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

3 AAC 304.505(a) is amended to read:

(a) The board's investigative personnel may

(1) conduct inspections of licensed premises and investigations of licensees, applicants, transferees and other persons with respect to applications, the possession and sale of alcoholic beverages, or licensed premises;

(2) issue **verbal warnings, advisory notices, or** notices of violation;

(3) seize alcoholic beverages [WHICH ARE] subject to forfeiture under AS 04.16.220;

(4) serve subpoenas issued by a hearing officer in a board adjudicative proceeding;

(5) execute search warrants;

(6) exercise specified peace officer powers upon the written concurrence of the commissioner of public safety filed with the lieutenant governor and the director, but only if necessary for the enforcement of the criminally punishable provisions of AS 04 and regulations adopted under AS 04;

[(7) TAKE SUCH OTHER ACTION AS IS CONSIDERED NECESSARY BY THE DIRECTOR TO ASSURE THE ENFORCEMENT OF AS 04 AND IS NOT IN CONFLICT WITH A LAW OR REGULATION.];

(7) file accusations for suspension or revocation of licenses or permits on the grounds listed under AS 04.11.370;

(8) take such other action as is considered necessary by the director to assure the enforcement of AS 04 and this chapter..

(Eff. 11/29/81, Register 80; am 3/13/99, Register 149; am ___/___/_____, Register _____)

Authority: AS 04.06.075 AS 04.06.100 AS 04.06.110

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

3 AAC 304.510. Communications and inspection. (a) The board recognizes that self-regulation by a licensee is a necessary ingredient for the enforcement of alcoholic beverage statutes, regulations, and local laws and that communication with licensees is necessary to assist licensees in conducting the licensee's licensed business in the public interest and in conformity with existing statutes and regulations.

(b) Licensees are considered to consent to the entry upon the licensed premises and inspection of the licensed premises at all reasonable times and in a reasonable manner by investigative personnel of the board or by other peace officers acting in an official capacity.

(c) Licensees shall do all things reasonably necessary and appropriate to cooperate with investigative personnel and employees of the board and peace officers acting in an official capacity to enforce the statutes, regulations and ordinances related to alcoholic beverages, including permitting entry upon and inspection of the licensed premises and providing access, upon request at reasonable times, to business records at the written direction of the director. (Eff. ___/___/_____, Register)

Commented [SJP(1]: This language is from repealed 304.515

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.630

3 AAC 304.515 is repealed:

Commented [SJP(2]: Language moved to new section 304.510 above.

3 AAC 304.515. Inspection. Repealed (Eff. 11/29/81, Register 80; repealed ___/___/_____, Register _____)

Authority: AS 04.06.100 AS 04.11.630

Repealed language 3 AAC 304.515 (a) [LICENSEES ARE CONSIDERED TO CONSENT TO THE ENTRY UPON THE LICENSED PREMISES AND INSPECTION OF THE LICENSED PREMISES AT ALL REASONABLE TIMES AND IN A REASONABLE MANNER BY INVESTIGATIVE PERSONNEL OF THE BOARD OR BY OTHER PEACE OFFICERS ACTING IN THEIR OFFICIAL CAPACITY FOR THE PURPOSE OF ENFORCING STATUTES AND REGULATIONS RELATED TO ALCOHOLIC BEVERAGES.

(b) LICENSEES SHALL DO ALL THINGS REASONABLY NECESSARY AND APPROPRIATE TO COOPERATE WITH INVESTIGATIVE PERSONNEL AND EMPLOYEES OF THE BOARD AND PEACE OFFICERS ACTING IN THEIR OFFICIAL CAPACITY TO ENFORCE THE STATUTES, REGULATIONS AND ORDINANCES RELATED TO ALCOHOLIC BEVERAGES, INCLUDING PERMITTING ENTRY UPON AND INSPECTION OF THE LICENSED PREMISES AND PROVIDING ACCESS, UPON REQUEST AT REASONABLE TIMES, TO BUSINESS RECORDS AT THE WRITTEN DIRECTION OF THE DIRECTOR.]

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

3 AAC 306.516. Verbal warning. (a) A verbal warning is intended to address a situation where a violation of a statute, regulation, or local law on the licensed premises is quickly correctable and does not pose an immediate risk to public safety or health.

