

3 AAC is amended by adding a new article to chapter 305 to read:

**Chapter 305. Alcoholic Beverage Control Board.**

**Article**

8. Enforcement; Civil Penalties (3 AAC 305.800 – 3 AAC 305.895)

**Article 8. Enforcement; Civil Penalties.**

**Section**

800. Determining the age of a patron

810. Recordkeeping requirements

820. Powers of investigative personnel

830. Communications and inspection

840. Verbal warning

850. Advisory notice

860. Violations subject to the bail forfeiture schedule

870. Administrative notices of violation

875. Suspension and revocation of licenses, endorsements, and conditional contractor permits

880. Fines for trade practice prohibition violations

885. Other civil fines

890. Probation, suspended time, and fines

895. Effect of revocation

**3 AAC 305.800. (old 304.425) Determining the age of a patron.** (a) A valid identification card as used in AS 04.21.050 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 or an agent or employee of a licensee has reason to believe that the identification card presented by a person is fraudulent, the licensee, agent, or employee shall refuse entrance to licensed premises and shall refuse service or sale to that person.

(b) A licensee, agent, or employee 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 this state.

(c) It is the responsibility of the licensee to obtain a statement of proof-of-age form[s] required under AS 04.21.050. Licensees shall retain completed forms for 90 days and make them available upon request for inspection by the board and peace officers. (Eff. \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 04.06.090 AS 04.06.100 AS 04.21.050

**3 AAC 305.810. (old 304.455) Recordkeeping requirements.** (a) A licensee shall retain, for at least one year, records of the sales, purchases, and expenses of the business,

including records sufficient to show the license was actively exercised for at least 240 hours during each of the two preceding calendar years as described in AS 04.11.330(a)(3).

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

(c) Wholesale licensees shall retain for three years a record of all sales and donations made in the conduct of the business. (Eff. \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 04.06.090 AS 04.06.100 AS 04.11.330

**3 AAC 305.820. (old 304.505) Powers of investigative personnel.** (a) The board's investigative personnel may

(1) conduct inspections of licensed premises and investigations of 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 tickets for violations under 3 AAC 305.860 and Administrative Rule 43.5 (alcohol bail forfeiture schedule);

(5) issue administrative notices of violation 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 for the enforcement of 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 contractors permits on the grounds listed under AS 04.11.370; and

(11) take such other action as is 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 \_\_\_)

<b>Authority:</b>	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. (old 304.515 and 304.525) 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.

(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 other peace officers acting in an official capacity.

(c) Licensees 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 is intended to address a situation where a violation of a statute, regulation, or local law on the licensed premises 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. (Eff. \_\_\_/\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 04.06.010 AS 04.06.100 AS 04.06.110  
AS 04.06.090

**3 AAC 305.850. (old partly 304.525) Advisory notice.** (a) A written advisory notice may be issued by investigative personnel to a licensee when an incident occurs, or a defect is identified that results in a violation of a statute, regulation, or local law and the investigative personnel elect not to provide a verbal warning.

(b) The notice may be issued from information recorded on an inspection report or elsewhere. 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. (Eff.

\_\_\_/\_\_\_/\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 04.06.010 AS 04.06.100 AS 04.06.110  
AS 04.06.090

**3 AAC 305.860. Violations subject to the bail forfeiture schedule.** (a) The board’s investigative personnel and other peace officers may issue tickets for any violation identified under AS 04 and described in Administrative Rule 43.5 (alcohol bail forfeiture schedule).

(b) A licensee, employee, agent, or other person issued a ticket for a violation of AS 04 subject to the alcohol bail forfeiture schedule may dispose of the violation without court appearance upon payment and forfeiture of the bail amounts set out in Administrative Rule 43.5.

(c) If a person charged with one of these violations appears in court and is found responsible for the violation, the penalty imposed for the violation may not exceed the bail amount for that offense listed in Administrative Rule 43.5. A court may not suspend a fine for an offense listed in Administrative Rule 43.5.

(d) For purposes of this section, “violation” means “violation” as defined at AS 11.81.900(b)(67). (Eff. \_\_\_/\_\_\_/\_\_\_, Register \_\_\_\_\_)

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

**3 AAC 305.870. (old partly 304.525) Administrative notice of violation.** (a) An administrative notice of violation is intended to address serious or repetitive violations of AS 04, 3 AAC 305, or other law relating to the manufacture and sale of alcoholic beverages that has

occurred or are occurring on the licensed premises. An administrative notice of violation is issued at the discretion of investigative personnel or director.

