



**Alcoholic Beverage Control Board
Meeting Agenda**

***Subject to change due to viral emergency**

Wednesday, April 8, 2020

Third Judicial District

April 8, 2020 at 1:00 pm

Call-in Number: 1-800-315-6338, code 69173#

All times are approximate.

● **ADMINISTRATION**

1:00 pm

A. Call to Order

1:00 pm

B. Roll Call

*Rex Leath, Public Safety Member
Charles "Charlie" Milton Cross, Rural Public Member
Sara Belle Erickson, Public Member
Glenn Brady, Industry Member
Dana Walukiewicz, Industry Member*

*Glen Klinkhart, Interim Director
Joan Wilson, Assistant Attorney General
Carrie Craig, Records and Licensing Supervisor
Jane Sawyer, Regulations Specialist*

● **EMERGENCY MEETING TO DISCUSS THE ABC BOARD'S RESPONSE RELATED TO COVID-19 MATTERS**

- **Consideration of emergency regulations for Curbside/To-Go pickup of beer & wine in factory-sealed containers from on-premise licensees.**
 - **Discussion of statutory authority and emergency powers of executive branch (see letter from Joan Wilson (AMCO AAG)).**

Joan Wilson states the board will need to suspend the statutes for curbside and to go orders. She does not know the timeframe yet. Glenn B. wants to have a broad discussion. The board needs to be clear what they need from the Governor's office.

Glenn B. states that he did see Sara Erickson's op-ed and he wants to be clear that the board does not want to overstep their authority. He asks if there is anyone present who could give some clarity on what the industry needs. He mentions Joan's draft language regarding redefining the premises boundaries to allow for curbside.

Joan Wilson, reads her letter to the Governor about what the ABC board voted to do at the previous meeting and for further discussion at the emergency meeting. The letter was given to the Governor's office. Glenn B. states they have not received a definitive guideline regarding their authority from the Governor's office.

Sarah Oates, President and CEO of CHARR, speaks regarding the draft of emergency regulations. She urges the board to consider adopting the temporary emergency regulations for 120 days that would capture the intent of the board's actions in the previous meeting. Joan Wilson will forward the email to the board members.

Glenn B. would entertain a motion to adopt the emergency regulations as articulated by Ms. Wilson for curbside pickup – not for delivery. Sara E. is confused. Is the board still waiting for the Governor's office to give the go ahead? Glenn B. and Joan clarifies that the board is putting everything in place for his approval.

Eugene Haberman, member of the public, is present on the phone and represents himself. He speaks about the public process regarding public meetings during the pandemic. Sara E. wants public comment to be limited to 2 minutes. Joan W. says the very point of emergency regulations is the for the people in power to write and adopt them to respond to the emergency. The reason why there is no public comment on these regulations at this point is because there is an emergency that the board needs to address. The law allows for this process.

Dana W. asks if these are the regulations received prior to the meeting? Joan W. urges the board to adopt the last document that she just emailed. Glenn B. does not want to open the door to home delivery now.

Jessica Brown, counsel from Holland & Knight is present on the phone, addresses the regulation language she drafted with Ms. Oates. 3 AAC 304.930.

Sara E. motions to adopt the emergency regulation as articulated by Ms. Wilson for curbside pickup. Rex L. seconds. *Charlie C. says he hasn't had time to read through the documents and would like more time for review. Glenn B. summarizes what was discussed at the previous meeting and the draft regulations in front of them is the direct outcome of that that discussion.*

Nancy Reader, Chief of Police for Fairbanks, is curious as how is this an essential service and necessity during the pandemic – liquor stores are still open. Why take this extraordinary step for something that is not a necessity? Law enforcement is stretched real thin right now and they are trying to limit contact as much as possible. Glenn B. asks how would this place additional burdens on law enforcement or create a greater public health risk factor beyond what they are dealing with? He says what is being changed does not create increased risk.

Rex L. wants to finish board comments. He suggests the board to look at all angles before voting and there are public safety concerns. 3 AAC 304.465(a) – driver completing alcohol server education. Glenn B. concurs – not his intent to create additional risks.

Sara E. asks Sarah Oates to recap her statement from last week. Sarah Oates recaps her testimony from the March 31st and April 1st meeting.

Dana W. has questions about the regulations. He mentions that package stores must review ids for alcohol purchase restrictions – specific to the Municipality of Anchorage and package stores. Joan answers his questions. He says there should be communication with the industry about that – not being enforced. Glenn B. says the emergency regulations will extend those requirements to any off-premise sale. Joan Wilson mentions subparagraph b addresses the issue and recommends defining “curbside delivery” and “sealed”.

Rex L. states that AS 04.11.150(i) & (j) says package stores allows delivery in certain circumstances – gift basket to a cruise ship, hotel guest or to a wedding or wedding reception within a certain time frame. He suggests using the some of the same language.

Sarah Oates points out that the language in 3 AAC 304.930(1) was copied and pasted from AS 04.11.150(j). Glenn B. says SB52 further addresses delivery, but the motion on the table does not include delivery.

