



## MEMORANDUM

TO: Bob Klein, Chair, and Members of the Alcoholic Beverage Control Board      DATE: February 19, 2019

FROM: Erika McConnell, Director      RE: Regulations Project: Security Interest Transfers/Involuntary Retransfers

**Statutory Authority:** AS 04.06.100(a): “The board shall adopt regulations governing the manufacture, barter, sale, consumption, and possession of alcoholic beverages in the state that are consistent with this title and necessary to carry out the purpose of this title in a manner that will protect the public health, safety, and welfare.”

**Status:** 2<sup>nd</sup> round of public comments closed February 8, 2019

**Background:** At the October 2018 meeting, the board asked staff to make revisions to the language of this proposal based on public comments received. The changes were provided to the board at the December meeting and put out for public comment. No comments were submitted on this draft.

**Older Background:** This draft project proposes the following:

- A new section on security interest transfers is created at 304.106.
- The information relating to how a security interest transfer must be established in order to perform an involuntary retransfer is moved from 304.107 to the new section 304.106.
- Security interest transfers may not be established unless 100% of the license ownership changes. A licensee may not establish a security interest during a controlling interest transfer.
- A license with an established security interest can't be transferred unless the security interest obligation is satisfied, with an exception in the case of the death of the licensee.
- The board is no longer required to use “accepted business principles” to determine whether the independent value of the property being conveyed is sufficient to justify the taking of a security interest. Instead, the board is required to determine that the value of the property is sufficient to determine that the license is not being used as collateral, which would be a violation of AS 04.11.670.

**Board options:**

- Vote on whether or not to adopt these regulations changes (may include minor, non-substantive amendments).
- Make substantive amendments and put out for public comment.
- Take no action.

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

**3 AAC 304.106. Security interest transfers.** (a) A licensee, wishing to establish a security interest in a license being transferred to a new owner, shall submit the following 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 UCC financing statement in which a security interest in the license is claimed under AS 04.11.670 and 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 304.106, 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 shall be sufficient for the board to determine that the license is not being used as collateral as prohibited by AS 04.11.670;

(3) all transaction and security documents relating to the lease or sale of real property and/or 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 304.106, 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 UCC financing statement must be provided to the director before the transfer will be effectuated.

(d) A security interest in a license may not be established when the license transfer contemplates a transfer of less than 100% of the interest in the license.

(e) A license with an established security interest may not be transferred to a new owner unless all obligations under the security interest are satisfied prior to or as part of the transfer, except that the board may make an exception in the case of the death of a licensee.

3 AAC 304.107 is repealed and readopted to read:

**3 AAC 304.107. Compelled transfer of license; security interest.** (a) If the former licensee seeks to compel the transfer of a license 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 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 304.106;

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

(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 a 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. 7/30/89, Register 111; am 5/1/94, Register 130; am\_\_/\_/\_\_, Register \_\_\_\_).

<b>Authority:</b>	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 04.11.050	AS 04.11.280	AS 04.11.670