



## Notice of Permanent Rules to Implement I-1183 – Explanatory Statement

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of rules to implement Initiative 1183.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Liquor Control Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately July 6, 2012).

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Karen McCall, Rules Coordinator, at (360) 664-1631 or e-mail at [rules@liq.wa.gov](mailto:rules@liq.wa.gov).

---

### What are the agency's reasons for adopting these rules?

Initiative 1183 was passed by the voters on November 8, 2011. New license types were created and additional privileges are allowed for current license types. Rules are needed to implement and clarify changes made by Initiative 1183.

---

### Summary of all public comments received on this rule proposal.

The Liquor Control Board received eighteen comments on the proposed permanent rules at the public hearing on May 24, 2012, and received two hundred ninety-four written comments during the comment period that ended May 30, 2012.

## Comments from Public Hearing:

**WAC 314-02-106 (4):** The following people commented on the 17% license issuance fee that spirits retail licensees must pay on all spirits sales. The commenters stated that former contract liquor stores and successful bidders of former state liquor stores should not be required to pay the 17% license issuance fee on retail-to-retail sales. There was also comment that no spirits retailer licensee should pay 17% license issuance fees on retail-to-retail sales.

- Rob Kauffman – CLS owner and member of the Lincoln County Board of Commissioners.
- Trent House – Representing former CLS, Clear View Spirits & Wine.
- Jerry McAlpine – CLS owner.
- Anthony Thieland – successful bidder of former state liquor store.
- Ian Murphy – Small restaurant owner.
- Katherine Degorty – CLS in Port Hadlock.
- Julia Clark – Washington Restaurant Association.
- Natalie Murphy – CLS in Greenacres.
- Julian Mark – CLS 147, Lake Chelan.
- Mike Thieland – successful bidder of former state liquor store.
- Bonnie Ralston – CLS owner
- Jeannie Weston – CLS 639.

**LCB response:** The language in RCW 66.24.630 (4) states, “Each spirits retail licensee must pay to the board, for deposit into the liquor revolving fund, a license issuance fee equivalent to seventeen percent of all spirits sales revenues under the license, exclusive of taxes collected by the licensee and of sales of items on which a license fee payable under this section has otherwise been incurred. The board must establish rules setting forth the timing of such payments and reporting of sales dollar volume by the licensee, with payments required quarterly in arrears. The first payment is due October 1, 2012. The language does not include any basis for the board to exempt any retail-to-retail-sales from the 17% license issuance fee required by the law.

**WAC 314-02-103 (2) and WAC 314-02-106 (1) (c):** The following people commented on the 24 liter limit per sale per on-premises licensee per day rules for wine and spirits. Numerous written comments were also received on this rule.

- Lynne Omlie – DISCUS. Supported the per day limit.
- Andy Thieland – Successful bidder of former state liquor store. Opposes the per day limit.
- Holly Chisa – NWGA – Opposes the per day limit.

- Julia Clark – WRA. Opposes the per day limit.
- Bruce Beckett – WRA. Opposes the per day limit.
- John Guadnola – WBWWA – Supports the per day limit.

**LCB response:** The emergency rules adopted by the board simply repeated the language of the initiative that included the 24 liter limitation. In response to the emergency rules, the board received comments that suggested the rule should be more specific, such as limiting the retail-to-retail sales to one every twenty-four hours, or other limitation, such as requiring each sale to be completed and the product removed from the store before another transaction could be made.

The board set this matter for a work session at the February 22, 2012, board meeting and received numerous comments. Some of the comments asserted that the board has no authority to impose a limitation and that the “twenty-four liters per sale” language is clear.

Testimony at the board work session certainly supports the view that a limitation of some kind was intended, and that the inclusion of a limit on the amount of spirits and wine that may be sold in a retail-to-retail transaction was intended to be a meaningful limitation. Although I-1183 amends the powers of the Liquor Control Board, the board clearly has authority to do rulemaking that affects how licensees may sell liquor:

*RCW 66.08.030 “The power of the board to make regulations under chapter [34.05](#) RCW extends to:*

- *(6) Regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;*
- *(12) Prescribing the conditions, accommodations, and qualifications requisite for the obtaining of licenses to sell beer, wines, and spirits, and regulating the sale of beer, wines, and spirits thereunder;*

Together these sections referenced above clearly show that the board has the authority to adopt rules governing the sale of liquor by licensees, including a clarification or further limitation on sales.

