



Notice of Rule Change Concise Explanatory Statement Hotel Liquor License

This explanatory statement concerns the **Washington State Liquor Control Board's modification of rules for the hotel liquor license.**

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 September 19, 2008).

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Rules Coordinator, at (360) 664-1648 or e-mail at rules@liq.wa.gov.

What are the agency's reasons for revising these rules?

In 2006, the WSLCB began a collaborative process with the hotel industry to investigate and discuss what would be needed to create a unique license that would replace the multiple licenses that are required to allow the sale and consumption of alcohol on the hotel premises. All interested parties recognized the need for a license that better reflected the facility and operation of the hotel premises.

Bill E2SSB 5859 was passed in 2007. The creation of a Hotel License was part of this bill. It consolidates privileges of other licenses currently used to provide alcohol service to hotel patrons under one license. It also provides additional privileges currently unavailable to qualifying hotels. This bill was followed by SSB 6770, which was passed in 2008, to further clarify where liquor may be consumed on premises, and under what conditions a hotel may provide service to occupants of private residential units.

Staff from the WSLCB have continued to work with representatives from the hotel industry to identify issues that need further clarification by adopting rules.

What changes are being made?

New sections are proposed in **Chapter 314-02 WAC – Requirements for Retail Liquor Licensees** that address the following:

1. Adds a definition of the term “adjacent”.
This definition is needed to clarify where additional structures can be located in relation to the Licensed Premise and still be covered under the License. (WAC 314-02-010 Definitions.) In response to public comment, the word "private" was removed from "private or public right of way" roads.
2. Adds a description of the privileges of this new license as outlined in RCW 66.24.590.
(WAC 314-02-041.)
3. Provides food requirements for this license.
Requirements include types of meals and times they must be available to customers, and what constitutes minimum food service. (WAC 314-02-0411.)
4. Clarifies where minors are allowed on the hotel premises, and provides criteria used by the Board to restrict access by minors in areas of the hotel premises. (WAC 314-02-0412.)
5. Clarifies the responsibilities of the parties when the hotel licensee does not operate the business that serves alcohol and food within the hotel premises.
As outlined in RCW 66.24.590, food and alcohol inventory may not be shared between licensees; the hotel licensee’s license may be subject to violations committed by the separately licensed business within the hotel premises that serve or sell alcohol; and agreements between licensees must be submitted to the Board. (WAC 314-02-0413.)
6. Clarifies that a hotel licensee may exercise catering privileges for alcohol service at events outside of the hotel premises. (WAC 314-02-0414.)
7. Clarifies the licensee’s use of spirits, beer, and wine used in on-premises instruction or training of employees.

Summary of all public comments received on this rule proposal, by subject matter.

1. Defining the term "adjacent" in regards to liquor service being extended to buildings, structures, and grounds located on adjacent properties that are either owned or leased by the hotel owner(s).

Comment: (a) Given the trend of hotels (in downtown areas) and resorts to expand outward rather than upward, "adjacent" should include areas that are diagonally across an intersection.

(b) In the case of resorts, roads constitute an artificial barrier.

Response: (a) "Adjacent" implies that two areas share a side. In the case of downtown-area hotels, catty-corner properties do not share a side. Our concern is to keep the notion of adjacent property for purposes of liquor service to those properties located physically close together with reasonable connections between the hotel activities and the hotel's customers.

(b) We have removed the word "private" from "private or public right of way". The definition of "hotel" speaks to buildings, structures and grounds. Staff expect a resort to lie within one contiguous grounds completely owned by the same person(s), with all the roads within the grounds under private ownership. By removing "private" roads, we have also removed the artificial barrier.

2. Providing a complimentary bottle of spirits.

Comment: Hotels would appreciate the ability to place a complimentary bottle of a guest's favorite spirit in a room instead of, or in addition to, beer or wine.

Response: Statute allows hotels to place only a complimentary bottle of beer or wine in a guest room, not spirits (RCW 66.24.590(2)(g)). The Liquor Control Board does not have the authority to make this change.

3. Determining food requirements.

Comment: Mid-scale hotels find that guests typically do not eat in the hotel restaurant, thereby making it difficult for hotels to meet the current menu requirement. Consider either (a) loosening the menu requirements, or (b) allowing third-party vendors that are adjacent to, or near, the hotel to provide food services.

Response: (a) The intent is to continue alcohol service to those facilities that were served by a Restaurant license on premises, rather than expanding alcohol service to those hotel facilities that do not currently have service through an on-premises restaurant.

(b) We will allow third-party vendors to provide food services provided that the food is prepared, cooked and served either on the hotel premises, or on those premises that belong to the hotel owner(s) and qualify under "adjacent".

4. Determining service requirements.

Comment: Allow hotels that currently operate a service bar to obtain a hotel license.

Response: Extending alcohol service to the hotel environment requires a hotel license with the accompanying privileges. Hotels may no longer operate through another license type to offer alcohol service to its customers at its facility.

