

AGENDA
BOARD MEETING
WA STATE LIQUOR CONTROL BOARD
Wednesday, July 29, 2009
Headquarter Building
3000 Pacific Ave, Olympia WA 98504

10:00 a.m.

- 1. New Employee Introduction and RecognitionDivision Directors**
- 2. Assistant Attorney General Recognition.....Board Members**
- 3. Board Approval to File CR 102 – Alcohol Advertising
.....Karen McCall, Rules Coordinator**
- 4. Board Approval on Interim Policy #06-2009 – Implement 2009
legislative session relating to retail licensees
.....Karen McCall, Rules Coordinator**
- 5. Board Approval on Interim Policy #07-2009 – Implement 2009
legislative session relating to manufacturers, distributors, importers,
and retailersKaren McCall, Rules Coordinator**
- 6. Board Approval on Interim Policy #08-2009 – Implement 2009
legislative session relating to cigarette and tobacco licensing
.....Karen McCall, Rules Coordinator**
- 7. Approval to File CR 102 – Delegation of Authority
.....Karen McCall, Rules Coordinator**
- 8. Approval of Meeting MinutesBoard Members**
- 9. Old Business.....Board Members**
- 10. New Business.....Board Members**

Recess/Adjourn



**Washington State
Liquor Control Board**

Date: July 29, 2009

To: Roger Hoen, Board Member
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Pat Kohler, Administrative Director
Rick Garza, Deputy Administrator
Pat Parmer, Enforcement and Education Director
Alan Rathbun, Licensing and Regulation Director

Subject: **Approval for filing proposed rules (CR 102) for rules review of WAC 314-52 - Advertising rules.**

At the Board meeting on July 29, 2009, the rules coordinator requests that the Liquor Control Board approve the filing of notice of proposed rule making (CR 102) regarding rules review of Chapter 314-52 WAC. An issue paper on the proposed rule changes is attached.

Process

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above.

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

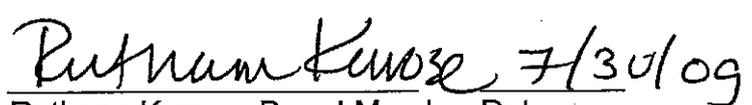
July 29, 2009	Board is asked to approve filing the proposed rules (CR 101)
August 5, 2009	Code Reviser publishes notice, LCB sends notice to rules distribution list
September 16, 2009	Publix Hearing held
September 23, 2009	End of written comment period
October 7, 2009	Board is asked to adopt rules
October 7, 2009	Agency sends notice to those who commented both at the public hearing and in writing.
October 7, 2009	Agency files adopted rules with the Code Reviser (CR 103)
November 8, 2009	Rules are effective (31 days after filing)

Approve Disapprove



Roger Hoen, Board Member 7/30/09
Date

Approve Disapprove



Ruthann Kurose, Board Member 7/30/09
Date

Attachment: Issue Paper

Issue Paper

Rule Making on Advertising

Date: July 29, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this issue paper is to recommend that the Board proceed with proposed rule changes (CR 102) resulting from a review of Advertising rules under WAC 314-52.

Why is rule making necessary?

The Liquor Control Board (LCB) continues to review existing rules for timeliness, clarity, and necessity complying with Executive Order 06-02 issued by Governor Gregoire. As part of the Liquor Control Board's on-going rules review process, rules regarding advertising are being reviewed for relevance, clarity, and accuracy.

Background

In 2008, a comparison was conducted on the LCB's advertising rules based on a 2003 Center on Alcohol Marketing and Youth (CAMY) report. It was determined the LCB needed to update their alcohol advertising rules to reflect the agency's focus on public safety by minimizing youth access and exposure to alcohol advertising.

In addition, the following bills enacted during the 2006 and 2007 legislative sessions require the advertising rules to be revised:

- **SHB 3150 / 2006 session** – Allows joint advertising by wineries and retailers to promote tourism
- **SSB 5751 / 2007 session** – Allows financial arrangements between sports/entertainment facility licensees and liquor manufacturers or distributors
- **HB 2240 / 2007** – For wineries only, allows "personal services" to be performed by wineries, including COA holders, when these services are conducted at a licensed retail premises and are intended to inform, educate, or enhance a customer's knowledge or experience of the manufacturer's product. For wineries and breweries, retailer and manufacturer listings and links are allowed on each other's Web sites.

The following Board Policies and Guidelines were also incorporated in this rulemaking:

- Policy Number 1-02: Use of licensed sports team name and trademark;
- Policy Number 1-05: Advertising events held at sports/entertainment facilities licensed under RCW 66.24.570;
- Interim Policy dated March 1, 2000, regarding criteria for approval of alcohol advertising;

- Interim Policy on advertising vs. information for the purpose of determining the extension of money's worth;
- Board Guidelines on coupon offers.

What changes are being proposed?

Amended Section WAC 314-52-005 – Purpose and application of rules.

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

Amended Section WAC 314-52-010 – Mandatory statements.

Amended section (1)(c) to conform with federal guidelines (alcoholic content of distilled spirits). Deleted section (4) (displays of beer based on alcohol content).

Amended Section 314-52-015 – General.

Amended to add language to implement LCB interim policy dated March 1, 2000, added additional advertising content restrictions, plain-talked.

Repealed Section WAC 314-52-020 – Use of insignia or reference to liquor control board prohibited – exception.

Added language from this section to 314-52-015.

Amended Section WAC 314-52-030 – Liquor advertising prohibited in school publication.

Amended to refer to advertising in any media. Plain-talked.

Amended Section WAC 314-52-040 – Contests, competitive events, premiums and coupons.

Added language to implement Board Guidelines on coupon offers. Corrected RCW reference for gambling, and plain-talked.

Amended Section WAC 314-52-070 – Outdoor Advertising.

Amended to restrict the number and signs advertising alcohol, brand names, and manufacturers that are visible from the outside of a retail licensed premises to a total of four. Restricted the size of alcohol signs visible from the outside of a retail licensed premises to 600 square inches.

Amended to restrict outdoor advertising within 500 feet of churches, schools, public playgrounds, or athletic fields used primarily by children. "Tourist Oriented Designation Signs" pre RCW 47.36.320 are exempt from this requirement. Plain-talked.

Amended Section WAC 314-52-085 – Programs and program folders.

Specified sporting arenas are premises holding a sports entertainment facility liquor license.

Amended Section WAC 314-52-090 – Advertising sponsored jointly by retailers and manufacturers, importers, or distributors.

Added language to implement SHB 3150, HB 2240, Board policy 1-02, and LCB interim policy on advertising vs. information. Plain-talked.

New Section WAC 314-52-095 – Financial arrangements between sports/entertainment facility licensees and liquor manufacturers and distributors.

The new section was created to implement SSB 5751 and LCB policy 1-05.

Amended Section 314-52-110 – Advertising by retail licensees.

Moved language from 314-52-114 to this rule. Added language to clarify that alcohol can't be advertised, offered for sale, or sold by the retail licensee at less than acquisition cost except under listed exceptions. Plain-talked.

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

Removed the reference to "animal" inflatables and "animal mascot" costumed individuals. Added a restriction that inflatables and costumed individuals may not be appealing to children or persons under 21 years of age. Plain-talked.

Repealed Section WAC 314-52-114 – Advertising by retail licensees, offering for sale, or selling beer, wine, or spirituous liquor at less than cost—Prohibited—Exceptions.

Added language to 314-52-110.

Amended Section WAC 314-52-115 – Advertising by clubs—Signs.

Plain-talked.

New Section – WAC 314-52-120 – Sponsorship of public and civic events.

