>image001.png</u>

To: ABC Board Members

From: Dale Fox, President & CEO, Alaska CHARR

Re: 3 AAC 306.985 Restaurant Definition

Date: August 22, 2017

Senate Bill 76 has a definition of "bona fide restaurant" that has been agreed to by all stakeholders. If something is needed immediately, prior to the passage of SB 76, I would encourage the Board to pass the definition that will likely be passed by the legislature. Why invent something new that deviates from what we are working on getting passed? In SB 76 Section 135, AS 04.21.080 (b) #21 reads as follows:

- (21) "bona fide restaurant" means an establishment or a portion of an establishment where, during all times alcoholic beverages are served or consumed,
 - (A) the patron's principal activity is consumption of food; and
 - (B) a variety of types of food items appropriate for meals is prepared on site and available for sale as shown on a menu provide to patrons and filed with the board.
- **3 AAC 306.985** Below are specific comments on the draft regulation proposed:
- A1. This section should have a period after 18 AAC 31.040 (C). Nothing else is needed; this section reflects all the requirements from the State of Alaska Department of Environmental Conservation (DEC) to have a qualified kitchen and restaurant.

CHARR opposes the second half of the sentence that reads "...and includes a detailed to-scale drawing of the food establishment showing the type, model, and location of kitchen equipment." If the ABC Board adopted this regulation, your enforcement officers would be able to give a Notice of Violation if the restaurant replaced a piece of equipment with a different type or model without notifying the ABC Board. We do not believe that this level of detail is warranted, or even useful.

A2. This section should read "The applicant shall provide a menu of food items that are regularly sold on the premises." The ABC Board does not need written recipes for dishes or a regulation requiring knowledge of basic ingredients. **This regulation would leave it to enforcement to decide what a basic ingredient is and how this rule should be applied.** Many of the chain restaurants have prepackaged food to ensure nationwide consistency. Exactly how will the enforcement staff determine who is in violation of this regulation? Good grief! Why would we make it complicated for the

industry and ultimately the ABC Board staff?

A3. This section is irrelevant in its entirety. It requires the establishment to have "sufficient employees for cooking, preparing, and serving meals for consumption..." Staffing levels at a business are the business owner's decision. This is not an issue for enforcement staff to arbitrarily decide what staffing is sufficient, as I expect that as a group they have little experience managing restaurants, nor is it in their purview of enforcement. Further, we should examine why short staff situation could occur. Common problems for restaurants might include:

- 1. Scheduled staff call in sick
- 2. Staffing is set for what the management believes will be a cloudy day. The sun comes out and the deck is full of people with the scheduled staff doing their best to keep up with demand.
- 3. It is a sunny day and the scheduled staff calls in sick because they want to go play and the number of customers is up because it is nice. This doubles the staffing challenges.

None of these should result in a Notice of Violation for restaurants.

A4. CHARR believes this section that requires a plan for alcohol issue is consistent with the mission of the ABC and makes total sense.

Thank you for your consideration,

Dale Fox President & CEO Alaska CHARR 1503 W 31st Ave Ste 202 Anchorage, AK 99503 907-274-8133 or Toll Free in Alaska 800-478-2427 www.alaskacharr.com





From: Dale Fox

To: <u>CED AMCO REGS (CED sponsored)</u>

Subject: Re: 3 AAC 304.425 Adds Identification Cards issued by federally recognized tribes to the list of valid

identifications allowed under AS 04.21.050

Date: Tuesday, August 22, 2017 11:02:50 AM

Attachments: <u>image001.png</u>

Tribal ID samples.docx

To: ABC Board Members

From: Dale Fox, President & CEO, Alaska CHARR

Re: 3 AAC 304.425 Adds Identification Cards issued by federally recognized tribes to the list of valid identifications allowed under AS 04.21.050

Date: August 22, 2017

The issue of accepting Tribal Identification cards for alcohol is more complicated than it may first appear.