**WAC 314-23-030. The following people commented on the restriction that an authorized representative US spirits COA and an authorized representative foreign spirits COA are not allowed to sell directly to a spirits retail licensee in Washington State.**

- Lynne Omlie – DISCUS. Opposes the rule that does not allow authorized representative spirits COAs from selling directly to Washington retailers.
- C.J.Healy – Spirits Canada. Opposes the rule that does not allow authorized representative spirits COAs from selling directly to Washington retailers. This

rule may be inconsistent with Washington State's international trade obligations under NAFTA.

**LCB response:** RCW 66.24.640 (section 206 of the initiative), states in part, "The board must by rule provide for issuance of certificates of approval to spirits suppliers." Rules were created for three types of spirits COA licenses based on the language in the new law. These new COA licenses are consistent with the authority provided to beer and wine COA licenses. Only an actual spirits manufacturer licensed as a Spirits COA with a direct sale to retail endorsement is allowed to sell directly to spirits retailers in the State of Washington.

**WAC 314-02-106 (3). One person commented on the requirement in RCW 66.24.630 (2) that on-premises spirits licensees that purchase spirits from a spirits retail licensee are required to submit a quarterly report should include providing the report to all spirits suppliers, not just distributors and distillers acting as a distiller:**

**The board must establish by rule an obligation of on-sale spirits retailers to:**

**(a) Maintain a schedule by stock-keeping unit of all their purchases of spirits from spirits retail licensees, indicating the identity of the seller and the quantities purchased; and**

**(b) Provide, not more frequently than quarterly, a report for each scheduled item containing the identity of the purchasing on-premise licensee and the quantities of that scheduled item purchased since any preceding report to:**

**(i) A distributor authorized by the distiller to distribute a scheduled item in the on-sale licensee's geographic area; or**

**(ii) A distiller acting as distributor of the scheduled item in the area.**

- Lynne Omilie – DISCUS.

**LCB response.** The law is clear and requires no language to clarify.

**General comment. We thought the initiative was intended to create a competitive marketplace. My prices for product are going up, not down.**

- Max Mesmer – Alderbrook resort.

**LCB response.** The initiative did create a competitive marketplace. Retailers are allowed to purchase spirits and wine directly from manufacturers, distributors, and off-

premises retailers holding the required licenses or endorsements. Uniform prices were repealed and quantity discounts are allowed for spirits and wine.

### **Written comments.**

Additional written comments address several proposed rules. They are addressed individually below:

**Wine retailer reseller endorsement. WAC 314-02-103 (2): No single sale to an on-premises liquor licensee may exceed twenty-four liters. Single sales to an on-premises licensee are limited to one per day.**

**Spirits retailer license. WAC 314-02-106 (1)(c): Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although no single sale may exceed twenty-four liters, and single sales to an on-premises licensee are limited to one per day.**

- Numerous comments were received opposing the per day limit on retail-to-retail sales of wine and spirits.

**LCB response:** The emergency rules adopted by the board simply repeated the language of the initiative that included the 24 liter limitation. In response to the emergency rules, the board received comments that suggested the rule should be more specific, such as limiting the retail-to-retail sales to one every twenty-four hours, or other limitation, such as requiring each sale to be completed and the product removed from the store before another transaction could be made.

The board set this matter for a work session at the February 22, 2012, board meeting and received numerous comments. Some of the comments asserted that the board has no authority to impose a limitation and that the “twenty-four liters per sale” language is clear.

Testimony at the board work session certainly supports the view that a limitation of some kind was intended, and that the inclusion of a limit on the amount of spirits and wine that may be sold in a retail-to-retail transaction was intended to be a meaningful limitation. Although I-1183 amends the powers of the Liquor Control Board, the board clearly has authority to do rulemaking that affects how licensees may sell liquor:

***RCW 66.08.030*** “*The power of the board to make regulations under chapter [34.05](#) RCW extends to:*

- *(6) Regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;*
- *(12) Prescribing the conditions, accommodations, and qualifications requisite for the obtaining of licenses to sell beer, wines, and spirits, and regulating the sale of beer, wines, and spirits thereunder;*

Together these sections referenced above clearly show that the board has the authority to adopt rules governing the sale of liquor by licensees, including a clarification or further limitation on sales.

**WAC 314-02-106 (4): A spirits retail licensee must pay to the board seventeen percent of all spirits sales.**

- Numerous comments were received that former contract liquor stores and successful bidders of former state liquor stores should not be required to pay the 17% license issuance fee on retail-to-retail sales. There were also comments that no spirits retailer licensee should pay 17% license issuance fees on retail-to-retail sales. There was also a comment that the word "sales" should be changed to the word "revenues" as used in the initiative.