Created a rule to address sponsorship of public and civic events by manufacturers, importers, and distributors.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-005 Purpose and application of rules. (1)

~~((PREAMBLE: The purpose of this title is to))~~ 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.

(2) No person engaged in business as a ~~((producer,))~~ manufacturer, ~~((bottler,))~~ importer, distributor, or retailer of liquor ~~((, directly or indirectly, or through an affiliate,))~~ shall publish or disseminate ~~((or cause to be published or disseminated))~~ in any media any advertisement of liquor, unless such advertisement is in conformance with these rules ~~((+ Provided, That these provisions shall not apply to the publisher of any newspaper, magazine or similar publication, nor to the operator of any radio or television station unless such publisher or operator is engaged in business as a producer, manufacturer, bottler, importer, distributor, or retailer of liquor, directly or indirectly, or through an affiliate))~~.

(3) The board holds each ~~((producer,))~~ manufacturer, ~~((bottler,))~~ importer, distributor, or retailer of liquor responsible for complying with the advertising rules of the Washington state liquor control board in any advertising

material placed by them or on their behalf by their agents. If desired, advertising may be submitted prior to publication for an advisory opinion by the (~~advertising coordinator of the~~) Washington state liquor control board, but advisory opinions will be restricted to advertising material submitted by (~~said producers~~) manufacturers, (~~bottlers~~) importers, distributors, or retailers of liquor, or their agents.

(4) Liquor advertising materials, defined as institutional or educational advertising in WAC 314-52-015, intended for placement in retail outlets of the Washington state liquor control board shall be presented to the (~~advertising coordinator of the~~) Washington state liquor control board for prior approval before placement (~~:- Provided, however, That~~). All other forms of advertising approved and accepted by the board (~~advertising coordinator and which are acceptable to the board merchandising committee under the provisions of WAC 314-52-040~~) shall not be prohibited under this rule.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, §

314-52-005, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.060. 86-15-041 (Order 191, Resolution No. 200), § 314-52-005, filed 7/16/86. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-005, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-005, filed 7/18/80; Order 46, § 314-52-005, Rule 115.5, filed 6/9/76; Order 10, § 314-52-005, Rule 115.5, filed 10/27/70, effective 11/27/70.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-010 Mandatory statements. (1) Brand advertising of spirituous liquor by any manufacturer shall contain the following information:

(a) The name and address of the manufacturer responsible for its publication. (Street number may be omitted.)

(b) A conspicuous statement of the class to which the product belongs and the type (~~thereof~~) corresponding with the statement of class and type which is required by federal regulations to appear on the label of the product.

(c) A statement of the alcoholic content (~~by proof, except that for cordials and liqueurs, gin fizzes, cocktails, highballs, bitters and other specialties, the alcoholic content~~

may)) for distilled spirits shall be stated in (~~percent age by volume or by proof~~) percent alcohol by volume.

(d) In the case of distilled spirits (~~other than cordials, liqueurs and specialties~~) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled.

(e) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled.

(2) Brand advertising of wine by any manufacturer or distributor shall contain the following information:

(a) The name and address of the manufacturer or distributor responsible for its publication. (Street number may be omitted.)

(b) A conspicuous statement of the class, type or distinctive designation to which the product belongs, corresponding with the statement of class, type, or distinctive designation which is required by federal regulation to appear on the label of the product.

(3) Brand advertising of malt beverages by any manufacturer, importer, or distributor shall contain the following information:

(a) The name and address of the manufacturer, importer or distributor responsible for publication of the advertisement. (Street number may be omitted.)

(b) A conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required by federal regulations to appear on the label of the product.

~~((4) Alcoholic content of beer. Retail licensees who choose to offer beer for sale at both less than four percent by weight and more than four percent by weight, alcoholic content, packaged in identical packages, shall be required to separate the two strengths of beer in their displays, and shall be required to identify by point-of-sale advertising which is the higher strength and which is the lower strength beer. Manufacturers, importers and distributors of such beer shall supply such shelf tickets free of charge to retail licensees: Provided, however, That no promotion of the higher alcoholic content shall be included in such advertising.))~~

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020,
66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300,
66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200,
66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244,
66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400,
66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455,
66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050,
66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310,

66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-010, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-010, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-010, filed 7/18/80; Order 46, § 314-52-010, Rule 116, filed 6/9/76; Rule 116, filed 6/13/63.]

AMENDATORY SECTION (Amending Order 108, Resolution No. 117, filed 8/11/82)

WAC 314-52-015 General. (1) Institutional advertising shall mean advertising which promotes company or brand name identification, but does not directly solicit purchase or consumption of liquor. Educational advertising shall mean factual information on liquor, its manufacture, history, consumption and methods of ascertaining the quality of various types of liquors (~~(such as German wines, French cognacs, or other classifiable types of product.~~ All liquor advertising shall be modest, dignified and in good taste and shall not contain:

~~(1) Any statement or illustration that)).~~ All liquor advertising on products sold in the state of Washington may not contain any statement, picture, or illustration that:

(a) Is false or misleading ((in any material particular.

~~(2) Any statement, picture, or illustration which));~~

(b) Promotes over consumption((=

~~(3) Any statement, picture, illustration, design, device, or representation which is undignified, obscene, indecent, or in bad taste.~~

~~(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.~~

~~(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer.~~

~~Nothing in this section shall prohibit the use of any enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package."~~

~~(6) Any statement that the product is produced, blended, made, bottled, packed or sold under, or in accordance with, any authorization, law, or regulation of any municipality, county, or state, federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.~~

~~(7) Any statement, design or device representing that));~~

(c) Shows a person who appears to be under twenty-one years of age consuming alcohol;

(d) Uses the Washington state liquor control board's seal or refers to Washington state liquor control board, except where required by law;

(e) Represents the use of liquor has curative or therapeutic effects, if such statement is untrue ((in any particular,)) or tends to create a misleading impression((

~~(8) Any statement, picture, or illustration implying that));~~

(f) Implies the consumption of liquor enhances athletic prowess, or any statement, picture, or illustration ((referring)) that refers to any known athlete, if such statement, picture, or illustration implies, or if the reader may reasonably infer, that the use of liquor contributed to ((such)) any known athlete's athletic achievements((

~~(9) Any depiction of));~~

(g) Depicts a child or other person under ((legal age to consume liquor; any depiction of)) twenty-one years of age, or includes:

(i) Objects, such as toys or characters, ((suggestive of)) suggesting the presence of a child((, nor any other depiction designed in any manner as to be especially appealing to children or other persons under legal age to consume liquor.

~~(10) Any reference to any religious character, sign or symbol, except in relation to kosher wines or where such are a part of an approved label));~~

(ii) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

(h) Is targeted principally to minors by implying that the consumption of alcoholic beverages is fashionable or the accepted course of behavior for persons under twenty-one years of age;

(i) Associates alcohol with social achievement; or

(j) 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.

(2) If advertising claims the alcohol product has a curative or therapeutic effect or enhances health or performance, the licensee must:

(a) Cite the name of the author and date of the research or study supporting the claim; and

(b) Provide a copy of this research or study to the board's licensing and regulation division.

[Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-015, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-015, filed 7/18/80. Statutory Authority: RCW 66.08.030, 66.08.060 and

66.08.070. 79-08-036 (Order 68, Resolution No. 77), § 314-52-015, filed 7/17/79; Order 46, § 314-52-015, Rule 116.5, filed 6/9/76; Order 10, § 314-52-015, Rule 116.5, filed 10/27/70, effective 11/27/70.]

