

No. 50090-6

Court of Appeals  
DIVISION II  
STATE OF WASHINGTON

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PUGET SOUND GROUP, LLC, et al.,

APPELLANTS,

V.

WASHINGTON STATE LIQUOR & CANNABIS BOARD et al.,

RESPONDENTS.

**APPELLANTS REPLY BRIEF**

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## I. ARGUMENT

There is a noticeable trend in the WSLCB's briefing materials that has its origins early in the litigation. Namely, the Respondents' willingness to provide knowingly false statements to the tribunal. Misrepresentations of fact were first called out by Puget Sound Group in the Plaintiffs' Response in Opposition to the Defendant's Motion for Summary Judgement, CP 246, 247.

Appellants address the latest round of dishonesty here.

1. The most odious falsehood presented to this tribunal is a continuation of a theme first employed before the Trial Court; that Puget Sound Group et al. failed to obtain licenses because they were ill-prepared.

“The more prepared and experienced an applicant was, the more rapidly it was generally able to fulfill these licensing requirements.”<sup>1</sup>

See also, Defendants' Motion for Summary Judgement and/or Dismissal, CP 164;

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<sup>1</sup> Respondent's Reply Brief at 20

“Within priority-one, applications were processed as quickly as applicants could produce the documents and information that licensing staff needed.”

idem, CP 169;

"It is the applicants' own responses to staff requests for information and documents that determines the progress of their applications through the licensing process."

As was noted before the Trial Court, Puget Sound Group et al. were denied licenses due to WSLCB's failure to create a system wherein applicants could demonstrate their experience and qualifications, coupled with the volume of would-be retailers wrongfully placed in front of them via the WSLCB system employed.<sup>2</sup>

Of the Appellants, a small portion received priority-one designation under the WSLCB's capricious warping of the Cannabis Patient Protection Act, but by the time this subset was asked to provide further information to the WSLCB, their home jurisdictions were full of applicants that had successfully exploited the loophole created by the WSLCB's improper licensing scheme.

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<sup>2</sup> CP 125, 17, 10, 29, 33

In either scenario, Appellants were timely in their responses to requested information. To further rebut the claim that Appellants were tardy, discovery was requested to obtain the timestamps of applicant-WSLCB interactions and application dates for cross-referencing. All discovery requests were denied by the Trial Court.

The WSLCB did not present evidence to support their claims although it is apparent that they didn't need to.

While Appellants knew with absolute certainty that licenses were not denied for lack of preparedness, there was no desire to make the case about response times to WSLCB requests, for two reasons. First, it would have divided the Trial Court's attention to focus on matters related to individual applications, yet the substance of the claims lay in facial challenges and as-applied challenges affecting the entire plaintiff group. Second, any review of individual applications would help the WSLCB's case that the complaint was an administrative matter not suitable for adjudication in Superior Court.

Appellants highlight the deceitful approach taken by the WSLCB in accusing Puget Sound Group of being tardy and ill-prepared because the Agency's comfort with dishonesty has carried over into the appeal. Worse yet, Respondents' Reply Brief proffers claims that are demonstrably false.

2. Respondents' brief references methodology used to determine the number of available retail store licenses. They first claim, without proof, that a written description of the methodology was presented to the Board at the December 16, 2015 meeting.

“A copy of the written description of the methodology used to determine the number of licenses to grant was provided at the December 16, 2016 Board meeting.”<sup>3</sup>

The methodology, description or otherwise, is not contained in the Board's meeting handouts, nor is it contained in the record.<sup>4</sup>

To say that items were before the Board, and imply that they were under deliberation, when they most certainly were not, is not mere argument. It is fabrication, meant to deceive.

Minutes from the December 16 meeting state that:

Pg 6. “Following an analysis<sup>5</sup> of the entire marijuana marketplace in Washington State, the (WSLCB) has a recommendation to increase the number of retail marijuana stores from the current cap of 334 to a new cap of 556. **The methodology for the cap will be part of**

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<sup>3</sup> Respondent's Reply Brief at 10

<sup>4</sup> See, Appendix A. WSLCB Board Agenda - December 16th, 2015.

[https://lcb.wa.gov/publications/board/2015\\_Board\\_Agendas/12\\_16\\_15\\_HANDOUTS\\_A\\_LL.pdf](https://lcb.wa.gov/publications/board/2015_Board_Agendas/12_16_15_HANDOUTS_A_LL.pdf)

<sup>5</sup> BOTEC's analysis

**emergency rules, which will be announced on Jan. 6th, 2016.”**<sup>6</sup>  
(emphasis added)

As previously highlighted,<sup>7</sup> the emergency rules do not contain new or revised language related to any type of methodology as to how the cap was set at 556. Thus, it is entirely dishonest to brief this Tribunal with assertions that:

“The proposed amendment to WAC 314-55-081 included the methodology the Board was using to determine the number of overall retail licenses.”<sup>8</sup>

“The Board did adopt a rule, WAC 314-55-081, that explained the methodology used to determine the number of retail licenses available in each jurisdiction and referenced where to find them, and amended it after enactment of the CPPA.”<sup>9</sup>

The record does not support the claim that methodology was available to the Board when the decision was made to set the number of available retail licenses at 556.

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<sup>6</sup> See, Appendix B. WSLCB Meeting Minutes - December 16th, 2015.  
<https://lcb.wa.gov/publications/board/2016%20Agendas/12%2016%2015%20BOARD%20MEETING%20MINUTES%20%28Signed%29.pdf>

<sup>7</sup> Appellants’ Brief at 32. See also, Appendix D.

<sup>8</sup> Respondent’s Reply Brief at 10-11

<sup>9</sup> Respondent’s Reply Brief at 30, fn 6

Methodology was not published on January 6th, 2016, nor was it presented as evidence to the Trial Court.

Appellants' opening brief set out the narrow window with which the WSLCB could have reviewed the final BOTEC report published on December 15th before making the decision to set the cap at 556 on December 16th. It appears that Respondents have attempted to fill that window with methodology that does not exist. It matters not, as the second BOTEC report did not correct the problems that WSLCB identified in the first publication.

3. In what appears to be an attempt to prove that the WSLCB "developed" a "merit-based" system that considered an applicant's "experience and qualifications" as the statute commanded, Respondents state that the WSLCB added new requirements to the application process:

"Moreover, the Board added additional requirements for applicants to demonstrate their experience and qualifications. WAC 314-55-020 required applicants to demonstrate their ability to successfully operate a retail marijuana business by submitting an operating plan, by submitting documentation of an ability to comply with the traceability system by which legal marijuana is tracked throughout its growing process through sale, and by showing they have the required funds to start and operate their business."<sup>10</sup>

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<sup>10</sup> Respondent's Reply Brief at 20

Each of the requirements listed above are preexisting application requirements, in effect prior to implementation of the CPPA.<sup>11</sup> It is a gross misrepresentation to suggest that these requirements represent the process that the legislature told the WLSCB to adopt, and it is an outright lie to state that they were “added” for that purpose.

3. Another falsehood contained in the Respondent brief is the assertion that medical cannabis was untaxed prior to the merger of the medical and recreational cannabis systems.<sup>12</sup> We know that collective garden sales of medical cannabis *were* taxable because the companion legislation to the CPPA (2SHB 2136), provided a sales tax exemption to dispensaries / collective gardens from the date of adoption until July 1, 2016.<sup>13</sup>

A. Plain Language of the Cannabis Patient Protection Act.

Appellants urge the Court to apply canons of statutory interpretation and agree that the Legislature required creation of a system that would award merit to applicants given an opportunity to demonstrate relevant marijuana industry experience, and that the Legislature

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<sup>11</sup> cf. Appendix C. WSR 13-18-086, 13-14-124, 14-21-103, 15-08-035, and 15-19-166

<sup>12</sup> Respondent’s Reply Brief at 3

<sup>13</sup> Laws of 2015, ch. 4, § 207:

(2) From the effective date of this section until July 1, 2016, the tax levied by RCW 82.08.020 does not apply to sales of marijuana, marijuana concentrates, useable marijuana, marijuana-infused products, or products containing THC with a THC concentration of 0.3 percent or less, by collective gardens under RCW 69.51A.085 to qualifying patients or designated providers, if such sales are in compliance with chapter 69.51A RCW.

specified the method of filtering competing applicants in the licensing process.

In arguing that a merit-based process comes before the priority filters, Appellants do not simply pull isolated statutory language as Respondents allege. Rather, the Act's command to the WSLCB falls entirely in the same section; one paragraph, preceding the next. Former RCW 69.50.331 delivered unambiguous directives to the WSLCB:

(1) For the purpose of considering any application for a license to produce, process, or sell marijuana, or for the renewal of a license to produce, process, or sell marijuana, the state liquor (~~control~~) and cannabis board must conduct a comprehensive, fair, and impartial evaluation of the applications timely received.

(a) The state liquor and cannabis board must develop a competitive, merit-based application process that includes, at a minimum, the opportunity for an applicant to demonstrate experience and qualifications in the marijuana industry. The state liquor and cannabis board shall give preference between competing applications in the licensing process to applicants that have the following experience and qualifications, in the following order of priority: (emphasis added, underline in original)

The language of the Act clearly instructs the WSLCB to *develop* an application *process* that considers an applicant's relevant industry experience. The legislature put several conditions in these instructions.

First, that comprehensive consideration be given to each applicant in a fair and impartial manner. Appellants did not allege that the WSLCB played favorites, but there is overwhelming evidence that the administrative code adopted to implement the CPPA is neither comprehensive or fair.

Further, the merit-based process that the WSLCB was required to develop had to include, at a minimum, the ability for an applicant to demonstrate their experience and qualifications in the marijuana industry. The Act does not contain language that would allow the Respondent Agency to insert the priority categories in lieu of developing a process, as they did when the Board perfunctorily rubber-stamped the rulemaking proposal placed before them on September 23rd, 2015.

