Article 7. Enforcement; Civil Penalties.

Section

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3 AAC 305.800. Determining the age of a patron. (a) For the purposes of AS 04.21.050, a "valid identification card" means an unexpired, unaltered passport or an unexpired, unaltered driver's license or identification card issued by a federal or state agency or federally recognized tribe authorized to issue driver's licenses or identification cards that meet the requirements under AS 04.21.050(b). If a licensee, licensee's employee, or licensee's agent has reason to believe that an identification card presented by a person is fraudulent, the licensee, licensee's employee, or licensee's agent shall refuse to the person entrance to the licensed premises and service or sale.

(b) A licensee, licensee's employee, or licensee's agent may elect to not accept a passport, military identification card, or other identification as proof that the person is not restricted from purchasing alcoholic beverages and may require the person to furnish a valid driver's license or state identification card or otherwise furnish proof that the person is not a resident of the state.

(c) A licensee shall obtain a statement of proof-of-age form as required under AS 04.21.050. The licensee shall retain completed forms for 90 days and make them available for inspection upon the request of the board or a peace officer. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.21.050

3 AAC 305.810. Recordkeeping requirements. (a) A licensee shall retain records of the sales, purchases, and expenses of the business for at least one year, including records sufficient to show the license was actively exercised for at least 240 hours during each of the two preceding calendar years as set out in AS 04.11.330(a)(3).

(b) A licensee shall maintain records of the purchase and sale of alcoholic beverages separate from records of the sale of other goods or services.

(c) A wholesale licensee shall retain a record of all sales and donations made in the conduct of the business for three years. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.330

3 AAC 305.820. Powers of investigative personnel. (a) The board's investigative personnel may

(1) conduct inspections of licensed premises, issue inspection reports, and

investigate licensees, applicants, transferees, and other persons with respect to applications, the possession and sale of alcoholic beverages, or licensed premises;

(2) issue verbal warnings under 3 AAC 305.840;

(3) issue advisory notices under 3 AAC 305.850;

(4) issue citations for violations under 3 AAC 305.860 and subject to AS 04.21.072;

(5) issue administrative violation notices under 3 AAC 305.870;

(6) seize alcoholic beverages subject to forfeiture under AS 04.16.220;

(7) serve subpoenas issued by a hearing officer in a board adjudicative proceeding;

(8) execute search and arrest warrants;

(9) exercise specified peace officer powers upon the written concurrence of the commissioner of public safety filed with the lieutenant governor and the director, but only if necessary to enforce the criminally punishable provisions of AS 04 and regulations adopted under AS 04;

(10) file accusations for suspension or revocation of licenses, endorsements, or conditional contractor permits on the grounds listed under AS 04.11.370; and

(11) take such other action considered necessary by the director to assure the enforcement of AS 04 and this chapter.

(b) Consistent with federal, state, and local law, the board's investigative personnel may carry firearms in the performance of their duties, if individually authorized by the board. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.075 AS 04.06.100 AS 04.11.370
AS 04.06.090 AS 04.06.110 AS 04.16.220

3 AAC 305.830. Communications and inspection. (a) The board recognizes that compliance by a licensee is a necessary ingredient for the enforcement of alcoholic beverage statutes, regulations, and local laws and that communication with licensees is necessary to assist licensees in conducting the licensee's licensed business in the public interest and in conformity with existing statutes and regulations. Investigative personnel shall memorialize an inspection in a written inspection report on a form approved by the board.

(b) Licensees are considered to consent to the entry upon the licensed premises and inspection of the licensed premises at all reasonable times and in a reasonable manner by investigative personnel of the board or by a peace officer acting in an official capacity.

(c) A licensee shall do all things reasonably necessary and appropriate to cooperate with investigative personnel and employees of the board and peace officers acting in an official capacity to enforce the statutes, regulations and ordinances related to alcoholic beverages, including permitting entry upon and inspection of the licensed premises and providing access, upon request at reasonable times, to business records at the written direction of the director. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.630

3 AAC 305.840. Verbal warning. (a) A verbal warning addresses the violation of a statute, regulation, or local law on a licensed premises that is quickly correctable and does not pose an immediate risk to public safety or health.