**LCB response:** The language in RCW 66.24.630 (4) states, "Each spirits retail licensee must pay to the board, for deposit into the liquor revolving fund, a license issuance fee equivalent to seventeen percent of all spirits sales revenues under the license, exclusive of taxes collected by the licensee and of sales of items on which a license fee payable under this section has otherwise been incurred. The board must establish rules setting forth the timing of such payments and reporting of sales dollar volume by the licensee, with payments required quarterly in arrears. The first payment is due October 1, 2012." The language does not include any basis for the board to exempt retail-to-retail-sales from the 17% license issuance fee required by the law. The board feels the use of the word "sales" is appropriate.

**WAC 314-23-001 (2) The price of spirits sold to retailers may not be below acquisition cost.**

- Comment was received that the rule does not include the exception in RCW 66.24.330 (1) that states: No price for spirits sold in the state by a distributor or other licensee acting as a distributor pursuant to this title may be below acquisition cost unless the item sold below acquisition cost has been stocked by the seller for a period of at least six months. The seller may not restock the item

for a period of one year following the first effective date of such below cost price.

**LCB response:** The exception in RCW 66.24.330 is clear and does not require a rule to clarify. There are numerous exceptions in law that do not have clarification in rule. The rule does not forbid what the statute allows..

### **WAC 314-23-030. What does a spirits certificate of approval license allow?**

- Several comments were received that manufacturers located outside of the US should not be excluded from obtaining a Spirits COA license. All persons holding a Spirits COA license should be allowed to obtain a direct shipment endorsement and sell directly to a retailer located in Washington state.

**LCB response:** RCW 66.24.640 states, "Any distiller licensed under this title may act as a retailer and/or distributor to retailers selling for consumption on or off the licensed premises of spirits of its own production, and any manufacturer, importer, or bottler of spirits holding a certificate of approval may act as a distributor of spirits it is entitled to import into the state under such certificate. The board must by rule provide for issuance of certificates of approval to spirits suppliers."

The language of the new law required the board to create "certificates" (plural) of approval for spirits. Since the board was directed to create certificates, to be consistent, the board created the same certificates for spirits that are currently in law for wineries and breweries.

### **WAC 314-23-030 (3)(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.**

- Comments were received that distillers and spirits COA holders selling direct to retailers should not be required to pay the board 10% of the total revenue from all sales of spirits to retail licensees.

LCB response: RCW 66.24.640 states, "An industry member operating as a distributor and/or retailer under this section must comply with the applicable laws and rules relating to distributors and/or retailers." Based on the language of the new law, a distillery or spirits COA is required to pay the 10% fee on sales to retailers. A distillery is also required to pay the 17% fee on sales to retailers. ESB 6635, passed in the 2012 legislative session, exempted craft distilleries from paying the 17% fee on retail sales.

### **WAC 314-23-050. What does a spirits importer license allow?**

- Comments were received that a spirits importer license should allow direct sales to retailers if they hold a direct shipment endorsement.

**LCB response.** The initiative did not change what a spirits importer was allowed to do prior to the initiative in RCW 66.24.160. The law states, "A spirits importer's license may be issued to any qualified person, firm or corporation, entitling the holder thereof to import into the state any liquor other than beer or wine; to store the same within the state, and to sell and export the same from the state." There is no allowance to sell to retailers.

### **WAC 314-02-103 (4) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board.**

- Comments were received that the rule does not include the provision in the law, RCW 66.24.360 (8), which allows delivery of wine to "lawful purchasers outside the state".

**LCB response:** The law is clear and does not require a rule to clarify.

### **WAC 314-02-104 (c). Licensees in a shared warehouse may consolidate their commitment for the amount of product they plan to order, but their orders must be placed separately and paid for by each licensee.**

- Comments were received stating the only limitations imposed on members of the the group are the limitations applicable individually and registration. The efficiency of consolidated warehousing logically extends to consolidated ordering and payment.

**LCB response:** There is no liquor license for a "cooperation, association, or comparable group of retailers". The initiative did not create such a license either, thus a cooperative or association may not purchase liquor on behalf of the members. An entity must hold a liquor license to purchase alcohol for resale. The board worked with stakeholders to create a solution that would work for all licensees interested in central warehousing.



**WAC 314-23-020 (2). Spirits distributors must sell and deliver product from their licensed premises.**

- Comments were received that the initiative does not direct the board to promulgate rules in this area, and there is no statutory authority for this limitation.

**LCB response:** *RCW 66.08.030 "The power of the board to make regulations under chapter [34.05](#) RCW extends to:*

- *(6) Regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;*
- *(12) Prescribing the conditions, accommodations, and qualifications requisite for the obtaining of licenses to sell beer, wines, and spirits, and regulating the sale of beer, wines, and spirits thereunder;*

Together these sections referenced above clearly show that the board has the authority to adopt rules governing the sale of liquor by licensees, including a clarification or further limitation on sales.