



Alcoholic Beverage Control Board
Meeting Agenda

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

Wednesday, April 22, 2020

Third Judicial District

April 22, 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**

12:59 pm

B. **Roll Call**

*Glenn Brady, Industry Member and Chair
Rex Leath, Public Safety Member and Vice Chair
Charles "Charlie" Cross, Rural Public Member
Sara Erickson, Public Member
Dana Walukiewicz, Industry Member*

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

• **EMERGENCY MEETING TO DISCUSS THE ABC BOARD'S ONGOING RESPONSE RELATED TO COVID19 MATTERS**

A. **Technical clarifications regarding temporary suspension orders -- action required for adoption.**

*1:01 pm: Joan Wilson provides background. Two business types were excluded from home deliveries – breweries & wineries with bona fide restaurants for home delivery. Food needs to be prepared on the licensed premises. **Dana W. motions to adopt the above clarifications of the temporary suspension orders. Sara E. seconds. Dana W. clarifies the sale of distilled spirits is only available by beverage dispensary licenses at curbside – not for home delivery.***

None opposed, motion carries. Joan Wilson clarifies the motion: this was a vote to accept both the amended emergency regulations and the amended findings, correct? Glenn B. confirms.

- B. Administrative procedures regarding ‘functional floor plans’ and ‘licensed premises’ related to possible temporary utilization of outdoor areas and/or modified floor plans accommodate intermediate Public Health occupancy, density and/or social distancing requirements while still allowing for control of access and consumption.**

1:34 pm: Glenn B. says how to re-open maximizing outdoor space – expand premises. Item tabled.

- C. Clarification of ‘Tamper-Evident’ requirements**

1:09 pm: Joan Wilson reads the definition of “factory sealed”. What was meant by tamper proof? Glenn B. says a common practice is using a heat shrink band. Dana W. says growlers are not sealed when filled at breweries. What is the intent? Is it an Enforcement issue? Rex L. addresses the definition of open container in the motor vehicle statutes. The end of AS 28.35.029. A broken seal is considered open. Joan Wilson gives an example and states that they are not changing the practice as it is. This is to allow bars to empty their taps. James Hoelscher confirms that package stores seal the growlers and doesn’t know about breweries not being sealed. The word “sealed” should be used. Glenn B. says that they should be compliant with Title 28 – this should be an advisory. Director Klinkhart says they could use evidence tape/packing tape. Let’s keep it simple. Glenn B. asks the Director to draft the advisory for licensees (not package stores).

- D. General discussion on coordination with Governor’s office to support a careful, controlled lifting of restrictions under Public Health orders to allow for interim business operations of licensed premises.**

1:35 pm: Glenn B. asks the Director to provide the information from the Governor’s office. Director Klinkhart says it is made in generality: the Governor wants to open restaurants at a certain percentage if people can be safe. They are waiting for details. This is a public safety concern. What does the Board want to do as a regulatory arm?

Glenn B. says the lifting of mandates does not specifically address alcohol. Not beverage dispensaries – only restaurants. He does not want this to become a political discussion. There is a lot of concern and uncertainty regarding the safety of employees and customers. How does the Board address this, if at all?

Sarah Oates, President and CEO of CHARR, submitted a letter of recommendation to the Governor what the reopening should look like. CHARR has not taken a side regarding the timing. The wish to avoid a second shut down of the industry.

Glenn B. says the Board is in a unique position and wants discussion. He personally has a lot of questions such as, should licensees get to open and still do curbside/home delivery? He says that people want to get back to normal as long as it’s safe.

Sara E. doesn’t like hearing about the Governor’s actions through the press. What restaurant can function at 25%? That is going to be a headache. She asks about direction on details from the Governor’s office. It would be very difficult for the licensees to choose to open or give up curbside/home. How can the Board rule on stuff without details or clear direction?

Glenn points out lack of clarity and “what ifs”. How will be this be enforced? There isn’t anything to

vote on. Rex L. is looking at it as a statewide issue. They serve at the pleasure of Governor. It would be challenging to get the same message to different groups – should put the burden on the industry.

Sarah Oates responds and adds issue guidance/regulations issued or considered today be considerate that it is statewide and it is diverse. Every state is having the same discussion. Provide flexibility for businesses.

Sara E. adds the Board was proactive. Clear concise agreement to the Governor – it's an easy decision for him. Now it's in reverse and he is shooting off the hip without discussion with the Board. The Board says yes or no.

Glenn B. states reopening is not the Board's authority. The challenge is maintaining control and public safety for the greater good. There is a sincere confusion and lack of guidance which has unintended consequences. It should be done in a calm, methodical, thoughtful way and he knows there will be risks.