- 1. The sheer number of existing identifications that servers and sellers of alcohol must learn in order to know how to spot fakes is overwhelming. At least with State and Federal IDs there are some general guidelines about how IDs should look, which allows instruction to servers and sellers on how to spot a fake ID. Additionally, there is an annually-published ID Checking Guide to use as a resource for all state IDs. There are 562 recognized Tribes in the United States, with 220 in Alaska. There is no standard ID format, nor is there a resource guide to allow industry members to verify IDs. Without any guidelines to follow, it would be a huge task for the industry to sort out real from fake.
- 2. It is absolutely true that Tribal governments retain a nation-to-nation relationship with the United States government. Therefore, the Tribes in the United States represent 562 nations with their own rules regarding who is issued an ID and the security standards of that ID. It has been reported that of the 562 tribes, only **FOUR** have developed ID systems that meet the US government's standards to allow re-entry into the US after travel abroad. That leaves 558 tribes with a variety of standards for issuing IDs. We are not aware how strict these nations are in their methods of issuing IDs (i.e. how is ID stock protected, how are identifications verified prior to issuing ID, etc.). Further, some Tribal IDs appear to be homemade while others have some of the requirements listed in Title 4 (we have included samples we found for the board's review).
- 3. Blanket statements cause problems as much as nuanced statements. If the ABC Board says Tribal IDs are legal for purchasing alcohol, those with a Tribal ID will expect to be able to use their ID. Servers will also likely accept Tribal IDs unchallenged. However, if the ABC Board says Tribal IDs are okay but they must have a photo, date of birth, expiration date and be encased in plastic, both Tribal members and servers will not understand the details of these requirements and be able to recall them on command. This causes problems for everyone. Tribal members whose cards do not include one or more of the required features would likely assume racism if service was refused. I would not want to be the server in a busy establishment trying to explain why one Tribal Card was acceptable but the other Tribal Card was not. Further, servers will get tangled up in the details and may get cited if they accept a card that does not meet all the requirements. There are 28,000+ servers in the field who have been trained to look for fake State and Federal IDs but no one has a clue how to look

for fake Tribal IDs.

4. I believe that accepting Tribal IDs for alcohol purchase is a step too far, at least until all Tribes meet the standard for foreign nations. Nations produce passports for their citizens under the guidelines of the United Nations; Tribal IDs, for the most part, do not meet those standards. Tribal IDs seem to be good back up IDs (if they have appropriate security features), but it is too early to make them primary IDs. Additionally, there needs to be some sort of commonality between these IDs so servers can reasonably be able to inspect them for fake IDs. To do less is to expand the problems of fake IDs, especially for underage persons.

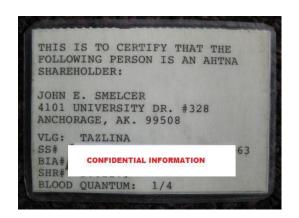
For all of these reasons the industry is opposed to this proposal.

Thank you for your consideration,

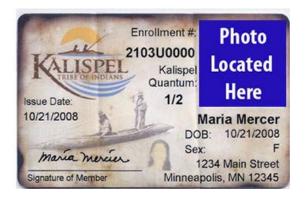
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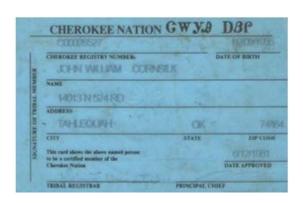




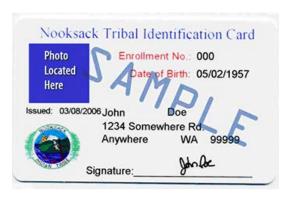




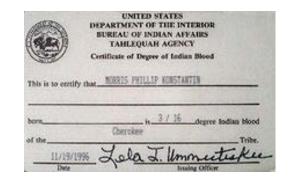












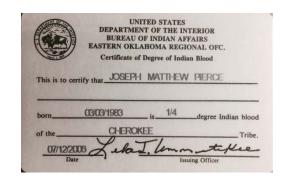


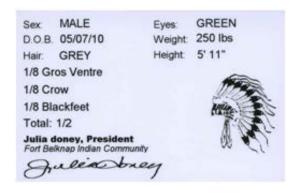








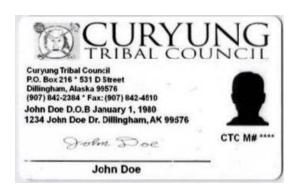


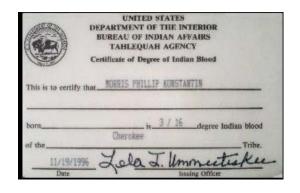














This is to certify that the records of this office shows that JOHN DOE MASO

is of 1/2 degree Indian Blood of the Yaqui Indian Nation.

DOB 3/2/75