Instructions that the WSLCB “must develop a competitive and merit-based process” is an affirmative command from the Legislature. The terms “develop” and “process” call for the Agency to create a system wherein the needs of patients and providers would be met by putting retail applicants through a process that considered their history serving patients.

However, the rulemaking file does not reflect development of a merit-based licensing process. The Agency was instructed to merge the medical cannabis market into a system that they would oversee with the aid of the Department of Health & WSDA, yet there is no record that the gravity

of this undertaking was ever considered, let alone a consideration by which they should best evaluate existing medical cannabis collectives to gauge merit.

The Legislature also provided a mechanism by which the WSLCB would filter groups of applicants that had gone through the merit process. Lawmakers created these filters using a set of priorities designed to reward meritorious medical cannabis operators that could also demonstrate being in service since 2012 and had a history of paying applicable taxes.

What the Legislature did not do was instruct the WSLCB to substitute those priorities for the process that the Agency was clearly told to first develop.

If the Legislature intended for the WSLCB to adopt the priority filters as the sole means of adding new retail licensees, then there is little use for the term ‘comprehensive’ and no use whatsoever for instructions to develop a process that allowed an applicant to demonstrate their experience and qualifications in the cannabis industry.

If an applicant’s demonstration of industry experience and qualifications is identical to the priority list, nothing would be gained by requiring the WSLCB to give applicants the opportunity to demonstrate them.

To concur with the Respondents interpretation of the CPPA means amending the law itself. When the WSLCB read RCW 69.50.331 they saw a highly abridged version of the actual law. Respondents' version reads:

“(a) The state liquor and cannabis board shall give preference between applications to applicants that have the following experience and qualifications, in the following order of priority:”

Respondents often state that they adopted the CPPA's licensing language verbatim. If one ignores eight lines of statute, they would be correct.

#### B. Bill Reports as Indicia of Legislative Intent

Respondents yet again offer Senate and House bill reports to show that the priority-is-merit system adopted by the WSLCB is mirrored in the summaries prepared by committee staff, and therefore the bill report's mere reference to priorities means that the WSLCB got it right.

The first error is that Respondents have not laid the proper foundation to prompt the Court to move beyond the plain meaning of the statute and look to legislative history.

The second error is that they seek to prove conformity with the text of the statute by highlighting the text of a bill summary. I.e., WSLCB rules

omitted key components of the CPPA as did the bill summary, ergo the Legislature must have intended a limited number of terms to be operative.

Bill reports can be useful when resolving ambiguities but it is inappropriate to use them in a manner that suggests some statutory terms are more meaningful than others, as the Respondents have done in their brief.

“[N]o part of a statute should be deemed inoperative or superfluous unless it is the result of obvious mistake or error.” *In re Det. of Strand*, 167 Wn.2d 180, 189, 217 P.3d 1159 (Wash. 2009) (quoting *Klein v. Pyrodyne Corp.*, 117 Wn.2d 1, 13, 810 P.2d 917, 817 P.2d 1359 (Wash. 1991)).

### C. Challenges to Emergency versus Final Rules

Appellants implore the Court to reject the argument that a challenge to WSLCB rule-making is only proper when the complaint includes all iterations of the emergency and proposed rules. The injuries occurred because of the rules in effect at the time licenses were made available. The rules in effect during the application period were the emergency rules adopted to implement the CPPA. Further, the rules at issue did not change in word or substance from emergency form

to final adoption.<sup>14</sup> Therefore, the only rule-making file of consequence and the only rule-making file that can inform the Court as to the attendant facts and circumstances at the time the WSLCB disregarded them, is the certified record presented in CP 73.

Appellants also contest the notion that the interpretation offered as the Legislature's correct intent would yield a "myriad" of "super priority-ones" without any method to distinguish amongst them. In fact, the Legislature provided the very mechanism by which the WSLCB was meant to distinguish between those possessing similar merit. Since the WSLCB never implemented a merit-based system, it may be easy for Respondents to claim that any process other than the priority-is-merit, merit-is-priority system would have been too unwieldy.

While one cannot prove a negative, Appellants did offer the Trial Court a simple solution by which the Board could determine merit before applying the priority filters. Specifically, collective gardens serving medical cannabis patients and providers would be the most capable of transitioning

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<sup>14</sup> In May of 2016, WAC 314-55-020(3) removed the phrase "Within priority categories, applications will not be ranked and will be processed in order of submission." By the time this change was codified, the application period for marijuana retail licenses had concluded and the critical phase when jurisdictions reached their allotments, had long-passed.

before the July 1, 2016 deadline and able to continue to serve the very patrons represented in the title of the Cannabis Patient Protection Act.

Only one proof would be necessary to effectively show that they were in operation serving patients at the time they sought a license from the WSLCB- a quarterly tax return from the Department of Revenue showing the exemption for medical cannabis sales codified in Laws of 2015, Chapter 4 § 2. Only collective gardens serving patients could produce a form with that unique tax exemption. If the WSLCB did nothing else, that simple receipt would show objectively more merit compared to those that could not produce the form.

Knowing the meritorious applicants that were serving patients, the WSLCB could assign priority one, two, and three, and process for license. If at some point after existing stores had their opportunity to transition into the Initiative 502 market and the WSLCB decided it needed more applicants, it could open a second round with the same criteria. WSLCB would be aware that second round applicants would move immediately into the priority filters but they would have carried out their duties under the CPPA none the less, since the more meritorious group had been processed first.

While there were perhaps more dynamic merit scoring systems than the tax-receipt concept, it is evident that the WSLCB made no attempt to evaluate an applicant's industry experience serving patients and providers or evaluate an applicant's efforts to help ensure a smooth transition for patients into the consolidated marketplace. At a minimum, it's difficult to argue that existing medical cannabis providers such as the Appellants were not intended to have first shot a retail license.

One of the critical errors with the system adopted by the WSLCB, and further proof they didn't deliberate beforehand, was allowing an applicant to obtain a priority-one designation without binding the requirements of RCW 69.50.331(1)(a)(i)<sup>15</sup> to a common entity. The WSLCB created a system by which *any* business with a history of paying taxes and in possession of a business license could purchase a retail application receipt (i)(A) and the paystub of a former collective garden employee (i)(B) to become eligible for a license. This not only happened, but it occurred to such a degree as to clog the application pool with groups

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<sup>15</sup> (i) First priority is given to applicants who:  
(A) Applied to the state liquor and cannabis board for a marijuana retailer license prior to July 1, 2014;  
(B) Operated or were employed by a collective garden before January 1, 2013  
(C) Have maintained a state business license and a municipal business license, as applicable in the relevant jurisdiction; and  
(D) Have had a history of paying all applicable state taxes and fees;

woefully lacking marijuana industry experience and little interest in serving patients. A truly comprehensive and merit-based system, if it had been developed, would have avoided this crucial mistake.

Moreover, the WSLCB did not inquire or require of any applicant; types and quantities of medical cannabis dispensed, the type and severity of ailments their patients sought to treat, alternative methods of medication delivery when a patient is immune-compromised or adverse to smoke/vapor, number of patients or designated providers served, letters of recommendation from patients, partnerships with licensed producers to ensure continuity of supply after July 1, 2016, support for clinical research, relationships with testing facilities to ensure quality assurance under the more stringent medical cannabis testing guidelines, performance bonds, or any other measure that would reasonably distinguish applicants interested in meeting the needs of medical cannabis patients and providers.

That the Board failed to consider any type of merit-system presents a threshold question as to whether the lack of deliberation was arbitrary and capricious (it was). That they also failed to consider the ramifications of opening the retail license application to everyone, through a process that allowed newly-created entities to purchase the priority credentials and supplant long-standing providers; is definitive proof that they ignored

attendant facts and did not engage in the deliberation necessary to carry out their command to protect patients and merge the vast medical market with the recreational system.

D. Adoption of a Rule Without Adherence to Mandatory Rulemaking Procedure

Respondents contend that the license cap adopted on December 16th, 2015 did not meet the definition of a rule because it did not “establish, alter, or revoke, any qualifications or standards for the issuance of (a license).”

The license cap did precisely that. Each applicant at that time, and indeed every member of the Appellants, had already applied for a license in a specific location- usually in the jurisdiction where they were serving patients at the time. The statewide cap of 222 also put into place caps for each jurisdiction. The jurisdictions where Puget Sound Group sought license hit their allotments with applicants that listing the same areas. Appellants seeking a license in a full jurisdiction no longer had the necessary qualifications to obtain a license. The license cap altered the qualification for the issuance of a license because it created a new minimum requirement- locating in an open jurisdiction.

The license cap was a rule for those that applied before December 16th, 2015 because their jurisdictions were open at the time they applied.

Also, it was a rule for applicants that waited until after December 16th to apply because they would now be asked to name an open jurisdiction before continuing toward a license, where previously no such requirement existed.

The original licensing criteria asked an applicant to name a location that met the State's minimum distance requirements from prohibited entities such as schools, parks and playgrounds. The original licensing criteria did not ask an applicant to list a jurisdiction that had not yet reached its allotment, since caps were not in place at the time Puget Sound Group applied.

In contrast, the Board did not need to adopt a separate rule when it set the license cap during implementation of Initiative 502 because the allotted retail store number was announced well before license applications were accepted.

The original license cap set in 2013 neither made a significant change to an existing regulatory program or alter the conditions for the issuance of a license. The 2013 cap did not alter an existing regulatory program because those regulations were not applicable until the licensing window opened.

