



## MEMORANDUM

TO: Bob Klein, Chair, and Members of the Alcoholic Beverage Control Board      DATE: April 29, 2019

FROM: Erika McConnell, Director      RE: Death of a Licensee

AS 04.11.030 addresses death of a licensee:

Sec. 04.11.030. Death of licensee.

- (a) The executor or administrator of the estate of a person who was operating a business as a sole licensee under a license authorized by this title may continue to operate the licensed business until an application for transfer of a license to another person is approved or until the license is forfeited under (b) of this section.
- (b) If an application for the transfer of ownership of a license from a deceased licensee is not made within 90 days of the death of the licensee or within an additional 90 days if an application for transfer of ownership made by the executor is denied, or no petition is made to the board for an extension of time under (c) of this section within the time, the license is forfeited.
- (c) The board may extend the time limits in (b) of this section on petition of the executor or administrator.
- (d) This section does not authorize the transfer of a liquor license by an administrator or executor to the estate of a decedent.
- (e) The board may transfer a license to an executor or administrator only in the executor's or administrator's individual capacity.

Subsection (a) appears to apply only when a license is held by a sole proprietor or by an entity with a sole owner.

In accordance with the rules of statutory construction, subsection (b) can be interpreted to describe a set of circumstances that is separate from subsection (a). This could mean that any time any licensee dies, no matter how great their ownership of a license was, a transfer application or extension request would be required within 90 days. However it is not clear that this is a sustainable way to interpret this section, given the practical realities of what happens when one of multiple owners of a single license dies. In the past several years, two issues have arisen out of this section:

(1) how to avoid the harsh result of forfeiture where it seems unreasonable, and (2) how to proceed where a minority owner is found to be operating the license.

Recently, the board has seen the death of a licensee who owned 99% of a licensing-holding entity, and the death of a licensee who owned 95% of a license-holding entity. In situations like these, there is no guarantee that the board will know who the remaining licensee(s) is, and thus who may be operating the license after the death of the majority owner. This is because the identity of individuals holding less than 10% of the stock of a corporation, holding less than 10% interest in a partnership, or holding less than 10% interest in a limited liability organization, do not need to be reported to the board and are not required to have a criminal history record check.

I suggest the board consider adopting an interpretation of AS 04.11.030 that requires a transfer or extension request within 90 days of the death of a licensee who holds more than 50% interest in the license. If approved by the board, I will bring a draft regulation to the next meeting.