AMENDATORY SECTION (Amending Order 108, Resolution No. 117, filed 8/11/82)

WAC 314-52-030 Liquor advertising prohibited in school publications. No liquor advertising shall:

(1) Be carried in any publication connected or affiliated with any elementary or secondary schools; (~~nor shall any liquor advertising~~) or

(2) Be connected with such schools (~~when broadcast over radio or television: Provided, That institutional advertising, as defined in WAC 314-52-015, may be carried, if the board advertising coordinator interposes no objection~~) in any media.

[Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-030, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-030, filed 7/18/80; Order 46, § 314-52-030, Rule 118, filed 6/9/76; Order 10, § 314-52-030, filed 10/27/70, effective 11/27/70; Rule 118, filed 6/13/63.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-040 Contests, competitive events, premiums and coupons. (1) Liquor advertisements may offer consumers premiums or prizes, upon completion of any coupon, contest, or competitive event, which may or may not require proof of purchase of the advertised product(~~(+)~~). Provided, (~~however,~~) that:

(a) 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;

(b) Contests or sweepstakes that offer prizes or premiums to consumers through a game of chance or random drawing, shall not require proof of purchase, and must comply with the requirements of RCW ((9.46.020(14))) 9.46.0356 regarding ((lotteries: And provided further, That no)) gambling.

(2) Liquor advertisements are prohibited by manufacturers, importers, or distributors ((may)) that:

(a) 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;

(b) Offer an "instant rebate" on either liquor or nonliquor items; or

(c) 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.

(3) 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.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-040, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-040, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-040, filed 7/18/80; Order 46, § 314-52-040, Rule 119, filed 6/9/76; Order 10, § 314-

52-040, filed 10/27/70, effective 11/27/70; Rule 119, filed 6/13/63.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-070 Outdoor advertising. (1) "Outdoor advertising" by manufacturers, importers, distributors, and retail licensees for these purposes shall include all signs visible to the general public(~~(, whether permanent or temporary))~~ from the outside of the retail premises, advertising the sale and service of liquor (~~((excluding point-of-sale brand signs, which are defined and governed as otherwise provided in WAC 314-52-113) as well as))~~, trade name and room name signs.

(2) 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.

(3) Outdoor signs shall be designed, installed, and (~~(used in a manner not offensive to the public, and shall))~~ comply with all liquor advertising rules. These rules include, but are not limited to:

(a) WAC 314-52-015(~~((1), which:~~

~~(i) Prohibits any statement or illustration that is false or misleading in any material particular;~~

~~(ii) Prohibits any statement, picture or illustration which promotes overconsumption;~~

~~(iii) Prohibits any statement, picture, illustration, design, device, or representation which is undignified, obscene, indecent, or in bad taste.)~~ which contains institutional advertising prohibitions; and

(b) WAC 314-52-110(~~(1)~~), ~~which requires that every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the trademark name. The term "trade name" shall mean the "licensed trade name" as it appears on the issued license)~~ which contains advertising requirements by a retail licensee.

~~((3))~~ (4) Prior board approval is not required before installation and use of outdoor ~~((signs/))~~ advertising; however, outdoor ~~((signs/))~~ advertising ~~((excluding outdoor readerboard messages and/or interior signs visible through a window of a premises))~~ not in compliance with board rules will be required to be altered or removed at the licensee's expense. If prior approval is desired, the licensee, applicant or their agent may submit ~~((three copies))~~ a copy to the board ~~((advertising coordinator))~~ for approval.

~~((4))~~ (5) No outdoor advertising of liquor shall be placed ~~((in proximity to))~~ within five hundred feet of schools, churches, ~~((or playfields))~~ public playgrounds, or athletic fields used primarily by minors, ~~((where administrative body of~~

~~said schools, churches, playfields, object to such placement,~~
~~nor~~) or any place which the board in its discretion finds
contrary to the public interest. "Tourist Oriented Directional
Signs" per RCW 47.36.320, are exempt from this requirement.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020,
66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300,
66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200,
66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244,
66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400,
66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455,
66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050,
66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310,
66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, §
314-52-070, filed 9/2/98, effective 10/3/98. Statutory
Authority: RCW 66.08.060. 86-15-041 (Order 191, Resolution No.
200), § 314-52-070, filed 7/16/86. Statutory Authority: RCW
66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No.
117), § 314-52-070, filed 8/11/82. Statutory Authority: RCW
66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73,
Resolution No. 82), § 314-52-070, filed 7/18/80; 78-02-056
(Order 62), § 314-52-070, filed 1/20/78; Order 46, § 314-52-070,
Rule 122, filed 6/9/76; § 314-52-070, filed 10/27/70, effective
11/27/70; Order 2, § 314-52-070, filed 5/1/69; Rule 122, filed
6/13/63.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-085 Programs and program folders. Programs and program folders, for the purpose of this section, shall mean brochures for use at sporting arenas which have, as a part of their operations, whether directly or indirectly, a retail licensed premises. No manufacturer, importer, distributor, or their agent, shall provide, without cost, directly or indirectly, programs or program folders for retail licensees(~~(+ Provided, however, That sporting arenas as described above, or their agents)~~) unless the following conditions are met:

(1) 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 (~~sporting arena: Provided further, That such~~) sports entertainment facility liquor licensee; and

(2) Advertising is paid for by said manufacturer, importer, distributor or their agent at the published advertising rate for all program or program folder advertisers, including nonliquor advertisers(~~(+ And also provided, That such advertising shall carry with it no express or implied offer on the part of the manufacturer, importer, distributor or their agent, or promise on the part of the retail licensee whose operation is directly~~

~~or indirectly part of the sporting arena, to stock or list any particular brand of liquor to the total or partial exclusion of any other brand)).~~

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-085, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-085, filed 8/11/82.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-090 Advertising sponsored jointly by retailers and manufacturers, importers, or distributors(~~(, prohibited)~~).

(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, ((That)) such advertising is upon the retail licensee's free initiative and no moneys or moneys' worth has been offered ((the retail licensee)) or solicited as an inducement to secure such mention ((by)) of any manufacturer, importer, or ((distributor or their agent, or solicited by the retail licensee or his agent.

~~(2) RCW 66.28.010 shall also apply to joint advertising insofar as it is relevant)) 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.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-090, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-090, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-090, filed 7/18/80; 78-02-056 (Order 62), § 314-52-090, filed 1/20/78; Order 46, § 314-52-090, Rule 124, filed 6/9/76; Order 10, § 314-52-090, filed 10/27/70, effective 11/27/70; Rule 124, filed 6/13/63.]

NEW SECTION

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

[]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-110 Advertising by retail licensees. (1) Every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the trademark name. The term "trade name" shall be defined as the (~~"licensed trade~~) name(~~("~~) as it appears on the license issued to the licensee: (~~Provided, however, That such~~)

(a) Words as tavern, cafe, grocery, market, (~~food store, food center, delicatessen,~~) wine shop, (~~beer parlor~~) and other similar words used to identify the type of business licensed, and numbers used to identify chain licensees (~~of the same trade name~~), shall neither be required nor prohibited as part of the trade name in advertisements (~~And provided further, That~~).

(b) Advertisements by ((public)) a spirit, beer and wine restaurant licensee((s)) may also ((refer)) be referred to as cocktails, bar, lounge and/or the "room name." The term "room name" shall be defined as the name of the room designated as the cocktail lounge and/or the dining room ((if both are in the same room)).

(2) No retail licensee shall offer for sale any liquor for on premises consumption under advertising slogans where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at a time, such as "two for the price of one," ((~~"two for one drinks,"~~)) "buy one--get one free," or "two for \$ _____ ((~~,"~~ nor any similar phrase or slogan where the express or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink or quantity of liquor at one time))."

