



Washington State
Liquor Control Board

Liquor Control Board Interim Policy #XX – 2009

Subject: Nightclub Liquor License
Implementation of SSB 5367

Effective Date: July 26, 2009

Ending Date: To remain in effect until the completion of
rulemaking on SSB 5367

Approved: _____
Roger Hoen, Board Member

Ruthann Kurose, Board Member

Purpose:

The purpose of Liquor Control Board Interim Policy #X-2009 is to provide clarification to new legislation that created a Nightclub liquor license.

Background:

The only liquor license that was available to businesses operating as nightclubs that wished to serve spirits is a spirits, beer, and wine restaurant liquor license. Nightclubs are businesses that primarily provide live entertainment and serve alcohol. Restaurants are primarily food service businesses that also serve alcohol. Having a separate license for nightclubs allows the Board to clearly distinguish between restaurants and nightclubs.

The 2009 legislature passed SSB 5367 creating a Nightclub liquor license. "Nightclub" is defined as an establishment that provides entertainment and has as its primary source of revenue (a) the sale of alcohol for consumption on the premises, (b) cover charges, or (c) both, and has an occupancy load of 100 or more. SSB 5367 also adjusts the cap on spirits, beer, and wine restaurant licenses to 1 per 1200 population statewide, but includes the nightclub license in the cap.

The Nightclub liquor license:

- Has an annual fee of \$2000;
- May only be issued to a person whose business includes the sale and service of alcohol;
- Has no food requirement;

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www.liq.wa.gov

- Has primary business hours between 9pm and 2am;
- Requires employees to hold a MAST permit;
- Allows local governments to petition the Board to request further restriction be imposed on the license in the interest of public safety (examples: no minors at all times, submitting a security plan, signing a good neighbor agreement with the local government); and
- Allows minors but only in areas where alcohol is not served or consumed.

Policy Statement:

The following application process relates to new applicants applying for a Nightclub liquor license, and to current liquor licensees who wish to obtain a Nightclub liquor license in lieu of their current liquor license.

Complete a Master Business Application and Liquor Control Board Addendum. Information can be found on the WSLCB website at www.liq.wa.gov:

When License Division receives the application:

- a liquor license investigator will be assigned to the application
- the investigator will contact the applicant to conduct an interview and send the applicant a request for documents needed to process the application (the applicant has 15 days to return documents)
- a notice will be sent to the local authority for comment (20 day period)
- a public posting notice will be sent to the local liquor enforcement office to be posted at the retail premises (must be posted for 14 days)
- when all documents are received and the investigation is complete the applicant will receive a letter from License division with either a conditional approval or approval of the liquor license
- when the license is approved the licensee should receive a Master License from Master License Service within 14 days.



Washington State
Liquor Control Board

Liquor Control Board Interim Policy #XX – 2009

Subject: Beer and Wine Regulation
Implementation of EHB 2040

Effective Date: July 26, 2009

Ending Date: To remain in effect until the completion of
rulemaking on EHB 2040

Approved: _____
Roger Hoen, Board Member

Ruthann Kurose, Board Member

Purpose:

The purpose of Liquor Control Board Interim Policy #X-2009 is to provide clarification to the changes in the tied house laws to include; financial interest and ownership between the tiers, money's worth in advertising, price post and hold, and elimination of the ten percent minimum mark-up.

Background:

In 2008 the Legislature established a Joint Select Committee on Beer and Wine Regulation (Select Committee) to review laws relating to the manufacture, distribution, and sale of beer and wine. The Select Committee met during the 2008 interim and produced a final report with recommendations. EHB 2040 is the result of those recommendations.

Financial Interest and Ownership

EHB 2040 permits financial interest between liquor manufacturers, distributors, and retailers under certain conditions. It is lawful for an industry member to have a direct or indirect financial interest in another industry member or a retailer unless the interest has resulted in or is more likely than not to result in:

- undue influence over the retailer or industry member; or
- an adverse impact on public health and safety.

A complaint process is established:

- Any person may file a complaint or request for determination with the Board asserting undue influence or an adverse impact on public health or safety;
- The Board may investigate and issue an AVN or notice of intent to deny the license, or both; and
- The Board may require that a transaction be undone.

