



MEMORANDUM

TO: Bob Klein, Chair, and Members of the
Alcoholic Beverage Control Board

DATE: January 23, 2018

FROM: Erika McConnell, Director

RE: Other Manufacturing License
Issues

Requested Action: Provide staff with an interpretation of “live entertainment, televisions, pool tables, dart games, dancing, electronic or other games, game tables, or other recreational or gaming opportunities”; particularly “live entertainment” and “other recreational...opportunities”

Statutory Authority: AS 04.06.090(a) states, “The board shall control the manufacture, barter, possession, and sale of alcoholic beverages in the state. The board is vested with the powers, duties, and responsibilities necessary for the control of alcoholic beverages...”

Staff Recommendation: Active events that are designed to invite patrons to the manufacturing facility for purposes other than tasting the manufacturer’s product, including festivals, classes, poetry readings, competitions, craft fairs, and the like, should be considered “live entertainment” and/or “recreational opportunities” and thus prohibited.

Passive events, such as art exhibits and displays, should not be considered “live entertainment” or “recreational opportunities” and would thus be permitted.

Live entertainment provided for the benefit of patrons in the tasting room, but actually located in an area where consumption does not occur (but still on the licensed premises) should be considered as providing live entertainment to the area where consumption occurs, and thus prohibited.

Initiate a regulations project to memorialize an interpretation of these statutory terms.

Background: Manufacturing licenses are permitted to have limited onsite consumption on their licensed premises as long as they meet certain restrictions that are intended to prevent them from

appearing to be or acting as a bar. The restrictions include a prohibition on “live entertainment, televisions, pool tables, dart games, dancing, electronic or other games, game tables, or other recreational or gaming opportunities on the premises where the consumption occurs.”

Certain elements on the list of restrictions are straightforward: televisions, pool tables, dart games, dancing, electronic or other games, game tables, and gaming opportunities.

Staff is aware of a variety of activities held in the tasting rooms of manufacturing licensees, such as festivals, fundraisers, painting parties, competitions, yoga classes, poetry readings, art exhibitions, and sales of local crafts.

Staff is seeking the board’s guidance on the interpretation of “live entertainment, televisions, pool tables, dart games, dancing, electronic or other games, game tables, or other recreational or gaming opportunities” with a particular focus on “live entertainment” and “recreational opportunities.”

Additionally, we have heard of at least one situation where live entertainment (a band) was located on the licensed premises of a manufacturing facility, but just outside the tasting room where consumption occurs. Staff is seeking board guidance on whether this would be permitted.

Dear ABC Board of Alaska,

Please read this before discussing manufacturing licenses allowing entertainment.

For the record I want to be clear that I support the innovation and creativity manufacturers bring to the alcohol industry in our state. I appreciate the quality products they continue to develop and provide for retail sale. However, I see mounting pressure over their general unhappiness and dissatisfaction with the three-tier system our industry operates under. The existing format has clear purpose in maintaining distinct separation between the three main entities: production, distribution, and retail, where each component has a niche it provides in support of the others with limited overlap. This format has evolved dating to Prohibition and statehood and gives ample opportunity for those interested in being part of the industry to operate in a competitive manner while still maintaining respect to the primary function of the other two components. Unfortunately, the respect for the distinct boundaries between the three components has begun to erode lately. Perhaps there is a need for more clear definition in the laws, more enforcement to regulate those wishing to push the boundaries, or simply more education to those new to the industry. A combination of all three may be necessary to support the continued health of a robust and growing industry in our state.

I would like to voice my concern about manufacturing licenses providing live music, paint and sip classes, and yoga. I believe these recreational activities were mentioned either at the last ABC meeting or in Ericka McConnell's Memorandum on September 13th to the Board.

When manufacturing licenses were first created and then amended in 2014 to allow distilleries to sell three ounces of their distilled product in tasting rooms, current alcohol license holders were concerned. We wanted to make sure manufacturing license tasting rooms did not function as bars and the focus of the manufacturing license was on manufacturing, not tasting room retail.