(3) Beer, wine, or spirituous liquor shall not be advertised, offered for sale, or sold by retail licensees at less than acquisition cost. The provisions of this section shall not apply to any sales made:

(a) For the purpose of discontinuing the trade of any product and in the case of the sale of seasonal goods;

(b) When the goods are damaged or deteriorated in quality, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation provided notice is given to the public;

(c) By an officer acting under the orders of any court;

(d) In an endeavor to meet the prices of a competitor selling the same article or product in the same locality or trade area and in the ordinary channels of trade.

(4) Specialty shops, wineries, breweries, and craft distilleries acting as a retail licensee, providing free tastings to the public, are prohibited from using any term that implies the product is free in their advertising for such events.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-110, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030, 66.98.070 and 66.08.060. 83-23-122 (Order 132, Resolution No. 141), § 314-52-110, filed 11/23/83. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-110, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-110, filed 7/18/80; Order 46, § 314-52-110, Rule 126, filed 6/9/76; Order

10, § 314-52-110, filed 10/27/70, effective 11/27/70; Rule 126, filed 6/13/63.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-113 Brand signs and point-of-sale displays on retail licensed premises. Manufacturers, importers or distributors may furnish brand signs and point-of-sale material to retailers under the following conditions:

(1) The brand signs and point-of-sale material shall have no value to the retailer except as brand advertisement; such signs as those ~~((which))~~ 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.

~~(2) ((The term "point-of-sale material" as used herein, shall include such manufacturer, importer or distributor-supplied items as display cards, placards, table tents, recipes, display bins, decalcomanias, price cards, shelf strips, product information pamphlets, bottle hangers, matches, scorecards, calendars, and other such brand advertising material for display at the point of sale.~~

~~(3))~~ Giant inflatables, such as inflated beer cans, bottles, ~~((animals,))~~ and banners may be provided as point-of-

sale (~~((by manufacturers, importers, or distributors))~~) to retailers for display purposes (~~(on their property)~~) inside the licensed premises, provided the following conditions are met:

(a) (~~((All retail licensees are afforded equal opportunity to display item;~~

~~(b))~~) 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(~~(, in its discretion,)~~) finds it contrary to the public interest.

~~((4) Animal mascots and)~~ (3) Costumed individuals representing beer, wine, or liquor manufacturers may be provided as point-of-sale (~~((by manufacturers, importers, or distributors))~~) 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) (~~((All retail licensees are afforded equal opportunity for such displays;~~

~~(e))~~) 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;

~~((d))~~ (c) The costumed individual must comply with the regulations regarding lewd and obscene conduct (WAC ~~((314-16-125))~~ 314-11-050);

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

~~((If the board finds it contrary to the public interest, it may prohibit the use of the above-mentioned activities.))~~ The board may prohibit the use of costumed individuals if the use is contrary to the public interest.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-113, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.24.010, 66.08.010, 66.08.030, 66.08.060 and 66.98.070. 86-19-022 (Order 199, Resolution No. 208), § 314-52-113, filed 9/10/86. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-113, filed 8/11/82. Statutory Authority: RCW 66.08.030,

66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-113, filed 7/18/80; 78-02-056 (Order 62, § 314-52-113, filed 1/20/78; Order 46, § 314-52-113, Rule 126.3, filed 6/9/76.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-115 Advertising by clubs--Signs. (1) Clubs shall not engage in any form of soliciting or advertising which may be construed as implying that the club operates a (~~public spirit, beer and wine restaurant~~) premises (~~(, a tavern)~~) open to the public, or that social functions at which club liquor may be consumed, are open to the public (~~(:—Provided, however, Circularizing membership shall not be considered advertising, and where)~~). Clubs that provide lunch or dinner to the public (~~(, this)~~) may be advertised (~~(:—Provided further, Such advertising)~~) but must specify no liquor service is available.

(2) Clubs and/or their auxiliary organizations may advertise social or other club events to their membership through the public media under the following conditions: (~~(Provided, Such)~~)

(a) Advertising (~~(is)~~) must be clearly directed to their membership only (~~(and)~~);

(b) Advertising cannot be construed as implying that the general public is welcome to attend (~~(-~~

~~(3) Advertising of the club functions by means of placards placed for public viewing shall be governed by the provisions of subsection (2) of this section.~~

~~(4))~~; and

(c) Advertising club functions with placards placed for public viewing shall be governed by (a) and (b) of this subsection.

(3) Advertising may be directed to the public generally in connection with events of special public interest ((such as Flag Day, Memorial Day, Veterans Day or such other occasions,)) under provisions set forth in WAC 314-40-080(3).

~~((5))~~ (4) A private club may hold a public membership function as outlined in WAC 314-40-040(6). The function must be advertised as a membership drive.

(5) Clubs shall not advertise the events held with the nonclub event endorsement per RCW 66.24.425(3).

(6) Clubs desiring to have radio or television broadcasts originating from their licensed premises may do so((+)) provided((, That)):

(a) Such broadcasts consist only of entertainment or other matter which is in the public interest and may not contain:

(i) Any announcement of opening or closing hours((,))

(ii) Any invitation to visit the club((,)) or

(iii) Any statement which may be construed as advertising or any implication that the club is operated as a public place.

(b) The only reference to the club during such broadcasts shall be limited to a statement at the opening and closing of the program as originating from the club quarters..

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-115, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030. 94-06-022, § 314-52-115, filed 2/22/94, effective 3/25/94. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-115, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-115, filed 7/18/80; Order 46, § 314-52-114 (codified as WAC 314-52-115), Rule 126.5, filed 6/9/76; Order 10, § 314-52-114, Rule 126.5, filed 10/27/70, effective 11/27/70. Formerly WAC 314-40-090 (part), Rule 111, filed 6/13/63.]

NEW SECTION

WAC 314-52-120 Sponsorship of public and civic events.

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

(1) Acknowledgment 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 acknowledgment 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.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-52-020 Use of insignia or reference
to liquor control board
prohibited--Exception.

WAC 314-52-114 Advertising by retail
licensees, offering for sale,
or selling beer, wine or
spirituous liquor at less
than cost--Prohibited--
Exceptions.



Washington State
Liquor Control Board

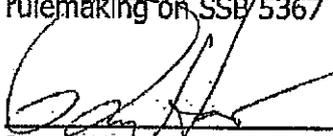
Liquor Control Board Interim Policy #06 – 2009

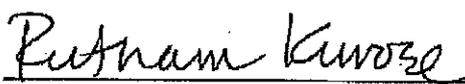
Subject: Nightclub Liquor License
Implementation of SSB 5367

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 #06-2009 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;

PO Box 43075, 3000 Pacific Ave. SE, Olympia WA 98504-3075, (360) 664-1600,
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.

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 also 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 retailer 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 but the prohibition on quantity discounts remains. 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 between industry members and retailers also remains.

Manufacturers and distributors must notify all of their customers of any reductions in the price of products listed in their price list.



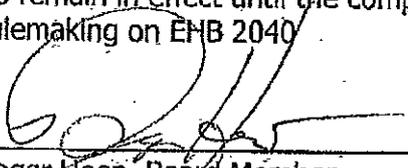
Washington State
Liquor Control Board

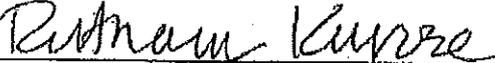
Liquor Control Board Interim Policy #07 – 2009

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 #07-2009 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.



Washington State
Liquor Control Board

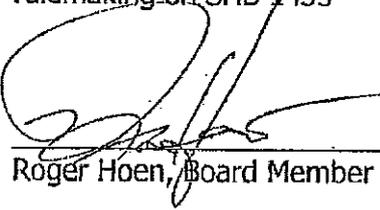
Liquor Control Board Interim Policy #08 – 2009

Subject: Cigarette and Tobacco Licensing

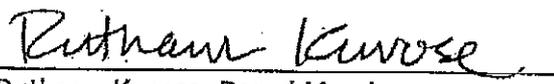
Effective Date: July 26, 2009

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 #08-2009 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.