Money's Worth - Advertising

Industry members may not advance to a retailer, and a retailer may not receive from an industry member, money's worth under any business practice or arrangement.

A new exception allows branded promotional items of nominal value, singly or in the aggregate. Items that may be provided include:

- Trays, lighters, blotters, postcards, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, hats, visors, and similar items.

The items must be used exclusively by the retailer or the retailer's employees in a manner consistent with the liquor license:

- Items must bear imprinted matter of the industry member only;
- Items may not be provided to retail customers; and
- Items may not be targeted to or appeal principally to youth.

A complaint process is established for branded promotional items similar to the complaint process for financial interest and ownership:

- Any person may file a complaint with the Board asserting undue influence or an adverse impact on public health or safety, or that the provision of the items is otherwise inconsistent with the requirements for promotional items; and
- The Board may investigate and issue an AVN.

Price Post and Hold

The requirement for beer and wine suppliers and distributors to file prices with the Board and hold the price for 30 days is deleted. Suppliers and distributors must maintain price lists at their licensed locations.

Minimum Mark-up

The requirement that suppliers mark-up prices to distributors or retailers and that distributors mark-up their prices to retailers by 10% of production/acquisition cost is removed. No price may be below acquisition cost.

Policy Statement:

Until rulemaking is completed to implement EHB 2040, financial interest and/or ownership will be allowed under the following conditions:

- An industry member in whose name a license or certificate of approval (COA) has been issued pursuant to Title 66 may wholly own or hold a financial interest in a retail liquor license under a separate legal entity. **Example:** Hops, LLC holds a brewery liquor license. Hops, LLC has two members:
 1. Ale Corp – Mike Night, President and 100% stockholder
 2. Suds, Inc. – Linda Day, Pres; Keith Day, VP & 100% stockholderHops, LLC wants to obtain a retail spirits, beer, and wine restaurant liquor license. Hops, LLC would need to create a new business entity. (Ale Corp or Suds, Inc. could apply for a retail license. Mike Night as a sole proprietor or Linda Day as a sole proprietor could apply for a retail license.
- A retailer in whose name a license has been issued pursuant to Title 66 may wholly own or hold a financial interest in a non-retail liquor license under a separate legal entity. **Example:** Kathy King has a beer/wine restaurant liquor license. The business entity is a sole proprietor. Kathy wants to start a winery. Kathy would need to create a new business entity (LLC or corporation) to file for a winery.
- A supplier in whose name a license or COA has been issued pursuant to Title 66 may wholly own or hold a financial interest in a distributor or importer under a separate legal entity. **Example:** Tom Smith has a COA liquor license. The business entity is a sole proprietor. Tom wants to apply for a distributor liquor license. Tom would need to create a new business entity (LLC or corporation) to apply for a distributor license.
- A distributor or importer in whose name a license has been issued pursuant to Title 66 may wholly own or hold a financial interest in a COA or supplier under a separate legal entity. **Example:** AG, Inc. has a distributor liquor license. Don Smith is a corporate officer of AG, Inc. They want to open a beer/wine specialty shop. AG, Inc. would need to create a new business entity (AG, LLC) to apply for the beer/wine specialty shop liquor license. Don Smith, as a sole proprietor, could also apply for a beer/wine specialty shop.

Industry members and retailers shall keep and maintain records on their premises for a three year period that includes records of all industry member financial ownership or interests in a retailer and of all retailer financial ownership interests in an industry member.

Novelty branded promotional advertising items which are of nominal value, singly or in the aggregate, may be provided to retailers by industry members. Singly or in the aggregate is per retail licensed location. The industry member can only provide their own branded promotional advertising items to the retail licensee.

Branded promotional items:

- May only be given to the retailer or the retailer's employees.
- May not be provided by or through retailers or their employees to retail customers.

Industry members and retailers shall keep and maintain records on their premises for a three year period that includes all items, services, and money's worth provided to retailers and purchased by a retailer at fair market value

Price post and hold is repealed. Beer and wine suppliers and distributors are required to maintain a price list at their liquor licensed premises. The price list must contain:

- The wholesale prices at which any and all brands of beer and/or wine sold by the supplier or distributor shall be sold to retailers within the state.