(b) Issuing a verbal warning is at the discretion of investigative personnel of the board. A verbal warning must be documented in the licensee's enforcement file maintained by the director.

Logging or documentation of the warning must be made available to the licensee upon request.

(c) The board's investigative personnel may issue verbal warnings to any individual affiliated with a license, endorsement, or permit. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.010 AS 04.06.100 AS 04.06.110
AS 04.06.090

3 AAC 305.850. Advisory notice. (a) The board's investigative personnel may issue a written advisory notice to a licensee when an incident occurs, or a defect is identified, that results in the violation of a statute, regulation, or local laws. Investigative personnel may choose to issue a written advisory instead of providing a verbal warning under 3 AAC 305.840.

(b) The notice may be issued from information recorded on an inspection report other documents memorialized by the Board's investigative personnel.. An advisory notice may be grounds for issuance of a notice of violation or accusation if the incident or defect continues uncorrected. Issuing an advisory notice is at the discretion of investigative personnel of the board. An advisory notice must be documented in the licensee's enforcement file maintained by the director. A copy of the advisory report must be delivered to the licensee when issued and made available to the licensee at a later time, upon request.

(c) The board's investigative personnel may issue an advisory notice to any individual affiliated with a license, endorsement, or permit. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.010 AS 04.06.100 AS 04.06.110
AS 04.06.090

3 AAC 305.860. Violations. (a) The board's investigative personnel or a peace officer

may issue a citation for any violation identified under AS 04. The board's investigative personnel may issue a citation to any individual affiliated with a license, endorsement, or permit.

(b) A person who receives a citation for a violation of AS 04 subject to AS 04.21.074 may dispose of the violation without court appearance upon payment and forfeiture of the bail amount.

(c) For the purposes of this section, "violation" has the meaning given in AS 11.81.900(b). (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.010 AS 04.06.100 AS 04.21.076
AS 04.06.090 AS 04.06.110

3 AAC 305.870. Administrative notice of violation. (a) An administrative notice of violation addresses serious or repetitive violations of AS 04, 3 AAC 305, or other law relating to the manufacture and sale of alcoholic beverages that have occurred or are occurring on the licensed premises. An administrative notice of violation is issued at the discretion of the board's investigative personnel or director.

(b) An administrative notice of violation must be in writing on a form approved by the board and must include

(1) a description of the violation or violations;

(2) a description of applicable violated statutes, regulations, or local law;

(3) prior disciplinary history over the preceding five years relevant to the violation or ownership of the license, including

(A) verbal warnings;

(B) advisory notices;

(C) notices of violation and accusation;

(D) fines subject to AS 04.21.074; and

(E) criminal history of the licensee and of the licensed premises; and

(4) the investigating officer's signature.

(c) An administrative notice of violation may be issued as a stand-alone document or from circumstances described in an inspection report or a citation issued under 3 AAC 306.860 or AS 04.21.074. An administrative notice of violation may be issued without a prior inspection report, citation, verbal warning, or advisory notice and may include conduct identified in AS 04.11.370 as grounds for suspension or revocation of a license or permit.

(d) A licensee, endorsement holder, any affiliate, or conditional contractor permittee who receives an administrative notice of violation may request an appearance before the director regarding the administrative notice of violation. The request must be made not more than 10 days after the licensee, endorsement holder, or conditional contractor permittee receives the notice. The director shall grant an appearance not more than10 days after the request is received. A licensee, endorsement holder, affiliate, or conditional contractor permittee shall respond in writing to the notice of violation.

(e) In considering whether to suspend, revoke, or renew a license, the board may review an administrative notice of violation and a licensee's response to the notice. An administrative notice of violation alone does not constitute grounds for a suspension, revocation, or refusal to renew an alcoholic beverage license; however, if the violation is proven by evidence at a hearing, the violation constitutes grounds for suspension, revocation, or refusal to renew a license.

(f) An administrative notice of violation is issued at the discretion of the board's investigative personnel and becomes part of the licensee's permanent record. A notice must be in writing on a form approved by the board. The director may withdraw a notice.

(g) The board's investigative personnel may issue an administrative notice of violation to any individual affiliated with a license, endorsement, or permit.