**Washington State
Liquor Control Board**

Date: July 29, 2009

To: Roger Hoen, Board Member
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Pat Kohler, Administrative Director
Rick Garza, Deputy Administrator
Alan Rathbun, Director, Licensing and Regulation

Subject: **Approval for filing the notice of proposed rulemaking (CR 102) for implementation of Board Policy #4-2009 – Delegation of Authority**

At the Board meeting on July 29, 2009, the rules coordinator requests that the Liquor Control Board approve the filing of notice of proposed rule making (CR 102) regarding the implementation of Board Policy #4-2009 – Delegation of Authority. **WAC 314-07-120** needed to be amended to reflect this policy, as well as **WAC 314-09** – Contested Liquor License Applications and Renewals. An issue paper on the proposed rule changes is attached.

Process

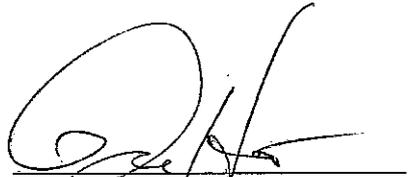
The Rules Coordinator requests approval to file the notice of proposed rulemaking (CR 102) for the rule making described above. An issue paper on this rules review was presented at the Board meeting on July 29, 2009, and is attached to this order.

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

July 29, 2009	Board is asked to approve filing the proposed rule making (CR 102 filing). LCB sends notice to rules distribution list.
August 19, 2009	Code Reviser publishes notice,
September 9, 2009	Public hearing held
September 16, 2009	End of written comment period
September 23, 2009	Board is asked to adopt rules
September 23, 2009	Agency sends notice to those who commented both at the public hearing and in writing.
September 23, 2009	Agency files adopted rules with the Code Reviser
October 24, 2009	Rules are effective (31 days after filing)

Approve

Disapprove


Roger Hoer, Board Member

7/29/09
Date

Approve

Disapprove


Ruthann Kurose, Board Member

7/29/09
Date

Attachment: Issue Paper

Issue Paper: Rulemaking on Delegation of Authority (Intent to Deny or Not Renew a Liquor License)

Date: July 29, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue:

The purpose of this issue paper is to request approval from the Board to file the notice of proposed rulemaking (CR 102) to review and amend current rules and/or develop new rules regarding Board policy #4-2009, Delegation of Authority. **WAC 314-07-120** needed to be amended to reflect this policy, as well as **WAC 314-09** – Contested Liquor License Applications and Renewals.

Why is rulemaking necessary?

On April 22, 2009, the Board adopted Policy #4-2009 delegating authority to the Licensing and Regulation Division Director to make initial threshold determinations relative to liquor license applicants and renewals where objections have been submitted. This threshold determination is to be made in accordance with the provisions of RCW 66.24.010 as well as all other relevant sections of state law and title 314 WAC.

What changes are being proposed?

New Section 314-07-121 Board delegation of authority to make initial threshold determinations. Explains the process the director of licensing and regulation will follow when making threshold decisions on applications or renewals objections have been received, or the applicant/licensee appears to be ineligible for a license due to failure to meet requirements under statute or rule.

Amended Section WAC 314-09-010 Objection to liquor license applications. Made corrections to current rule. Changed language from "receipt of the denial letter" to "receipt of the intent to deny".

Amended Section WAC 314-09-015 Objections to liquor license renewals. Revised language in section (1)(d) regarding objections to renewals received within 30 days of the expiration date when the license has already been renewed. Clarified language in section (2).

Attachment: Board Policy #4-2009
WAC 314-07-121
WAC 314-09



NEW SECTION

WAC 314-07-121 Board delegation of authority to make initial threshold determinations. (1) The board may delegate to the licensing and regulation division director the authority to make initial threshold determinations on liquor license applications and renewals where:

(a) Objections have been submitted; or
(b) The applicant/licensee appears to be ineligible for a license due to failure to meet requirements under statute or rule. Failure to meet eligibility requirements includes data obtained through a criminal background check or criminal history record information (CHRI) report.

(2) Threshold determinations will be made in accordance with the provisions of RCW 66.24.010 as well as all other relevant sections of state law and Title 314 WAC. The licensing and regulation division director shall:

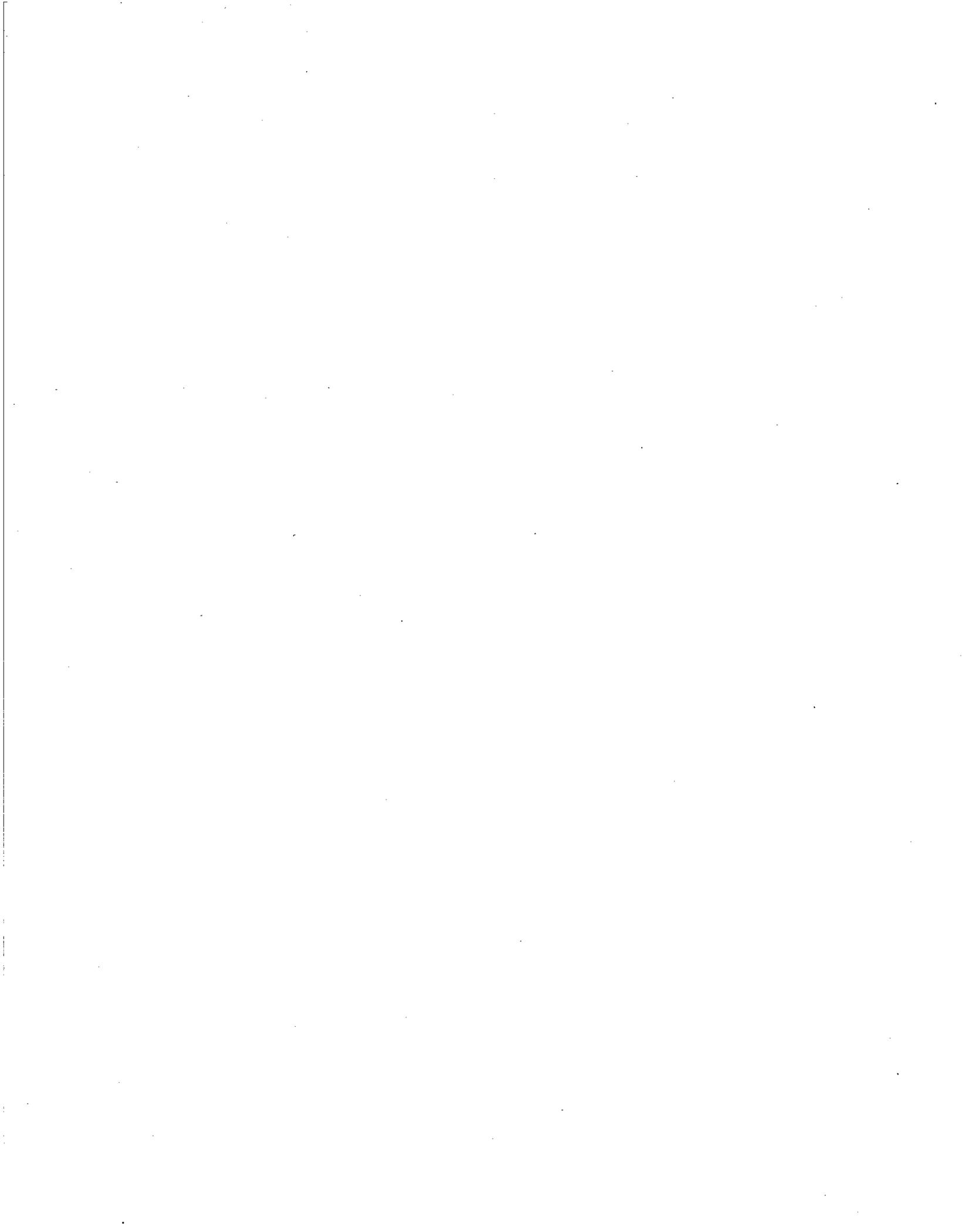
(a) Give substantial weight to objections from a local authority where objections are based on chronic illegal activity;

(b) Give due consideration to the location of a new liquor license application as it relates to the proximity to churches, schools, and public institutions as well as other considerations raised by the local authority.

