



MEMORANDUM

TO: Alcoholic Beverage Control Board DATE: November 12, 2019
FROM: Erika McConnell, Director RE: Regulations Project: Death of a Licensee

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: Public comment period closed on October 30, 2019

The board opened a regulations project to clarify AS 04.11.030, Death of a licensee, at the April 29, 2019, board meeting.

The attached draft repeals and replaces 3 AAC 3 AAC 304.215 and proposes the following:

- Subsection (a) is essentially what is currently in the regulation, but clarifies that this applies to licensees who are sole proprietors or sole owners of entities.
- Subsection (b) proposes that upon the death of a licensee who owns 50% or more of an entity holding a license, the surviving licensees may continue to operate the license but a transfer application or request for extension must be filed within 90 days of the individual’s death. If the transfer or extension request is not submitted, the business must cease operating until a transfer is filed. Only one extension is allowed, unless there is a delay in appointing a personal representative for the estate of the deceased licensee which is cause for allowing additional extensions.
- Subsection (c) proposes that upon the death of a licensee who owns less than 50% of an entity holding a license, the surviving licensees may continue to operate the license but must submit a transfer application or report a change of ownership within 90 days of the individual’s death. (Should the surviving licensees not comply with that requirement, an NOV can be issued and if appropriate, an accusation can be served.)

The proposed regulations change was posted for public comment for 40 days. Two comments were received which are attached.

Board options:

- Vote on whether or not to adopt.
- Amend and put out for public comment.
- Send back to staff for additional revisions.

3 AAC 304.215 is repealed and readopted to read:

3 AAC 304.215. Death of a licensee. (a) Upon the death of an individual who is the sole owner of a license, either individually or as the sole owner of the licensed entity, the business must cease operation until the appointment of a personal representative by the superior court. Upon written request made by the personal representative accompanied by an order of the superior court showing the appointment as personal representative of the estate of a deceased individual licensee, the director will grant permission to the personal representative to operate the business upon the licensed premises under AS 04.11.030. In accordance with AS 04.11.030, an application for transfer of ownership of the license or a request for a time extension shall be made within 90 days of the death of the individual. The board may consider subsequent requests for a time extension if they are received before the applicable deadline.

(b) Upon the death of an individual who owns 50 percent or more of a limited liability organization, corporation, or partnership, including a limited partnership, that holds a license under this title, the surviving owners may continue to operate the licensed business but must file a transfer application within 90 days of the death of the individual. If a transfer application or time extension request is not filed by the 90 day deadline, the business must cease operation until the transfer application is filed. Upon receipt of an extension request filed before the 90 day deadline, the board may grant one 90 day extension. Additional extensions may be granted by the board only if a request is filed before a deadline, and only if the extension is needed to allow time for a personal representative to be appointed in order to sign the transfer application.

(c) Upon the death of an individual who owns less than 50 percent of a limited liability organization, corporation, or partnership, including a limited partnership, that holds a license under this title, the surviving owners may continue to operate the licensed business but shall

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report a change of ownership under AS 04.11.045, 04.11.050, or 04.11.055, or shall file a transfer application if required by AS 04.11.040, within 90 days of the death of the individual.

(Eff. 11/29/81, Register 80; am ___/___/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.030

CSG, Inc.

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October 23, 2019

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Alcohol and Marijuana Control Office
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Re: Comments RE: Proposed Changes on Death of a Licensee

To Whom It May Concern:

Our office is submitting our comments to the proposed changes on Death of a Licensee in the regulations of the Alcoholic Beverage Control Board. Our office has nine attorneys. We represent numerous clients who own liquor licenses. We also do a large volume of probate cases each year. The proposed regulations do not provide sufficient protections for the estates of the deceased license holders.

We understand that safeguards need to be in place to ensure that liquor licenses are operated correctly. The requirements as they are currently written and the proposed regulations do not provide sufficient time for a personal Representative to transfer the license based on the applicable probate statutes. Also, the current and proposed regulations will cause businesses to suffer significant economic loss, upon their deaths.