(b) Issuing a verbal warning is at the discretion of investigative personnel of the board. A verbal warning must be documented in the licensee's enforcement file maintained by the director Logging or documentation of the warning must be made available to the licensee upon request. (Eff. ___/___/_____, Register _____).

Authority: AS 04.06.075 AS 04.06.090 AS 04.06.100

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

3 AAC 304.520. Advisory notice. (a) A written advisory notice may be issued by investigative personnel to a licensee when an incident occurs or a defect is identified that results in a violation of a statute, regulation, or local law and the investigative personnel elect not to provide a verbal warning.

(b) The notice may be issued from information recorded on an inspection report or elsewhere. An advisory notice may be grounds for issuance of a notice of violation or accusation if the incident or defect continues uncorrected. Issuing an advisory notice is at the discretion of investigative personnel of the board. An advisory notice must be documented in the licensee's enforcement file maintained by the director. A copy of the advisory report must be delivered to the licensee when issued and made available to the licensee at a later time, upon request. (Eff. ___/___/_____, Register _____).

Authority: AS 04.06.075 AS 04.06.090 AS 04.06.100

3 AAC 304.525 is repealed:

3 AAC 304.525. Communication with licensees. Repealed. (Eff. 11/29/81, Register 80; am 7/30/89, Register 111; repealed ___/___/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100

Repealed language 3 AAC 304.535 (a) THE BOARD WILL, IN ITS DISCRETION, SUSPEND OR REVOKE A LICENSE ON THE GROUNDS STATED IN AS 04.11.370. IN ADDITION, THE BOARD WILL, IN ITS DISCRETION, SUSPEND OR REVOKE A LICENSE UPON CONVICTION OF THE LICENSEE FOR A FELONY.

(b) UPON CONVICTION OF AN AGENT OR EMPLOYEE OF THE LICENSEE, THE BOARD MAY FIND UNDER AS 04.11.370(5) THAT THE LICENSEE KNOWINGLY ALLOWED THE VIOLATION, OR RECKLESSLY OR WITH CRIMINAL NEGLIGENCE FAILED TO ACT IN ACCORDANCE WITH THE DUTY PRESCRIBED UNDER AS 04.21.030, IF

(1) THE LICENSEE WAS PHYSICALLY PRESENT WHEN THE VIOLATION OCCURRED AND KNEW OR SHOULD HAVE KNOWN THE VIOLATION WAS OCCURRING AND TOOK NO ACTION TO STOP IT;

(2) THE LICENSEE FAILED TO ADEQUATELY SUPERVISE THE AGENT OR EMPLOYEE; (3) THE LICENSEE FAILED TO ADEQUATELY TRAIN THE AGENT OR EMPLOYEE IN THE REQUIREMENTS OF AS 04 RELATING TO ALCOHOLIC BEVERAGES; OR

(4) THE LICENSEE WAS RECKLESS OR CARELESS IN HIRING THE AGENT OR EMPLOYEE.

(c) IF THE LICENSEE IS A CORPORATION, THE CONVICTION OF A SHAREHOLDER HOLDING 10 PERCENT OR MORE OF THE OUTSTANDING COMMON STOCK OF THE CORPORATION OR OF AN OFFICER OR DIRECTOR OF THE CORPORATION IS CONSIDERED TO BE A CONVICTION OF THE LICENSEE.

(d) A DUPLICATE BEVERAGE DISPENSARY LICENSE AND THE BEVERAGE DISPENSARY LICENSE TO WHICH IT RELATES ARE CONSIDERED TO BE A SINGLE LICENSE FOR PURPOSES OF SUSPENSION OR REVOCATION.

(e) IF THE LICENSEE IS A LIMITED LIABILITY ORGANIZATION, THE CONVICTION OF A MANAGER OR A MEMBER WHO HOLDS 10 PERCENT OR MORE OF THE LIMITED LIABILITY ORGANIZATION'S OWNERSHIP INTEREST IS CONSIDERED TO BE A CONVICTION OF THE LICENSEE.

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

3 AAC 304.530. Notice of violation. (a) A notice of violation is intended to address more serious or repetitive violations of statute, regulation, or local law that has occurred or are occurring on the licensed premises or for violations of statute, regulation, or local law that continued after receiving a verbal warning or advisory notice under the same or similar circumstances. A notice of violation is issued at the discretion of investigative personnel or director.