(3) If the licensing and regulation director determines that the board will seek denial of a license application or nonrenewal of an existing license, an aggrieved applicant/licensee may request an adjudicative hearing before an administrative law judge (see chapter 314-09 WAC).

(4) If the licensing and regulation director determines that the board will seek to approve a license or renewal over the objection of the local authority, the local authority may request an adjudicative hearing before an administrative law judge (see chapter 314-09 WAC). The licensing and regulation director will determine whether an adjudicative hearing will be granted to the local authority.

An adjudicative hearing will be granted where the objection is based on alleged conduct related to public safety within the jurisdiction of the board under Title 66 RCW.



AMENDATORY SECTION (Amending WSR 05-07-011, filed 3/4/05, effective 4/4/05)

WAC 314-09-010 Objections to liquor license applications.

(1) **How can persons, entities, and governmental jurisdictions object to the issuance of a liquor license or permit?** Per RCW 66.24.010 (8) and (9), the board will notify certain entities of the following types of annual or special occasion liquor license or permit applications. In addition to the following entities, any person or group may comment in writing to the board regarding ~~((f)(a))~~ an application.

Type of Application	Entities the board will notify
<ul style="list-style-type: none"> • Applications for an annual license or permit at a new location that would allow the sale and/or service of alcohol beverage to the public for on-premises consumption or to-go; and • Applications to change the class of an existing annual liquor license or permit that allows the sale and/or service of alcohol beverage to the public for on-premises consumption or to-go. 	<ul style="list-style-type: none"> • Governmental jurisdictions in which the premises is located, and • Schools, churches, and public institutions within 500 feet of the premises to be licensed (as measured according to RCW 66.24.010(9)).
<ul style="list-style-type: none"> • Applications for any annual or special occasion liquor license or permit that allows the sale and/or service of alcohol beverage; and • Changes of ownership at existing licensed premises. 	<p>((f)(b)) • Governmental jurisdictions only.</p>

(2) **What will happen if a person or entity objects to a liquor license application?** When deciding whether to issue or deny a liquor license application ~~((for permit))~~ or permit, the board will give due consideration to input from governmental jurisdictions in which the premises is located; private schools, churches, and public institutions within 500 feet of the premises (as measured according to RCW 66.24.010(9)); and other persons or groups. Note~~((f)(1))~~: Per RCW 66.24.010(9), the board shall not issue a new ~~((retail))~~ retail liquor license if a tax-supported public elementary or secondary school within 500 feet of the premises to be licensed objects to the application (500 feet as measured according to RCW 66.24.010(9)).

(a) If the board contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW). If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the licensee

will be notified and given the opportunity to present evidence at the hearing.

(b) If the board denies a liquor license application based on the objection from a governmental jurisdiction; a private school, church, or public institution within 500 feet of the premises (as measured according to RCW 66.24.010(9)); and/or other persons or groups, the applicant(s) may either:

(i) Reapply for the license or permit no sooner than one year from the original denial date; or

(ii) Submit a written request, within twenty days of the date of licensee's receipt ~~((of))~~ of the ~~((denial letter))~~ intent to deny, for an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW).

AMENDATORY SECTION (Amending WSR 05-07-011, filed 3/4/05, effective 4/4/05)

WAC 314-09-015 Objections to liquor license renewals. (1)
How can local governmental jurisdictions object to the renewal of a liquor license?

(a) The board will give governmental jurisdictions approximately ninety days written notice of premises that hold annual liquor licenses in that jurisdiction that are up for renewal.

(b) Per RCW 66.24.010(8), if a governmental jurisdiction wants to object to the renewal of a liquor license in its jurisdiction, it must submit a letter to the board detailing the reason(s) for the objection and a statement of all facts on which the objections are based.

~~((c))~~ (c) This letter must be received by the board at least thirty days before the liquor license expires. The objection must state specific reasons and facts that show issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health, or welfare of the community.

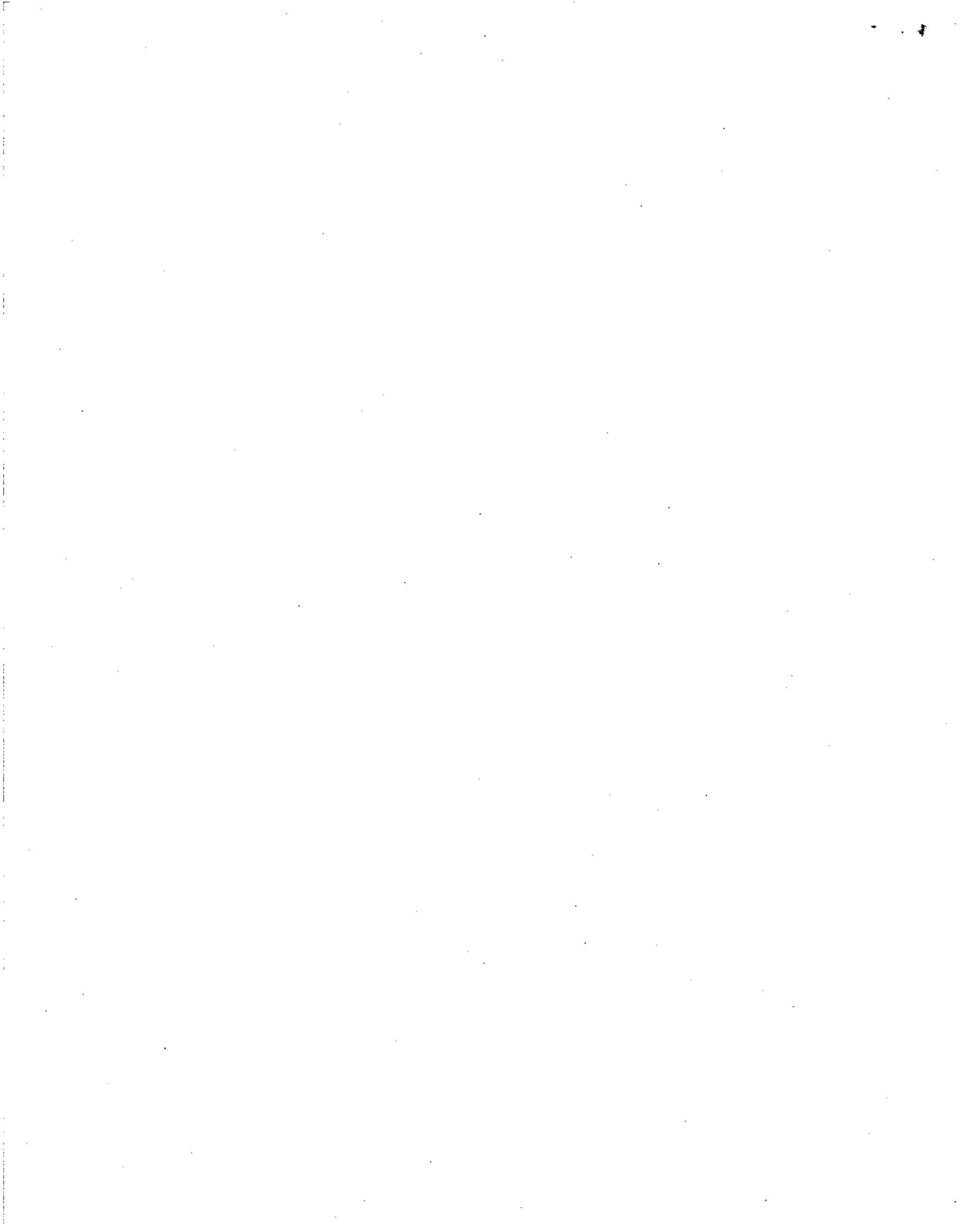
~~((d) If the objection is received within 30 days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation by the Enforcement Division.))~~ (d) If the objection is received within thirty days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation may be pursued by the enforcement division.

