



MEMORANDUM

TO: Alcoholic Beverage Control Board DATE: July 9, 2019
FROM: Erika McConnell, Director RE: Recreational Site Licenses

In the last session, the legislature passed SB 16, which effectively grandfathered all recreational site licenses that were valid in 2018, before the board began to effectuate the direction from the legislative auditors to more accurately apply the recreational site license statute at AS 04.11.210.

Twelve recreational site licenses were presented to the board for renewal in the last several years as questionable as to whether or not they were compliant with AS 04.11.210. Of those twelve:

- four were renewed (with or without “last renewal” warnings) and are currently operating;
- five were denied renewal in 2018 or 2019;
- two sought and were granted different license types;
- one did not seek renewal after the “last renewal” warning given at the previous renewal.

SB 16, which is expected to be signed by Governor Dunleavy on July 5 and has an immediate effective date, does the following:

- It requires the board to reconsider a renewal or transfer application for a recreational site license if the application was denied between January 1, 2018, and July 5, 2019 (effective date of the act), and the denial was because the board determined the licensed premises did not meet the definition of a recreational site.
- It requires the board to reconsider any new recreational site license applications if the application was denied between October 1, 2018, and July 5, 2019 (effective date of the act), and the denial was because the board determined the licensed premises did not meet the definition of a recreational site.
- It prohibits the board from denying the renewal or transfer of a recreational site license solely because the board determines the licensed premises does not meet the definition of a recreational site, as long as the license was valid any time between January 1, 2018, and March 31, 2019, and the license is being operating “under the same conditions required at the time of initial licensure.”
- It prohibits the board from denying an application for a new recreational site license solely because the board determines the licensed premises does not meet the definition of a recreational site, as long as the application was filed between October 1, 2018 and July 5, 2019 (effective date of the act).

Recreational Site Licenses Overview

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Tabs 29 through 34 are recreational site license applications affected by SB 16. A few of the affected license holders declined to have their denials reconsidered.



LAWS OF ALASKA

2019

Source

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Chapter No.

AN ACT

Relating to certain alcoholic beverage licenses and permits; relating to the bond requirement for certain alcoholic beverage license holders; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to certain alcoholic beverage licenses and permits; relating to the bond requirement
2 for certain alcoholic beverage license holders; and providing for an effective date.

3

4 * **Section 1.** AS 04.11.210 is amended by adding new subsections to read:

5 (d) The board may not deny an application for renewal of a license issued
6 under this section or an application to transfer a license issued under this section to
7 another person solely because the board determines that the licensed premises is not a
8 "recreational site" as defined under (c) of this section if the applicant

9 (1) held a license under this section or received a transferred license
10 under this section that was valid at any time between January 1, 2018, and March 31,
11 2019 or holds a license that was initially issued under (e) of this section; and

12 (2) operates the license under the same conditions required at the time
13 of initial licensure.

1 (e) The board may not deny an application for issuance of a new license under
2 this section solely because the board determines that the licensed premises is not a
3 "recreational site" as defined in (c) of this section if the applicant filed an application
4 for a new license under this section between October 1, 2018, and the effective date of
5 this Act.

6 * **Sec. 2.** AS 43.60.040(a) is amended to read:

7 (a) Each brewer, distiller, bottler, jobber, wholesaler, or manufacturer is
8 primarily liable for the payment of the excise taxes on alcoholic beverages sold, and,
9 **except as provided under (i) of this section,** shall furnish a good and sufficient
10 surety bond of \$25,000 payable to the department and approved by the Department of
11 Law. If a wholesaler fails to pay the tax to the state, the wholesaler forfeits the bond
12 and the wholesaler's license shall be revoked. The department, in its discretion, may
13 issue permits in place of bonds to resident holders of wholesale, malt beverage, and
14 wine licenses doing business wholly in the state who pay the tax before shipment.

15 * **Sec. 3.** AS 43.60.040(b) is amended to read:

16 (b) Upon receipt of the bond and its subsequent approval, the department shall
17 issue a license certificate authorizing the brewer, distiller, bottler, jobber, wholesaler,
18 or manufacturer, liable for the payment of the tax, to sell alcoholic beverages in the
19 state or to consign shipments of alcoholic beverages to the state. **Except as provided**
20 **under (i) of this section, it** [IT] is unlawful for a brewer, distiller, bottler, jobber,
21 wholesaler, or manufacturer to sell alcoholic beverages in the state or to consign
22 shipments of alcoholic beverages into the state without first furnishing the required
23 bond and obtaining the license certificate or permit from the department. The license
24 certificate does not constitute permission to sell alcoholic beverages in the state or to
25 consign them to the state without having complied with other requirements of state or
26 federal law.

27 * **Sec. 4.** AS 43.60.040 is amended by adding a new subsection to read:

28 (i) The department may not require a brewer, distiller, bottler, jobber,
29 wholesaler, or manufacturer who has timely filed monthly tax returns and paid
30 monthly taxes to the department over the most recent three consecutive years to
31 maintain a bond if the brewer, distiller, bottler, jobber, wholesaler, or manufacturer

1 continues to remain in compliance with this chapter. The department shall notify the
2 brewer, distiller, bottler, jobber, wholesaler, or manufacturer of any noncompliance
3 that requires the brewer, distiller, bottler, jobber, wholesaler, or manufacturer to file a
4 bond under (a) of this section. The brewer, distiller, bottler, jobber, wholesaler, or
5 manufacturer shall, within 30 days after receiving the notice of noncompliance, file
6 with the department a bond under (a) of this section.

7 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 TRANSITION. (a) The Alcoholic Beverage Control Board shall reconsider an
10 application for renewal of a recreational site license or transfer of a recreational site license to
11 another person and apply AS 04.11.210(d), enacted by sec. 1 of this Act, if

12 (1) the application was denied between January 1, 2018, and the effective date
13 of this Act; and

14 (2) the board denied the application because the board determined that the
15 licensed premises was not a "recreational site" as defined under AS 04.11.210(c).

16 (b) The Alcoholic Beverage Control Board shall reconsider an application for
17 issuance of a new recreational site license and apply AS 04.11.210(e), enacted by sec. 1 of
18 this Act, if

19 (1) the application was denied between October 1, 2018, and the effective date
20 of this Act; and

21 (2) the board denied the application because the board determined that the
22 licensed premises was not a "recreational site" as defined under AS 04.11.210(c).

23 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 RETROACTIVITY. (a) AS 04.11.210(d), enacted by sec. 1 of this Act, is retroactive
26 to January 1, 2018.

27 (b) AS 04.11.210(e), enacted by sec. 1 of this Act, is retroactive to October 1, 2018.

28 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).