The ten percent minimum markup is removed. Beer and wine may not be sold below acquisition cost. Uniform pricing is required:

All customers must be notified of any reductions in price.



Washington State Liquor Control Board

Liquor Control Board Interim Policy #XX – 2009

Subject: Cigarette and Tobacco Licensing

Effective Date: July 26, 2009

Ending Date: To remain in effect until the completion of rulemaking on SHB 1435

Approved:

Roger Hoen, Board Member

Ruthann Kurose, Board Member

Purpose:

The purpose of Liquor Control Board Interim Policy #X-2009 is to provide the application process to obtain a retail, wholesale, or distributor cigarette or tobacco products license.

Background:

Persons selling cigarettes or tobacco products in this state are required to hold either a wholesaler or retailer cigarette license or a distributor or retailer tobacco products license (for all tobacco products other than cigarettes) through the Department of Licensing, Master License Service. A criminal background check is required for a cigarette wholesaler and a tobacco distributor license.

The Liquor Control Board (LCB) is charged with enforcing the tax on tobacco products provisions. The Board's Tobacco Tax Enforcement Unit was formed in 1997 to enforce assessment of unpaid tobacco taxes for state collection by the Department of Revenue. The Tobacco Tax Enforcement Unit ensures that people who sell cigarettes and tobacco in Washington are properly licensed, have paid the appropriate taxes, and do not sell cigarettes to persons under 18 years of age.

The 2009 legislature passed SHB 1435 giving the LCB the administrative authority, previously vested in the Department of Revenue, to approve, deny, suspend, or revoke retail, wholesale, or distributor cigarette and tobacco products licenses. A criminal background check is now required for a retailer, wholesaler, and distributor license. The Board may consider any prior criminal conduct of the applicant, including an administrative violation history record with

the Board. If the Board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant or licensee may request a hearing under the Administrative Procedure Act.

Policy Statement:

The following application process relates to cigarette and tobacco products licenses:

- Applicants must complete a Master Business Application (MBA) and submit the application and fees to Master License Service (MLS);
- MLS forward the information to the Liquor Control Board (LCB) to conduct a criminal background check and review any violation history record with the Board;
- If the background check and administrative history record is clear the LCB will send an approval to MLS;
- MLS will mail the applicant a Master License with the appropriate cigarette and/or tobacco endorsement;
- The licensee is required to exhibit the master license in the place of business for which it is issued and in the manner required for the display a master license.

If the Board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant or licensee may request a hearing subject to the applicable provisions under Title 34 RCW.



Rule Making Schedule

The Liquor Control Board reviews rules as part of its on-going regulatory improvement efforts. It also reviews rules and proposes changes that implement laws passed during the recent legislation session. This schedule is updated periodically.

If you have questions or would like to be added to the rule making distribution list, please contact the agency's Rules Coordinator at rules@liq.wa.gov.

To assist the reader in understanding the status of the different rule making topics, the following references are explained:

CR 101 – Agency files a notice of intent to develop rules on the topic. Typically, no amendments or new language is proposed but existing rules are identified.

CR 102 – Agency files a notice proposing new rules or changes to existing rules.

CR 103 – Agency has adopted the proposed rules that will become effective 31 days after they are filed with the Code Reviser unless otherwise indicated.

Rule Making Topic	Public Comment
CR 101 Pre-proposal	
Advertising These rules are being reviewed for relevance, clarity, accuracy, and to implement legislation from the 2006 and 2007 session.	CR 101 comment period on initial rule making notice open through June 15, 2009. Please see web site: http://www.liq.wa.gov/rules/review_rules.asp
Extended and Outside Service Rules are needed to address these activities on a liquor licensed premises.	CR 101 comment period on initial rule making notice open through July 3, 2009. Please see web site: http://www.liq.wa.gov/rules/review_rules.asp
Internet Sales and Home Delivery Rules are needed to address these activities on a liquor licensed premises.	CR 101 comment period on initial rule making notice open through July 3, 2009. Please see web site: http://www.liq.wa.gov/rules/review_rules.asp
MAST As part of the Board's on-going regulatory efforts, these rules are being reviewed for relevance, clarity, and accuracy. Rules will also be developed to implement an online	CR 101 comment period on initial rule making notice open through July 20, 2009. Please see web site: http://www.liq.wa.gov/rules/review_rules.asp