(e) Objections from the public will be referred to the appropriate governmental jurisdiction for action under subsection (2) ~~((below))~~ of this section. Upon receipt of the objection, the board licensing and regulation division will acknowledge receipt of the objection(s) and forward to the appropriate governmental

jurisdiction. Such jurisdiction may or may not, based on the public objection, request nonrenewal.

(2) **What will happen if a governmental jurisdiction objects to the renewal of a liquor license?** The board will give due consideration to a governmental jurisdiction's objection to a liquor license renewal of a premises in its jurisdiction. Based on the governmental jurisdiction's input and any information in the licensing file, the board will decide to either renew the liquor license, or to proceed with nonrenewal.

<p>((b)) (a) Board decides to renew the liquor license:</p>	<p>((c)) (b) Board decides to ((pursue nonrenewal of)) <u>pursue nonrenewal of</u> the liquor license:</p>
<p>(i) The board will notify the governmental jurisdiction(s) in writing of its intent to renew the license, stating the reason for this decision.</p> <p>(ii) The governmental jurisdiction(s) may contest the renewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW).</p>	<p>(i) The board will notify the licensee in writing of its intent to not renew the license, stating the reason for this decision.</p> <p>(ii) The licensee may contest the nonrenewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW).</p> <p>(iii) If the licensee requests a hearing, the governmental jurisdiction((s)) will be ((notified)) <u>notified</u>.</p> <p>((v)) (iv) During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the liquor license until a final decision is made.</p>



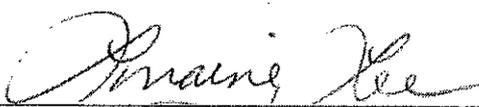
Liquor Control Board Interim Policy #4-2009

Subject of Policy: Delegation of authority to make threshold decisions related to liquor license applications and renewals where objections have been received or the applicant/licensee appears to not meet eligibility requirements

Effective Date: April 22, 2009

Ending Date: Upon adoption of WACs to implement this change in policy/procedure.

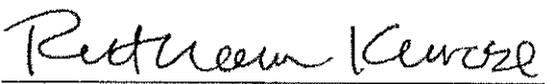
Approved:



Lorraine Lee, Chair



Roger Hoeh, Board Member



Ruthann Kurose, Board Member

Purpose and Background:

State law (RCW 66.24.010) governs the issuance of liquor licenses. When either a new license application is received or when a license is pending renewal, state law requires the applicable local government authority to be notified and given the opportunity to object to said issuance. Under current procedure, a pending application or renewal that has had an objection received is forwarded to the Board Members for an initial threshold determination. In making this submission Licensing and Enforcement staff submits recommendations with accompanied justification.

If the initial determination by the Board Members is contested by either the applicant/licensee or the local authority, they must make a final determination in the same case after an adjudicative hearing by an administrative law judge. While not inappropriate under administrative law (RCW 34.05), this process presents an appearance of fairness concern.

Policy Statement:

The Board hereby delegates authority to the Licensing and Regulation Division Director to make initial threshold determinations relative to liquor license applications and renewals where objections have been submitted. This threshold determination is to be

made in accordance with the provisions of RCW 66.24.010 as well as all other relevant sections of state law and title 314 WAC. The Licensing Director shall give substantial weight to objections from a local authority where said objections are based on chronic illegal activity. Further, the Licensing Director will give due consideration to the location of a new liquor license applicant as it relates to its proximity to churches, schools, public institutions as well other considerations raised by the local authority.

The Licensing Director is also granted the authority to make initial threshold determinations where the applicant/licensee appears to be ineligible for a license due to failure to meet requirements under statute or rule. This failure to meet eligibility requirements includes data obtained through a criminal background check or Criminal History Record Information (CHRI) report.

Where the Licensing Director determines that the Liquor Control Board (LCB) will seek denial of a license application or non-renewal of an existing license, an aggrieved applicant/licensee is granted a hearing before an administrative law judge. In a case where the Licensing Director determines that the LCB will seek to license over the objection of a local authority, the local authority may request an adjudicative hearing. The Board Members further delegate the Licensing Director the authority to determine whether said hearing will be granted. The Licensing Director is to grant such a hearing request where the objection is based on alleged conduct which is jurisdictional to the LCB under Title 66 RCW and/or Title 314 WAC.

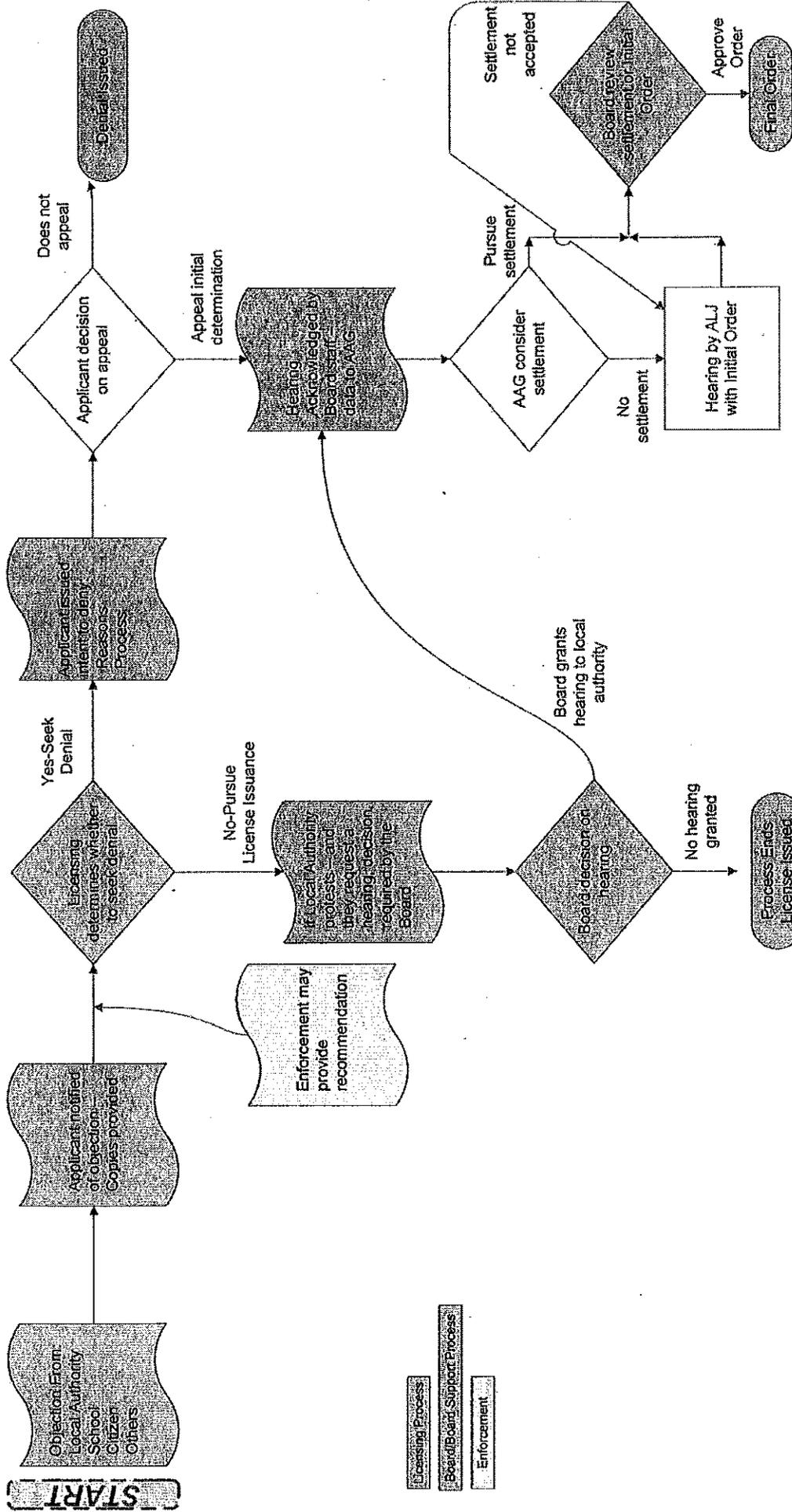
The following procedure relates directly to an application/renewal which is objected to by a local authority or others. In those circumstances where the applicant/licensee does not appear to meet eligibility requirements, some of these steps will not apply.

