



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Commerce,
Community, and Economic
Development**

ALCOHOL AND MARIJUANA CONTROL OFFICE
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MEMORANDUM

TO: Alcohol Beverage Control Board

DATE: September 16, 2021

FROM: Glen Klinkhart, Director AMCO

RE: Board Hearing/Consideration – Misdemeanor Conviction: Hunger Hut Bar, License #537

Requested Action:

The Alcohol Beverage Control Board is being asked to consider the case of State of Alaska vs. Hunger Hut Bar, a Beverage Dispensary license (#537) located in Nikiski, Alaska, in which the licensee was recently found guilty of a Title 4 Misdemeanor criminal statute.

The AMCO office requests the ABC board consider whether or not they as a board wishes to:

- A) Impose sanctions
 - a. Suspension of the license for 0 - 45 days
 - b. Fine(s) of up to \$10,000
- B) Sanctions with portions or all suspended for a specific period of time
- C) No sanctions

Background:

Responding to a complaint of ongoing smoking being promoted in a licensed liquor establishment in December of 2019 SOA DHSS Tobacco Enforcement, the Alaska State Troopers and an AMCO enforcement officer responded to the Hunger Hut Bar at 51815 Kenai Spur Highway in Nikiski, Alaska. Further investigation revealed several patrons who were consuming tobacco products. Citations were issued to the patrons for smoking. Additionally, the bartender was issued two citations for allowing the tobacco consumption and for providing ashtrays for the patrons. The licensee and owner, Linda L. Superman, was interviewed and

admitted to knowingly allowing the violations to occur in the establishment for at least the prior six (6) months.

On 12/17/2019 AMCO Enforcement Officer J. Hamilton issued a Notice of Violation to the Hunger Hut Bard (AMCO case# 19-1801) for violations under AS 04.21.030: Responsibility of licensees, agents, employees and under AS 04.16.150: Licensee Responsible for Violations, both of which are currently A Misdemeanor criminal violation.

Hunger Hut has been in front of the ABC twice since the violation allegation(s) occurred:

January 5, 2021 ABC Board Meeting Minutes

TOURISM LICENSES – RENEWALS

A. Renewal Applications for Licensees with 2019 and 2020 Notices of Violation

1. 537 Hunger Hut Bar: Hunger Hut, Inc. TAB 18

51815 Kenai Spur Highway, Kenai

Local governing body: Kenai Peninsula Borough

License: Beverage Dispensary – Tourism

12/17/19 – Allowed patrons to smoke inside establishment. Violation of AS 18.35.301,

Prohibition of Smoking

2:40 pm: Dana W. motions to approve the renewal with delegation. Sara Erickson seconds. Jana Weltzin, legal counsel for the licensee, is present. None opposed, motion passes.

March 30, 2021 ABC Board Meeting Minutes

Renewal applications for licensees with 2018 and 2019 notices of violation

2004 Hunger Hut: Hunger Hut Inc. TAB 49

51815 Kenai Spur Highway, Kenai

License: Package Store

12/17/2019 – Smoking tobacco on licensed premises

Licensee is not present. Joe Hamilton provides background information regarding the NOV.

David K. motions to approve Tab 49. Diane T. seconds. None opposed, motion passes.

Additionally, the Hunger Hut is currently in the process of their license renewal for 2021-2022 and they have been issued a temporary license pending final approval by the ABC board.

Title 4 indicates that upon a conviction under Title 4, the board SHALL afford the licensee notice and hearing on the issue of what administrative sanction to impose under AS 04.16.180. Additionally, the Title 4 Statutes say license or permit SHALL be suspended or revoked if the board finds a conviction of a licensee of a violation of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

However, the Title 4 statutes also allows that on first conviction the license of the premises involved may not be revoked, but MAY be suspended for not more than 45 days;

Additionally, board MAY not impose a civil fine exceeding the amount specified under AS 12.55.035 applicable to the offense for which the licensee was convicted, or with the licensee's consent, the limit imposed under (b) of this section.

