



MEMORANDUM

TO: Vice Chair Ganley and Members of the ABC Board DATE: October 16, 2017

FROM: Erika McConnell, Director RE: Distillery Advisory—Interpretation of AS 04.11.170(d) and (e)

Background

In June of this year, AMCO's Enforcement Section received a complaint that a distillery was both serving mixed drinks and providing entertainment. AMCO issued an advisory notice to all nine distillery licensees on August 2 (attached) that concluded, "Please regard this Advisory Notice as Enforcement's directive to cease selling or giving as samples drinks that are made by mixing your distilled product with other ingredients that are not produced on the licensed premises."

This matter was brought to the board on September 13, 2017, and the board voted to "uphold the advisory as written" and open a regulations project "to determine what would be appropriate to be added in a distillery's tasting room, what beverages, what mixers."

On September 20, 2017, the advisory was re-issued, as written.

The Advisory

The advisory specifically states that drinks sold or served in the tasting room must be made with ingredients produced on the licensed premises. When I drafted the advisory, I chose that language because I was aware that at least one distillery makes "ginger beer," a non-alcoholic beverage similar to ginger ale, and I made the determination that whatever type of beverage is created by a distillery must count as "the distillery's product." I did not anticipate the number of creative ways distilleries have found to appear to be in compliance with this advisory while serving what the public could reasonably think are cocktails.

Since the second advisory was issued, we have seen or heard of the following being mixed with a distilled spirit produced by the distillery:

- Simple syrup
- Lemon juice
- Tonic water
- Egg white
- Bloody Mary mix—home made "seasoned tomato water" created by mixing tomatoes and tomato paste
- Alaskan berry juice
- Cucumber syrup
- Crème de Violette liqueur
- Major Maraschino liqueur
- Elderflower liqueur
- Orange zest liqueur
- Honey syrup

Based on enforcement staff research, we understand that five distilleries are serving cocktails. Two distilleries appear not to be serving any cocktails, and we do not have information on the additional two distilleries. Here are a number of Facebook posts showing activities of some distilleries.

[Redacted]

Pictured below is our Autumn Eve cocktail. It's our mixture of fall berries and succulent cucumber syrup. Special for International Vodka Day only \$5. Tomorrow they'll be gone so come by today.

Congrats to Dan Finney, the winner of our Vodka Day drawing- you won merch! We'll send you a private message with details.



Like Comment Share

[Redacted] September 29 at 2:51pm

It's "Bee's Knees" week! Come get your honey on! Special thanks to Raelene at Alaska Honey Works!



[Redacted] September 29 at 2:47pm - Instagram

Our weekly specials are ALWAYS special, but this week is extra special. It's national "Bee's Knees" week! An extra special shout out goes to local honey producer Raelene Wentz of Alaska Honey Works for the honey that we used in our honey syrup for the cocktail! #drinklocal #beeskneescocktail

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[Redacted]



[Redacted] Yesterday at 1:23pm - Instagram

Our cocktail special this week is another in house masterpiece, we call it the "Whisper Martini." It's got our Summer Harvest Gin, our Long Winter Vodka, and our ALL NEW [Redacted] Elderflower liqueur! Come give it a try and let us know what you think, won't you?

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[Redacted] October 6 at 1:48pm

The High Voltage Sour is one of four special First Friday cocktails on the menu in the tasting room this evening. Not for the faint of heart. Stop by and try one!

[Redacted] #craftcocktails #infusion #jalapeno #lavender #moonshine #nofilter



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The Problem

Many of these products were not what I anticipated when I drafted the advisory. For example, the honey used in the “Bees Knees” cocktail and the chocolate garnish on the “High Voltage Sour” are not “the distillery’s product.” My staff do not know – and there is no way to be certain – how much of the various non-alcoholic “mixers” are produced by the distillery. Certainly, the cocktails themselves are not what I was envisioning when I used the words “the distillery’s product.” And the board’s discussion at the September 13th meeting left me with enough questions about what the board had in mind when you voted to “uphold the advisory as written” that I am requesting clarification and guidance.