The original 334 store cap was announced on September 4th, 2013.<sup>16</sup> Applications for a marijuana retail license were not accepted until November 18th, 2013.<sup>17</sup> During Initiative 502 implementation, the rules disclosing that the initial retail license allocation would be based on population & consumption data in partnership with the Office of Financial Management (OFM) went through required notice and comment. For the cap adopted on December 16th, 2015, methodology was never submitted for public comment or published in the Washington State Register.

Respondent's brief refers to WAC 314-55-081 as though reference to OFM was the very methodology promised in the December 16, 2015 announcement. Just as licensing requirements were not "added" and were present since the earliest versions of WAC 314-55-020, so too was the requirement to consult with OFM. Comparing the previous iterations of WAC 314-55-081 clearly shows that OFM consultation was a preexisting requirement and does not represent the methodology foretold in the December 16th meeting minutes. Again, Respondents employ a deceitful telling of events.

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<sup>16</sup> Appendix D. WSLCB. Publications - I502 Rules Changes.

<https://lcb.wa.gov/publications/Marijuana/I-502/I-502-Rules-Changes-II-9-4-13.pdf>

<sup>17</sup> Appendix E. Washington Secretary of State. Marijuana Licensing - Things to Know.

<https://www.sos.wa.gov/corps/Marijuana-Licensing---Things-to-know.aspx>

E. Significant Legislative Rules

RCW 34.05.328 lists the agencies that are subject to the added rulemaking conditions of .328(1) when those agencies engage in significant legislative rulemaking. The added requirements are also placed on agencies that volunteer (none do) or are instructed by the joint administrative rules review committee to do so. Appellants never argued that WSLCB failed to comply with the added requirements of .328(1), merely that their actions fit the definition of significant legislative rule by making a significant amendment to an existing regulatory program. The point is that, by setting the license cap, WSLCB engaged in rulemaking without following the general strictures of the APA and the rulemaking requirements of 34.05.310 et. seq. Appellants do not argue that the Board failed to follow RCW 34.05.328(1).

Since significant legislative rules automatically trigger the more stringent requirements of .328(1) for the agencies listed in .328(5)(a)(i); it follows that if an agency engages in the type of activities that define a significant legislative rule, those affected by the changes must have the opportunity to receive notice and provide comment. Without that opportunity, the rule is invalid. An agency that isn't listed in RCW 34.05.328 should not escape accountability simply because they were not

of the group that must also comply with the goal statements,  
implementation plan, cost/benefit analysis, etc. described in 34.05.328(1)  
(a)-(i)

Puget Sound Group et al. represent the providers of medical cannabis that the Legislature gave a preferred pathway toward licensure. The license cap adopted on December 16th, 2015 further disadvantaged the Appellants, as inexperienced groups, already exploiting the WSLCB's loophole, filled the newly established jurisdictional allotments.

The statewide and jurisdictional license caps were a significant shift to an existing regulatory program and represent rulemaking under APA.

We renew our request that the ruling of the Trial Court be reversed and relief granted to the Appellants. 10/16/2017

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APPENDIX A.



Washington State  
**Liquor and Cannabis Board**

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Date: December 16, 2015

To: Jane Rushford, Board Chair  
Ruthann Kurose, Board Member  
Russ Hauge, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Rick Garza, Agency Director  
Peter Antolin, Deputy Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director

Subject: **Approval for filing proposed rules (CR 102) to creating a new section in Chapter 314-03 WAC Allowed Activities**

The Beer/Wine Gift Delivery license allows a business that is primarily engaged in the retail sale of gifts or flowers to deliver beer and/or wine in bottles or original packages. The beer or wine must be delivered in conjunction with the gifts or flowers. Many of the orders are placed via the internet. The board has in the past allowed internet sales for holders of this license but there are currently no rules that outline the requirements for this practice. Becky Smith, Licensing director, has asked for an interim policy and rules to outline the requirements for internet sales and delivery of beer and wine.

### Process

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above. An issue paper on this rule was presented at the Board meeting on December 16, 2015, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

July 15, 2015	Board is asked to approve filing the pre-proposal statement of inquiry (CR 102)
January 20, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
February 10, 2016	End of written comment period
February 10, 2016	Public Hearing held
February 24, 2016	Board is asked to adopt rules
February 24, 2016	Agency sends notice to those who commented both at

	the public hearing and in writing.
February 24, 2016	Agency files adopted rules with the Code Reviser (CR 103)
March 26, 2016	Rules are effective (31 days after filing)

Approve       Disapprove      \_\_\_\_\_  
 Jane Rushford, Chairman      \_\_\_\_\_  
 Date

Approve       Disapprove      \_\_\_\_\_  
 Ruthann Kurose, Board Member      \_\_\_\_\_  
 Date

Approve       Disapprove      \_\_\_\_\_  
 Russ Hauge, Board Member      \_\_\_\_\_  
 Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

## **Issue Paper**

### **Beer/Wine Gift Delivery License**

Date: December 16, 2015

Presented by: Karen McCall, Agency Rules Coordinator

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#### **Description of the Issue**

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) creating a new section in Chapter 314-03 WAC Allowed Activities.

#### **Why is rule making necessary?**

The Beer/Wine Gift Delivery license allows a business that is primarily engaged in the retail sale of gifts or flowers to deliver beer and/or wine in bottles or original packages. The beer or wine must be delivered in conjunction with the gifts or flowers. Many of the orders are placed via the internet. The board has in the past allowed internet sales for holders of this license but there are currently no rules that outline the requirements for this practice. Becky Smith, Licensing Director, has asked for an interim policy and rules to outline the requirements for internet sales and delivery of beer and wine.

#### **What changes are being proposed?**

**New Section. WAC 314-03-040 Consumer orders, internet sales, and delivery for beer and/or wine gift delivery licenses.** Created a new rule clarifying the requirements for a beer and/or wine gift delivery licensee to sell over the internet and delivery beer and wine to their customers.

Attachment: Proposed Rules

NEW SECTION

**WAC 314-03-040 Consumer orders, internet sales, and delivery for beer and/or wine gift delivery licenses.** A beer and/or wine gift delivery licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Liquor shall not be for resale.

(2) **Stock location.** Liquor must come directly from a licensed retail location.

(3) **How to place an order.** Liquor may be ordered in person at a licensed location, by mail, telephone or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. A third-party service may not solicit customer business on behalf of a licensee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell liquor via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Liquor may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of liquor must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory sealed containers is prohibited. For the purposes of

this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.



**Washington State  
Liquor and Cannabis Board**

Date: December 16, 2015

To: Jane Rushford, Board Chair  
Ruthann Kurose, Board Member  
Russ Hauge, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Rick Garza, Agency Director  
Peter Antolin, Deputy Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director

Subject: **Approval of final rules (CR 103) to revise WAC 314-02-090 Non-Profit Arts Organization License.**

At the Board meeting on December 16, 2015, the rules coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) to revise WAC 314-02-090 Non-Profit Arts Organization License.

The Board was briefed on the rule making background and public comment for this rule making. An issue paper and text of the rules is attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments.

After sending this explanation, the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Jane Rushford, Chairman      Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Ruthann Kurose, Board Member      Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Russ Hauge, Board Member      Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

## **Issue Paper**

### **Non-Profit Arts Organization License**

Date: December 16, 2015

Presented by: Karen McCall, Agency Rules Coordinator

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#### **Description of the Issue**

The purpose of this issue paper is to recommend that the Washington State Liquor and Cannabis Board (WSLCB) proceed with final rule making and adopt the revision to WAC 314-02-090 Non-Profit Arts Organization License.

#### **Comments**

Two written comments were received in support of this rule revision. No comments were received at the public hearing held on December 2, 2015.

#### **Why is rule making necessary?**

A petition for rulemaking was submitted by Carol Miller, Attorney, representing licensees who hold the nonprofit arts organization license. The licensees would like to allow alcohol consumption in the seating area of the theater during performances. The law does not specifically prohibit alcohol consumption in the seating area. The prohibition is in rule and can be revised.

#### **What changes are being proposed?**

**Amended Section. WAC 314-02-090 Non-Profit Arts Organization License.** Language has been added to allow consumption in the seating areas during performances.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

**WAC 314-02-090 What is a nonprofit arts organization license?**

(1) Per RCW 66.24.495, this license allows a bona fide nonprofit organization to sell beer, wine, and spirits by the individual serving in conjunction with artistic or cultural exhibitions or performances.

(2) The nonprofit organization must be organized and operated for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs for viewing by the general public. See RCW 66.24.495(2) for specific organizational requirements.

(3) Alcohol sales and consumption may ~~((only))~~ occur in the seating areas during performances and in the lobby area and/or restricted bar area of the premises prior to the commencement of an exhibition or performance and during intermission.

~~((Alcohol is not allowed in the performance seating areas of the facility.))~~

(4) The annual fee for this license is two hundred fifty dollars.



Washington State  
**Liquor and Cannabis Board**

Date: December 16, 2015

To: Jane Rushford, Board Chair  
Ruthann Kurose, Board Member  
Russ Hauge, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Rick Garza, Agency Director  
Peter Antolin, Deputy Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director

Subject: **Approval of final rules (CR 103) to implement 2015 liquor legislation.**

At the Board meeting on December 16, 2015, the rules coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for rules to implement 2015 liquor legislation.

The Board was briefed on the rule making background and public comment for this rule making. An issue paper and text of the rules is attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments.

After sending this explanation, the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

_____ Approve	_____ Disapprove	_____	_____
		Jane Rushford, Chairman	Date
_____ Approve	_____ Disapprove	_____	_____
		Ruthann Kurose, Board Member	Date
_____ Approve	_____ Disapprove	_____	_____
		Russ Hauge, Board Member	Date

Attachment: Issue Paper

## Issue Paper

### 2015 Liquor Legislation Implementation

Date: September 9, 2015

Presented by: Karen McCall, Agency Rules Coordinator

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#### Description of the Issue

The purpose of this issue paper is to recommend that the Washington State Liquor and Cannabis Board (WSLCB) proceed with final rule making and adopt rules to implement 2015 liquor legislation.