Charlie C. and Rex L. are opposed, 3-2 motion carries.

Joan Wilson asks for guidance for a definition of “curbside delivery” and “factory sealed”. Glenn B. agrees it is needed and should be clear. The board will need to have another meeting to vote to adopt the definitions. Joan Wilson is tasked to put the definitions together.

Sara E. asks about growlers and factory sealed/tamper evident. It is the board’s intent to allow growlers for curbside delivery.

- **Consideration of refund/waiver of alcohol license fees/extensions during mandated shutdown period.**
 - **Letters from Rep. Wool & Rep. Knopp**

2:00 pm: Glenn B. provides background. The Alcohol Beverage Control Board is self-funded, regulatory agency that derives its budget from license fees. He urges consideration of those facts when discussing these matters.

Sara E. suggest that licenses are refunded from January 1st of 2020 and/or to waive the rest of the fees for the year. Glenn B. says not all segments of the industry is shut down – some are doing better right now. That action would be opening a can of worms. The Division of Corporations, Business and Professional Licensing (CBPL) waived business licensing fees and he is seeing chatter that now is a good time to go get your free licenses.

Rex L. says the board would be taking away the funding to keep AMCO operating. If they reimbursed those fees, they would have to look for other paths to bring money into AMCO for the day-to-day operations. The board must think further down the road – long standing effects. Other departments in the State of Alaska do not rely on license fees to fund operations and positions.

Sara E. mentions the Governor vetoed a large part of the budget and using the federal monies for COVID to pay for the things he vetoed. If it is legal, can we request some of that money from the Governor? Limit or be fair for only restaurant/eating place licenses, beverage dispensaries, etc. Glenn B. thinks the board would need look deeply at the long-term effects that but he can't envision it. The Governor's office has a lot going on and will likely be overloaded for the foreseeable future. He states the board does not want to be in the position to beg for money.

Dana W. echoes some of Sara's comments. Maybe they can revisit this subject later when there is more clarity regarding the length of the closure. Perhaps a partial refund if the budget allows for it. If the board accepts these actions now (waivers/refunds) it will overburden the office when there is other work the staff needs to focus on.

Director Klinkhart states that the board does not see a lot of the problems behind the scenes and the staff has been working hard and helping the marijuana industry. He is very proud to working for a department that can pay for itself. The ripple effect of taking away a portion of the budget is that staff will not be able to complete the other things that they currently do and they are working remotely, which is not as efficient as working in the office. He will abide by the board's will but if he must go to Juneau to ask for money every year, he will be in a big pool of people asking for the same thing.

Sara E. asks the Director what kind of impact would it have on the operating budget if the board reimbursed restaurant/eating place licenses and beverage dispensaries? She agrees that the staff is swamped however it is not the industry's fault that the boards were designed this way and the office is understaffed and working remotely. She says it is her understanding that there is money in the budget to continue to operate if they did waive/reimburse the fees.

Director Klinkhart says that one of the things he has learned about the budget is that the office is independently paid for but not by much. He says he can get the actual numbers but mentions that anything around \$100,000 is going to have an impact and once that happens, they will need to find the money somewhere else or find other ways to cut and like other offices, 90% of the cost is staff.

Sara E. says the board shouldn't pursue this if puts them in a tough legal predicament. Glenn B. says it's premature and will re-examine it later when there is more data available.

- **Consideration of extension of protest period deadlines from LGBs**
 - **See attached April 7, 2020 letter from AMCO staff**

Memo from Jane Sawyer, Regulations Specialist, on the subject. Glenn B. provides an introduction and asks Director Klinkhart or Jane to confer. Jane S. is present on the phone. They are requesting the board to consider issuing an extension for the local governing bodies an additional 30 days.

Jane answers some questions and clarifies the procedures. She has heard from only 2 local governments, the Municipality of Anchorage and the City of Haines.

Glenn B. mentions this is an isolated request and he doesn't think it is an emergency. He asks for the will of the board. Dana W. doesn't see any negative consequences to issuing the extra 30 days. Rex L. asks how will it affect the licensees? (phone breaks up) Glenn B. suggests letting the subject sit for a while. Sara E. agrees with Glenn. Charlie C. is okay with not taking any action.

- **Additional consideration of Alcohol Server Training and duration of public health mandates.**

Glenn B. provides background asks the Director for further background which he does provide. Turns it over to Sarah Oates.

Sarah Oates is hoping this is not an indefinite waiver. Once businesses reopen, the server cards would need to be renewed within 30 days. Glenn B. says this is meant to be temporary and will keep an eye on this.

- **Consideration of request for temporary additional restriction of shipments to local option communities.**

Glenn B. asks Joan Wilson to provide information on the subject. Joan defers to Savannah Fletcher, with Alaska Legal Services and legal counsel for Tanana Chiefs Conference. Ms. Fletcher asks if the board will recognize tribal authority to mandate non-essential businesses, which includes alcohol imports, and the shipments of alcohol to communities?

