

# MEMORANDUM

## State of Alaska Department of Law

TO: Alcoholic Beverage Control  
Board

DATE: January 4, 2021

TEL. NO.: (907) 269-3039

FROM: Joan M. Wilson  
Senior Assistant Attorney  
General

SUBJECT: Alcohol Server Education  
Regulations

Following legal review, attached is a rekeyed version of the Alcohol Server Education regulations. The changes are as follows.

1. 3 AAC 304.465(b) and (d). The rekeyed version of 3 AAC 304.465(b) states:

(b) State or nationally recognized organizations or associations that address the subject of responsible alcoholic beverage service may obtain approval of an alcohol server education course by making written application on forms provided by the board. The application must include the course book **or digital materials** to be provided to students, any video or audio presentations that will be used, the written **or online written** test required under (d) of this section, detailed lesson plans, and a description of the qualifications of and training provided to course instructors. The application must identify the communities where the course will be presented and the frequency of the presentation. [THE APPLICANT SHALL EXPLAIN HOW RURAL PREMISES WILL BE SERVED UNDER (e) OF THIS SECTION.]

The version the board received and approved in October included this text, but was not bolded or underlined as it is above. Based on board discussion at the last meeting, I believe it was the board's intent to approve this language even absent proper marking. One additional word is added for clarification. The addition of "written" to "online written" is made to conform the regulation with a statutory requirement of AS 04.21.025(c). This statute requires a server to "pass a written test demonstrating an understanding of the course subjects." To avoid confusion and a statutory violation, the change clarifies that an online test must be written, as compared to verbal or oral.

3 AAC 304.465(d) is amended to make a similar distinction between permissible online written tests and non-permissible oral tests.

2. 3 AAC 304.465(m)(1). For grammatical consistency, "presenting" is changed to "present."

3. 3 AAC 304.465(m)(4). "Within five business days" is changed to "not later than five business days after". The substitution of "after" for "from" is subtle but substantive. If the time period starts "from" the date the student passed the test, then Day 1 of the five-business day period is that date. If the time period starts "after" the date the student passed the test, then Day 1 of the five-business day period is the day after that date.

4. 3 AAC 304.465(m)(5). As adopted, 3 AAC 304.465(m)(5) contains a requirement that the instructor for an Internet alcohol server course be a resident of the state, "to ensure maintained knowledge of current alcoholic beverages statutes and regulations in the state." The residency requirement is deleted in the rekeyed version.

The Department of Law, myself included, questions whether the residency requirement would pass muster under the equal protection clause of the Alaska Constitution or under the U.S. Constitution's Privileges and Immunities Clause. The regulation already requires that instructors be knowledgeable of current alcoholic beverage and regulations in the state. Proof of residency does not establish knowledge. Therefore, the requirement does not appear to be rationally tied to the purpose. There may be other permissible ways to establish proficiency in Alaska law. The board may want to approve a new regulations project to research this.

5. 3 AAC 304.465(n). 3 AAC 304.465(n) is deleted as redundant and outside the board's authority. AS 10.50.055 (Alaska Revised Limited Liability Company Act) addresses registered agent requirements for limited liability companies.

This summarizes all the changes. The board will need to adopt the rekeyed regulations before the regulations can move forward to the Lieutenant Governor's office for signature and implementation.

Register \_\_\_\_, \_\_\_\_\_ 2021 COMMERCE, COMMUNITY, AND EC. DEV

3 AAC 304.465(b) is amended to read:

(b) State or nationally recognized organizations or associations that address the subject of responsible alcoholic beverage service may obtain approval of an alcohol server education course by making written application on forms provided by the board. The application must include the course book **or digital materials** to be provided to students, any video or audio presentations that will be used, the written **or online written** test required under (d) of this section, detailed lesson plans, and a description of the qualifications of and training provided to course instructors. The application must identify the communities where the course will be presented and the frequency of the presentation. [THE APPLICANT SHALL EXPLAIN HOW RURAL PREMISES WILL BE SERVED UNDER (e) OF THIS SECTION.]

3 AAC 304.465(d) is amended to read:

(d) A provider of an alcohol server education course shall issue a card as described under (a) of this section to a student who successfully completes the course. Before issuing the card, the course provider shall require the student to pass a written test that demonstrates that the student understands the course subjects. **The test may be an online written test if the course is in an Internet-based webinar or video teleconference format as provided in (m) of this section.**

3 AAC 304.465(e) is repealed:

(e) Repealed \_\_\_/\_\_\_/\_\_\_.

Register \_\_\_\_, \_\_\_\_\_ 2021 COMMERCE, COMMUNITY, AND EC. DEV

3 AAC 304.465 is amended by adding a new subsection to read:

(m) A provider of an alcohol server education course may obtain approval from the board to provide its course to students in an Internet-based webinar or video teleconference format by making a request with an application required under (b) of this section. An Internet-based or video teleconference alcohol server education course provider shall

(1) have a live instructor present the approved alcohol server course material and be available throughout the course to answer questions from students;

(2) check the identity of each student while maintaining confidentiality of personally identifiable information;

(3) provide a printable certificate of completion to each student who passes the written test required under (d) of this section to be used as temporary proof of completion until the student receives the course card described under (a) of this section;

(4) mail the course card not later than five business days after the date the student passed the test; in this paragraph, "business day" means a day other than Saturday, Sunday, or a federal or state holiday;

(5) certify that each instructor has maintained knowledge of current alcoholic beverages statutes and regulations in the state;

(6) update the course material with any applicable change to AS 04 and this chapter not later than 10 days after the effective date of the change; and

(7) provide a printable digital copy of the written course materials to each student. (Eff. 4/1/94, Register 129; am 8/24/2001, Register 159; am 12/13/2009, Register 192; am 9/16/2017, Register 223; am 2/23/2020, Register 233; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

Register \_\_\_\_, \_\_\_\_\_ 2021 COMMERCE, COMMUNITY, AND EC. DEV

**Authority:** AS 04.06.090 AS 04.06.110 AS 04.21.025

AS 04.06.100