#### Why is rule making necessary?

New rules and revisions to current rules are needed to implement the following legislation that passed during the 2015 legislative session:

- **HB 1004 Alcohol Tasting by Students**
- **HB 1342 Microbrewery Sale of Cider**
- **ESSHB 1807 Small Businesses Selling Spirits**
- **SSB 5280 Beer and cider Growlers in Grocery Stores**
- **E2SSB 5353 Allowances for WA Distilleries**
- **SSB 5504 Liquor Stocking by Distributors**
- **SSB 5596 Winery Special Permit**
- **SB 5662 Promotional Items to Special Occasion Licensees by Domestic Breweries and Microbreweries**

#### Public Comment

Two written comments were received on this rulemaking. No public comment was received at the public hearing held December 2, 2015.

#### What changes are being proposed?

**Amended Section. WAC 314-02-100 What is a grocery store?** Added requirements for beer and wine growler sales. (SSB 5280)

**Amended Section. WAC 314-02-104 Central warehousing.** Added requirements for spirits retail licensees having spirits product delivered to another spirits retail licensees premises. (ESSHB 1807)

**Amended Section. WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retail licensee?** Change the penalty amount on late payments from 2% to 1%. (ESSHB 1807)

**Amended Section. WAC 314-05-025 Application process for a special occasion license.** Changed the name of the board to liquor and cannabis board.

**New Section. WAC 314-05-035 Branded promotional items.** Created a rule to allow special occasion licensees to accept branded promotional items from domestic breweries and microbreweries and associated requirements. (SB 5662)

**Amended Section. WAC 314-12-140 Prohibited practices – Contracts – gifts – Rebates.** Added language allowing nonretail licensees employees between 18 and 21 years old to handle liquor under certain conditions and requirements. (SSB 5504)

**Amended Section. WAC 314-20-015 Licensed brewers – Retail sales of beer on brewery premises – Beer served without change on premises – Spirits, beer, and wine restaurant operation.** Added language allowing domestic breweries and microbreweries to sell cider produced by a domestic winery for on and off premises. Also included the allowance from past legislation allowing breweries and microbreweries to sell beer produced by another domestic brewery or microbrewery under certain conditions. (HB 1342)

**Amended Section. WAC 314-28-010 Records.** Changed the name of the board to liquor and cannabis board.

**New Section. WAC 314-28-095 Farmer’s market spirits sales.** Added language clarifying the conditions and requirements regarding spirits sales at farmer’s markets. (E2SSB 5353)

**New Section. WAC 314-28-100 Consumer orders, internet sales, and delivery for distillery and craft distillery licensees.** Created a rule clarifying the conditions and requirements for internet sales and delivery of spirits to customers by distillers and craft distillers. (E2SSB 5353)

**Amended Section. WAC 314-38-060 Special permit for technician or community colleges, regional university, or state university, as authorized by RCW 66.20.010 (12) shall be called a class 15 permit.** Revised rule to include regional university and state university. (HB 1004)

**New Section. WAC 314-38-080 Class 18 special winery permit.**

Created a rule clarifying the requirements for the new special winery permit.  
(SSB 5596)

**New Section. WAC 314-38-090 Class 19 special distillery permit.**

Created a rule clarifying the requirements for the new special distillery permit.  
(E2SSB 5353)

**WAC 314-02-104 Central warehousing.** (1) Each retail liquor licensee having a warehouse facility where they intend to receive wine and/or spirits must register their warehouse facility with the board and include the following information:

(a) Documentation that shows the licensee has a right to the warehouse property;

(b) If a warehouse facility is to be shared by more than one licensee, each licensee must demonstrate to the board that a recordkeeping system is utilized that will account for all wine and/or spirits entering and leaving the warehouse for each license holder. The system must also account for product loss;

(c) Licensees in a shared warehouse may consolidate their commitment for the amount of product they plan to order, but their orders must be placed separately and paid for by each licensee; and

(d) Alternatively, if the warehouse does not have a recordkeeping system that provides the required information, wine and/or spirits for each licensee in a shared warehouse must be separated by a physical barrier. Where physical separation is utilized, a sketch of the interior of the warehouse facility must be submitted indicating the designated area the licensee will be storing product. (Example: If ABC Grocery and My Grocery, each licensed to a different ownership entity, both lease space in a warehouse facility, the wine and/or spirits must be in separate areas separated by a physical barrier.)

(2) Spirits retail licensees may have spirits product delivered to their individual licensed premises, at any other spirits retail licensed premises, or at a warehouse facility registered with the board.

(a) Spirits retail licensees may negotiate a volume discount price with a spirits distributor to order spirits product as a group and have all product delivered to one spirits retail licensed premises.

(b) Spirits distributors may accept a group order for spirits and deliver to one spirits retail licensed premises and collect individual checks for payment from each spirits retail licensee that participated in the group order.

(c) Each spirits retail licensee will pick up their spirits product from the spirits retail licensed premises where the spirits product was delivered.

(3) Upon the request of the board, the licensee must provide any of the required records for review. Retail liquor licensees must keep the following records for three years:

(a) Purchase invoices and supporting documents for wine and/or spirits purchased;

(b) Invoices showing incoming and outgoing wine and/or spirits (product transfers);

(c) Documentation of the recordkeeping system in a shared warehouse as referenced in subsection (1)(b) of this section; and

(d) A copy of records for liquor stored in the shared warehouse.

~~((3))~~ (4) Each licensee must allow the board access to the warehouse for audit and review of records.

~~((4))~~ (5) If the wine and/or spirits for each licensee in a shared warehouse is not kept separate, and a violation is found, each licensee that has registered the warehouse with the board may be held accountable for the violation.

**WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retailer license?** (1) A spirits retailer must submit quarterly reports and payments to the board.

The required reports must be:

- (a) On a form furnished by the board;
- (b) Filed every quarter, including quarters with no activity or payment due;
- (c) Submitted, with payment due, to the board on or before the twenty-fifth day following the tax quarter (e.g., Quarter 1 (Jan., Feb., Mar.) report is due April 25th). When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and
- (d) Filed separately for each liquor license held.

(2) **What if a spirits retailer licensee fails to report or pay, or reports or pays late?** Failure of a spirits retailer licensee to submit its quarterly reports and payment to the board as required in subsection (1) of this section will be sufficient grounds for the board to suspend or revoke the liquor license.

A penalty of (~~two~~) one percent per month will be assessed on any payments postmarked after the twenty-fifth day quarterly report is due. When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.

**WAC 314-02-100 What is a grocery store license?** (1) Per RCW 66.24.360, a grocery store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred fifty dollars.

(3) In order to obtain and maintain a grocery store license, the premises must be stocked with an inventory of at least three thousand dollars wholesale value of food for human consumption, not including soft drinks, beer, or wine. This minimum inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained at the premises at all times the business is licensed, with the exception of:

(i) The beginning and closing inventory for seasonal operations; or

(ii) When the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) A grocery store licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(5) A grocery store licensee may sell beer and wine over the internet. See WAC 314-03-020 regarding internet sales and delivery.

(6) A grocery store applicant or licensee may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

(7) A grocery store applicant or licensee may apply for a beer and wine tasting endorsement which allows beer and wine tastings on the grocery store premises. The annual fee for this endorsement is two hundred dollars.

(8) A grocery store licensee may apply for an endorsement to sell beer and cider growlers.

(a) The licensee must have sales from beer and wine exceeding fifty percent of their total revenues or maintain an alcohol inventory of not less than fifteen thousand dollars.

(b) Beer and cider must be sold in sanitary containers provided by the purchaser, licensee or the manufacturer and filled by the employee at the time of purchase.

(c) The taps must be located behind a counter where only employees have access or the taps must have locks preventing use unless unlocked and operated by an employee.

(d) Only employees of the licensee are permitted to operate the taps.

(e) All employees operating a tap must hold a class 12 alcohol server permit.

(f) The cost for the endorsement is one hundred twenty dollars.

**WAC 314-05-025 Application process for a special occasion license.** (1) Special occasion applications normally take forty-five days to process. The liquor (~~control~~) and cannabis board may not be able to process your application in time for your event if you do not apply at least forty-five days before the event.

(2) Per RCW 66.24.010(8), when the liquor and cannabis board receives a special occasion application, it must send a notice to the local authority. The local authority has twenty days to respond with any input, and they may request an extension for good cause.

(3) The liquor (~~control~~) and cannabis board may run a criminal history check on the organization's officers and/or managers.

(4) The liquor (~~control~~) and cannabis board requires documentation to verify the organization is a (~~bona fide~~) bona fide nonprofit, who the true party(ies) of interest are in the organization, and that the organization meets the guidelines outlined in WAC 314-05-020 and 314-05-025.

(5) See chapter 314-07 WAC regarding possible reasons for denial of a special occasion license. Denials are subject to the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

**WAC 314-05-035 Branded promotional items.** (1) Nothing in RCW 66.28.305 prohibits a licensed domestic brewery or microbrewery from providing branded promotional items which are of nominal value, singly or in the aggregate, to a nonprofit charitable corporation or association, exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the Internal Revenue Code as it existed on the effective date of this section for use consistent with the purpose entitling it to such exemptions. Branded promotional items may not be targeted to or be especially appealing to youth.

(2) If the nonprofit charitable corporation or association applies for and receives a special occasion license, they are considered a liquor retailer and are required to comply with RCW 66.28.305. Branded promotional items:

(a) Must be used exclusively by the retailer in a manner consistent with its license;

(b) Must bear imprinted advertising matter of the industry member only, except imprinted advertising matter of the industry member can include the logo of a professional sports team which the industry member is licensed to use;

(c) May be provided by industry members only to retailers and their employees and may not be provided by or through retailers or their employees to retail customers; and

(d) May not be targeted to or be especially appealing to youth.

