

Register _____, _____ 2024 COMMERCE, COMMUNITY, AND EC. DEV.

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

Version 1-

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

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(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 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

Commented [KRS2]: 306.015(a) The board will issue each marijuana establishment license to a specific individual, a partnership, including a limited partnership, a limited liability company, a corporation, or a local government. A person other than a licensee may not have a direct or indirect financial interest in the business for which a marijuana establishment license is issued ****
(f) In this section,
(1) "direct or indirect financial interest" means
(A) a legal or equitable interest in the operation of a business licensed under this chapter;
(B) does not include a person's right to receive
(i) rental charges on a graduated or percentage lease- rent agreement for real estate leased to a licensee; or
(ii) consulting fee from a licensee for services that are allowed under this chapter;
Commented [KRS3]: MJ testing facility not allowed

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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 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 [KRS4]: In Alcohol's example a 'reasonable fee' is a reasonable flat fee not linked to sale or non-sale of alcohol. Does MCB wish to change or clarify 'reasonable management fee?'

(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. **A management agreement requiring a correction must be resigned and redated by both the 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.** The director may declare a management agreement that does not comply with this section void. A management agreement must comply with 3 AAC 306.015(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 [KRS5]: Literally—the agreement must state that both parties have done this and list each regulation.

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(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 _____)

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

Commented [KRS6]: 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.

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Version 2.

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 _____)

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Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
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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

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(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 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) Prior to the execution of a management agreement, the licensee or transferor whose name is required to be provided with an application for a new or transfer license under 3 AAC

Commented [KRS2]: 306.015(a) The board will issue each marijuana establishment license to a specific individual, a partnership, including a limited partnership, a limited liability company, a corporation, or a local government. A person other than a licensee may not have a direct or indirect financial interest in the business for which a marijuana establishment license is issued ****

(f) In this section,
(1) "direct or indirect financial interest" means
(A) a legal or equitable interest in the operation of a business licensed under this chapter;
(B) does not include a person's right to receive
(i) rental charges on a graduated or percentage lease-rent agreement for real estate leased to a licensee; or
(ii) consulting fee from a licensee for services that are allowed under this chapter;

Commented [KRS3]: MJ testing facility not allowed

Commented [KRS4]: This allows for date/signatures to be redone if corrections are required to the agreement.

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306.020 or 3 AAC 306.045-046 shall file with the Alcohol & Marijuana Control Office the following:

(1) a copy of the management agreement and any related agreements between the parties that are signed and dated by

(A) 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

(B) the non-licensee or transferee agreeing to manage the operation of the business;

(2) information detailing any compensation paid in exchange for the management agreement; and

(3) any other information relevant to the management agreement requested by the board.

(c) The effective date of the agreement may be no earlier than AMCO's approval of the agreement and, in the case of material change to a management agreement, including but not limited to expiration, termination or amendment, the licensee shall, not later than 10 days after each change to the management agreement occurs,

(1) provide any relevant records, files or information to AMCO; and

(2) receive AMCO's approval prior to the material change to the management agreement taking effect.

Commented [KRS5]: Or possible simple wording....notify AMCO of the change

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(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 deny a management agreement or declare a change to a management agreement that does not comply with this section void if:

(1) the management agreement does not comply with 3 AAC 306.015(a), 3 AAC 306.915, and 3 AAC 306.916;

(2) the management agreement transfers control of a license in violation of AS 17.38 and the regulations adopted under this title;

(3) the licensee fails to provide proper notice as specified under this section;

(3) the licensee fails to produce additional documentation requested by AMCO; or

(4) for any other good cause.

(e) 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 306.015, 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.**

(f) 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 _____)

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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.

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AS 17.38.121