(h) Nothing in this section limits the authority of the board to suspend or revoke a license, endorsement, or conditional contractor's permit on grounds stated in AS 04.11.370. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.010 AS 04.06.100 AS 04.11.370
AS 04.06.090 AS 04.06.110

3 AAC 305.875. Suspension and revocation of licenses, endorsements, and conditional contractor permits. (a) The board may suspend or revoke a license, endorsement, or conditional contractor's permit on the grounds set out in AS 04.11.370 or if a licensee is convicted of a felony.

(b) If a licensee's employee or licensee's agent is convicted of a felony, the board may find under AS 04.11.370(5) that the licensee, endorsement holder, or conditional contractor permittee knowingly allowed the conduct, or recklessly or with criminal negligence failed to act in accordance with the duty prescribed under AS 04.21.030, if that licensee, endorsement holder, or conditional contractor permittee

(1) was physically present when the conduct occurred and knew or should have known the conduct was occurring and took no action to stop it;

(2) failed to adequately supervise the agent or employee;

(3) failed to adequately train the agent or employee in the requirements of AS 04 and 3 AAC 305 relating to alcoholic beverages; or

(4) was reckless or careless in hiring the agent or employee.

(c) For the purposes of this section, if a licensee, endorsement holder, or conditional contractor permittee is a corporation, a conviction of any of the following individuals constitutes a conviction of the licensee:

(1) the director of the corporation;

(2) an officer of the corporation;

(3) a shareholder holding 10 percent or more of the outstanding common stock of the corporation.

(d) For the purposes of this section, if a licensee, endorsement holder, or conditional contractor permittee is a limited liability organization, the conviction of a manager or a member who holds 10 percent or more of the limited liability organization's ownership interest constitutes a conviction of the licensee.

(e) A licensee, endorsement holder, or conditional contractor permittee may request an informal conference with the director not later than 10 days after the individual is served with an accusation under this section, unless the grounds for suspension or revocation are the grounds set out in AS 04.11.370(a)(4). A licensee, endorsement holder, or conditional contractor permittee requesting an informal conference under this section tolls the time for filing a notice of defense required under AS 44.62.390. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.11.370 AS 04.11.510

AS 04.06.100

3 AAC 305.885. Other civil fines. (a) Except as provided in (b) of this section and in addition to fines subject to AS 04.21.074, the board may impose a civil fine on a licensee in accordance with AS 04.11.575 in a proceeding under AS 04.11.510(c). The civil fine may not exceed the greater of

(1) an amount three times the monetary gain realized by the licensee as a result of the violation as determined by the board;

(2) $10,000 for the first violation;

(3) $30,000 for the second violation; or

(4) $50,000 for the third or subsequent violation.

(b) In a proceeding under AS 04.11.510(c) against a general wholesale licensee or a limited wholesale brewed beverage and wine licensee for a violation of AS 04.16.160 pertaining to the sale of alcoholic beverages to unlicensed persons, the board may impose a civil fine of $5,000 for each illegal sale. The board may suspend all or part of the fine based on the circumstances of the illegal sales. For the purpose of this section, "sale" means a single delivery on a single date to a single purchaser. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.09.110 AS 04.11.575
AS 04.06.100 AS 04.11.510 AS 04.16.160
AS 04.09.100

3 AAC 305.890. Probation, suspended time, and fines. (a) The board may elect to place a licensee or permittee on probation for a period of not more than three years in addition to suspending or revoking a license permitted under AS 04.11.370. The board may suspend any portion of time of suspension ordered or civil fines owed to ensure good faith performance of a

licensee's or permittee's obligations while under probation. The board may elect to fine the licensee or permittee a portion of or the remainder of the suspended fine or time for any violation of the conditions of probation or additional violation of AS 04 or this chapter.

(b) Nothing in this section limits the authority of the board to suspend or revoke a license or permit on grounds stated in AS 04.11.370. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.370

3 AAC 305.895. Effect of revocation. A person whose license or permit is revoked by the board may not apply for a license of any type until at least one year after the effective date of the revocation. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.11.320 AS 04.11.370
AS 04.06.100