(3) An industry member is not obligated to provide such branded promotional items as a condition for selling alcohol to the retailer.

(4) Any industry member or retailer or any other person asserting the provision of branded promotional items as allowed in this section has resulted or is more likely than not to result in undue influence

or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria of this section, may file a complaint with the liquor and cannabis board. Upon receipt of a complaint, the liquor and cannabis board may conduct such investigation as it deems appropriate.

(a) The liquor and cannabis board may issue an administrative violation notice to the industry member, the retailer, or both.

(b) The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

**WAC 314-12-140 Prohibited practices—Contracts—Gifts—Rebates, etc.** (1) No industry member or retailer shall enter into any agreement which causes undue influence over another retailer or industry member. This regulation shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of liquor which are made in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(2) No industry member shall advance and no retailer, any employee thereof, or applicant for a retail liquor license shall receive money or money's worth under any written or unwritten agreement or any other business practice or arrangement such as:

- (a) Gifts;
- (b) Discounts;
- (c) Loans of money;
- (d) Premiums;
- (e) Rebates;
- (f) Free liquor of any kind; or

(g) Treats or services of any nature whatsoever except such services as are authorized in this regulation.

(3) Pursuant to RCW (~~66.28.010~~) 66.28.310 and 66.44.318 an industry member or licensed agent may perform the following services for a retailer:

(a) Build, rotate, and restock displays, utilizing filled cases, filled bottles or filled cans of its own brands only, from stock or inventory owned by the retailer.

(b) Rotate, rearrange or replenish bottles or cans of its own brands on shelves or in the refrigerators but is prohibited from rearranging or moving displays of its products in such a manner as to cover up, hide or reduce the space of display of the products of any other industry member.

(c) Industry members or any employees thereof may move or handle in any manner any products of any other manufacturer, importer or distributor on the premises of any retail licensee when a two-day notice is given to other interested industry members or their agents and such activity occurs during normal business hours or upon hours that are mutually agreed.

(d) Provide price cards and may also price goods of its own brands in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(e) Provide point of sale advertising material and brand signs.

(f) Provide sales analysis of beer and wine products based on statistical sales data voluntarily provided by the retailer involved for the purpose of proposing a schematic display for beer and wine products. Any statistical sales data provided by retailers for this purpose shall be at no charge.

(g) Such services may be rendered only upon the specific approval of the retail licensee. Displays and advertising material installed or supplied for use on a retailer's premises must be in conformity with the board's advertising rules as set forth in chapter 314-52 WAC.

(h) Licensees holding nonretail class liquor licenses are permitted to allow their employees between the ages of eighteen and twenty-one to stock, merchandise, and handle liquor on or about the:

(i) Nonretail premises if there is an adult twenty-one years of age or older on duty supervising such activities on the premises; and  
(ii) Retail licensee's premises, except between the hours of 11:00 p.m. and 4:00 a.m., as long as there is an adult twenty-one years of age or older, employed by the retail licensee, and present at the retail licensee's premises during the activities.

Any act or omission of the nonretail class liquor licensee's employee occurring at or about the retail licensee's premises, which violates any provision of this title, is the sole responsibility of the nonretail class liquor licensee.

(4) No industry member or employee thereof shall, directly or indirectly, give, furnish, rent or lend to, or receive from, any retailer, any equipment, fixtures, supplies or property of any kind, nor shall any retail licensee, directly or indirectly, receive, lease or borrow from, or give or offer to, any industry member any equipment, fixtures, supplies or property of any kind. Sales authorized in this regulation shall be made on a cash on delivery basis only.

(5) No industry member or employee thereof shall sell to any retail licensee or solicit from any such licensee any order for any liquor tied in with, or contingent upon, the retailer's purchase of some other beverage, alcoholic or otherwise, or any other merchandise, property or service.

(6) In selling equipment, fixtures, supplies or commodities other than liquor, no industry member shall grant to any retailer, nor shall such retailer accept, more favorable prices than those extended to nonlicensed retailers. The price thereof shall be not less than the industry member's cost of acquisition. In no event shall credit be extended to any retailer.

(7) Any industry member who sells what is commonly referred to as heavy equipment and fixtures, such as counters, back bars, stools, chairs, tables, sinks, refrigerators or cooling boxes and similar articles, shall immediately after making any such sales have on file and available for inspection, records including a copy of the invoice covering each such sale, which invoice shall contain the following information:

(a) A complete description of the articles sold;

(b) The purchase price of each unit sold together with the total amount of the sale;

(c) Transportation costs and services rendered in connection with the installation of such articles; and

(d) The date of such sale and affirm that full cash payment for such articles was received from the retailer as provided in subsection (4) of this section.

(8) If the board finds in any instance that any licensee has violated this regulation, then all licenses involved shall be held equally responsible for such violation.

Note: WAC 314-12-140 is not intended to be a relaxation in any respect of section 90 of the Liquor Act (RCW 66.28.010). As a word of caution to persons desiring to avail themselves of the opportunity to sell to retail licensees fixtures, equipment and supplies subject to the conditions and restrictions provided in section 90 of the act and the foregoing regulation, notice is hereby given that, if at any time such privilege is abused or experience proves that as a matter of policy it should be further curtailed or eliminated completely, the board will be free to impose added restrictions or to limit all manufacturers and distributors solely to the sale of liquor when dealing with retail licensees. WAC 314-12-140 shall not be considered as granting any vested right to any person, and persons who engage in the business of selling to retail licensees property or merchandise of any nature voluntarily assume the risk of being divested of that privilege and they will undertake such business subject to this understanding. The board also cautions that certain trade practices are prohibited by rulings issued under the Federal Alcohol Administration Act by the United States Bureau of Alcohol, Tobacco and Firearms, and WAC 314-12-140 is not intended to conflict with such rulings or other requirements of federal law or regulations.

**WAC 314-20-015 Licensed brewers—Retail sales of beer on brewery premises—Beer served without charge on premises—Spirit, beer and wine restaurant operation.**

(1) A licensed brewer (~~((holding a proper retail license, pursuant to chapter 66.24 RCW,))~~) may sell:

(a) Beer of its own production at retail on the brewery premises(~~([.])~~);

(b) Beer produced by another microbrewery or a domestic brewery for on- and off-premises consumption from its premises as long as the other breweries brands do not exceed twenty-five percent of the microbrewery's on-tap offering of its own brands. Beer not of its own production must be purchased through normal distribution channels; and

(c) Cider produced by a domestic winery. Cider must be purchased through normal distribution channels.

(2) In selling beer and/or cider at retail, as provided in subsection (1) of this (~~((regulation))~~) section, a brewer shall conduct such operation in conformity with the statutes and regulations applicable to holders of such beer and/or wine retailers' licenses. The brewer shall maintain records of such retail operation separate from other brewery records.

(3) Upon written authorization of the board, pursuant to RCW 66.04.011, beer of a licensed brewer's own production may be consumed in designated parks and picnic areas adjacent to and held by the same ownership as the licensed brewer.

(4) A licensed brewer or a lessee of a licensed brewer operating a spirit, beer and wine restaurant, licensed pursuant to RCW 66.28.010, shall conduct such operation in conformity with the statutes and regulations which apply to holders of such spirit, beer and wine restaurant licenses.

(5) A brewer may serve its own beer and beer not of its own production without charge on the brewery premises, as authorized by RCW 66.28.040.

(6) No retail license or fee is required for the holder of a brewer's license to serve beer without charge on the brewery premises as set forth in subsection (5) of this (~~((regulation))~~) section. Before exercising this privilege, however, such brewer shall obtain approval of the proposed service area and facilities from the board. Such brewer shall maintain a separate record of all beer so served.

(7) A brewery is required to obtain the appropriate retail license to sell beer, wine, or spirits on the brewery premises that is not of its own production except as set forth in subsection (1) of this section pursuant to RCW 66.24.244.

AMENDATORY SECTION (Amending WSR 14-03-078, filed 1/15/14, effective 2/15/14)

**WAC 314-38-060 Special permit for technical or community colleges, regional university, or state university as authorized by RCW 66.20.010(12) shall be called a class 15 permit.** (1) The class 15 permit allows tasting of alcohol by persons between eighteen and twenty years old. The requirements for a class 15 permit are as follows:

(a) The permit applicant is a technical or community college, regional university, or state university;

(b) The permit allows tasting, not consuming of alcohol as part of the class curriculum with approval of the educational provider;

(c) The student must be enrolled in a required or elective class at the college premises as part of a culinary, sommelier, wine business, enology, viticulture, beer technology, wine technology, or spirituous technology-related degree program;

(d) The alcohol served to any person in the program under twenty-one years of age is tasted but not consumed for the purpose of educational training as part of the class curriculum with the approval of the educational provider;

(e) Faculty or staff of the educational provider must be at least twenty-one years of age, supervise the service and tasting, and hold a class 12 or class 13 alcohol server permit; and

(f) Students may not purchase the alcoholic beverages.

(2) There is no annual fee for this permit.

NEW SECTION

**WAC 314-38-080 Class 18 special winery permit.** (1) The special winery permit is for domestic wineries.

(2) A special winery permit allows a manufacturer of wine to have a private event not open to the general public at a specific place and date for the purpose of tasting wine and selling wine of its own production for off-premises consumption.

(3) The activities at the event are limited to the activities allowed on the winery premises.

(4) The winery must obtain the special permit by submitting an application for a class 18 special winery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

(5) The winery is limited to twelve events per calendar year.

NEW SECTION

**WAC 314-38-090 Class 19 special distillery permit.** (1) A special distillery/craft distillery permit is for Washington distillers only.