Overview of the Probate Process

An overview of the probate process will help us point out the problems with the current proposed regulations.

The earliest a personal representative can apply to be appointed as a Personal Representative of an estate is five days (120 hours) after death. In order for a Personal Representative to file his/her application to be appointed by the court, the applicant needs a certified copy of the decedent's death certificate. In most instances the death certificate is not ready within a week of death; fact it can sometimes take up to two months, or more to collect the death certificate. If the decedent dies with a will, and the will waives the bond requirement and the original will is submitted with the informal probate application, once the application is filed with the court, it can generally take at least a month, if not longer, for the individual to be appointed. If the original of the will cannot be found, the will does not waive the bond requirement and/or there is no will and/or the cooperation of the heirs, the process

of appointment is slowed and can take up to two months to get a Personal Representative appointed.

With the large number of state budget cuts in the past few years, the courthouse staff has been dramatically reduced and it takes much longer to get individuals appointed. This means that usually the soonest a personal representative is appointed is five to six weeks after death, if there are no issues and there is an original will, the will names the personal representative to be appointed and waives the bond requirement.

Once the court appoints a personal representative, the personal representative then gives notice to potential known creditors and publishes a notice in the newspaper to any potential unknown creditors. Upon publication of the notice, creditors then have four months from the date of first publication to present their claims against the estate. While the claims period is running, the Personal Representative of the estate prepares an inventory. The inventory is due three months after they have been appointed. When the four-month claim period expires, the inventory of assets is compared to the claims to be paid and it is then when the Personal Representative can start liquidating the estate to satisfy the claims in order of priority. To protect the personal representative from mismanagement of the estate, it is in the personal representative's best interest to only pay those estate expenses that preserve an asset, while the claim period is running to ensure there are sufficient assets to satisfy the claims. If the estate is cash poor, but has adequate assets to pay the claims presented, the Personal Representative must start liquidating assets to pay the claims, before any distributions to the heirs are made.

There is no way to know, until after the claims period has expired, who will receive the estate assets or what assets the estate has to distribute. Distribution of the estate before the claim period expires is risky for a Personal Representative and highly discouraged by our firm. Therefore, requiring a Personal Representative complete a transfer license application for a liquor license, so soon after death (within 90 days), is next to impossible in most estate matters.

Death of a Sole Proprietor or Sole Owners of Entities (Subsection (a)).

Requiring an establishment to immediately stop selling liquor upon the death of a sole proprietor can cripple the establishment because it will undoubtedly lose customers, which will have an adverse effect on the business value due.

We respectfully request regulations be adopted that allow establishments to continue operation at the death of a sole proprietor for at least 60 to 90 days after death, before the Board places the automatic pause on the license. The Board could request within the 60-90 days that the Personal Representative show proof that he/she has taken the initiative to be appointed by the court to administer the estate. Then once appointed the Personal Representative can take the necessary steps to notice the creditors, as referenced above and determine the liquidity of the estate so it can ultimately work toward transfer of the license and distribution of the estate to the heirs.

A regulation allowing a business to continue operating for a short period of time until a personal representative can be appointed and file the request to continue operations would prevent the loss or decrease of value of an estate asset.

Death of Owner Holding More than 50% (Subsection (b)).

This regulation allows for the business to continue to operate but requires a transfer license to be filed within 90 days of death. As outlined in the overview of probate section above, 90 days is not enough time for a Personal Representative to determine the solvency of the estate and to determine who will receive what from the estate assets, after all claims are paid.

The regulation allows for an extension, but only one, unless there is a delay in appointing a personal representative. The regulation should allow for extensions as needed for the personal representative to be appointed, determine what assets and debts are in the estate and how is to receive the liquor license. Probate is unpredictable. At any given moment a will dispute, unknown heir or creditor could appear, not to mention fighting amongst the heirs as to who receives what. The amount of time that will be needed to resolve issues when requesting an extension is a best guess, but court calendars and other circumstances can cause delays. Additional extensions should be granted if a personal representative can show that they are actively trying to administer the estate and determine who the license needs to be transferred to.