Department of Law Observations

The Department of Law has been working closely with the staff on the proposed regulation project for this issue, to avoid a situation where the board adopts a regulation that is rejected by the Department of Law. A closer examination of the statute and this issue leads the Department of Law to offer the following preliminary observations:

- The board has no authority to regulate non-alcoholic beverages.
- A beverage that contains one-half of one percent or more of alcohol by volume is an “alcoholic beverage” and the board has authority to regulate alcoholic beverages.
- The statute permits distilleries to offer small samples of and sell in a tasting-room setting “the distillery’s product.”
- The statute does not specifically allow a distillery to provide samples of anything other than “the distillery’s product.”
- The tasting room provision (subsection (e)) uses the term “the distillery’s product;” it does not say “alcoholic beverages made with the distillery’s product” and it imposes additional restrictions that are intended to distinguish a distillery tasting room from a bar.
- There is no indication in the legislative history that the legislature intended “the distillery’s product” to include mixed drinks or cocktails.

The Department of Law cautions that these are preliminary observations; its conclusions as to the legality of any regulation will necessarily depend on the language the board adopts after public comment.

Conclusion

Our enforcement staff and the public need to know what you intended the phrase “the distillery’s product” to mean, *for the purposes of this advisory*. We recognize that the board’s interpretation may change depending on the outcome of its planned regulation project, but we feel that an interim interpretation is needed for clarity in enforcement.

Attached: Additional Facebook posts from distilleries
 AMCO Advisory (dated 8/2/17 and 9/20/17)
 Comments received



September 16 at 5:12pm · 🌟

This should clear things up.

Notice To All Customers:

In light of the recent interpretation of the statutes by the AMCO Director and the ABC Board, we need to clarify something:

When we sell you a “cocktail,” we are really just selling you our alcohol. We are GIVING you any mixer that said cocktail may have in it.

For instance a gin and tonic: we are selling you our Gin. We are giving you the tonic water, agave, and garnish. We are also mixing them together for you because we love you.

The State of Alaska has NO business telling us we can’t do that!

September 12 at 1:46pm · 🌟

This week's special, thanks Maggie Billington!

One of our most special fall cocktails is back: the Lump Lingon Cosmopolitan! This “All Ester” cocktail starts with Maggie’s fresh picked lingonberries from Ester Lump, and ends with our Long Winter Vodka. If you miss it, you’ll have to wait a whole year to try it again!

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September 16 at 11:23am

Tom Collins \$6
GIN + SIMPLE SYRUP + LEMON JUICE + FIZZY WATER

GIN FIZZ \$6
GIN + EGG WHITE + LEMON JUICE + SIMPLE SYRUP + FIZZY H2O

GIN Mojito \$8
GIN + FRESH MINT + LIME JUICE + SIMPLE SYRUP + FIZZY H2O

Alcoholic Beverage Control Board cracks down on distillers' cocktails

FAIRBANKS — Martinis are extra dry today at Fairbanks' two distillery tasting rooms, and all cocktails may soon go off the menu based on a new...

NEWSMINER.COM

Like Comment Share

59 Top Comments

September 28 at 2:49pm

They say we are competition? They ain't seen nothin yet!

September 28 at 2:46pm · Instagram

With this continuing saga of government overreach and certain folks trying to regulate out what they see as competition, we are upping our game! We are hard at work as we speak developing our new line of liqueurs, tonics, and aperitifs. These will be used in our tasting room and soon will also be available for sale by the bottle! We've already nailed a beautiful Cointreau substitute, and should have some very nice substitutes for things like Campari and Chartreuse. We are also looking at bottling our own tonic water and Ginger beer! Stay tuned for some wonderful things to come! Thank you Fairbanks for your overwhelming support!