(2) A special distillery/craft distillery permit allows a manufacturer of spirits to have a private event not open to the general public at a specific place and date for the purpose of tasting spirits and selling spirits of its own production for off-premises consumption.

(3) The activities at the event are limited to the activities allowed on the distillery/craft distillery premises.

(4) The distillery or craft distillery must obtain the special permit by submitting an application for a class 19 special distillery/craft distillery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

(5) The licensee is limited to twelve events per calendar year.



# PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with RCW 34.05.330, the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at <http://apps.leg.wa.gov/wac/default.aspx?cite=82-05>.

### CONTACT INFORMATION (please type or print)

Petitioner's Name JOHN WORTHINGTON

Name of Organization \_\_\_\_\_

Mailing Address 4500 SE 2ND PL

City RENTON State WA Zip Code 98059

Telephone 425-917-2235 Email worthingtonjw2u@hotmail.com

### COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: <http://www.leg.wa.gov/CodeReviser/Documents/RClis.htm>.

### INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: WASHINGTON STATE LIQUOR CONTROL BOARD

1. NEW RULE - I am requesting the agency to adopt a new rule.

The subject (or purpose) of this rule is: \_\_\_\_\_

The rule is needed because: THE RULES FOR I-502 ARE INVALID BECAUSE THE WSLCB VIOLATED RCW 34.05

The new rule would affect the following people or groups: CANNABIS USERS

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: \_\_\_\_\_

I am requesting the following change: \_\_\_\_\_

This change is needed because: \_\_\_\_\_

The effect of this rule change will be: \_\_\_\_\_

The rule is not clearly or simply stated: \_\_\_\_\_

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: ALL I-502 WAC'S AND RULES. ITEMIZED IN ATTACHED THE MEMORANDUM

*(Check one or more boxes)*

It does not do what it was intended to do.

It is no longer needed because: \_\_\_\_\_

It imposes unreasonable costs: \_\_\_\_\_

The agency has no authority to make this rule: \_\_\_\_\_

It is applied differently to public and private parties: \_\_\_\_\_

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: \_\_\_\_\_

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: \_\_\_\_\_

Other (please explain): THE RULES ARE INVALID PURSUANT TO RCW 34.05.375.



**Topic: Petition for Rulemaking to repeal current marijuana rules**

**Date: December 16, 2015**

**Presented by: Karen McCall**

**Problem or Opportunity**

A petition for rulemaking was submitted by John Worthington, a private citizen. Mr. Worthington is requesting the board repeal all current rules adopted to implement Initiative 502. Mr. Worthington feels the board did not achieve the policy goals in Initiative 502. Mr. Worthington also feels the board violated RCW 35.05.375 which covers rulemaking procedures. He asserts that other agencies worked on rules that affect marijuana, but that the work of those agencies is not reflected in the Board’s rulemaking file. Materials sent with the petition refer to a “partnership” and that the Board “conducted rulemaking” with various entities that was not identified in the rulemaking file.

**Background**

The current rules for recreational marijuana are found in chapter 314-55 WAC. The board adopted the original rules to implement Initiative 502 in October, 2013. Since then several revisions to those rules and new rules have been adopted. Mr. Worthington submitted several hundred pages of attachments to his petition for rulemaking. All pages were provided to the board members for review. The actual petition for rulemaking is attached to this issue paper for your review.

**Recommendation**

Director’s Office staff recommends the board deny the petition for rulemaking for the following reasons:

- The Petition does not object to the substance of any particular rule, but only to the Board’s rule adoption process and alleged effect of the rules. Staff believes the proper rulemaking processes were followed and the rules properly implement the initiative.

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Jane Rushford, Chairman      Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Ruthann Kurose, Board Member      Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Russ Hauge, Board Member      Date



## Washington State Liquor and Cannabis Board Meeting

Wednesday, December 16, 2015, 2016, 10:00 a.m.  
LCB Headquarters - Boardroom  
3000 Pacific Avenue SE, Olympia WA 98501

### Meeting Minutes

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#### 1. CALL TO ORDER

Acting Chair Russ Hauge called the regular meeting of the Washington State Liquor Control Board to order at 10:00 a.m. on Wednesday, December 16, 2015. Member Ruthann Kurose was present on the phone.

#### 2. EMPLOYEE ANNOUNCEMENTS

A. Public Service Recognitions –Mike Kashmar, Chief Financial Officer, recognized Shelly Reisher, Fiscal Analyst, for 25 years of state service. She began her career as a clerk typist in 1990 with DSHS. She promoted and worked for Dept. of Natural Resources from 1992 to 1998. In 1998 she transferred to Dept. of Ecology. Shelly promoted to WSLCB in 2011. She enjoys the coworkers at WSLCB and is reliable, organized, efficient and pleasant to work with. Congratulations Shelly for your 25 years of service.

B. Employee Retirement – Chief Justin Nordhorn presented LT Gallegos with his badge on a plaque and a retirement letter from Governor Inslee.

Frank was hired by the Board as a liquor enforcement officer in 1995, after retiring from LA PD. He actually worked as a temporary in 1992 five months, and obviously liked it, as he came back for another 20 years. He began working in the Everett Office and continued on the Snohomish county team until he was promoted to lieutenant in Region 2 (Seattle) in August 2007. In May of 2012 he returned to Region 3 to run Northeast King County.

Frank is a quiet leader, with a strong work ethic. He is a worker focused on public safety with humility – his team recognizes this and reacts in kind to keep their communities safer. Frank has a special talent of finding high-risk areas that minors and intoxicated persons are attempting to get alcohol and targeting those areas for enforcement. There is little doubt that during his career, Frank wrote more MIPs than any other LCB officers in the state.

Frank will be tough to replace and we wish him well in his retirement.

C. Swearing In of New Officers – Chief Justin Nordhorn - Presenter

Chief Nordhorn swore in the following officers:

Officer Jonathan Miller  
Region 2 – Federal Way  
Start Date: October 5, 2015

Jonathan Miller came to the LCB from the Pierce County Police Department and has a bachelor's degree in business management from the Washington State University. He joined the King County team and is assigned to the Federal Way office.

Officer Austin Shively  
Start Date: January 5, 2015  
Academy start date: February 2015  
Academy Graduation June 30, 2015  
Retail – Pasco Enforcement Office

Officer Justin Pattison  
Start Date: January 5, 2015  
Academy start date: February 2015  
Academy Graduation June 30, 2015  
Region 1 – Olympia Enforcement Office

Officer Jon Christner  
Start Date: April 1, 2015  
Academy start date: May 2015  
Academy Graduation – October 21, 2015  
Region 4 – Spokane Enforcement Office

Officer Garrett Marvin  
Start Date: June 1, 2015  
Academy start date: May 2015  
Academy Graduation – October 21, 2015  
Region 4 – Spokane Enforcement Office

Officer Terry Jones  
Start Date: May 4, 2015  
Academy start date: July 2015  
Academy Graduation – November 25, 2015  
Region 1 – Tacoma Enforcement Office

He then congratulated all of the officers and noted their fantastic work. He also acknowledged their friends and family who were in the audience to support them.

The Board also congratulated the officers and thanked Chief Nordhorn for his dedication.

### **3. ACTION ITEMS (A-D)**

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUT(S) 3A 1-3, 3B 1-3, 3C 1-8, 3D 1-2).

#### **A. ACTION ITEM 3A - Board Approval of (CR 102) for B/W Gift Delivery Internet Sales**

##### Proposed Changes

New Section. WAC 314-03-040 Consumer orders, internet sales, and delivery for beer and/or wine gift delivery licenses. Created a new rule clarifying the requirements for a beer and/or wine gift delivery licensee to sell over the internet and delivery beer and wine to their customers.

#### Timeline

If approved for filing, the tentative timeline for the rule making process is outlined below:

- January 20, 2016 - Code Reviser publishes notice, LCB sends notice to rules distribution list
- February 10, 2016 - End of written comment period
- February 10, 2016 - Public Hearing
- February 24, 2016 – Ask Board to adopt rules
- February 24, 2016 - Agency sends notice to those who commented both at the public hearing and in writing
- If the Board adopts the rule it will become effect March 26, 2016 (31 days after filing)

Ms. McCall then requested approval from the Board to file proposed rules.

**MOTION:** Member Ruthann Kurose moved to approve the filing of proposed rules (CR 102) for B/W Gift Delivery Internet Sales.

**SECOND:** Acting Chair Russ Hauge seconded.

**ACTION:** Motion passed unanimously.

#### **B. ACTION ITEM 3B - Board Adoption of (CR-103) for Non-Profit Arts Organization Licenses**

##### Comments

Two written comments were received in support of this rule revision. No comments were received at the public hearing held on December 2, 2015.

##### Proposed Changes

Amended Section. WAC 314-02-090 Non-Profit Arts Organization License. Language has been added to allow consumption in the seating areas during performances

Ms. McCall then requested the Board adopt CR-103 for Non-Profit Arts Organization Licenses.

**MOTION:** Member Ruthann Kurose moved adoption CR 103 for Non-Profit Arts Organization Licenses

**SECOND:** Acting Chair Russ Hauge seconded.

**ACTION:** Motion passed unanimously.

#### **C. ACTION ITEM 3C - Board Adoption of (CR 103) for Rules to Implement 2015 Liquor Legislation**

##### Comments

New rules and revisions to current rules are needed to implement the following legislation that passed during the 2015 legislative session:

- HB 1004 Alcohol Tasting by Students

- HB 1342 Microbrewery Sale of Cider
- ESSHB 1807 Small Businesses Selling Spirits
- SSB 5280 Beer and cider Growlers in Grocery Stores
- E2SSB 5353 Allowances for WA Distilleries
- SSB 5504 Liquor Stocking by Distributors
- SSB 5596 Winery Special Permit
- SB 5662 Promotional Items to Special Occasion Licensees by Domestic Breweries and Microbreweries

Proposed Changes

Amended Section. WAC 314-02-100 What is a grocery store? Added requirements for beer and wine growler sales. (SSB 5280)

Amended Section. WAC 314-02-104 Central warehousing. Added requirements for spirits retail licensees having spirits product delivered to another spirits retail licensees premises. (ESSHB 1807)

Amended Section. WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retail licensee? Change the penalty amount on late payments from 2% to 1%. (ESSHB 1807)

Amended Section. WAC 314-05-025 Application process for a special occasion license. Changed the name of the board to liquor and cannabis board.