Procedure and/or Desired Outcome	Responsible Party
Receive objection from local authority, school or citizen. Evaluate objection for timeliness, subject jurisdiction and whether further supporting documentation is necessary. Acknowledge receipt as appropriate.	LCB Licensing and Regulation Division
Feedback and recommendations requested from Enforcement and Education Division.	LCB Licensing and Regulation Division
Enforcement provides written recommendations to the Licensing Director with justification.	LCB Enforcement and Education Division
Licensing managers evaluate all relevant information and develop DRAFT recommendations on the application/renewal. File submitted to prosecuting AAGs for their review and comment.	LCB Licensing and Regulation Division
Prosecuting AAGs advise licensing managers of their comments on recommended action.	LCB Licensing and Regulation Division
Licensing managers prepare recommendation and submit to Director for action. While the recommendation will be in writing, the presentation may be in person with representatives from Enforcement in attendance.	LCB Licensing Managers

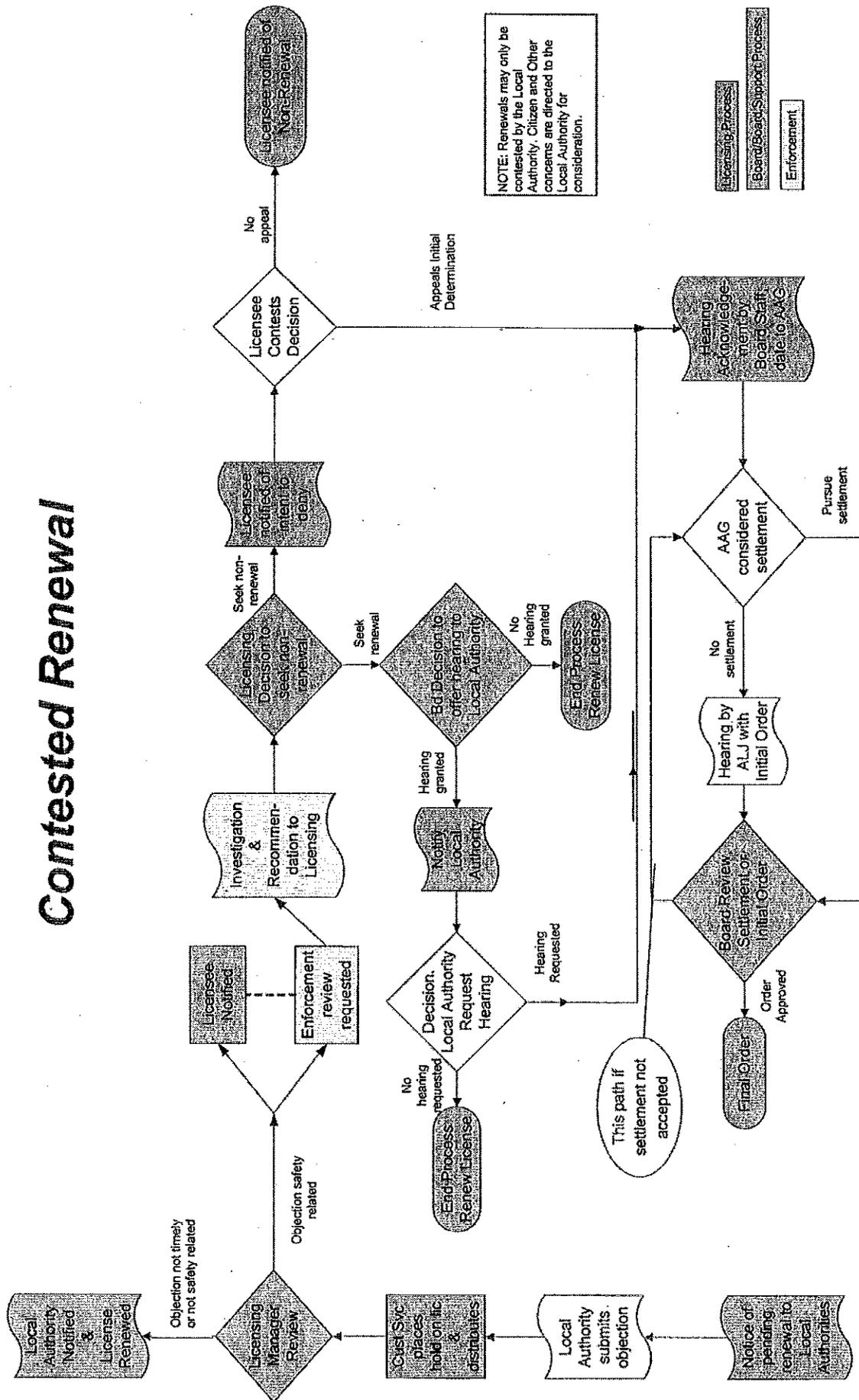
Procedure and/or Desired Outcome	Responsible Party
<p>Licensing Director makes threshold determination and directs preparation of either:</p> <ul style="list-style-type: none"> • Intent to deny/not renew to applicant/licensee; or • Notice to local authority that license will be issued/renewed over their objection <p>These notifications will include appropriate information relative to appeal rights and required response timeframes.</p>	<p>Licensing Director</p>
<p>Licensing notifies all parties of threshold determination.</p>	<p>LCB Licensing and Regulation Division</p>
<p>Where the threshold determination is to issue a license or renewal over an objection by the local authority, granting such a hearing will be discretionary based on whether the objection is based on safety related issues jurisdictional to the LCB under statute or rule.</p>	<p>Licensing Director</p>
<p>This is the end of LCB Licensing Division's direct role in this process.</p> <p>In cases where the applicant/licensee appeals the threshold decision by Licensing, the process for handling the request for a hearing will be the responsibility of Board's Adjudicative Proceedings Coordinator. Similarly, where the local authority is granted a hearing, the handling of this request will be by the Board's Adjudicative Proceedings Coordinator.</p>	

Attached are flowcharts for the Contested License Application and Contested Renewal process.

Contested License Application



Contested Renewal



NOTE: Renewals may only be contested by the Local Authority. Citizen and Other concerns are directed to the Local Authority for consideration.

Licensing Process
 Board/Board Support Process
 Enforcement