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Advisory Notice

(3AAC 304.525)

Date: 08/02/2017 and 09/20/2017

Licensee: All Distillery Licenses

DBA:

License #/Type: Distillery

Address:

This is a notice to you as licensee that an incident has occurred or a defect is noted that could result in a violation of a statute, regulation or municipal ordinance.
Note: This is not an accusation or a criminal complaint.

Distillery Licensees,

It has been brought to our attention there may be some misinterpretation of the statute with regard to Distillery licenses and what is permitted. Enforcement has been made aware that along with the consumption of the distillery's product, additional non-alcoholic ingredients as well as alcohol which was not produced in/on the licensed premises is being served i.e. adding Vermouth (not distilled on premises) to Vodka (which was distilled on premises) in order to make a Martini, or cola mixed with rum.

AMCO Enforcement identifies this as a violation of AS 04.11.170(d) & (e) of the Distillery License as shown below:

(d) The holder of a distillery license may permit a person to sample small portions of the distillery's product free of charge unless prohibited by AS 04.16.030.

(e) Unless prohibited by AS 04.16.030, a holder of a distillery license may sell not more than three ounces a day of the distillery's product to a person for consumption on the premises if [...]

Please regard this Advisory Notice as Enforcement's directive to cease selling or giving as samples drinks that are made by mixing your distilled product with other ingredients that are not produced on the licensed premises.

Issuing Investigator: S. Johnson

Received by:

SIGNATURE: *Erika McConnell*

SIGNATURE:

Delivered VIA: e-mail

Date:



Ursa Major Distilling

PO Box 81204

Fairbanks, Alaska 99708

907-457-1070

September 14, 2017

Erika McConnell
Director, Alaska Alcohol and Marijuana Control Office
550 West 7th Ave, Suite 1600
Anchorage, AK 99501

Dear Director McConnell,

Considering a recent vote at the ABC Board meeting on September 13th regarding what distilleries can do, there also may be some misinterpretation of the statute with regard to Alcoholic Beverage Dispensary licenses and what is permitted.

It was just decided by the board to stand by the advisory notice to distillers dated 8/2/2017. It was decided that distillery licensees cannot mix non-alcoholic ingredients such as orange juice, tonic water, or cola with our products to be sold in our tasting rooms. According to this interpretation we can only serve straight shots of our product to the public. In both your testimony, and the testimony of your attorney, it was said that the board must follow the plain language in the statute. The language in the statute says that we can serve up to three ounces of our product per person per day. It doesn't say that we can mix it, it also doesn't say that we can't.

Following this logic, I would like to direct you to AS 04.11.090. Beverage Dispensary License. The statute says that "a beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only." This statute does not say that BDLs can mix alcoholic beverages with non-alcoholic ingredients such as orange juice, tonic water, or cola. Furthermore, in Sec. 04.21.080 (b) (1) "alcoholic beverage" means a spirituous vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage [...]. Again, no mention of whether it can be mixed with non-alcoholic ingredients.

As both you and your attorney mentioned in your testimonies, we have to go by the plain language in the statute. So I expect that you will need to send out advisory notices to all BDL holders in the state as well. You cannot interpret the statute one way for one type of license, and another way for another type of license. Under your interpretation of the statutes, the State Troopers should also be alerted that private citizens all over Alaska are mixing tonic water with their gin as we speak. The law does not state that they can do that.

Or as a compromise, you could admit that you have no statutory jurisdiction over unregulated, non-alcoholic beverages or how they are used. The state has no right to tell me how my products should be presented in my tasting room. My gin is best presented with tonic water, it was designed to be presented with tonic water. My Rum was designed to be presented with Cola. Tonic water and Cola are not controlled substances, they can be bought by anybody in the grocery store. As long as I'm following the statute and serving only 3 ounces of my product per person per day, this should not be an issue.