I would like to point out what manufacturing law AS 04.11.170 e (2) states:

(2) the distillery does not provide seats at the counter or bar where the product is served;

I am one of the concerned retail license holders. I believe part of the law intended to mean no seats, period. The point being tasting rooms functioned truly as tasting rooms and were not designed to invite people to stay and mingle for a long time. Why else would you include anything about seats in the law? However, the intent was lost when it went to legislation and others unfamiliar with the alcohol industry rewrote the law. Shame on the alcohol industry for failing to see the above sentence was reworded in a manner that no longer prevents seating in tasting rooms. Originally the intent or wording did not allow for seating at all, which provided a major distinction between manufacturing licenses and BDL's. Who cares if they remove four stools in front of the serving area? Most bars don't have stools in front of their waitress or "cocktail station" either. Because of the wording used in the final version, this part of the law no longer carries the original intent. Some manufacturers have built huge tasting rooms! In some cases, bigger than most bars, with more space than their manufacturing area. Why? Because they intend to earn the majority of their income through tasting room sales and not through the other two entities: distribution and retail. This is a fact. The license holders of BDLs, package stores, and REPLs screwed up

and didn't pay attention to the final wording of the law. The ABC Board has not heard many complaints from BDLs or REPL about the large amounts of seating manufacturers are providing. We now see this part of the law was not re-written correctly to achieve the original intent- no seats.

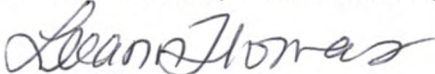
The seating issue is an example of how the existing separation is continuing to erode one rule at a time. Now, we are concerned because we see the following section of law in serious jeopardy:

(1) the distillery does not allow live entertainment, televisions, pool tables, dart games, dancing, electronic or other games, game tables, or other recreational or gaming opportunities on the premises where the consumption occurs;

This part of the law seems straightforward and complete. It covers the intent of the law with simple and plain language and states no live entertainment or recreational opportunities. Why? So tasting rooms do not function like BDLs. Operating a retail/tasting room is a free license under a manufacturing license. However, operating a similar room under a REPL or BDL is not free but rather sold at market value and range anywhere from \$30k to \$250k depending on the actual class of license and the location. Entertainment encourages repeat daily customers to linger in a bar setting. A tasting room should NOT use music, classes, lectures, painting lessons, or yoga to entice new or repeat customers. These are forms of entertainment to develop their tasting room as a regular hang-out for patrons. A private party at the manufacturer should not be a way to skirt this law either. This law should be enforced at all times, not just during business hours. Simply because the above examples of activities currently being offered by manufacturers aren't found in the language of AS 04.11.170 (e)1 doesn't mean they meet the intent of the law. Even the AMCO Director agrees:

"The intent of a manufacturing license is to allow the holder to manufacture the type of alcohol permitted by the license, and the onsite consumption provisions are there to allow members of the public who may wish to purchase the product, to taste it to see if they like it, purchase or not purchase, and leave. The license type does not suggest that members of the public should be encouraged to linger through food service and events, and the prohibition on entertainment supports that interpretation. That said, there is nothing in the statute or regulation that prohibits food service or the sale of other products." Erika McConnell- Director of Alcohol and Marijuana Control Office - memorandum to ABC Board on October 20th, 2017.

I want to make clear I do not support entertainment in manufacturing tasting rooms. It is clear the ABC Board should enforce the law as written so manufacturing licenses stay focused on manufacturing. To allow otherwise is unfair to the other long-standing alcohol retail businesses in the State. These businesses are also essential components in the industry and create and maintain jobs that contribute to Alaska's economy. Please don't forget about us.


Leeann Thomas
Triangle Club



December 21, 2017

Chairman Bob Klein
Alcohol Beverage Control Board
550 W 7th Ave, #1600
Anchorage, AK 9950

Chairman Klein,

The Brewers Guild of Alaska (BGA) is a nonprofit trade association founded in 2000 and currently representing 32 breweries, brewpubs and others in the Alaska craft beer industry. The BGA has had a positive working relationship with the ABC Board and staff in the past, and looks forward to continued dialogue about issues affecting our industry. The BGA urges the Board to adopt an interpretation of AS 04.11.130(e) that is consistent with prior enforcement practices, the statute's intent, and common sense, and which allows breweries to continue to host events and activities so long as they do not constitute "live entertainment" or are not explicitly prohibited by the statute.

