



MEMORANDUM

TO: Alcoholic Beverage Control Board DATE: December 22, 2020
FROM: Jane P. Sawyer, Regulations Specialist RE: Regulations Project – Death of a Licensee

At the October 2020 meeting, after considering comments from last public comment period, the board sent out a revised draft for public comment. The draft was out for about 38 days closing on December 11, 2020. No comments were received.

The draft would do the following:

- 3 AAC 304.215 is repealed and readopted: subsection
 - (a) clarifies that this subsection applies to sole proprietors and sole owners of entities.
 - (b) sets out the steps an administrator or executor must follow upon the death of a licensee.
 - (c) outlines what “administrator or executor” means for this purpose.
- 3 AAC 304.216 is a new section to address the death of a licensee with a controlling interest in a license issued to a business entity
 - (a) sets out the requirements of the surviving licensee or licensees to follow upon the death of the licensee who owns controlling interest in the entity.
 - (b) would allow the board to approve an extension request not to exceed one year as long as the extension request is submitted before the expiration of the applicable deadline, unless the board approves a petition submitted after the deadline for good cause and the license is still available for transfer.
- 3 AAC 304.217 is a new section to address the death of a licensee with less than a controlling interest in a license issued to a business entity
 - (a) sets out the requirements of the surviving licensee or licensees to follow upon the death of a licensee who owns less than controlling interest in the entity.
 - (b) would allow the board to approve an extension request not to exceed one year as long as the extension request is submitted before the expiration of the applicable deadline, unless the board approves a request submitted after the deadline for good cause.

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3 AAC 304.215 is repealed and readopted to read: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 unless or until an administrator or executor of the estate files written proof of the administrator or executor's authority to act on behalf of the licensee or the estate of the deceased along with a written request to continue operations with the director. Upon receipt of written proof of the administrator or executor's authority and validation of the authority, the director will grant permission to the administrator or executor to operate the business upon the licensed premises as permitted under AS 04.11.030. That permission expires upon legal appointment of a different administrator or executor of the estate, 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, “administrator or executor” includes an administrator, executor, agent, or personal representative as defined at AS 13.06.050. (Eff. 11/29/81, Register 80; am ____/____/_____, Register _____)

Authority: AS 04.06.090 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, the board may grant an extension not to exceed one year. All written petitions to extend the applicable deadline must be submitted before the expiration of the applicable deadline, unless the board approves a petition submitted after the deadline for good cause and the license is still available for transfer. Additional extensions may be granted by the board only for good cause. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 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. (a) 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 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.

(b) Upon receipt of an extension request, the board may grant an extension not to exceed one year. 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. Additional extensions may be granted by the board only for good cause. (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 and readopted. Repealed language:
 [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

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COMMERCE, COMMUNITY AND EC. DEV.

PERSONAL REPRESENTATIVE TO OPERATE THE BUSINESS UPON THE LICENSED
PREMISES UNDER AS 04.11.030.]