Glenn B. speaks about the local option process in statute. He asks what is broken with the current process in statute? Ms. Fletcher says that local option requires a community-wide vote on a ballot but due to emergency conditions and the need to rapidly respond, it is neither safe nor feasible to have everyone re-vote on local option law.

Glenn B. asks Joan Wilson how much emergency authority does the local governing bodies have regarding local option – under emergency conditions, do they have a mechanism to adjust local option rules?

Joan mentions that most local governments that opt in are some form of government, not tribal. Who has authority? The tribe or local government? Under the Governor's orders, essential businesses include

stores and all other businesses that can maintain social distancing. The Governor can suspend or limit, this is not necessarily the board's jurisdiction.

Savannah Fletcher agrees with Joan that there a lot of jurisdictional considerations and asks who does tribal governments have authority over?

Joan Wilson asks the board what they want to do. Glenn B. understands where they are coming from but he is concerned how it would affect things in the future.

Ms. Fletcher says the tribe has clear, well-documented jurisdiction over any affairs that impact their health and welfare and safety. And that would include, during this time, any preventative measures to protect them from COVID-19, violence that could occur from shelter-in-place orders. They ask that the board respects the tribal authorities to confiscate materials they deem illegally imported to the tribal members, which is well within their rights. If the board cooperates, the airlines will respect this order. One of the mandates indicates that smaller communities, off the road system, could adopt stricter mandates – who comes into the community.

Joan suggests that they seek relief from the Governor's office instead of the ABC board. Savannah Fletcher says the airlines were requesting answers from the board and says the Governor's office is just as overwhelmed.

Joan advises the board that this is an issue for board consideration of their interest in it and the next step would be legalities. Joan asks, what is the community? Village government, a rural hub, or is it a tribe and that is going to raise issues. Glenn B. states that if the board recognizes this authority, it could potentially set precedence. He is concerned how it would affect things in the future.

Rex L. thinks the questions are valid but it would be setting precedence. This should be sent to the Governor's office.

Charlie C. is a tribal member and in a previous position he has enforced alcohol laws. This is a very complex subject. This is not right venue to discuss the subject.

Glenn B. suggests the tribe takes it up with the Governor. Joan Wilson commits to work with Savannah Fletcher to help facilitate the conversation with the Governor's office. Ms. Fletcher appreciates the position.

- **Other items related to COVID-19 response and emergency regulatory oversight of alcoholic beverages.**

Sara E. wants to talk about to-go orders or home delivery. What is the board's decision? Glenn B. says that things are still fluid and lacking clarification from Governor's office and the timing is off. There is not enough information to take action right now. The board will consider this subject at a future date.

Jessica Brown, counsel with Holland & Knight, wants to know how the board is leaning in terms of to-go orders and home delivery.

Joan Wilson says the Law and Regulations section will have some suggestions for the emergency regulations and she imagines the board will be having another emergency meeting. Does the board wish to address home delivery not or at a future meeting?

Glenn B. would like to see clarity from the Governor's office before discussing in a meeting. Sara E. says the board has not heard from him and may never will. The Governor isn't going to do the work. Glenn B. says they should wait for the temporary tweaking of Title 4 under emergency regulation clauses. He says that curbside is more controllable than home delivery.

Joan Wilson sent the documents that identified the parameters for curbside delivery that the board discussed the previous week and identified the statutes that would need to be changed for home delivery, but did not identify any parameters the board would set on that subject.

Sara E. says that the industry has asked for the board to decide on home delivery and if they are going to wait on the Governor, then it isn't fair to the licensees. Glenn B. says he is not hiding behind waiting for the Governor. His concern is that home delivery opens a lot of potentially far-reaching implications. He does not want to react to the crisis without thoughtful consideration. It is too soon for the board to take thoughtful action on the question of delivery. He is not suggesting that the board says "no" – just more homework is needed. Sara E. says that is fair.

Glenn B. suggests a special meeting in two weeks. She agrees.

Rex L. wants clarification of curbside sales vs. home delivery. Jessica Brown says the delivery component (in many other states) increases sales across the board and promotes getting back stock out the door. Her clients have ordered a lot of alcohol and now they cannot sell it without to-go, curbside or home delivery options.

Glenn B. mentions that Title 4 allows for restricted delivery by package stores under certain circumstances. He suggests scheduling another meeting in two weeks. Director Klinkhart asks Glenn B. to reiterate that these actions do not allow for curbside and home delivery.

Joan Wilson says there will be another meeting where they approve the final regulations. The Governor's order does not provide enforcement powers.

Sarah Oates asks for an advisory to be sent out to licensees. Joan w. and the Director will draft the advisory and it will be emailed and posted to AMCO's website.

Next emergency meeting is April 22, 2020 at 1:00 pm, unless another emergency comes up that requires sooner action.

Charlie motions to adjourn. Seconds. None opposed, motion carries.

Adjourn

3:21 pm