During the eleven years since AS 04.11.130(e) was amended, our member breweries, acting in accordance with the agency's interpretation of the statute have hosted a variety of social, educational, and community oriented activities – some of which are now viewed by the agency as banned by the statute.

The November 13, 2017 memo from AMCO to the Board regarding "extracurricular activities" in breweries is troubling in several respects. The memo lists activities occurring in tasting rooms, and urges the board to determine that they constitute "entertainment" banned by the statute. The memo suggests that these activities serve to encourage "lingering" at tasting rooms, which the agency views as contrary to the statute's purpose. In the agency's current view, patrons should sample the product, decide what to purchase, and leave the premises. This view reflects a misunderstanding of the statute's language and intent.

The 2006 amendments to AS 04.11.130, including the restrictions on activities allowed in breweries, were part of a compromise between subgroups in the food and beverage industry. AS 04.11.130(e) provides that breweries may serve up to 36 ounces of beer to a person as long as the brewery does not allow "live entertainment, televisions, pool tables, dart games, dancing, electronic or other games, game tables, or other recreational or gaming opportunities...". Nothing in the statute or legislative history supports the agency's current position that all

“entertainment” must be banned from tasting rooms. The statute does not prohibit “entertainment” generally; rather, it refers specifically to “*live* entertainment” (emphasis added). “Live entertainment” is not defined, but a common sense meaning is that it refers to events featuring a performance, typically by professional performers. In contrast, other activities in which patrons participate do not constitute “live entertainment.”

It also appears that AMCO may view some activities as prohibited not just as “entertainment” but because they are “recreational.” However, the reference in AS 04.11.130(e) to “recreational,” appearing where it does in the list of restrictions, connotes that it is “recreation” in the context of games or gaming opportunities, and not simply a ban on any kind of “recreational...opportunity.” “Recreation” is not defined in the statute but it means “activity done for enjoyment when one is not working.” To interpret the statute to mean that breweries must prevent all “recreational...opportunities”, all enjoyable, non-work activities, on the premises is fundamentally unenforceable. It would put breweries in the position of policing customers’ conversations, prohibiting the use of cell phones or laptops, checking purses or backpacks for playing cards or other games, and taking other intrusive steps that the legislature could not have intended. A sensible interpretation of the statute, on the other hand, is that breweries must not affirmatively offer games or gaming activities for prizes or money.

Some may argue that anything but the most restrictive interpretation of the statute would allow tasting rooms to become like bars, which can offer a full range of on-premises activities and events. But, that argument overlooks the other restrictions in AS 04.11.130, including limits for on-premises consumption, limits to hours of operation (and in particular, termination of service at 8:00pm), limits to television and other specifically identified activities like pool and darts, and more. The limitations in AS 04.11.130 differentiate tasting rooms from full bars, but should not be interpreted –as does the November 13 memo to the Board – that patrons are prohibited from “lingering” on premises. Indeed, encouraging customers to sample beer, speedily choose and quaff their statutorily allowed 36 ounces, and immediately leave would be irresponsible. From a common sense and public health perspective, patrons should feel welcomed to take their time and slowly enjoy their craft beer experience. If the legislature wanted consumers to sample and immediately leave, then it would not have approved a 36-ounce limit (3 12-oz glasses or 2 pints of beer) or ended service (but not closure) at 8 pm.

The craft brewing industry in Alaska is directly responsible for 1,400 jobs, \$340 million in income, \$27 million in taxes and fees, and \$84 million in-state expenditures. During the current economic downturn, this industry continues to be a bright spot in the economy and according to a new economic trends report from

the Alaska Department of Labor and Workforce Development, it remains “unscathed by state recession.” To stifle a successful and growing industry during an economic downturn is counterproductive and ultimately harmful to more than just the craft brewing industry.