training program.	
Cigarette and Tobacco Licensing Implement SHB 1435/2009 Legislative session	CR 101 comment period on initial rule making notice open through July 20, 2009. Please see web site: http://www.liq.wa.gov/rules/review_rules.asp
Beer and Wine Regulation Implement EHB 2040, SHB 1812, ESHB 1441, and SSB 5834 – all from 2009 Legislative session	CR 101 comment period on initial rule making notice open through July 20, 2009. Please see web site: http://www.liq.wa.gov/rules/review_rules.asp
Retail Liquor Licenses Implement SSB 5367 (Nightclub license), SSB 5834, and EHB 2358 – all from 2009 Legislative session	CR 101 comment period on initial rule making notice open through July 20, 2009. Please see web site: http://www.liq.wa.gov/rules/review_rules.asp
Delegation of Authority Implement Board Policy #4-2009 and review current rules on contested liquor license applications and renewals.	CR 101 comment period on initial rule making notice open through July 20, 2009. Please see web site: http://www.liq.wa.gov/rules/review_rules.asp
CR 102 Proposed rule changes	
Liquor Vendors As part of the Board's on-going regulatory efforts, these rules are being reviewed for relevance, clarity, and accuracy.	CR 102 comment period on initial rule making notice open through August 12, 2009. Please see web site: http://www.liq.wa.gov/rules/review_rules.asp
Penalty guidelines As part of the Board's on-going regulatory efforts, these rules are being reviewed for relevance, clarity, and accuracy.	CR 102 comment period on initial rule making notice open through August 26, 2009. Please see web site: http://www.liq.wa.gov/rules/review_rules.asp
CR 103 Rules Adopted	
Public Records Rules that implement the state Public Records Act RCW 42.56 and provisions of the Admin Procedures Act (APA) RCW 34.05. These rules are being reviewed for relevance, clarity, and accuracy.	Board adopted rules and CR 103 filed March 17, 2009. Rules effective April 18, 2009.
Liquor Samples As part of the Board's on-going regulatory efforts, these rules are being reviewed for relevance, clarity, and accuracy.	Board adopted rules and CR 103 filed June 24, 2009. Rules effective July 25, 2009.
Penalties Clarify language in 314-29-010 (2) to eliminate licensee confusion.	Board adopted rules and CR 103 filed on June 10, 2009. Rules effective July 11, 2009.



Washington State Liquor Control Board

A summary of the proposed changes to the Advertising rules - WAC 314-52 chapter.

314-52-005 - Purpose and application of rules:

Replaced the preamble with more an "intent". Plain talked.

- The liquor control board regulates alcohol advertising to promote public safety, prevent the misuse of alcohol, and reduce youth exposure to alcohol advertising and marketing. These rules provide reasonable regulations as to the kind, character, size, and location of advertising of liquor, as authorized by RCW 66.08.060.
- No person engaged in business as a manufacturer, importer, distributor, or retailer of liquor shall publish in any media any advertisement of liquor, unless such advertisement is in conformance with these rules.

314-52-010 - Mandatory statements:

Amended section (1)(c) to conform with federal guidelines (alcoholic content of distilled spirits). Deleted section (4) since it has never been enforced (displays of beer based on alcohol content).

WAC 314-52-015 - General:

Added additional advertising restrictions:

All liquor advertising on products sold in the state of Washington may not contain any statement, picture, or illustration that:

- Shows a person who appears to be under twenty-one years of age consuming alcohol;
- Is targeted principally to minors by implying that the consumption of alcoholic beverages is fashionable or

the accepted course of behavior for persons under 21 years of age;

- Associates alcohol with social achievement; or
- Uses subliminal or similar techniques. "Subliminal or similar techniques" as used in this section, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.
- If advertising claims the alcohol product has a curative or therapeutic effect or enhances health or performance, the licensee must:
- Cite the name of author and date of the research or study supporting the claim; and
- Provide a copy of this research or study to the board's licensing and regulation division.

