

3 GAR BUSINESS REGULATIONS
CH. 2 ALCOHOLIC BEVERAGE CONTROL BOARD

CHAPTER 2
ALCOHOLIC BEVERAGE CONTROL BOARD

SOURCE: Adopted by P.L. 33-032:2 (June 10, 2015), renumbered by the Compiler pursuant to 1 GCA § 1606.

2019 NOTE: The rules and regulations for the government of Guam first published in 1975 included rules of the Alcoholic Beverage Control Board. The rules were codified as Chapter 2 of Title III in the print publication entitled, Rules and Regulations of the Agencies of the Government of Guam. The Editor's Note for this 1975 publication stated: "The regulations of the Alcoholic Beverage Control Board are reprinted here in form as exact as possible to those filed with the Legislative Secretary." The note does not specify the date of submission to the Legislative Secretary or the actual effective date of the rules; however, it is undisputed that these rules were originally published in 1975, and that rulemaking authority was granted by Government Code §§ 25101, 25411, 25116.1, 25117(a), 25126(c), 25301, and 25309.

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§ 2101. Introduction.

The following regulations consolidate and add to those previously promulgated by the Alcoholic Beverage Control Board under the provisions of 11 GCA § 3511. They provide necessary controls in the licensing, operation and conduct of businesses that are selling or serving alcoholic beverages. The penalties for

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violations of these regulations are indicated under 11 GCA § 3611 and/or § 3617.

§ 2102. Definitions.

For the purposes of this Chapter, except as otherwise specifically provided, the following shall have the meaning prescribed in this Section:

(a) Board means the Alcoholic Beverage Control Board, as provided pursuant to § 3106 of Chapter 3 of Title 3, Guam Code Annotated.

(b) Administrator means the Alcoholic Beverage Control Administrator, as provided pursuant to §§ 3102 and 3506 of Chapter 3, Title 11, Guam Code Annotated.

§ 2103. Applications.

(a) Applications for any Alcoholic Beverage Control license or transfer or any license authorized under 11 GCA Chapter 3, shall be submitted upon proper forms approved by the Board and furnished by the Alcoholic Beverage Control Administrator;

(b) Each application must be properly and completely filled out, and accompanied by any and all required data supplementing the application forms. If the Board feels that additional information is necessary, consideration of the application may be postponed and a reasonable period of time may be afforded the applicant to comply with this requirement.

(c) Applications or other documents to be formally presented to the Board must first be filed with the Alcoholic Beverage Control Administrator. These documents shall be marked or stamped to indicate time and date of receipt. The Administrator shall review all applications or other documents and if not complete according to instructions on the form or according to regulations, shall mark them “rejected as incomplete” and return them to applicant for completion and resubmission.

(d) The required fee must have been paid into the Treasury of Guam before the Board will consider the application of any person for an alcoholic beverage control license. The acceptance of the fee by the Treasury of Guam does not constitute Board approval or

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extension of license required under provisions of 11 GCA § 3309.

§ 2104. Qualifications of Prospective Licensees.

(a) Prior to the Board considering an application for an alcoholic beverage control license, a thorough investigation into the applicant's background will be conducted by the Alcoholic Beverage Control Administrator. The Board will carefully consider the results of this investigation and may make a determination as to approval or disapproval of the application upon such action.

(b) Where the applicant for a license is a corporation, all individuals who own stock in such corporations or are otherwise involved in any way as proprietors, managers, employees or agents of the business being licensed shall be listed by legal name in the current application on file with the Administrator. No license shall be issued or renewed unless these listings are complete and legally accurate and reveal compliance with the intent of 11 GCA §§ 3300 and 3301, as each may be applicable.

§ 2105. Premises Qualifications.

(a) Prior to the Board considering an application for an alcoholic beverage control license, the Alcoholic Beverage Control Board will require the Administrator to conduct an inspection of the premises to determine that they meet the requirements of the law. Results of this inspection will be included with the application and made available to the Board upon its consideration thereof.