(b) A notice of violation may be issued as a stand-alone document or from circumstances described in an inspection report. It may be issued even if an inspection report not issued or if it is not preceded by either a verbal warning or advisory notice. It may include conduct identified in AS 04.11.370 as grounds for suspension or revocation of licenses or permits.

(c) A notice of violation must be in writing on a form approved by the board and must detail

(1) a description of the circumstances of the violation or violations;

(2) a description of applicable violated statutes, regulations, or local law;

(3) prior disciplinary history, including verbal warnings, advisory notices, notices of violation, and accusation as well as criminal history of the licensee and of the licensed premises;

(4) If applicable, the civil fine imposed under 3 AAC 304.540(a); and

(5) the signature of the investigating officer.

(d) The notice of violation must be documented in the licensee's enforcement file maintained by the director. A copy of the notice of violation must be delivered to the licensee, and to the appropriate law enforcement agency, and it must be filed with the board.

(e) A licensee may contest a notice of violation by filing a written response to the director. The director may uphold or increase the recommended fine or disciplinary action, reduce the recommended fine or disciplinary action, or dismiss the notice of violation. If the director does not provide a remedy to the licensee's satisfaction, the licensee may request for an informal conference no later than 10 days after licensee's receipt of the director's decision or proceed directly to the board.

(f) If an informal conference with the director is requested, the director shall grant an appearance within 10 days after receipt of the request. The director may uphold or increase the recommended fine or disciplinary action, reduce the recommended fine or disciplinary action, or dismiss the notice of violation. Dismissal of notices of violation must be documented in the licensee's enforcement file maintained by the director.

(g) If the licensee elects to have the notice of violation addressed by the board, the election will be considered as an appeal of a director's decision at its next regularly scheduled meeting. At the meeting, the director will present information and witnesses sufficient to prove that the violation occurred and the fine is consistent with the fine schedule under 3 AAC 306.540(a) and board precedent. The licensee may present information and witnesses to rebut the director's presentation.

(h) Following the presentation described in (g) of this section, the board shall determine whether there is substantial evidence to uphold the notice of violation and the fine or other disciplinary action based on board precedent. In addition to vacating the notice of violation and decreasing the recommended disciplinary action, the board may also suspend portions of the fine under conditions of probation as described in 3 AAC 306.541 or order additional disciplinary action, including requesting the director to prepare an accusation for suspension or revocation of a license.

(i) Excluding requesting the director to prepare an accusation for suspension of revocation of a license, a decision by the board relating to the notice of violation or civil fine or other disciplinary action may be appealed to the superior court under AS 44.63.560.

(j) Nothing in this section limits the authority of the board to suspend or revoke a license on grounds stated in AS 04.11.370. (Eff. ___/___/_____, Register _____)

Authority: AS 04.06.075 AS 04.06.090 AS 04.06.100

3 AAC 304.535(a) is amended to read:

(a) The board will, in its discretion, suspend**, summarily suspend,** or revoke a license on the grounds stated in AS 04.11.370. In addition, the board will, in its discretion, suspend or revoke a license upon conviction of the licensee for a felony.

Commented [SJP(3]: Suspension and revocation of license

3 AAC 304.535 is amended by adding a new subsection to read:

(f) Unless the grounds for suspension or revocation are under AS 04.11.510(c), the licensee may request an informal conference with the director no later than 10 days after an accusation is served. The licensee requesting an informal conference under this section tolls the

Commented [SJP(4]: Suspension and revocation of license

time for filing a notice of defense required under AS 44.62.390. (Eff. 11/29/81, Register 80; am 6/13/2003, Register 166; am ___/___/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.370

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

3 AAC 304.536. Summary suspension to protect public health, safety, or welfare. (a) If the director finds that a licensee has acted and appears to be continuing to act in a way that constitutes an immediate threat to the public health, safety, or welfare, the director may issue an order immediately suspending the license of that person, and ordering an immediate stop to the activity that constitutes the threat to the public health, safety, or welfare.