314-52-020 Use of insignia or reference to liquor control board prohibited - exception:

REPEALED - included in 314-52-015.

314-52-030 Liquor advertising prohibited in school publication:

Amended to refer to advertising in any media, not just radio and television.

No liquor advertising shall:

- Be carried in any publication connected or affiliated with any elementary or secondary schools; or
- Be connected with such schools in any media.

314-52-040 Contests, competitive events, premiums and coupons:

Added language prohibiting persons under 21 years of age from participating in contests or competitive events and added language regarding coupons and rebates (taken from current board guidelines).

- No one under twenty-one years of age is allowed to participate, and no premiums, prizes, coupons, contests, or competitive events are targets to persons under twenty-one years of age;

Liquor advertisements are prohibited by manufacturers, importers, or distributors that:

- Offer any premium or prize redeemable through a Washington state liquor store or any retail liquor outlet licensed by the state of Washington, such as "instant" or "in-store" redeemable offers;
- Offer an "instant rebate" on either liquor or nonliquor items; or
- Offer any premium redeemable through retail outlets prohibited by the advancement of "money or money's worth" from a nonretail licensee to a retail licensee in chapter 66.28 RCW.

A retailer may have its own coupon offers, provided the "after rebate" price does not put the product below cost, and provided there is no undue influence by a nonretail

licensee, the coupon is at the retailer's free initiative,
and the retailer is covering the entire cost.

314-52-070 Outdoor Advertising:

Added language to limit the number and size of alcohol advertising signs visible from the outside of a retail liquor licensed premises, and limited outdoor advertising within 500 feet of schools, churches, public playgrounds, or athletic fields used primarily by minors. Created an exemption for "Tourist Oriented Directional Signs".

- The board limits each retail licensed premises to a total of four signs referring to alcoholic beverages, brand names, or manufacturers that are visible from the outside of the retail licensed premises. The board also limits the size of a sign advertising alcohol, brand names, or manufacturers that are visible from the outside of a retail licensed premises to six hundred square inches.
- No outdoor advertising of liquor shall be placed within five hundred feet of schools, churches, public playgrounds, or athletic fields used primarily by minors, or any place which the board in its discretion finds contrary to the public interest. "Tourist Oriented Designation Signs" per RCW 47.36.320, are exempt from this requirement.

314-52-085 Programs and program folders:

Specified programs and program folders are for sports/entertainment liquor licensees and plain talked.

- A premises holding a sports entertainment facility liquor license may accept bona fide liquor advertising from manufacturers, importers, distributors or their agents, for publication in the program or program folder of the sports entertainment facility liquor licensee;

314-52-090 Advertising sponsored jointly by retailers and manufacturers, importers, or distributors:

Added language to implement SHB 3150 (2006 legislation) which allows joint advertising by wineries and retailers to promote tourism, and HB 2240 (2007 legislation) which allows wineries to perform personal services for retailers and allows wineries and breweries and retailers to list and link to each other on their websites. Also added section (3) to implement LCB policy 1-02 (use of licensed sports team name and trademark).

(1) The name of a retail licensee shall not appear in, or as a part of, or supplementary to, any advertising of a manufacturer, importer or distributor, except:

(a) To produce brochures and materials promoting tourism in Washington state;

(b) A manufacturer, importer, or distributor may list on their web sites information related to retailers who sell or promote their products.

(2) The brand name of liquor may appear in or as a part of advertising by a retail licensee: Provided, such advertising is upon the retail licensee's free initiative and no moneys or moneys' worth has been offered or solicited as an inducement to secure such mention of any manufacturer, importer, or distributor's product.

(3) A professional sports team who holds a liquor license may accept liquor advertisements from manufacturers, importers, or distributors for use in sports entertainment facilities and may allow a manufacturer, importer, or distributor to use the name and trademark of the professional sports team in their advertising and promotions, if such advertising:

(a) Is paid for by the manufacturer, importer, or distributor at reasonable fair market value; and

(b) Carries no express or implied offer by the manufacturer, importer, or distributor on the part of the retail licensee to stock or list any particular brand of liquor to the total or partial exclusion of any other brand.