I realize that there is intense pressure from CHARR and the BDL holders in this state who consider distillers and brewers to be competition. Since when is competition a bad thing? And since when is it the states duty to take sides in the competition? Yes, BDL holders in some cases pay \$250,000 or more for their licenses, but that shouldn't be any of the state's business. Again, if we go by the plain language of AS 04.11.090 (b) "the biennial beverage dispensary license fee is \$2500." Not the huge number that they love to throw around.



Ursa Major Distilling

PO Box 81204

Fairbanks, Alaska 99708

907-457-1070

In closing, I would just like to say that you had eight legislators sign a letter stating that the intent of HB309 was to allow us to serve our products mixed with other ingredients. Yes, the statute does not spell out that we can do it, but either do any of the other statutes as mentioned earlier. The statute shouldn't have to spell that out, non-alcoholic ingredients are unregulated. We are not doing anything wrong by presenting our products with non-alcoholic ingredients, and will continue to do so.

Respectfully,

A handwritten signature in black ink, appearing to be "Rob Borland", with a long horizontal line extending to the right.

Rob Borland

Owner

Ursa Major Distilling

Cc: ABC Board, Governor Walker, Representative Kawasaki

From: B B [<mailto:b10cookie@hotmail.com>]

Sent: Thursday, September 21, 2017 11:23 AM

To: Alcohol Licensing, CED ABC (CED sponsored) <alcohol.licensing@alaska.gov>

Subject:

A distillery license is NOT a liquor license. These business should not be selling mixed drinks. Ridiculous this is even up for a debate. They want to sell cocktails made from their product? Purchase a liquor license like the rest of us. Shame on the board. Wake up!

From: Skagway Spirits
To: [McConnell, Erika B \(CED\)](#)
Subject: Message from Skagway Spirits
Date: Tuesday, September 26, 2017 12:05:00 PM

Hello Ericka,

I know you are very busy and quite possibly don't have time for a lot of research on recent trends in the craft beverage and alcohol industry.

Here is a link that is a quick read and might be some insight
: https://www.fona.com/sites/default/files/Millennials_alcoholic%20beverages_0116.pdf

My reason for sharing this is that I'd like to simply point out that times are changing, demographics of consumers are changing as our younger population become of drinking age.

Tasting rooms (regardless of what the beverage is) are offering what the new customer base wants. Traditional bars are not often changing with new trends in the market. When the customer chooses Tasting Rooms over bars, the bar owners are blaming the tasting rooms rather than adjusting as needed.

This feels like a David and Goliath situation. There a lot of bars with a collective loud voice but really we little guys are so restricted it's hard to believe that we are seen as a threat.

What is happening in Alaska is happening around the US, bars are complaining that tasting rooms are competing for 'their' customers. I would suggest that bar owners study what is happening in the industry and step up their game.

A tasting room is offering a limited selection of cocktails containing fresh,local,sustainable ingredients along with their (in most cases small selection of) spirits. We are often times offering an experience by taking time to share the science of distilling, the hands on process of bottling and distribution and the story of how the distillery got started. What we can't offer is live music, TV, games, pull tabs, seating at the 'bar' counter and longer operating hours.

We don't even WANT to be a bar. In Skagway the local bar owners and bartenders say they'd be willing to sign a letter of support for our tasting room and confirm the that there is a happy co-existence between us here. They send people to us for a unique experience, we send people to them for food and entertainment. We don't do what they do and vice versa which adds to what our community has to offer.

I'll close in returning to my original point which is that the alcohol beverage industry is changing and that point should be considered when listening to the loud complaining voices of some BDL owners. Changing market trends should not be blamed on tasting rooms of any kind.