(b) When the director issues a summary suspension under this section, the director shall immediately give the licensee subject to the summary suspension order notice of the reasons for the summary suspension, and of the time and place for an expedited hearing before the board. Unless the licensee subject to the summary suspension order requests a delay, the hearing will be held before the board not later than five business days after the director gives notice of the reasons for the summary suspension and the scheduled hearing. (Eff. ___/___/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.370

3 AAC 305.540 is amended as follows:

3 AAC 304.540. Civil fine. (a) Except as provided in (b) of this section, [IN A PROCEEDING UNDER AS 04.11.510(C),] the board may impose a civil fine upon a licensee,

in accordance with **a proceeding under AS 04.11.510(c) and** AS 04.11.575 **or a notice of violation under 3 AAC 304.530**, not to exceed the greater of

(1) a civil fine set forth under the board's approved fine schedule;

[(1) AN AMOUNT THAT IS THREE TIMES THE MONETARY GAIN REALIZED BY THE LICENSEE AS DETERMINED BY THE BOARD AS A RESULT OF THE VIOLATION];

(2) an amount that is three times the monetary gain realized by the licensee as determined by the board as a result of the violation;

(3)[(2)] $10,000 for the first violation;

(4)[(3)] $30,000 for the second violation; or

(5)[(4)] $50,000 for the third or subsequent violation.

(b) In a proceeding against a general wholesale licensee under AS 04.11.510(c) for a violation of AS 04.11.160 pertaining to the sale of alcoholic beverages to unlicensed persons, the board may impose a civil fine of $5,000 for each illegal sale. The board may suspend all or part of the fine based on the circumstances of the illegal sales. For the purpose of this section, "sale" means a single delivery on a single date to a single purchaser. (Eff. 5/22/92, Register 122; am 8/24/2001, Register 159; am ___/___/_____, Register _____)

Authority: AS 04.06.100 AS 04.11.160 AS 04.11.575

Editor's note: The current version of the fine schedule approved by the board is posted on the Alcohol & Marijuana Control Office's https://www.commerce.alaska.gov/web/amco/.

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

3 AAC 304.541. Probation, suspended time, and fines. (a) In any of its disciplinary decisions on notices of violation or suspension orders, the director may impose with delegated authority or the board may elect to place a license on probation for a period of no greater than three years. To ensure good faith performance of a licensee's obligations while under probation, the board may suspend any portion of time of suspension or civil fines owed.

(b) It is a director's decision to rescind or partially rescind probation and impose all or portions of the initial penalty by filing a probation violation. To initiate such an action for probation violation, the director shall detail in a written communication

(1) a description of the circumstances of that support that request;

(2) a description of applicable violated statutes, regulations, or local laws;

(3) prior disciplinary history, including verbal warnings, advisory notices, notices of violation, and accusations as well as criminal history of the licensee and of the licensed premises;

(4) whether probation is fully or partially rescinded and the amount of unsuspended time or fine to levy; and

(5) the signature of the director.

(d) The written communication described in (c) of this section must be documented in the licensee's enforcement file maintained by the director. A copy of the communication must be

delivered to the licensee, and, if applicable, to the appropriate law enforcement agency, and it must be filed with the board.

(e) A licensee may contest a probation violation or the recommended disciplinary action issued under (a) of this section as an appeal of a director's decision by filing a written response to the director no later than 10 days after licensee's receipt of the notice. If the licensee does not contest the violation and sanction, the violation and sanction shall be imposed.

(f) If the licensee elects to contest the probation violation, the board will consider the violation at its next regularly scheduled meeting at which the director will present information and witnesses sufficient to prove to the satisfaction of the board that the violation occurred, that partial or full rescission of probation is appropriate, and that the imposed unsuspended time or fine is consistent with board precedent. The licensee may present information and witnesses to rebut the director's presentation

(g) Following the presentation described in (f) of this section, the board shall determine whether there is substantial evidence to uphold the probation violation and the penalty. In addition to vacating the probation violation and decreasing the recommended disciplinary action, the board may also order additional disciplinary action, including requesting the director to prepare an accusation for suspension or revocation of a license.

(h) Excluding requesting the director to prepare an accusation for suspension of revocation of a license, a decision by the board relating to the notice of violation or civil fine or other disciplinary action may be appealed to the superior court under AS 44.63.560.

(i) Nothing in this section limits the authority of the board to suspend or revoke a license on grounds stated in AS 04.11.370. (Eff. ___/___/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.370

3 AAC 304.545 is amended to read:

3 AAC 304.545. Effect of revocation. A person whose license is revoked by the board may not apply for a license of any type until at least **five years** [ONE YEAR] after the effective date of the revocation. (Eff. 11/29/81, Register 80; am ___/___/_____, Register _____)

Authority: AS 04.06.100 AS 04.11.320 AS 04.11.370