On or about 9/10/2021 the District Court for the State of Alaska at Kenai provided AMCO Enforcement with a Judgement decree dated 8-2-2021 with states that the company itself, Hunger Hut, plead GUILTY of a misdemeanor in count one (1) AS04.21.030 Responsibility of the Licensee, agent, or employee. Count two (2), AS 04.16.150 Licensee Responsible for Alcohol Violations was dismissed. Hunger Hut was fined \$7500 with \$5000 suspended. Additionally, Hunger Hut was placed on probation on 8/2/2021 for 12 months and is subject to must continue to comply with all state, federal and local laws.

Prior to this conviction the only other violation associated with the Hunger Hut was a 2014 Notice of Violation AS 04.16.052: Furnishing alcohol beverages to a person under the age of 21 by licensees (see Attachment B: Prior Violation(s) – 2014 Hunger Hut)

Additionally, there have been no further violations or complaints regarding the Hunger Hut reported to the AMCO since the December 2019 violations.

Statutory & Regulatory Authority:

AS 04.11.510. Procedure For Action On License Applications, Suspensions, and Revocations.

(a) Unless a legal action relating to the license, applicant, or premises to be licensed is pending, the board shall decide whether to grant or deny an application within 90 days of receipt of the application at the main office of the board. However, the decision may not be made before the time allowed for protest under AS 04.11.480 has elapsed, unless waived by the municipality.

(b) The board may review an application for the issuance, renewal, transfer of location, or transfer to another person of a license without affording the applicant notice or hearing, except

(1) if an application is denied, the notice of denial shall be furnished the applicant immediately in writing stating the reason for the denial in clear and concise language; the notice of denial must inform the applicant that the applicant is entitled to an informal conference with either the director or the board, and that, if not satisfied by the informal conference, the applicant is then entitled to a formal hearing conducted by the office of administrative hearings (AS 44.64.010); if the applicant requests a formal hearing, the office of administrative hearings shall adhere to AS 44.62.330 - 44.62.630 (Administrative Procedure Act); all interested persons

may be heard at the hearing and unless waived by the applicant and the board, the formal hearing shall be held in the area for which the application is requested;

(2) the board may, on its own initiative or in response to an objection or protest, hold a hearing to ascertain the reaction of the public or a local governing body to an application if a hearing is not required under this subsection; the board shall send notice of a hearing conducted under this paragraph 20 days in advance of the hearing to each community council established within the municipality and to each nonprofit community organization entitled to notification under AS 04.11.310 (b);

(3) if a petition containing the signatures of 35 percent of the adult residents having a permanent place of abode outside of but within two miles of an incorporated city or an established village is filed with the board, the board shall hold a public hearing on the question of whether the issuance, renewal, or transfer of the license in the city or village would be in the public interest;

(4) if a protest to the issuance, renewal, transfer of location or transfer to another person of a license made by a local governing body is based on a question of law, the board shall hold a public hearing.

(c) Unless the grounds for the suspension or revocation are under AS 04.11.370(a)(4), board proceedings to suspend or revoke a license shall be conducted in accordance with AS 44.62.330 - 44.62.630 (Administrative Procedure Act), except that the licensee is entitled to an opportunity to informally confer with the director or the board within 10 days after the accusation is served upon the licensee. Notice of the opportunity for an informal conference shall be served upon the licensee along with the accusation. If an informal conference is requested, the running of the period of time specified in AS 44.62.380 for filing a notice of defense is tolled from the date of receipt of the request for the conference until the day following the date of the conference unless extended by the board. After the conference, the licensee, if not satisfied by the results of the conference, may obtain a hearing by filing a notice of defense as provided in AS 44.62.390 . If the grounds for suspension or revocation are under AS 04.11.370 (a)(4), the licensee is not entitled to notice and hearing under AS 44.62.330 - 44.62.630 on the merits of the suspension or revocation. However, the board shall afford the licensee notice and hearing on the issue of what administrative sanction to impose under AS 04.16.180 .

AS 04.11.370. Suspension and Revocation of Licenses and Permits.

