



MEMORANDUM

TO: Alcoholic Beverage Control Board DATE: October 18, 2020
FROM: Jane P. Sawyer, Regulations Specialist RE: Regulations Project – Death of a licensee

At the August 2020 meeting, the board sent out death of a licensee draft out for public comment. The draft was out for about for about 45 days closing on October 9, 2020. One comment was received which is attached.

The draft would:

- repeal and readopt 3 AAC 304.215.
 - (a) would allow for an executor or administrator of the estate of a deceased sole owner (sole proprietor or one-person entity) to, upon request to the director and validation of authority of the executor or administrator to act on behalf of the estate by AMCO, continue the operation of the licensed premises for a certain amount of time while said person is working on submitting a license transfer. The liquor license, in this case, must cease to be operated until the director approves the continuation of operations.
 - (b) outlines deadline requirements by which the executor or administrator must submit the license transfer or request for extension of time to do so and the consequences of not submitting a license transfer or request for extension of time within the deadlines.
 - (c) defines “administrator or executor”.
- Add section 3 AAC 304.216. This section allows an entity owned by more than one person whose controlling interest licensee died to continue to operate the licensed premises but shall file a transfer application within a specific amount of time from the death of said licensee. The surviving owner(s) may, within a specific time, file a request to the director for time extension to submit the transfer application or cease operation until transfer is submitted.
- Add section 3 AAC 304.217. This section allows an entity to keep operating when a licensee who holds less than a controlling interest dies, but the surviving owners shall file a report of change of ownership or a transfer application, if required, within 90 days. No time extensions under this section.

Options for the board:

- vote to adopt
- amend and put out for public comment
- send back to staff for revisions
- close the project without action

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

3 AAC 304.215 is repealed and readopted to read:

3 AAC 304.215. Death of a sole licensee. (a) Upon the death of an individual who is the sole owner of a license or the sole owner of the licensed entity, the business operating the license shall cease operation until an administrator or executor of the estate files written proof of the administrator or executor's authority to act on behalf of the estate of the deceased along with a written request to continue operations with the director. Upon validation of the authority, the director will grant permission to the administrator or executor to operate the business upon the licensed premises as permitted under AS 04.11.030. That permission expires upon approval of an application for transfer of the license submitted in accordance with 3 AAC 304.175 or upon forfeiture in accordance with AS 04.11.030(b).

(b) An application for transfer of the license from the deceased licensee must be made in compliance with the time limitations set out at AS 04.11.030(b). Failure to do so forfeits the license, unless the board approves an extension of the time limits upon the filing of a written petition by the administrator or executor to extend the applicable deadline. All written petitions to extend the applicable deadline must be submitted before the expiration of applicable deadline, unless the board approves a petition submitted after the deadline for good cause and the license is still available for transfer.

(c) For purposes of this section and 3 AAC 304.216, "administrator or executor" includes an administrator, an executor, or personal representative as defined at AS 13.06.050. (Eff.

11/29/81, Register 80; am ____/____/_____, Register _____)

Authority: AS 04.06.100 AS 04.11.030

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

3 AAC 304.216. Death of an individual with a controlling interest in a license issued to a business entity. (a) Upon the death of an individual who owns a controlling interest in a partnership, including a limited partnership, a limited liability company, or a corporation that holds a license under this title, the business entity may continue to operate the licensed business but shall file a transfer application as required under AS 04.11.040 within 90 days of the death of the individual. If a transfer application or time extension request is not filed by the 90-day deadline, the business shall cease operation until the transfer application is filed.

(b) Upon receipt of an extension request filed before the 90-day deadline, the board may grant one 90-day extension. Additional extensions may be granted by the board only for good cause. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.100 AS 04.11.030

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

3 AAC 304.217. Death of an individual with less than a controlling interest in a license issued to a business entity. Upon the death of an individual who owns less than a controlling interest in a partnership, including a limited partnership, a limited liability company, or a corporation that holds a license under this title, the business entity may continue to operate the licensed business but shall report a change of ownership under AS 04.11.045, 04.11.050, or

04.11.055, or shall file a transfer application if required by AS 04.11.040, within 90 days of the death of the individual. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.030