(b) Licensees shall provide, at the time of application or renewal of any Class 4, General On-Sale license, and maintain in a sanitary and functioning manner, adequate separate toilet and/or lavatory facilities with hot and cold running water for men and women. Such facilities shall provide for reasonable security and privacy.

§ 2106. Transfer of Licenses.

(a) Where a license has been issued to or in the name of a partnership, no substitution, addition, removal or other change to the licensed partnership shall be made until the proposed change has first been considered by the Board upon application for a transfer by the licensee in the same manner and procedure as an application for

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a transfer between two distinct business entities.

(b) No application for transfer of a license will be considered by the Board unless the applicant has met the same personal qualifications as that required of an applicant for an original license, nor will an application for transfer be considered by the Board if the proposed premises do not meet the qualifications as that required for premises in an application for an original license. This procedure does not apply to transfers as defined in 11 GCA § 3310(a).

2019 NOTE: Internal reference in subsection (b) was altered to reflect the change in the Guam Code Annotated.

§ 2107. Responsibilities of the Licensee.

(a) It shall be the responsibility of a licensee to notify the Administrator in writing of any and all changes in licensed business ownership, management, agents or any other changes which materially affect or modify the data on file and recorded as the basis for granting or renewal of such license, prior to the time such change occurs. Failure to do so within twenty-four (24) hours of such change shall require immediate temporary suspension of the license pending investigation and review by the Board. This suspension shall remain in effect until removed, modified, or other action as may be deemed necessary and appropriate has been taken by the Board.

(b) All Class 4, On-Sale establishments shall have a duly registered manager or assistant manager or registered designated responsible person on the premises, in the absence of the licensee, and during the hours from 7:00 p.m. daily until closing. ‘Registered designated responsible person’ means a person designated by the president, corporation, or owner of the establishment, who shall be responsible in the absence of the manager or assistant manager, and who shall be registered with the Department of Revenue and Taxation. The manager or assistant manager or registered designated responsible person shall be capable and competent in maintenance of order and responsible for compliance with pertinent laws and regulations as pertains to the licensed premises. Should the duly registered manager, assistant manager, and registered designated responsible person be absent from the premises at 7:00 p.m. until closing, the premises shall be ‘CLOSED’ immediately

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until such time that one of the persons named herein is present. If the premises remains open in violation of this Section, the licensee shall pay a penalty of \$100.00 for each violation.

(c) A licensee proposing to transfer or in the process of transferring his license to another party shall remain responsible for the conduct of the licensed business and liable for compliance with all terms of the license and all laws and regulations pertaining thereto until such time as the Board has approved the transfer and the transferred license has been re-issued by the Administrator in the new licensee's name.

(d) A licensee who proposes to be absent or who may be absent from the island of Guam for a period of forty-eight (48) hours or more shall, prior to departure, notify the Board in writing of the name of the person or persons who are designated responsible for the licensed premises during such absence. The person so designated must meet all qualifications for owner or manager as specified by law and/or regulations and must agree in writing that he is so qualified and accepts this responsibility prior to the licensee's departure. The Board may refuse to accept or approve such designation if, in the Board's consideration, they decide such would not be in conformance with the law, these regulations, or otherwise not in the best interest of the public.

(e) A licensee shall post a list of employees and their specified duty hours on the premises where such list shall be at all times available for inspection by duly authorized representatives of the government of Guam. These specified work periods shall clearly indicate the hours when each employee is considered to be on duty. The list shall be posted in advance and shall not be changed except for a bona fide reason. When such changes are made to a posted list, the change shall be initialed by the person making the change, and the date and time of such change entered thereon.

(f) Licensees of General On-Sale establishments shall be required to register or cause to be registered with the Alcoholic Beverage Control Administrator all persons employed by his establishment and engaged in the mixing and/or the serving of alcoholic beverages, within seventy-two (72) hours after their

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employment.

