



MEMORANDUM

TO: Bob Klein, Chair, and Members of the
Alcoholic Beverage Control Board

DATE: August 14, 2018

FROM: Erika McConnell, Director

RE: Securities and Exchange
Commission Reports

Requested Action: Clarify when the exemption provided by filing a Securities and Exchange Commission (SEC) report applies

Statutory Authority: AS 04.06.090(a): "The board shall control the manufacture, barter, possession, and sale of alcoholic beverages in the state. The board is vested with the powers, duties, and responsibilities necessary for the control of alcoholic beverages,..."

Staff Rec.: The exemption applies if the license holder is required to file the SEC report

Background: During the last legislative session, the legislature amended AS 04.11.295 to add an exemption to a certain requirement if the licensee was required to file a periodic report with the US Securities and Exchange Commission (SEC).

At the last board meeting, Chair Klein asked how this was being applied. After a brief discussion, it was agreed to place this issue on the agenda for the next meeting.

With this latest legislative change, there are two exemptions offered in Title 4 relating to licensees who are required to file reports with the SEC:

AS 04.11.050. Reports required of corporations

(a) A corporation issued a license under this title shall report to the board when 10 percent or more of its corporate stock is transferred and shall also report any change in its corporate officers or in the membership of its board of directors.

(b) The report to the board shall be made in writing in duplicate and shall be sent within 10 days after the transfer of the stock or the change in officers or directors.

(c) This section does not apply to a corporation whose stock is listed on a stock exchange, a corporation that is required by law to file periodic reports with the United States Securities Exchange Commission, or to a bank, trust company, financial institution, or title company to which a license is issued in a fiduciary capacity.

AS 04.11.295. Criminal justice information and records

(a) An applicant for the issuance or transfer of a license or a conditional contractor's permit under this title shall submit to the board, with the application, the applicant's fingerprints and the

fees required by the Department of Public Safety under AS 12.62.160 for criminal justice information and a national criminal history record check. The board may require an applicant for renewal of a license or a conditional contractor's permit under this title to submit fingerprints and pay fees as required by this subsection. The board shall submit the fingerprints to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400. The Department of Public Safety may submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The board shall use the information obtained under this section in its determination of an applicant's qualification for issuance, transfer, or renewal of a license or a conditional contractor's permit.

(b) In this section,

(1) "applicant" means all individuals whose names and addresses are required to be provided with an application for a new license or permit under AS 04.11.260;

(2) "criminal justice information" has the meaning given in AS 12.62.900.

(c) For renewal of a license or conditional contractor's permit held by a corporation that is required by federal law to file periodic reports with the United States Securities Exchange Commission, the board may require submission of fingerprints and payment of the required fees of not more than three individuals who are officers of the corporation.

In both sections, the requirement that is being exempted applies to the holder of the license. In AS 04.11.050, "a corporation issued a license under this title" must report to the board in certain circumstances, but is exempted from the reporting requirement if the "corporation issued a license under this title" is listed on a stock exchange, or is required by law to file periodic reports with the United States Securities Exchange Commission, or to a bank, trust company, financial institution, or title company to which a license is issued in a fiduciary capacity. This exemption is not given to a parent company of the corporation issued a license under this title; it is given to the corporation holding the license.

The language in AS 04.11.295(c) is similar. The exemption applies during the renewal of a license held by a corporation, when the corporation is required to file periodic reports to the SEC. Again, the exemption is not given to a parent company.