



## MEMORANDUM

TO: Bob Klein, Chair, and Members of the Alcoholic Beverage Control Board      DATE: February 19, 2019

FROM: Erika McConnell, Director      RE: Regulations Project: Definition of Moral Turpitude

**Statutory Authority:** AS 04.06.100(a): “The board shall adopt regulations governing the manufacture, barter, sale, consumption, and possession of alcoholic beverages in the state that are consistent with this title and necessary to carry out the purpose of this title in a manner that will protect the public health, safety, and welfare.”

**Status:** Initial draft for board consideration

**Background:** At the October 2018 meeting, the board opened a regulations project to define “moral turpitude” in 3 AAC 304.180, for the purpose of clarifying what past convictions must be brought to the board for a determination of whether or not issuing a license is in the public interest. Multiple times, staff has seen that an individual indicates on a form that they have not been convicted of a crime of moral turpitude, when their criminal history indicates that they have. The response of the individual is frequently that they did not know what a crime of moral turpitude was.

Crimes that are not included on this list that appear in some definitions of moral turpitude are: stalking, robbery, extortion; theft; burglary; criminal mischief; criminal impersonation; bribery; perjury; unsworn falsification; interference with official proceedings; witness tampering; jury tampering; terroristic threatening; unlawful distribution or possession for distribution of a controlled substance; unlawfully furnishing alcohol to a minor; felony possession of a controlled substance. Note that an individual with a felony conviction of one of those crimes in the ten years before application would still be brought to the board for a determination of whether or not issuing a license is in the public interest.

Two drafts are attached: one shows changes to the current language of 3 AAC 304.180, and the other shows the section as repealed and readopted, which appears to meet the drafting requirements of the Department of Law. The changes:

- Clarify that conviction of a crime is the threshold for information to come to the board, while commission of a violation of Alaska’s alcohol laws or the alcohol laws of another state is also a threshold;
- Define “a crime involving moral turpitude” as one of twelve specific crimes.

Board options:

- Put out for public comment.
- Amend and put out for public comment.
- No action.

3 AAC 304.180 is amended to read:

**3 AAC 304.180. Denial, suspension, revocation, or refusal to renew or transfer, in the public interest.** (a) The factors the board may [WILL, IN ITS DISCRETION,] consider in determining whether it is in the public interest to deny, revoke, suspend, or refuse to renew or transfer a license include

(1) the applicant's, the applicant's affiliates', the transferee's, or the transferee's affiliates' histories of conviction [COMMISSION] of

(A) [AN ACT THAT CONSTITUTES] a crime involving moral turpitude;

or

[(B) A VIOLATION OF AS 04 OR REGULATIONS ADOPTED BY THE BOARD;

(C) A VIOLATION OF THE ALCOHOLIC BEVERAGE CONTROL LAWS OF ANOTHER STATE, AS A LICENSEE OF THAT STATE; OR]

(B)[(D)] a felony in this state, the United States, or another state or territory during the 10 years immediately preceding the date of application;

(2) the applicant's, the applicant's affiliates', the transferee's, or the transferee's affiliates' histories of commission of

(A) a violation of AS 04 or regulations adopted by the board; or

(B) a violation of the alcoholic beverage control laws of another state, as a licensee of that state;

(3) whether the applicant, the applicant's affiliates, the transferee, or the transferee's affiliates are untrustworthy, unfit to conduct a licensed business, or a potential source of harm to the public;

**(4)**[(3)] whether the applicant, the applicant's affiliates, the transferee, or the transferee's affiliates have permitted, on licensed premises belonging to that person, the occurrence of sexual contact between persons; for the purpose of this paragraph, "sexual contact" means the touching of genitals, anus, or female breast or the intrusion of any object into the genital or anal opening regardless of whether the act was consensual; and

**(5)**[(4)] all other factors the board in its discretion determines relevant to the public interest.

(b) The grounds on which a local governing body may properly protest an application under AS 04.11.480 include the grounds set out in (a) of this section.

**(c) In this section, "a crime involving moral turpitude" means**

**(1) homicide;**

**(2) manslaughter;**

**(3) assault in the first or second degree;**

**(4) kidnapping;**

**(5) forgery;**

**(6) arson;**

**(7) human trafficking;**

**(8) coercion;**

**(9) indecent exposure in the first degree;**

**(10) sexual assault;**

**(11) sexual abuse of a minor;**

**(12) unlawful exploitation of a minor including possession or distribution of child pornography.** (Eff. 4/28/84, Register 90; am 5/1/94, Register 130; am 5/11/96, Register 138; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

<b>Authority:</b>	AS 04.06.090	AS 04.11.330	AS 04.11.370
	AS 04.06.100	AS 04.11.340	AS 04.11.480
	AS 04.11.320	AS 04.11.360	

3 AAC 304.180 is repealed and readopted to read:

**3 AAC 304.180. Denial, suspension, revocation, or refusal to renew or transfer, in the public interest.** (a) The factors the board may consider in determining whether it is in the public interest to deny, revoke, suspend, or refuse to renew or transfer a license include

(1) the applicant's, the applicant's affiliates', the transferee's, or the transferee's affiliates' histories of conviction of

(A) a crime involving moral turpitude; or

(B) a felony in this state, the United States, or another state or territory

during the 10 years immediately preceding the date of application;

(2) the applicant's, the applicant's affiliates', the transferee's, or the transferee's affiliates' histories of commission of

(A) a violation of AS 04 or regulations adopted by the board; or

(B) a violation of the alcoholic beverage control laws of another state, as a licensee of that state;

(3) whether the applicant, the applicant's affiliates, the transferee, or the transferee's affiliates are untrustworthy, unfit to conduct a licensed business, or a potential source of harm to the public;

(4) whether the applicant, the applicant's affiliates, the transferee, or the transferee's affiliates have permitted, on licensed premises belonging to that person, the occurrence of sexual contact between persons; for the purpose of this paragraph, "sexual contact" means the touching of genitals, anus, or female breast or the intrusion of any object into the genital or anal opening regardless of whether the act was consensual; and

(5) all other factors the board in its discretion determines relevant to the public interest.

(b) The grounds on which a local governing body may properly protest an application under AS 04.11.480 include the grounds set out in (a) of this section.

(c) In this section, “a crime involving moral turpitude” means

(1) homicide;

(2) manslaughter;

(3) assault in the first or second degree;

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