New Section. WAC 314-05-035 Branded promotional items. Created a rule to allow special occasion licensees to accept branded promotional items from domestic breweries and microbreweries and associated requirements. (SB 5662)

Amended Section. WAC 314-12-140 Prohibited practices – Contracts – gifts – Rebates. Added language allowing nonretail licensees employees between 18 and 21 years old to handle liquor under certain conditions and requirements. (SSB 5504)

Amended Section. WAC 314-20-015 Licensed brewers – Retail sales of beer on brewery premises – Beer served without change on premises – Spirits, beer, and wine restaurant operation. Added language allowing domestic breweries and microbreweries to sell cider produced by a domestic winery for on and off premises. Also included the allowance from past legislation allowing breweries and microbreweries to sell beer produced by another domestic brewery or microbrewery under certain conditions. (HB 1342)

Amended Section. WAC 314-28-010 Records. Changed the name of the board to liquor and cannabis board.

New Section. WAC 314-28-095 Farmer's market spirits sales. Added language clarifying the conditions and requirements regarding spirits sales at farmer's markets. (E2SSB 5353)

New Section. WAC 314-28-100 Consumer orders, internet sales, and delivery for distillery and craft distillery licensees. Created a rule clarifying the conditions and requirements for internet sales and delivery of spirits to customers by distillers and craft distillers. (E2SSB 5353)

Amended Section. WAC 314-38-060 Special permit for technician or community colleges, regional university, or state university, as authorized by RCW 66.20.010 (12) shall be called a class 15 permit. Revised rule to include regional university and state university. (HB 1004)

New Section. WAC 314-38-080 Class 18 special winery permit. Created a rule clarifying the requirements for the new special winery permit. (SSB 5596)

New Section. WAC 314-38-090 Class 19 special distillery permit.

Created a rule clarifying the requirements for the new special distillery permit. (E2SSB 5353)

Ms. McCall then requested the Board Adoption of (CR 103) for Rules to Implement 2015 Liquor Legislation.

MOTION: Member Ruthann Kurose moved adoption CR 103 Rules to Implement 2015 Liquor Legislation.

SECOND: Acting Chair Russ Hauge seconded.

ACTION: Motion passed unanimously.

**D. ACTION ITEM 3D Board Decision on Petition for Rulemaking to Repeal Marijuana Rules  
Problem or Opportunity**

A petition for rulemaking was submitted by John Worthington, a private citizen. Mr. Worthington is requesting the board repeal all current rules adopted to implement Initiative 502. Mr. Worthington feels the board did not achieve the policy goals in Initiative 502. Mr. Worthington also feels the board violated RCW 35.05.375 which covers rulemaking procedures. He asserts that other agencies worked on rules that affect marijuana, but that the work of those agencies is not reflected in the Board's rulemaking file. Materials sent with the petition refer to a "partnership" and that the Board "conducted rulemaking" with various entities that was not identified in the rulemaking file.

Background

The current rules for recreational marijuana are found in chapter 314-55 WAC. The board adopted the original rules to implement Initiative 502 in October, 2013. Since then several revisions to those rules and new rules have been adopted. Mr. Worthington submitted several hundred pages of attachments to his petition for rulemaking. All pages were provided to the board members for review. The actual petition for rulemaking is attached to this issue paper for your review.

Recommendation

Director's Office staff recommends the board deny the petition for rulemaking for the following reasons:

- The Petition does not object to the substance of any particular rule, but only to the Board's rule adoption process and alleged effect of the rules. Staff believes the proper rulemaking processes were followed and the rules properly implement the initiative.

MOTION: Member Ruthann Kurose moved to deny the petition.

SECOND: Acting Chair Russ Hauge seconded.

ACTION: Petition is disapproved.

**4. ADDITIONAL BUSINESS**

WSLCB staff recommendation on marijuana retail cap – Becky Smith, Licensing & Regulation Director

Beck Smith provided a summary of where we have been and where we are heading in the future. In September 2013 we identified the number of allocations for retail stores using our census data. On October 16, 2013 the board adopted rules including lottery and licensing cap. We licensed those retail stores at 334. On September 23, 2015 the board adopted emergency rules to remove the lottery language and the cap from retail stores. We did state at that time that we would be moving forward with redoing a cap, but it was important we start that process. It takes a number of months to license an applicant and we wanted to make sure that as of July 2016 we had enough retail stores to ensure patients had access. The WSLCB began accepting license applications on Oct. 12, 2015. Thus far, the WSLCB has received 1,194 retail applications. Of those who have applied, 39 have been determined as priority one and 42 have been determined as priority two. Applicants must still meet all other WSLCB licensing criteria before being licensed.

Following an analysis of the entire marijuana marketplace in Washington State, the Washington State Liquor and Cannabis Board (WSLCB) has a recommendation to increase the number of retail marijuana stores from the current cap of 334 to a new cap of 556. The methodology for the cap will be part of emergency rules which will be announced Jan. 6, 2016. The allocation of retail licenses determined by the board will be published on the WSLCB website at [lcb.wa.gov](http://lcb.wa.gov).

Earlier this year the legislature enacted, and Gov. Inslee signed, legislation (SSB 5052) entitled the Cannabis Patient Protection Act. The new law charges the WSLCB, the state Department of Health and other agencies with drafting regulations that integrate the medical marijuana marketplace into the tightly controlled recreational marketplace. The WSLCB is charged with licensing retail applicants using a priority-based system.

BOTEC Analysis Corporation provided its final report, estimating the Size of the Medical Cannabis Market in Washington State, on Dec. 15, 2015. In its report, BOTEC provided a range of the value of the overall marijuana market in Washington State. Its best estimate of the overall market value is a median figure at \$1.3 billion annually. Its best estimate on the breakdown is: \$480M medical (37 percent of market), \$460M state-licensed recreational stores (35 percent of market) and \$390M illicit (28 percent of the market). BOTEC estimates that there are 331 marijuana dispensaries across the state. The majority of those in the populated centers around the state. Their report indicates the highest need of marijuana in ten counties.

The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large.

WSLCB recommendation is to increase the number of available licenses in the ten counties with the highest medical sales by 100 percent. Exceptions include Yakima and Benton Counties which have bans and moratoria in all major population centers. The 100 percent increase will transfer to the next two

highest for medical needs, Skagit and Cowlitz Counties. Those counties and jurisdictions not in the top ten for medical sales will receive an increase of the number of licensees by 75 percent. The new cap does respect the will of 35 local jurisdictions that have implemented moratorium and ban. So did not increase the number of licenses in those areas.

In addition to new retail licensees, 70 percent of existing retail recreational marijuana stores have received an endorsement on their license to sell medical marijuana.

Becky Smith and other WSLCB staff will be available for questions following the meeting.

The board thanked Becky Smith for providing the report.

## 5. ADDITIONAL BUSINESS

Acting Chair Russ Hauge then invited citizens to address the Board regarding any issues related to LCB business.

### John Worthington - Citizen

Mr. Worthington said he has filed a public records request in the past and feels documents were missing from the rule making file.

### Micah Anderson - Citizen

Mr. Anderson said that distribution of cannabis has not been decriminalized and wanted to inform the board that WSLCB is violating state laws.

## ADJOURN

Acting Chair Russ Hauge adjourned the meeting at 10:38.

Minutes approved this 13 day of January, 2016

Not Present  
Jane Rushford  
Board Chair

Ruthann Kurose  
Ruthann Kurose  
Board Member

Russ Hauge  
Russell Hauge  
Board Member

Minutes prepared by: Lisa Faker, Executive Assistant to the Board.

**LCB Mission** - Promote public safety and trust through fair administration and enforcement of liquor, tobacco and marijuana laws.

Complete meeting packets are available online: [http://lcb.wa.gov/boardmeetings/board\\_meetings](http://lcb.wa.gov/boardmeetings/board_meetings)  
For questions about agendas or meeting materials you may email [lisa.faker@lcb.wa.gov](mailto:lisa.faker@lcb.wa.gov) or call 360.664.1717

## APPENDIX C.

WSR 13-18-086 [Filed September 4, 2013, 11:39 a.m.]

WAC 314-55-020:

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

WSR 13-14-124 [Filed July 3, 2013, 11:39 a.m.]

WAC 314-55-020:

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

WSR 14-21-103 [Filed October 15, 2014, 12:02 p.m.]

WAC 314-55-020:

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of

the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

WSR 15-08-035 [Filed March 25, 2015, 10:57 a.m.]

WAC 314-55-020

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

WSR 15-19-166 [Filed September 23, 2015, 11:21 a.m.]

WAC 314-55-020

~~((8))~~ (11) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the ~~((board))~~ WSLCB. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

~~((9))~~ (12) As part of the application process, each applicant must submit in a format supplied by the ~~((board))~~ WSLCB an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

## APPENDIX D:

WSR 16-02-128 [Filed January 6, 2016, 11:22 a.m.]

WAC 314-55-081

(1) The WSLCB may accept applications for marijuana retail licenses at time frames published on its web site at [lcb.wa.gov](http://lcb.wa.gov). Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the ((liquor control board)) WSLCB will determine the maximum number of marijuana retail locations per county.