In conclusion, we urge the Board to interpret AS 04.11.130 with past enforcement practices and common sense to allow activities in breweries unless explicitly prohibited by the statute. Reinterpreting the statute after 11 years, and after many small businesses have spent considerable time and significant financial resources in planning, developing, and operating their breweries based on previously accepted practices is unfair and unnecessary.

A handwritten signature in blue ink, appearing to read "C. Ryan Makinster", with a long horizontal flourish extending to the right.

Ryan Makinster
Executive Director

Alcohol Beverage Control Board

Comment for: Manufacturing License Issues / Entertainment (TAB ??)

A manufacturing license is not a license based on retail sales at the bar like a (BDL) or off-premises (package store) as some manufacturers would like us all to believe. Manufacturers were privileged with limited sampling rooms to promote their product to new customers by offering samples of their product. The desire of manufacturers to become destination bars, taverns, or Package stores was not and is not the intent. With a long list of cocktails, planned entertainment events, and catering events to increase their return patronage and get customer to stay longer manufacturers have crossed over the line. This is effectively doubling or potentially even quadrupling the number of destination drinking establishments acting like bars open to the public.

The expansion of entertainment, extra hours through catering permits, and public activities outside of regulated hours needs to be acted on. The Manufacturing group of licenses clearly has existing regulation to stop the entertainment and recreational activities currently occurring on a regular basis in several manufacture tasting rooms.

does not

(1) allow live entertainment, televisions, pool tables, dart games, dancing, electronic or other games, game tables, or other recreational or gaming opportunities on the premises where the consumption occurs

Manufacturing tasting rooms clearly have standard hours of operation just like BDL's and Package Stores. Outside of which public activity is not allowed.

(3) the room where the consumption occurs is not open before 9:00 a.m. and serving of the product ends not later than 8:00 p.m.

Chapter 04.16 REGULATION OF SALES AND DISTRIBUTION

Sec. 04.16.010. Hours of sale and presence on licensed premises (standard closing hours).

Some manufacturers I am sure are going to try and tell you how they are just being good neighbors and helping non-profit groups by hosting entertainment events for the public. Do not be fooled, these events/entertainment/recreational opportunities, or however else they would like to refer to them as serve one purpose, it's the same purpose that a BDL, legally under regulation, hosts events for, to increase patronage and add value for their customers. I am sure there will be plenty of testimony to try and sway you to believe that these events are not covered by **Sec. 04.11.170. Distillery license. (e)** or the other relevant manufacture sections; or they may try and convince you that this is standard practice and enforcing it now would be reinterpreting of statute. The fact that there may not be a high number of violations in this new manufacturing group does not mean that its standard practice or you are reinterpreting anything. Really what it means is enforcement has been so busy with Marijuana for a few years and that violations in this new segment may have been missed.

The plain language of the Title 04 and its regulation and the obvious intent both lead to the same conclusions. Entertainment was not intended, and is in fact prohibited, in this part of our regulated industry.

Please give staff clear direction to follow the law today.

With complete prohibition of, as statute and regulation provide for, entertainment and recreational events held on site of the manufacturing tasting rooms. Changing the name of an event does not change the fact that it is entertainment meant to increase patronage.

Strict adherence to their regulated hours of operation just as Bars and Liquor stores they are emulating are required to do needs to also be consistently enforced. The following is an excerpt from Title 04.

A licensee, an agent, or employee may not permit a person to consume alcoholic beverages on the licensed premises outside of regulated hours.

A licensee, an agent, or employee may not permit a person to enter and a person may not enter premises licensed under this title outside of regulated hours.

Remember we are not talking about a full retail licenses here, but manufacturers license intended to make products for sale to wholesalers and retailer. Wrong or right, they have been given a very limited (regulated) hole in the three-tier structure. Allowing them to operate limitedly in all three tiers unlike any other license. Even allowing for both on premise and off premise sales at the same location unlike any other licensed retail locations. Expecting them to stick to the existing law and regulation and not further expand the inequities in the system seems a small request. Especially when they have been given more opportunities than any other license.



Paul Thomas

Retail Title 04 License holder #271