



MEMORANDUM

TO: Alcoholic Beverage Control Board DATE: August 18, 2020
FROM: Jane P. Sawyer, Regulations Specialist RE: Regulations Project – Death of a Licensee

At the November 2019 meeting, the board requested a revised draft based on public comment received from last round of public comment and with counsel input. Attached is the revised draft. There is also a question/comment for the board to consider on the draft.

The draft would:

Repeal and readopt 3 AAC 304.215, it would allow for an executor or administrator of the estate to, upon request to the director, continue the operation of the alcohol licensed premises for a certain amount of time while this person is working on submitting a license transfer. – I think the problem here was the term Personal Representative being appointed by the court to act on behalf of the decedent (old/current regulation) vs Executor or Administrator (proposed).

3 AAC 304.216 and 304.217 are new sections to address death of a licensee of a company when that person holds controlling interest and when that person holds less than controlling interest in the license, respectively.

Options for the board:

- Put out for public comment
- Amend and put out for public comment
- Send back to staff for revisions
- Close the project without action

(Words in boldface and underlined indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 304.215 is repealed and readopted to read:

3 AAC 304.215. Death of a sole licensee. (a) Upon the death of an individual who is the sole owner of a license or the sole owner of the licensed entity, the business operating the license shall cease operation until an executor or administrator of the estate files written proof of his or her authority to act on behalf of the estate of the deceased along with a written request to continue operations with the director. Upon validation of the authority, the director will grant permission to the executor or administrator to operate the business upon the licensed premises as permitted under AS 04.11.030. That permission expires upon approval of an application for transfer of the license submitted in accordance with 3 AAC 304.175 or upon forfeiture in accordance with AS 04.11.030(b).

(b) An application for transfer of the license from the deceased licensee must be made in compliance with the time limitations set out at AS 04.11.030(b). Failure to do so forfeits the license, unless the board approves an extension of the time limits upon the filing of a written petition by the administrator or executor to extend the applicable deadline. All written petitions to extend the applicable deadline must be submitted before the expiration of applicable deadline, unless the board approves a petition submitted after the deadline for good cause and the license is still available for transfer.

(c) For purposes of this section and 3 AAC 304.216, “executor or administrator” includes an executor, an administrator, or personal representative as defined at AS 13.06.050. (Eff.

11/29/81, Register 80; am ____/____/_____, Register _____)

Commented [SJP(1): [Note, AS 04.11.030 does not require cessation of operations. The board could choose to permit continued operations as it does when the owner of the controlling interest in the business entity owning the license dies] –which is keep operating but submit transfer within 90-days.
However, if we allow an establishment to continue operating as it does when the owner of the controlling interest in the business dies, there is no guarantee that we will know that the sole licensee died.
I guess the question is: in the instance of a sole licensee dying (as opposed to one of the licensees in the corporation dying) does the board care/worry/would like to know about who keeps operating the license/alcohol/business of the sole licensee who died? In a corporation, the remainder licensees would keep the business going and be the responsible parties, who have been fingerprinted, etc. Do we care about this in the sole licensee instance death and about who keeps the business going?
In theory, if the sole licensee establishment is required to cease operation upon death, the “person in charge” would be contacting us to let us know and it just goes from there.

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Authority: AS 04.06.100 AS 04.11.030

3 AAC 304 is amended by adding a new section to read:

3 AAC 304.216. Death of an individual with a controlling interest in a license issued to a business entity. (a) Upon the death of an individual who owns a controlling interest in a partnership, including a limited partnership, a limited liability company, or a corporation that holds a license under this title, the business entity may continue to operate the licensed business but shall file a transfer application as required under AS 04.11.040 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 shall cease operation until the transfer application is filed.

(b) 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 for good cause. (Eff. ___/___/_____, Register _____)

Authority: AS 04.06.100 AS 04.11.030

3 AAC 304 is amended by adding a new section to read:

3 AAC 304.217. Death of an individual with less than a controlling interest in a license issued to a business entity. Upon the death of an individual who owns less than a controlling interest in a partnership, including a limited partnership, a limited liability company, or a corporation that holds a license under this title, the business entity may continue to operate the licensed business but shall report a change of ownership under AS 04.11.045, 04.11.050, or

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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. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.030

3 AAC 304.215. Death of a licensee is repealed

[UPON THE DEATH OF AN INDIVIDUAL WHO IS THE SOLE LICENSEE OF A LICENSED PREMISES, 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.]