Regards,
Janilyn Heger

Skagway Spirits LLC
Located in scenic Skagway, Alaska
phone 907.983.2040

fax 907.983.2030

From: Rosalie Loewen
To: [McConnell, Erika B \(CED\); CED AMCO REGS \(CED sponsored\)](#)
Cc: [Heather Shade](#)
Subject: Prohibition on Mixers Comment
Date: Monday, October 09, 2017 12:54:09 PM

To Ms. McConnell and Members of the Alcohol Control Board,

I wanted to make you aware that your recent interpretation of the legislation regarding Alaskan distilleries and tasting rooms has had an enormous negative effect on my business. I do not make or sell alcoholic beverages, so I am a bit surprised to find myself in the position of having to write to you to advise you of this.

I am the owner of a small business in Haines, Dipper Kitchen, (www.dipperkitchen.com.) We make jams, jellies and syrups out of Alaska's best flavors (like fireweed, spruce tip, and highbush cranberries.) We have a small DEC certified kitchen and we are certified as a Made In Alaska company, as well.

It was a wonderful boost to my business when the Port Chilkoot Distillery, selected my syrups to use as a base for the cocktails that they offer on their tasting menu. I was so proud to be a part of this effort to create and sell high quality locally made products to both locals and visitors. In the summer I like to go to the Port Chilkoot tasting room just to watch the visitors from the cruise ships be amazed as they are introduced to the level of craftsmanship that our little town has on offer. To see the Dipper Kitchen name on the big chalk menu by the door and to hear the people exclaim over their cocktails made the hard work worthwhile.

Today, I feel as though I am an innocent bystander caught in the crossfire. My kitchen is full of expensive raw materials and high value finished products that I can no longer sell to my most important customer. I understand that we want to regulate the sale of alcohol in Alaska. My comment to you is this: if, in this war between the Distilleries and the Bars, the casualty turns out to be my little syrup company, which does not even sell alcohol, then maybe your aim is off.

Furthermore, as seems to be frequently the case in Alaska, I am struck by how quickly the urban regulators write off the interests of the rural areas. From an urban perspective, this may be a business interest skirmish of minor import, but I want to tell you that our town is struggling, as are many rural areas across Alaska. Every dollar that is spent in a local business on a local product is gold to us. New enterprises, like mine and that of Port Chilkoot Distillery, don't start in Haines every day. People like Heather Shade and I have worked so hard to build what we can. We get up early, we sweep the floors, we make the things that are sold, we make jobs, we collect sales tax, we contribute to the nonprofits, we make our communities proud, and then we go to bed late and tired. And nobody pays our wages, buys us cushy healthcare plans, or gives us paid leave. Our hard work, and the work of all the other local business owners in Alaska, is the lifeblood of the rural communities and at this point, we can't afford to lose a drop.

I hope that this perspective is helpful to you as you consider your responsibilities in serving the people of Alaska.

Thank you for your time and service,

Rosalie Loewen
Owner, Dipper Kitchen



October 7, 2017

Robert A. Grove
P.O. Box 150
Ester, AK 99725

Ms. Erica McConnell, Director
Alaska Alcohol and Marijuana Control Office
550 West 7th Ave, Suite 1600
Anchorage, Alaska 99501

Dear Director McConnell,

Please reconsider not allowing distilleries to use non-alcoholic ingredients such as orange juice, tonic water, or cola with products to be sold in tasting rooms. It is my understanding that in your testimony and that of your attorney's, statements were made which indicate you believe the statute prohibits tasting rooms from doing so. The statute states that tasting rooms can serve up to three ounces of their product, but it clearly *does not* state that establishments subject to the statute are prohibited from using other non-alcoholic ingredients .

I am not a lawyer but this recent interpretation is clearly not the legislative intent of AS 04.11.090 and Sec. 04.21.080 (b) (1). Once again I am not a lawyer, but from what I have read, nowhere in the regulations for the licensing of local distillers is there any mention of not being allowed to mix non-alcoholic ingredients with distilled products.

The September 13, 2017 interpretation makes no sense and I strongly urge to reverse your ruling or ask the Alaska State Legislature to modify or add language into the original licensing regulations to allow the use of non-alcoholic ingredients in selling their distilled products.

Sincerely,

Robert A. Grove