The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county((. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated. Once the number of locations per city and at large have been identified, the eligible applicants will be selected by lottery in the event the number of applications exceeds the allotted amount for the cities and county. Any lottery conducted by the board will be witnessed by an independent third party)) and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated.

(2) The number of ((marijuana)) retail licenses determined by the board can be found on the ((liquor control board)) WSLCB web site at (([www.liq.wa.gov](http://www.liq.wa.gov))) [lcb.wa.gov](http://lcb.wa.gov).

(3) Any entity and/or principals within any entity are limited to no more than three retail marijuana licenses ((with no multiple location licensee allowed more than thirty-three percent of the allowed licenses in any county or city.

(4) The board will initially limit the opportunity to apply for a marijuana retailer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana retailer license application to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana retailer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary).



## Washington State Liquor Control Board

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### Changes in Proposed Rules

September 4, 2013

On July 3, 2013, the Washington State Liquor Control Board (WSLCB) filed proposed rules with the state code reviser (CR 102). The Board held five public hearings across the state and solicited public input on its proposed rules. Based on public comments, the Board chose to revise its rules. The Board will file revised rules on September 4, 2013 (Supplemental CR 102).

Below are the top revisions (no particular order) that the LCB has made to the rules based on public input and continued research and discussion.

#### Production Limits

- Added language that limits the total amount of marijuana to be produced at 40 metric tons
- Added language that sets the maximum amount of space for marijuana production at two million square feet

#### Production Tiers

- Added language that creates three production tiers based on square footage:
  - Tier 1 – less than 2000 square feet
  - Tier 2 – 2000 to 10,000 square feet
  - Tier 3 – 10,000 to 30,000 square feet

#### Market Control Limits

- Limited any entity and/or principals within any entity to three producer or processor licenses.
- Limited any principal and or entity to no more than three retail licenses with no multiple location licensee allowed more than 33 percent of the allowed licenses in any county or city

#### On-Site Product Limits

- Established the maximum amount of marijuana allowed on a producer licensee's premises at any time based on the type of grow operation (indoor, outdoor, greenhouse).
  - Producer License
    - Outdoor or greenhouse: 125 percent of year's harvest
    - Indoor: Six months of its annual harvest
  - Processor License
    - Six months of their average useable marijuana (plant material); and
    - Six months average of their total production (finished product)
  - Retailer License
    - Four months of their average inventory

#### Retail Stores

- A maximum of 334 retail stores will be allowed in the system
- Stores locations are allocated based on population and consumption data

### **1,000 Foot Buffer**

- Changed the way the 1,000 foot buffer is measured to “along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business locations to the perimeter of the grounds of the entities listed.”

### **Samples**

- Limited free samples are allowed between producers, processors and retailers for the purpose of negotiating a sale. Samples are not allowed to be given to retail customers.

### **Tightened Definitions**

- Added a definition for “plant canopy” to clarify what area is considered in the square footage calculation for marijuana producers”
- Revised the definition of “Public Park” to include parks owned or managed by a metropolitan park district. Clarified that trails are not included in the definition of “Public Park”
- Revised the definition of “recreation center or facility.” Added the language “owned and/or managed by a charitable non-profit organization, city, county, state, or federal government”

### **Advertising**

- Added language requiring all advertising and labels of useable marijuana and marijuana infused products sold in the state of Washington may not contain any statement or illustration that:
  - Is false or misleading;
  - Promotes overconsumption;
  - Represents the use of marijuana has curative or therapeutic effects;
  - Depicts a child or other persons under legal age to consume marijuana, or includes:
    - Objects such as toys, characters or cartoon characters suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume marijuana; or
    - Is designed in any manner that would be especially appealing to children or other persons under legal age.
- All advertising of any kind must contain the following warnings:
  - “This product has intoxicating effects and may be habit forming”; and
  - “Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.”

For more information regarding Initiative 502, please visit the Liquor Control Board website at [www.liq.wa.gov](http://www.liq.wa.gov).

###

# Marijuana Licensing - Things to know

Apply for your marijuana business license November 18 through December 20, 2013 at the Business Licensing Service (<http://bls.dor.wa.gov/index.aspx>) web page.

Marijuana licenses **are not** distributed on a first come, first served basis. All applications received or postmarked by December 20, 2013 will be reviewed. Applications submitted after December 20 will be returned.

## **Is there anything I should do now?**

If you are forming a corporation or limited liability company (LLC), you must register with the Washington Secretary of State's (SOS) office (<http://www.sos.wa.gov/corps/>). Register now. The Liquor Control Board (LCB) will not issue a license to a corporation or LLC that is not registered with SOS as a domestic entity. Be sure to include the UBI number issued by the Secretary of State for all license applications and filings. (note: Secretary of State filing fee's are non-refundable and all information received by SOS is public record)

## **How do I apply for a marijuana business license?**

To apply for a marijuana business license, you must file a completed:

- Business license application
- Marijuana license addendum (available November 18, 2013)

You must also pay all required application fees and your license application must be approved by the Washington State Liquor Control Board (LCB).

## **How do I file?**

The fastest and easiest way to file an application is online.

- **Online:**

On November 18, a link to the application will appear on the Business Licensing Service (<http://bls.dor.wa.gov/index.aspx>) web page. Pay using E-check of a MasterCard, Visa, or American Express credit or debit card. (Gift cards and refillable cards cannot be used.)

- **By mail:**

The paper application will be available on Business Licensing Service (<http://bls.dor.wa.gov/index.aspx>) November 18. Applications must be postmarked no later than December 20, 2013. Pay by check or money order only.

- **In person:**

The paper application will be available on this web page and at Department of Revenue offices starting November 18. You can drop it off, along with payment, at any Department of Revenue office. Pay by cash, check or money order only.

## What will it cost?

All license applications must include:

- A **\$250 nonrefundable** fee for each marijuana endorsement you apply for (producer, processor, or retailer).
- A **\$19 nonrefundable** fee for filing the business license application.
- A **\$5 nonrefundable** fee for each trade name you register.

Depending on your business, other fees (some or all nonrefundable) may also apply, such as:

- A weighing and measuring device fee if you are determining the amount to charge based on weight
- City license fee

## What are my risks?

If you aren't approved for a license by LCB, you will lose any nonrefundable fees.

The number of retailer licenses is limited; if too many apply, a lottery will be held for the eligible applicants. There are no limits on the number of producer or processor licenses available.

## What else do I need to know?

You should know:

- Why the Liquor Control Board may deny an application ([http://liq.wa.gov/mjlicense/license\\_approval\\_or\\_denial](http://liq.wa.gov/mjlicense/license_approval_or_denial)).
- Whether the local jurisdiction at your business location will allow marijuana businesses. Contact your local jurisdiction (<http://www.mrsc.org/byndmrsc/cities.aspx>).
- The distance restrictions ([http://liq.wa.gov/mjlicense/distance\\_from\\_restricted\\_entities](http://liq.wa.gov/mjlicense/distance_from_restricted_entities)) for your business location.
- The number of marijuana retailer licenses available in any city or county is limited. If the number of applications exceeds the licenses available, the Liquor Control Board will hold a lottery (<http://liq.wa.gov/mjlicense/lottery>) for the eligible applicants.
- That no individual (principal) or business (entity) may have more than three marijuana licenses. Also, no individual or business can hold more than 33 percent of the retail licenses in any county or city that is allocated three or more licenses.
- Retail marijuana licenses cannot be combined with producer or processor licenses. However, one owner may have both a producer and a processor license.

- The LCB will approve or deny all completed applications submitted on time.
- Information regarding medicinal marijuana can be found on [Department of Health's website \(http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/MedicalMarijuanaCannabis/GeneralFrequentlyAskedQuestions.aspx\)](http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/MedicalMarijuanaCannabis/GeneralFrequentlyAskedQuestions.aspx).

### **When will the LCB begin issuing licenses?**

There is no timeline established for the issuance of licenses. Visit the [LCB I-502 web page \(http://liq.wa.gov/marijuana/I-502\)](http://liq.wa.gov/marijuana/I-502) or join the [LCB listserv \(http://liq.wa.gov/marijuana/email-notifications\)](http://liq.wa.gov/marijuana/email-notifications) for the latest information.

### **What happens if I am approved for a marijuana license?**

You will receive an electronic billing statement requesting payment of the \$1,000 license fee for each license. Applicants approved for both a processor and producer license will need to pay \$2,000. This covers the license fee(s) for your first year of operation.

### **See also:**

- [Get licensing contact info and forms \(http://bls.dor.wa.gov/licensing.aspx\)](http://bls.dor.wa.gov/licensing.aspx)
- [File a Business License Application \(http://bls.dor.wa.gov/file.aspx\)](http://bls.dor.wa.gov/file.aspx)



[Washington State Business Resource Guide \(http://ora.wa.gov/business.asp\)](http://ora.wa.gov/business.asp)

-  [Plan for and pay your taxes: A new businesses' introduction to Washington State taxes \(http://business.wa.gov/tax\\_video.aspx\)](http://business.wa.gov/tax_video.aspx) (Department of Revenue video)

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**CERTIFICATE OF SERVICE**

I certify that on this date, I sent for delivery a true and correct copy of the document to which is affixed by the method indicated below and addressed to the following:

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DATED: October 16th, 2017

SIGNED By:



Ryan R. Agnew, WSBA #43668

**THE LAW OFFICE OF RYAN R. AGNEW PS**

**October 16, 2017 - 3:03 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50090-6  
**Appellate Court Case Title:** Puget Sound Group, LLC, et al., Appellants v. WA State Liquor & Cannabis Bd,  
et al., Respondents  
**Superior Court Case Number:** 16-2-00477-3

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