Rex L. says public health is the issue. The Board should follow the guidance from DHSS. (phone breaks up). That's how they can move forward as an industry. They are not responsible for non-alcohol related issues. Glenn B. says there is a lot going on for the Governor's office to deal with. The channels aren't as open as they should be.

Dana W. echoes all of the Board member's comments. Should yield to the state mandates and they need a seat at the table. There is also the Municipality's hunker down order which causes more confusion for licensees. Governor versus Mayor. The Board can't provide guidance without a seat at the table.

Sara E. talks about the percentages of what a restaurant can be open. Can the Board say restaurants can still do to-go sales and give that information to the Governor until they can operate at 100%? She says that is a valid issue to vote on today.

Glenn B. is not advocating for the removal of the temporarily allowed activities. He would like to discuss an Enforcement challenge – a portion of the industry will have relaxed restrictions. How does the Board direct the staff? Sara E. suggests Glenn B. write a letter to the Governor to get clear guidance. Glenn B. states timing is of the essence and getting this right is really important – it needs thoughtful discussion.

Rex L. asks if the Board is concerned about the licensee's health regarding Covid-19 or just alcohol. Glenn B. says that is two parts and not in our purview. Potential implications of the use of alcohol when stressed – violate rules. Sara E. agrees with Glenn B. The Board's concern is how they handle alcohol sales percentages.

Dana W. asks what is the Board's concern of the industry and how do they regulate? What is their role to enforce mandates? Is that for AMCO's Enforcement team or...? Director Klinkhart agrees and says to leave these things in place until operations are at 100%. He is concerned about the Enforcement side – not to enforce health mandates – just alcohol portion. It will all be a case by case basis. AMCO's number one priority is public safety.

Glenn B. speaks some more. Rex says to look back at previous comments/meetings. The majority of the industry is law abiding and they need to keep the same perspective. Leave the temporaries in place until operations are at 100%. Joan Wilson has consulted with Department of Law to suspend

statutes.

Sara E. is confused and asks about Enforcement's role? Who will enforce the percentages? It is not AMCO's role to do so. Glenn B. says no and he doesn't know who will enforce those mandates. His concern is control. He wants clear guidance to Enforcement staff on how to handle the willful violators. Wants to make the position very clear.

Enforcement needs to act swiftly and firmly. Sara E. gives example. Repeats previous statements about percentages. The government shouldn't threaten restaurants. Glenn B. says a portion of this is their job and the majority of infractions are reported by third parties. Director Klinkhart agrees and assures the Board that if it is serious enough to call a meeting then it's a big deal and will always be fact based. Glenn B. concurs and asks if the Director has the resources and guidance to do the job. He answers yes.

Joan Wilson says the licensees have the obligation to comply with all law.

Glenn B. asks if action is needed – he doesn't believe so. Most of the population will not run out to a restaurant/bar right away even when everything is open. Let the emergency regulations go to the expiration date.

Glenn B. asks about future emergency meetings and suggest in two weeks, same time on Wednesday and only about the Covid-19 response.

E. Review of current state of temporary suspensions (i.e. report on # of licenses requesting temporary permissions, enforcement, etc)

1:20 pm: Director Klinkhart provides an update. There have been 156 curbside applications approved. 68 home delivery applications approved. Notice is given within 24 hours and staff is about one day behind in processing those applications.

James Hoelscher agrees – going smoothly so far. He asks the Board what they want Enforcement to do when they catch the violators. Glenn B. says to issue one advisory and if they keep offending, issue a NOV. He asks James if they are willfully breaking the mandates or is it ignorance? James says most are ignorant, but a few are willful – they won't follow the rules. Sara E. agrees with Glenn B. about the process.

Glenn B. advocates that the Board delegates specific authority to the Director or the Board confronts these things in a timely manner. Director Klinkhart says that most licensees are doing the right thing, but he worries about the willful licensees. He cannot provide a timeline to the Board.

James Hoelscher adds that Enforcement does not harbor ill feelings if the Board takes their time – as long as they are dealt with and there is no pressure for weekly meetings.

Glenn B. asks the Director if he feels comfortable with his level of authority to stop them. The Director would like the Board to stay the judge and jury and work with Enforcement. His preference if public, staff is at risk and he will bring it to the Board quickly for an emergency meeting. Rex L. agrees. If there is a pattern, the Board should meet.

Tim Clark, licensee, asks if they need to follow the mandate regarding reservation only for dine-in. Glenn B. says the Board can't give clarity on that. Those would be health mandate violations, not for AMCO's Enforcement team.

- **Meeting Adjourns**

2:47 pm: Dana W. motions to adjourn. Rex L. seconds. None opposed, motion passes.