The current and proposed regulation requires filing a change request with 90 days of death. This is insufficient time. In probate, it is rare to know within the first 90 days who will receive what asset from the estate. Also, only allowing one extension is unrealistic given the unpredictable nature of many estate. We recommend that extensions be given as needed.

Death of Owner Holding Less than 50% (Subsection (c)).

Under the new regulation change the Board proposes that a business be allowed to continue, but will require the surviving owners to submit a transfer application or report of change of ownership within 90 days after death. Extensions are not noted in this section. Even if a deceased owner owns less than 50% interest in a business, the shares owned by the deceased member are still part of the deceased owner's estate and are subject to creditor claims. Therefore, for the reasons stated in the previous sections above, granting surviving owners with at least one 90-day extension to commence the transfer.

We appreciate the opportunity to comment and welcome your questions. Feel free to call us at 452-1855.

Sincerely,
CSG, Inc.

By:


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Restaurant and Retailers Association



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October 28, 2019

Alcoholic Beverage Control Board
amco.regs@alaska.gov

Re: Opposition to Proposed Regulatory Changes Regarding Death of a Licensee

Dear members of the Alcoholic Beverage Control (ABC) Board:

The Alaska Cabaret, Hotel, Restaurant, and Retailers Association (CHARR) – as a representative of Alaska’s alcohol industry as a whole – generally opposes the regulation project which would repeal and readopt 3 AAC 304.215 to expand the requirements and restrictions in the event of a death of a licensee. As a nonprofit business association with an extremely diverse membership, we have serious concerns about the regulatory overreach and clear lack of understanding of basic corporate ownership demonstrated in this draft language.

The current language in 3 AAC 304.215 limits cessation of license operation in the event of the death of a licensee to only licenses directly held by sole individuals. Subsection (a) of this draft would expand that to include corporations that have only one financial shareholder but that have governing boards who have been subjected to background checks by the ABC Board and who have been approved to make responsible decisions for the license.

More importantly, each subsection of this draft either adds or omits language that could have serious financial implications to businesses, and to those already dealing with the emotional and legal challenges that accompany the death of a loved one. Specifically:

- A new sentence has been added to the end of (a) which states, *“The board may consider subsequent requests for a time extension if they are received before the applicable deadline.”* This certainly leaves room for the interpretation that if a subsequent request for an additional extension is received after the deadline, then it will not be considered by the board, and the license will be forfeit. That, of course, is completely unreasonable when one considers that executors and personal representatives of estates are concurrently dealing with probate (a court process which often takes years to complete) and sorting personal effects, all while grieving. Having to wait to appeal a license forfeiture would put the establishment completely out of business, while costing both the executors and the State large sums of unnecessary expenses.
- Subsection (b) is worse. Personal representatives do not necessary have the legal authority to sign a transfer application. Often, transfers of liquor licenses are postponed for over a year while probate is worked out. It is irresponsible and impractical to limit additional extensions for license transfers to only occurrences when personal representatives still need to be appointed. This would again result in an inappropriate license forfeiture, as the



personal representative might be appointed but unable to legally sign a transfer document. Each entity has adopted bylaws or agreements that govern how ownership changes may occur.

- Subsection (c) mandates that the license be transferred within 90 days and does not include language that allows for a time extension for the transfer. The issues in the previous bullet regarding probate apply here as well.

I implore you to reject this language because of the inevitable future impacts on businesses around the state. If the ABC Board wishes to proceed with a project for clarification purposes, I would respectfully request that you form a working group that I am included in.

Thank you for your consideration and interest in continuing to responsibly regulate the industry.

Respectfully,

A handwritten signature in green ink, appearing to read 'S. Oates', is written over a faint, light-colored watermark of the Alaska CHARR logo.

Sarah D. Oates
President & CEO
Alaska CHARR