3 AAC 304.215. Death of a licensee is repealed and readopted. Repealed language:

[UPON THE DEATH OF AN INDIVIDUAL WHO IS THE SOLE LICENSEE OF A LICENSED PREMISES, THE BUSINESS MUST CEASE OPERATION UNTIL THE APPOINTMENT OF A PERSONAL REPRESENTATIVE BY THE SUPERIOR COURT. UPON WRITTEN REQUEST MADE BY THE PERSONAL REPRESENTATIVE ACCOMPANIED BY AN ORDER OF THE SUPERIOR COURT SHOWING THE APPOINTMENT AS PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED INDIVIDUAL LICENSEE, THE DIRECTOR WILL GRANT PERMISSION TO THE PERSONAL REPRESENTATIVE TO OPERATE THE BUSINESS UPON THE LICENSED PREMISES UNDER AS 04.11.030.]



Alaska Cabaret, Hotel, Restaurant, and Retailers Association
1503 W. 31st Avenue, Suite 102
Anchorage, AK 99503
Office (907) 274-8133
www.alaskacharr.com

October 1, 2020

Alcoholic Beverage Control Board
amco.regs@alaska.gov

Re: Proposed Regulatory Changes Regarding Death of a Licensee

Dear members of the Alcoholic Beverage Control (ABC) Board:

The Alaska Cabaret, Hotel, Restaurant, and Retailers Association (CHARR) – as a representative of Alaska’s alcohol industry as a whole – generally supports the regulation project regarding reporting and operating requirements when a licensee dies. We appreciate that the ABC Board is considering distinguishing between very different ownership structures.

We do, however, recommend some critical changes. Please consider adopting the attached track changes to the draft (or putting them back out for public comment, if necessary), which would do the following:

- Allow a licensee or a licensee’s legal power of attorney (POA) to make a written request prior to the death of the licensee that the POA be allowed to continue operating the license until such time that a legal administrator or executor of the estate is appointed by the court. This is especially important now, as many legal proceedings have been postponed indefinitely due to COVID-19-related court closures. Regardless, there should be a method that allows a license to be operated without interruption while the decedent’s successors begin the arduous legal processes.
- Provide realistic timelines for successors to navigate the lengthy probate process and then transfer the license to a living person. The current draft implies that if the executor of an estate fails to make a written extension request to the ABC Board within three months of the decedent’s death, then an extension will not be granted, and the license is forfeited. Often, successors and even licensees are unaware of the 90-day statutory transfer requirement. This language could unintentionally place undue additional hardship and stress to grieving families. Additionally, the current draft only allows to ABC Board to grant a 90-day extension for the first request. Anyone who has gone through the probate process knows that it usually takes a year or more. Limiting the first extension to 90-days effectively requires the ABC Board to consider extension requests at back-to-back meetings. This is impractical and inefficient. The first extension should be limited to one year rather than 90 days. Requiring the bereaved to repeatedly request additional time within an extremely short timeframe is unnecessary and harsh.

Thank you for your consideration and interest in continuing to responsibly regulate the industry.

Respectfully,

Sarah D. Oates
President & CEO

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(b) An application for transfer of the license from the deceased licensee must be made in compliance with the time limitations set out at AS 04.11.030(b). Failure to do so forfeits the license, unless the board approves an extension of the time limits upon the filing of a written petition by the administrator or executor to extend the applicable deadline. All written petitions to extend the applicable deadline must be submitted before the expiration of applicable deadline, unless the board approves a petition submitted after the deadline for good cause and the license is still available for transfer.

(c) For purposes of this section and 3 AAC 304.216, "administrator or executor" includes an administrator, ~~an~~ executor, agent, or personal representative as defined at AS 13.06.050. (Eff.

Commented [KM1]: What does "validation" entail?
Seems like it's possibly outside of AMCO's scope.

11/29/81, Register 80; am ____/____/____, Register ____)

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(b) Upon receipt of an extension request ~~filed before the 90-day deadline~~, the board may grant ~~one 90-day~~ extension not to exceed one year. All written petitions to extend the applicable deadline must be submitted before the expiration of applicable deadline, unless the board approves a petition submitted after the deadline for good cause and the license is still available for transfer. Additional extensions may be granted by the board only for good cause.

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(b) Upon receipt of an extension request, the board may grant an extension not to exceed one year. All written petitions to extend the applicable deadline must be submitted before the expiration of applicable deadline, unless the board approves a petition submitted after the deadline for good cause. Additional extensions may be granted by the board only for good cause. (Eff. _____/____/____, Register _____)

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