314-52-095 Financial arrangements between sports entertainment facility licensees and liquor manufacturers, importers, and distributors.

Created a new section to implement SSB 5751 (2007 legislation) which allows a sports entertainment facility licensee to enter into an arrangement with a manufacturer, importer, or distributor for brand advertising, and LCB policy number 1-05.

A sports entertainment facility licensee and affiliated business may enter into arrangements with a manufacturer, importer, or distributor for brand advertising or promotional events at the sports entertainment facility under the following conditions:

- (1) The facility has a capacity of five thousand or more;
- (2) Entities required by WAC 314-12-030 must be placed on the sports entertainment facility license due to financial interest, may receive advertising from liquor manufacturers, importers, or distributors;
- (3) The advertising agreement under the provisions of this section must be made by written agreement;
- (4) The license must stock and offer for sale other competitive brands of liquor in addition to those of the advertising manufacturer, importer, or distributor;
- (5) The agreement may not contain credit of money's worth to be provided by the manufacturer, importer, distributor, or sports entertainment facility licensee;

(6) There will be no exclusionary contracts between a sports entertainment facility licensee and manufacturer, importer, or distributor; and

(7) The advertising manufacturer, importer, or distributor may not exercise undue influence in any manner over the sports entertainment facility licensee's liquor purchasing and sales operations.

314-52-110 Advertising by retail licensees:

Combined 314-52-110 and 314-52-114. Plain talked.

314-52-113 Brand signs and point-of-sale displays on retail licensed premises.

Removed the reference to "animals" (inflatables), removed the reference to "animal mascots" (costumed individuals), and added the restriction that inflatables and costumed individuals may not be appealing to children or persons under 21 years of age.

(1) The brand signs and point-of-sale material shall have no value to the retailer except as brand advertisement; such signs as those that provide illumination for cash registers, pool tables, and other parts of the premises, have a functional value and are not authorized. The brand signs and point-of-sale material shall remain the property of, and be the responsibility of, the manufacturers, importers or distributors.

Giant inflatables, such as inflated beer cans, bottles, and banners may be provided as point-of-sale to retailers for

display purposes inside the licensed premises, provided the following conditions are met:

(a) Novelty items as defined in WAC 314-52-080 are not provided by manufacturers, importers, or distributors to customers in conjunction with the display;

(b) Inflatables are not appealing to children or persons under twenty-one years of age; and

(c) The display shall be removed if objected to by local officials, or if the board finds it contrary to the public interest.

(3) Costumed individuals representing beer, wine, or liquor manufacturers may be provided as point-of-sale to retailers for display and promotion purposes on their property, provided the following conditions are met:

(a) The costumed individual is limited to the manufacturer, importer, distributor, or employee thereof and the costumed individual's activities on-premises are limited to socializing with customers and not conducting any activity that the retail licensee would otherwise have to assign employees to;

(b) Novelty items as defined in WAC 314-52-080 and including the purchase of drinks, are not to be provided to customers by the costumed individual in conjunction with such displays;

(c) The costumed individual must comply with the regulations regarding lewd and obscene conduct (WAC 314-11-050);

(d) The costumed individual may not be appealing to children or persons under twenty-one years of age; and

(e) The board may prohibit the use of costumed individuals if the use is contrary to the public interest.

314-52-115 Advertising by clubs - Signs:

Plain talked.

314-52-120 Sponsorship of public and civic events:

Created a new section to address sponsorship of public and civic events by manufacturers, importers, and distributors. Restrictions are placed on advertising and branded promotional items.

Manufacturers, importers, and distributors may sponsor public and civic events under the following conditions:

- (1) Acknowledgement of the sponsor, either by name, brand, or both, is allowed in any media advertisement where the function recognizes the sponsors of the event. The size of the alcohol industry sponsor acknowledgement may not exceed the size of the event name;
- (2) Brand advertising is allowed only in areas at the event where alcohol sales and consumption are conducted; and
- (3) There may be no giveaways of promotional items of any kind at events held in public areas, including, but not limited to:
 - (a) Street fairs;
 - (b) Parks; and
 - (c) Government buildings.