(g) Licensees shall not engage in business practices which are inimical or discriminatory to public interest or that which may tend to create a monopoly. Credit extended by or to any wholesale or retail licensee beyond forty-five (45) days from date of sale or delivery of the alcoholic beverages shall constitute a violation of provisions of 11 GCA § 3429.

(h) Class 4, 5, 6, 7, 9, 10, 11 and 12 ABC licensees shall not hire or employ any employee that does not have a valid alcohol employee license from an approved alcohol server/seller training program twelve months from the effective date of this act; provided, however that a current ABC license shall continue to be valid until expiration, but the licensee shall be required to have taken the alcohol server/seller training program prior to license renewal. Further, the unexpired license shall not be portable, as provided pursuant to § 3212.1(b) which only applies to a licensee who has passed an alcohol server/seller training program.

SOURCE: Subsection (b) amended by P.L. 29-034:4 (Oct. 25, 2007).
Subsection (h)(1) added by P.L. 32-051:7 (July 5, 2013), subitem designation removed by the Compiler.

§ 2108. Employee's Responsibilities.

(a) Employees of an On-Sale licensee, engaged in the mixing and/or the serving of alcoholic beverages, shall not engage in dancing while on duty or scheduled for duty as per posted schedule with the premises.

(b) Individuals of questionable reputations shall not be employed in a General On-Sale establishment. The Alcoholic Beverage Control Board shall be advised immediately by the Administrator when violations of this regulation become evident during an inspection. The licensee shall be notified in writing by the Board to remedy the situation within a specified time. If subsequent investigation, after the specified time, determines the discrepancy continues to exist, the Board may order a suspension of the license and require the licensee to show cause as to why his license should not be revoked.

§ 2109. Administrator's Responsibilities.

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(a) It shall be the responsibility of the Alcoholic Beverage Control Administrator to enforce the provisions of these regulations and make timely reports of violations to the Board.

(b) If it is discovered by the Administrator that an establishment has acquired an unsavory reputation, this fact shall be reported to the Board immediately for any action they may deem appropriate and necessary.

(c) The Administrator, with the concurrence of the Board, shall approve classroom alcohol server/seller training programs that meet the regulations duly promulgated by the Board pursuant to 11 GCA § 3124.

SOURCE: Subsection (c) added by P.L. 32-051:8 (July 5, 2013).

§ 2110. Responsibilities in the Employment of Minors as Entertainers.

(a) Minor entertainers or minor members of a group must be represented by an adult and a responsible adult shall accompany all minors after the legal curfew hours.

(b) The individual or group must be properly licensed.

(c) It shall be the responsibility of the licensee to cause the minor entertainers to be registered prior to employment, and it is likewise the licensee's responsibility to determine that all entertainers have reached their sixteenth (16th) birthday.

(d) The designated adult representative may be permitted to register the entertainers and it shall be his responsibility to notify the Administrator of any change in the position or membership of a group. Adequate proof of birth shall be presented at the time of registering entertainers.

(e) Termination of the hours of duty of minors must coincide with the sale of alcoholic beverages.

(f) It shall be the responsibility of the licensee to adhere to all provisions of the Alcoholic Beverage Control Act and these regulations as concerns minors. Further, he is to be held strictly liable for the general behavior of the minors during the hours of their duty.

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(g) All minors employed as entertainers must remain within certain specified enclosures designated for entertainment. They will not be permitted to visit the bar or tables where alcoholic beverages are being sold or served or consumed.

§ 2111. Miscellaneous Provisions.

(a) All General On-Sale Licensees shall register or cause to be registered with the Alcoholic Beverage Control Administrator anyone employed as a manager or assistant manager, within seventy-two (72) hours after employment and the proper Alcoholic Beverage Control forms must be accomplished at the time of registering. No person who is not eligible as a licensee will be employed as a manger or assistant manager.