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

- (1) a description of the circumstances of the violation or violations;
- (2) a description of applicable violated statutes, regulations, or local law;
- (3) prior disciplinary history over five years relevant to the violation or ownership, including verbal warnings, advisory notices, notices of violation, and accusation as well as fines issued under Administrative Rule 43.5, and criminal history of the licensee and of the licensed premises; and
- (4) the signature of the investigating officer.

(c) An administrative notice of violation may be issued as a stand-alone document or from circumstances described in an inspection report or a ticket issued under 3 AAC 306.860 or fined under Administrative Rule 43.5. It may be issued even if an inspection report or ticket has not been issued or if it is not preceded by either a verbal warning or advisory notice. It may include conduct identified in AS 04.11.370 as grounds for suspension or revocation of licenses or permits.

(d) Upon receipt of a notice of violation, a licensee, endorsement holder, or conditional contractor permittee may request to appear before the director and be heard regarding the administrative notice of violation. The request must be made within 10 days after receipt of the notice, and the director shall grant an appearance within 10 days after receipt of the request. A licensee shall respond, either orally or in writing, to the notice of violation.

(e) An administrative notice of violation and a response to the notice will, in the board’s discretion, be reviewed by the board in considering whether to suspend, revoke, or renew, a license, but the filing of an administrative notice of violation does not alone constitute grounds for suspension, revocation, or refusal to renew. A violation itself does constitute such grounds, however, if proven by evidence at a hearing.

(f) An administrative notice of violation is issued at the discretion of investigative personnel and becomes a permanent record of the licensee to whom the notice was issued. A notice must be on a form approved by the board. The director may dismiss a notice.

(g) 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. (old and partly 304.535) Suspension and revocation of licenses, endorsements, and conditional contractor permits.** (a) The board will, in its discretion, suspend, or revoke a license, endorsement, or conditional contractor’s permit on the grounds stated in AS 04.11.370. In addition, the board will, in its discretion, suspend or revoke a license upon conviction of the licensee for a felony.

(b) Upon conviction of an agent or employee of the licensee, the board may find under AS 04.11.370(5) that the licensee, endorsement holder, or conditional contractor permittee, as applicable, 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

(1) the licensee, endorsement holder, or conditional contractor permittee, as applicable, 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) the licensee, endorsement holder, or conditional contractor permittee, as applicable, failed to adequately supervise the agent or employee;

(3) the licensee, endorsement holder, or conditional contractor permittee, as applicable, failed to adequately train the agent or employee in the requirements of AS 04 and 3 AAC 305 relating to alcoholic beverages; or

(4) the licensee, endorsement holder, or conditional contractor permittee, as applicable, was reckless or careless in hiring the agent or employee.

(c) If the licensee, endorsement holder, or conditional contractor permittee, as applicable, is a corporation, the conviction of a shareholder holding 10 percent or more of the outstanding common stock of the corporation or of an officer or director of the corporation is considered to be a conviction of the licensee.

(d) If the licensee, endorsement holder, or conditional contractor permittee, as applicable, 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 is considered to be a conviction of the licensee.

(e) Unless the grounds for suspension or revocation are under AS 04.11.510(c), the licensee, endorsement holder, or conditional contractor permittee, as applicable, may request an informal conference with the director no later than 10 days after an accusation is served. The licensee 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 305.880. Fines for trade practice prohibition violations. [reserved]**

(Eff. \_\_\_/\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 04.06.090 AS 04.06.100 AS 04.16.017

**3 AAC 305.895. (old 304.540) Other civil fines.** (a) Except as provided in (b) of this section and in addition to fines imposed under Administrative Rule 43.5, in a proceeding under AS 04.11.510(c), the board may impose a civil fine upon a licensee, in accordance with AS 04.11.575, not to exceed the greater of

- (1) an amount that is three times the monetary gain realized by the licensee as determined by the board as a result of the violation;
- (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 against a general wholesale licensee or a limited wholesale brewed beverage and wine license under AS 04.11.510(c) for a violation of AS 04.11.160 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 04.11.510

AS 04.06.100

AS 04.09.100

AS 04.11.575

**3 AAC 305.890. Probation, suspended time, and fines.** (a) In addition to suspension and revocation of a license permitted under AS 04.11.370, the board may elect to place a license on probation for a period of no greater than three years. To ensure good faith performance of a licensee's obligations while under probation, the board may suspend any portion of time of suspension ordered or civil fines owed. The board may elect to fine the licensee 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 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. (old 304.545) Effect of revocation.** A person whose license 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 AS 04.11.320