



MEMORANDUM

TO: Alcoholic Beverage Control Board DATE: April 9, 2024
FROM: Kristina Serezhenkov, Regulations RE: Regulations Issue- Management
Specialist Agreements

Staff presents this regulations issue as a potential regulations project addressing management agreements. A management agreement between a licensee and a 'manager' does not currently exist in marijuana regulations, though it does exist in alcohol regulation. Staff has noted an uptick in marijuana licensees entering into 'management agreements'. A draft is attached for board discussion.

The draft proposes to amend:

3 AAC 306.915. Exercise of authority.

Clarifying language is added so that the licensee is solely responsible and liable for the conduct of business while allowing that an agent of the licensee may operate a management services agreement approved under 3 AAC 306.

3 AAC 306.916. Responsibility of licensees, agents, and employees.

A new section is added outlining the responsibility of the licensee to ensure its agents and employees are compliant with AS 17.38 and public health, fire, and safety codes and ordinances.

3 AAC 306.917. Prohibited financial interest; representative or owner; management agreements.

A new section is added allowing a licensee to enter into a management agreement and lays out the requirements for a management agreement, including director review.

Options for the board:

- Table issue to a later board date.
- Consider opening a regulations project or take no action.
- Move to send back to staff for more work.
- If regulations project is opened, send draft to Law for initial review and (with Law's approval) subsequent public comment.
- If regulations project is opened, move to amend regulations, and then send to Law for initial review and (with Law's approval) subsequent public comment.

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(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 306.915 is amended to read:

3 AAC 306.915. Exercise of authority. Until a marijuana establishment surrenders its license to the board, and so long as business is conducted under the license on the licensed premises, the person holding the license, whether an individual, a partnership, a limited liability company, a corporation, or a local government, is **solely** responsible and liable for the conduct of the business. Any individual exercising actual authority over the conduct of business on the licensed premises must be the holder of the marijuana establishment license[, OR] an agent or employee of that person, **or an agent operating a management services agreement approved under 3 AAC 306.917**, unless the board has approved a transfer of the license to a different person. (Eff. 2/21/2016, Register 217; am ___/___/___, Register ___)

Commented [KRS1]: A management agreement cannot state that the manager has any liability or co-liability- only the licensee is liable for conduct of business.

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.916. Responsibility of licensees, agents, and employees. (a) The licensee has a duty to exercise that degree of care that a reasonable person would observe to ensure that a business under the person’s control is lawfully conducted. This duty of the licensee includes, but is not limited

(1) to ensuring the compliance by agents or employees with AS 17.38 and the regulations adopted under this title including acting with reasonable diligence to determine that

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agents or employees are advised of the provisions of AS 17.38 and the regulations adopted under this title, either by securing the agent's or employee's written acknowledgement of posted instructions or otherwise; and

(2) to ensuring the compliance of the premises with public health, fire, and safety codes and ordinances of the state or municipality having jurisdiction. (Eff. 1/1/2024, Register 248; am _____ / _____ / _____, Register _____)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.917. Prohibited financial interest; representative or owner; management agreements. (a) For the purposes of 3 AAC 306.015(a), a marijuana establishment licensee, excluding a licensee holding a marijuana testing facility license under 3 AAC 306.605, may enter into a management agreement with a person who would otherwise qualify for a marijuana license under 3 AAC 306.015 and who holds a current marijuana handler permit set out at 3 AAC 306.700, who does not have an ownership interest in the marijuana establishment license for the purpose of giving that person responsibility for the day-to-day operations of a marijuana establishment license.

(b) A management agreement under this section must be in writing and signed by a licensee or transferor whose name is required to be provided with an application for a new or transfer license under 3 AAC 306.020 or 3 AAC 306.045-046, and by the non-licensee or transferee agreeing to manage the operation of the business. A copy of the signed, written

Commented [KRS2]: MJ testing facility not allowed

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management agreement must be filed with the Alcohol & Marijuana Control Office. The effective date of the agreement may be no earlier than AMCO’s approval of the agreement. The licensee who signs the management agreement shall notify the board of any change to the management agreement, including expiration, termination, or amendment not later than 10 days after each change to the management agreement occurs.

(c) A management agreement may not create a mechanism for a manager who is not a licensee to derive profit from the sale of marijuana or marijuana product in violation of 3 AAC 306.315, including an agreement for a manager to keep all profit above a certain amount of income when that profit may be derived from the sale of marijuana or marijuana product. A reasonable management fee is not a prohibited financial interest.

Commented [KRS3]: This ‘reasonable fee’ is a reasonable flat fee not linked to sale of mj

(d) The director shall review a management agreement for compliance with this section, and any errors or omissions must be corrected by the licensee not later than 10 days after receipt of notification of the error or omission. The director may declare a management agreement that does not comply with this section void. A management agreement must comply with 3 AAC 306.315(a), 3 AAC 306.915, and 3 AAC 306.916 and contain language that indicates both parties to the agreement have read, understand, and agree to comply with those regulations.

Commented [KRS4]: Literally—the agreement must state that both parties have done this and list each regulation.

(e) The board may suspend or revoke the marijuana handler permit of an agent operating a management services agreement under 3 AAC 305.917 if the agent violates AS 17.38 or its implementing regulations. (Eff. 1/1/2024, Register 248; am ___/___/_____, Register _____)

Commented [KRS5]: This is a restatement of 306.812a which reads:
3 AAC 306.812. Suspension or revocation of marijuana handler permit
(a) The board may suspend or revoke a permit issued under 3 AAC 306.700, impose probation under 3 AAC 306.836, or impose a civil fine under 3 AAC 306.840 if the board finds that a marijuana handler permit holder acted in violation of a statute, regulation, or local law.

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121