(b) All persons having Class 3, Wholesale Dealer's licenses shall keep a copy of invoices or alcoholic beverage sales filed in the order in which made so as to be readily available for examination by the Alcoholic Beverage Control Administrator or members of the Alcoholic Beverage Control Board. These invoices must be kept separate from invoices of sales of other commodities, must show date of sale, delivery, quantity, brand and price received. Wholesalers shall comply with the provisions of 11 GCA §3429(k) in preparing invoices for sale of alcoholic beverages.

(c) The business entrance doorway of any premises licensed to sell or serve alcoholic beverage for consumption thereon must be kept unlocked while the premises are open for business. No licensed business establishment shall be used for private parties when the door is locked after expiration of authorized hours for the sale of alcoholic beverages unless means are established whereby it can be determined that no alcoholic beverages are being sold therein.

(d) Requests for changing the "trade name" of the premises, licensed to sell or serve alcoholic beverages, must be filed with the Board through the Alcoholic Beverage Control Administrator.

The reason for the change must be included. If the Board approves the change, the license and allied records retained by the Administrator will be amended to include the new name. The application for a name change will be coordinated with the

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license.

(e) If the portion of the licensed premises, open to the customers, is equipped with a bar, the preparation of all drinks shall be made on the top surface of the bar in such a manner as to permit any interested customer to have a clear and unobstructed view of the bartender's operation.

(f) Whenever a suspension is effected by the Administrator or the Board, the Administrator shall cause a "Notice of Suspension" to be posted in a conspicuous place on the exterior of the licensed premises. The notice will contain the following wording: "Government of Guam, Notice of Suspension, Alcoholic Beverage Control Licenses Issued for these Premises have been Suspended. By Order of: The Alcoholic Beverage Control Administrator or the Alcoholic Beverage Control Board under 11 GCA § 3614. This poster shall not be removed except by authorized persons."

§ 2112. Responsibilities of Alcohol Server/Seller Training Programs.

(a) No alcohol server/seller training program shall offer or conduct alcohol server/seller training classes until they have received written approval from the Administrator.

(b) All alcohol server/seller training programs shall apply for approval from the Administrator by submitting their complete program, including instructor manuals, student manuals, videos and any other materials that are used for the program.

(c) The curriculum of an alcohol server/seller training program shall include, at a minimum, all of the following topics:

- (1) the ethics and responsibilities of serving alcoholic beverages;
- (2) basic alcohol content among different types of drinks containing alcohol;
- (3) the clinical effects of alcohol, including the identification of progressive stages of intoxication and the visible signs associated with each stage;

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(4) variables associated with visible intoxication, including the rate of drinking, tolerance, weight, food consumption, gender, and use of other drugs;

(5) procedures for monitoring consumption, personal skills to prevent intoxication and intervention procedures;

(6) acceptable forms of personal identification, techniques for determining the validity of identification, and procedures for dealing with fraudulent identification;

(7) personal skills to assess the need to ask for identification based on appearance and company policy;

(8) the identification of potential third-party sales and furnishing of alcoholic beverages to minors by persons twenty-one (21) years of age or over;

(9) the understanding of possible legal, civil, and administrative consequences of violations of this Act, the rules of the Board, and other pertinent laws;

(10) how to identify at place of employment spirits and other alcoholic beverage products not intended for resale or commercial distribution outside of military bases, and procedures for reporting these violations to the Board;

(11) the understanding of Guam laws pertaining to minors attempting to purchase, minors in possession, and third-party sales or furnishing of alcoholic beverages by adults to minors;

(12) knowledge of the legal hours of alcohol service and occupancy;

(13) identification of signs of prohibited activities, such as gambling, solicitation for prostitution, and drug sales; and

(14) any other pertinent laws as determined by the Board or Administrator to be appropriate and in keeping with applicable law and these regulations.

(d) The alcohol server/seller training program shall administer a comprehensive examination to participants of the program, including individuals seeking certification as instructors

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within the program. The examination shall thoroughly test the individual's knowledge and competency in the curriculum topics required by the Board. The minimum passing grade for the examination participants of the program shall be not less than 75%. For instructor certification, the passing grade shall be not less than 90%. All tests shall be approved by the Administrator.

