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: Alcoholic Beverage Control Board DATE: March 23, 2022

FROM: Jane P. Sawyer, Regulations Specialist RE: History of Reinstatement Regulation 3 AAC 304.160

The board requested to know about the history of the "reinstatement" regulation. Said regulations is 3 AAC 304.160 – License renewals.

3 AAC 304.160 is implementing, interpreting, making specific or otherwise carrying out the provisions of AS 04.11.270 – Application for renewal of license or permit, and AS 04.11.540- License renewal and expiration.

3 AAC 304.160-License renewals has been on the books since 1998 with amendments made to it in 2003 and 2019. Without spending an excessive amount of time, I was able to go back to 2012. The changes in 2019 on this regulation are noted below:

3 AAC 304.160. License renewals

(a) For purposes of AS 04.11.270(b), a license renewal is timely and not delinquent if received at the board's main office or postmarked on or before December 31.

(b) For purposes of AS 04.11.540, an application for renewal of a license as described in that section is considered submitted by February 28 if the renewal application is received at the board's main office or postmarked on or before February 28.

(c) If a mailed renewal application has an illegible postmark or an undated postmark, the postmark date is rebuttably presumed to be five calendar days before the application was received in the board's office.

(d) In this section, "postmark" means the official cancellation stamp used by the United States Postal Service that records the date and place of mailing.

(e) For the purposes of AS 04.11.540, if a license has expired for failure to file a complete application for renewal by February 28 or for failure to pay the required fees and penalty fees by that date, the board will consider a written request to reinstate the license if the request is accompanied by

(1) a complete application;

Commented [SJP(1]: Sec. 04.11.540. License renewal and expiration.
Notwithstanding AS 04.11.680, an application for renewal of a license issued for the two calendar years ending December 31 or of a seasonal license issued for parts of those calendar years may be submitted up until the next February 28. If a complete application for renewal has not been filed by February 28 or the required fees and the penalty fees have not been paid by that date, the license expires at 12:00 midnight February 28. A new license may not be issued to the holder of an expired license for the same premises except on proof satisfactory to the board of good cause for the failure to file and pay.

Commented [SJP(2]: Sec. 04.11.540. License renewal and expiration.
Notwithstanding AS 04.11.680, an application for renewal of a license issued for the two calendar years ending December 31 or of a seasonal license issued for parts of those calendar years may be submitted up until the next February 28. If a complete application for renewal has not been filed by February 28 or the required fees and the penalty fees have not been paid by that date, the license expires at 12:00 midnight February 28. A new license may not be issued to the holder of an expired license for the same premises except on proof satisfactory to the board of good cause for the failure to file and pay.

(2) a reinstatement fee of $1,000;

(3) all other required fees and penalty fees; and

(4) proof of good cause for the failure to file and pay by February 28.

(f) The board will deny a request for reinstatement submitted under (e) of this section if

(1) the license became available in accordance with 3 AAC 304.100(2) and was issued to a different applicant, unless the limit of licenses under AS 04.11.400 has not been reached; or

(2) the board finds that the failure to timely file or pay was caused by

(A) the licensee's failure to notify the board of a change of the licensee's mailing address;

(B) a transfer of ownership of the business for which the license was issued without written approval of the board in violation of AS 04.11.040;

(C) a lease of the licensed business to another person in violation of AS 04.11.450(c); or

(D) any other action of the licensee whether active or tacit that the board finds constitutes a failure to lawfully operate the business for which the license was issued. (Eff. 9/11/98, Register 147; am 6/13/2003, Register 166; am 2/21/2019, Register 229)

Sec. 04.11.330. Denial of license or permit renewal.
(a) An application requesting renewal of a license shall be denied if
(1) the board finds, after review of all relevant information, that renewal of the license would not be in the best interests of the public;
(2) the license has been revoked for any cause;
(3) the applicant has not operated the licensed premises for at least 240 hours during each of the two preceding calendar years, unless the board determines that the licensed premises are under construction or cannot be operated through no fault of the applicant;
(4) the board finds that issuance of an existing license under AS 04.11.400(d) has not encouraged tourist trade;
(5) the requirements of AS 04.11.420 — 04.11.450 relating to zoning, ownership of the license, and financing of the licensee have not been met;
(6) renewal of the license would violate the restrictions pertaining to the particular license under this title or the license has been operated in violation of a condition or restriction imposed by the board;
(7) renewal of the license is prohibited under this title as a result of an election conducted under AS 04.11.507;
(8) the application has not been completed in accordance with AS 04.11.270; or
(9) the license was issued under AS 04.11.400(g), and the board finds that the public convenience does not require renewal.

(b) An application for renewal of a license may be denied if the applicant is delinquent in the payment of taxes if the tax liability arises in whole or in part out of the licensed business.

Commented [SJP(3]: This provision here (2) was added in 2019

Commented [SJP(4]: 304.160(f) has been on the books for at least 10 years.

Commented [SJP(5]: In 2019 (f) was amended to add this provision right here (1), to try to solve "problems regarding population limits" (ABC minutes from January 2018) when the (expired) license had been granted to a different applicant.

It is worth mentioning that there is no solution in statute or regulation, that I could find, when an expired license actually does not become available (therefore not being granted to a different applicant) because of saturation in the area and the licensee is applying for a reinstatement.

AS 04.11.400 talks about new licenses and relocation of licenses (not reinstatement for failure to renew of licenses).

Commented [SJP(6]: (statutory) factors to deny a renewal application

(c) An application requesting renewal of a conditional contractor's permit shall be denied if

(1) the board finds, after review of all relevant information, that issuance of the permit would not be in the best interests of the public;

(2) the application has not been completed in accordance with AS 04.11.270.

(d) Notwithstanding (a)(3) of this section, a recreational site license issued under AS 04.11.210 may be renewed if the license was exercised at least once during each of the two preceding calendar years.

3 AAC 304.180. Denial, suspension, revocation, or refusal to renew or transfer, in the public interest

Commented [SJP(7]: (regulatory) factors the board may consider in…refusing to renew.. a license in the public interest.

(a) The board may consider the following factors in determining whether it is in the public interest to deny, revoke, suspend, or refuse to renew or transfer a license:

(1) the applicant's, the applicant's affiliates', the transferee's, or the transferee's affiliates' histories of conviction of a felony in this state, the United States, or another state or territory during the 15 years immediately preceding the date of application;

(2) the applicant's, the applicant's affiliates', the transferee's, or the transferee's affiliates' histories of commission of

(A) a violation of AS 04 or regulations adopted by the board; or

(B) a violation of the alcoholic beverage control laws of another state, as a licensee of that state;

(3) whether the applicant, the applicant's affiliates, the transferee, or the transferee's affiliates are untrustworthy, unfit to conduct a licensed business, or a potential source of harm to the public;

(4) whether the applicant, the applicant's affiliates, the transferee, or the transferee's affiliates have permitted, on licensed premises belonging to that person, the occurrence of sexual contact between persons; for the purpose of this paragraph, "sexual contact" means the touching of genitals, anus, or female breast or the intrusion of any object into the genital or anal opening regardless of whether the act was consensual; and

(5) all other factors the board in its discretion determines relevant to the public interest.

(b) A local governing body may properly protest an application under AS 04.11.480 using the factors set out in (a) of this section. (Eff. 4/28/84, Register 90; am 5/1/94, Register 130; am 5/11/96, Register 138; am 11/28/2019, Register 232)