(a) A license or permit shall be suspended or revoked if the board finds

- (1) misrepresentation of a material fact on an application made under this title or a regulation adopted under this title;
- (2) continuation of the manufacture, sale, or service of alcoholic beverages by the licensee or permittee would be contrary to the best interests of the public;
- (3) failure on the part of the licensee to correct a defect that constitutes a violation of this title, a condition or restriction imposed by the board, a regulation adopted under this title, or other laws after receipt of notice issued by the board or its agent;
- (4) conviction of a licensee of a violation of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

AS 04.16.180. Penalties For Violation.

(a) Except as provided in AS 04.11.015, 04.11.150 (g), AS 04.16.025 , 04.16.050, 04.16.051, 04.16.200 - 04.16.210, and AS 04.21.065 , a person who violates a provision of this title or a regulation adopted by the board is guilty, upon conviction, of a class A misdemeanor. Each violation is a separate offense.

(b) A suspension or revocation of a license ordered by the board under AS 04.11.370 (a) (4) and (5) shall be as follows:

- (1) on first conviction the license of the premises involved may not be revoked, but may be suspended for not more than 45 days;
- (2) on second conviction the license of the premises involved may not be revoked, but may be suspended for not more than 90 days;
- (3) on third conviction the license of the premises involved may be suspended or revoked.

(c) In this section, the terms "second conviction" and "third conviction" include only convictions for violations that occur within five years of the first conviction. The terms refer to the cumulative number of convictions of a licensee of any combination of violations of the provisions of this title, regulations adopted under this title, or ordinances adopted under AS 04.21.010 . The terms "second conviction" and "third conviction" include a conviction of the agent or employee of a licensee of a violation of a law, regulation, or ordinance if the conviction constitutes a ground for suspension or revocation under AS 04.11.370(a) (5) .

(d) This section does not affect the authority of the board to suspend or revoke a license when the board determines that continuance of activities under a license would not be in the best interests of the public.

Sec. 04.11.575. Civil fine.

(a) Except as provided in (c) of this section, the board may, in addition to any other penalties imposed under this title, impose a civil fine upon a licensee that the board determines, at a proceeding under AS 04.11.510(c), has violated a provision of this title, a regulation adopted under this title, or an ordinance adopted in accordance with AS 04.21.010.

(b) The board shall by regulation adopt a schedule of fines that a licensee may be required to pay under this section. A fine may not exceed the greater of (1) \$50,000; or (2) an amount that is three times the monetary gain realized by the licensee as a result of the violation.

(c) If the board is proceeding under AS 04.11.370(a)(4), the board may not impose a civil fine exceeding the amount specified under AS 12.55.035 applicable to the offense for which the licensee was convicted, or with the licensee's consent, the limit imposed under (b) of this section.

AS 12.55.035. Fines.

(a) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) \$500,000 for murder in the first or second degree, attempted murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, promoting prostitution in the first degree under AS 11.66.110 (a)(2), or misconduct involving a controlled substance in the first degree;

(2) \$250,000 for a class A felony;

(3) \$100,000 for a class B felony;

(4) \$50,000 for a class C felony;

(5) \$10,000 for a class A misdemeanor;

(6) \$2,000 for a class B misdemeanor;

(7) \$500 for a violation.

(c) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) \$1,000,000 for a felony offense or for a misdemeanor offense that results in death;

- (B) \$200,000 for a class A misdemeanor offense that does not result in death;
- (C) \$25,000 for a class B misdemeanor offense that does not result in death;
- (D) \$10,000 for a violation;
- (2) three times the pecuniary gain realized by the defendant as a result of the offense; or
- (3) three times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.
- (d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.
- (e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider
 - (1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;
 - (2) measures taken by the organization to prevent a recurrence of the offense;
 - (3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and
 - (4) the extent to which the organization will pass on to consumers the expense of the fine.
- (f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense.

Staff Recommendations:

The staff recommends that the board discuss the case and if the board is considering taking action, we suggest that all of the board-imposed time be of a probationary period of time, and/or a fine, with all of the fine monies suspended for a period of time acceptable to the board members.