(e) The Department of Revenue and Taxation or its designee shall issue an alcohol employee license to the student who successfully completes the program. Certification shall be valid for a term of three (3) years.

(f) The Department of Revenue and Taxation or its designee shall issue an instructor certification card to all instructors that have been certified by the program that shall be valid for a term of three years, and shall notify the Board or Administrator. The alcohol server/seller training program shall immediately notify the Board or Administrator when an instructor is no longer certified by the program.

(g) The alcohol server/seller training program shall make available all records of students, instructors and certifications to the Board and the Administrator.

(h) The Administrator shall rescind approval of any alcohol server/seller training program that fails to continue to meet these requirements or fails to pay the yearly fee set by the Board.

(i) The Administrator shall not approve online-only alcohol server/seller training programs.

§ 2113. Responsibilities of Alcohol Server/Seller Training Programs.

(a) No alcohol server/seller training program will offer or conduct alcohol server/seller training classes until they have received written approval from the Administrator.

(b) All alcohol server/seller training programs shall apply for approval from the Administrator by submitting their complete program, including instructor manuals, student manuals, videos and any other materials that are used for the program.

(c) The curriculum of an alcohol server/seller training

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program shall include, at a minimum, all of the following topics:

- (1) the ethics and responsibilities of serving alcoholic beverages;
- (2) basic alcohol content among different types of drinks containing alcohol;
- (3) the clinical effects of alcohol, including the identification of progressive stages of intoxication and the visible signs associated with each stage;
- (4) variables associated with visible intoxication, including the rate of drinking, tolerance, weight, food consumption, gender, and use of other drugs;
- (5) procedures for monitoring consumption, personal skills to prevent intoxication and intervention procedures;
- (6) acceptable forms of personal identification, techniques for determining the validity of identification, and procedures for dealing with fraudulent identification;
- (8) personal skills to assess the need to ask for identification based on appearance and company policy;
- (9) the identification of potential third-party sales and furnishing of alcoholic beverages to minors by persons 21 years of age or over;
- (10) the understanding of possible legal, civil, and administrative consequences of violations of this Act, the rules of the Board, and other pertinent laws;
- (11) how to identify at place of employment spirits and other alcoholic beverage products not intended for resale or commercial distribution outside of military bases, and procedures for reporting these violations to the Board;
- (12) the understanding of Guam laws pertaining to minors attempting to purchase, minors in possession, and third-party sales or furnishing of alcoholic beverages by adults to minors;
- (13) knowledge of the legal hours of alcohol service and occupancy;

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(14) identification of signs of prohibited activities, such as gambling, solicitation for prostitution, and drug sales; and

(15) any other pertinent laws as determined by the Board or Administrator.

(d) The alcohol server/seller training program shall administer a comprehensive examination to participants of the program, including individuals seeking certification as instructors within the program. The examination shall thoroughly test the individual's knowledge and competency in the curriculum topics required by the Board. The minimum passing grade for the examination participants of the program shall be not less than 75%. For instructor certification, the passing grade shall be not less than 85%. All tests shall be approved by the Administrator.

(e) The alcohol server/seller training program shall issue an Alcohol Employee License to the student who successfully completes the program. Certification shall be valid for a term of three years.

(f) The alcohol server/seller training program shall issue an instructor certification card to all instructors that have been certified by the program that shall be valid for a term of three years, and shall notify the Board or Administrator. The alcohol server/seller training program shall immediately notify the Board or Administrator when an instructor is no longer certified by the program.

(g) The alcohol server/seller training program shall make available all records of students, instructors and certifications to the Board and the Administrator.

(h) The Administrator may rescind approval of any alcohol server/seller training program that fails to continue to meet these requirements or fails to pay the yearly fee set by the Board.

(i) The Administrator shall not approve online alcohol server/seller training programs.

SOURCE: Amended by P.L. 32-051:9 (July 5, 2013).