5. Making a hotel liquor license mandatory.

Comment: Must hotels obtain a hotel license, or may they obtain a Spirits, Beer, and Wine Restaurant license?

Response: Hotels must obtain a hotel license. The Revised Code of Washington (RCW) creates a unique hotel liquor license for a unique business type (RCW 66.24.590). This license stipulates specific activities that a hotel is allowed, such as selling liquor through room service and operating its own spirits, beer and wine restaurant. In addition to the hotel liquor license, statutory language was changed to remove the authority for a Spirits, Beer, and Wine restaurant licensee from providing alcohol service to hotels. If a hotel qualifies for the hotel liquor license and wishes to continue these activities, then that hotel must now do so under the hotel liquor license.

6. Affording a hotel liquor licensee the same privileges as a holder of a Spirits, Beer, and Wine Restaurant license.

Comment: Hotel operators should be afforded the same privileges as the holder of a Spirits, Beer, and Wine Restaurant license. Privileges include (a) selling non-exclusive bottles of wine, (b) allowing guests to remove unused, re-corked portions of wine from the hotel's restaurant, and (c) allowing guests to bring their own wine for consumption with a meal at the hotel's restaurant.

Response: (a) Yes. Hotel licensees may sell bottles of wine from retail sales locations within the hotel premises. RCW 66.24.590(2)(e)

(b) Yes. A hotel licensee may allow sales and consumption of beer and wine throughout the hotel premises. Removing unfinished, recorked bottled wine from a restaurant venue within the hotel premises is allowed under this license. (c) Yes. The hotel license does not restrict wine brought in by a customer for use in the hotel in the customer's room or in a dining venue if the hotel allows the practice.

Public Comment Participant List

Name and Affiliation

Written comments

Jan Simon Aridj, President and CEO, Washington State Hotel and Lodging Association

Jessica Nguyen, Attorney, Cairncross & Hempelmann, P.S.

Testimony at public hearing – July 9, 2008, Olympia, WA

Jan Simon Aridj, President and CEO, Washington State Hotel and Lodging Association

Jeff Fox, Hilton Hotels and member of the Washington State Hotel and Lodging Association

Text of modified rule (Estimated effective date is September 15, 2008)

Hotel Liquor License

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

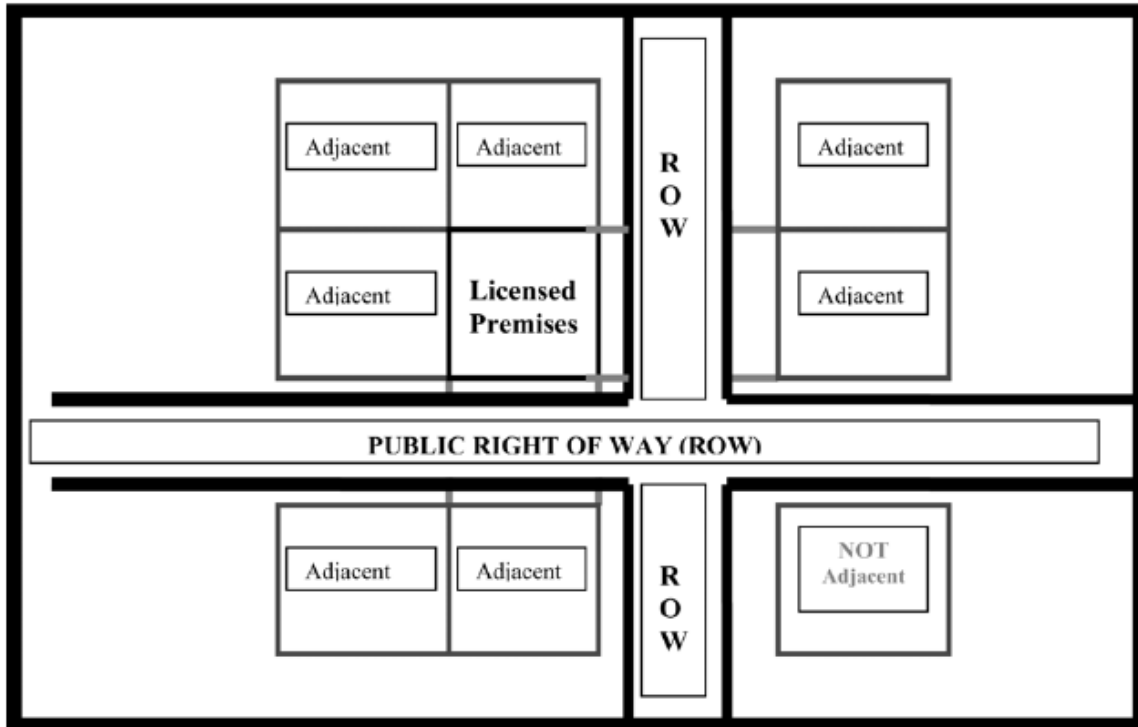
WAC 314-02-005 What is the purpose of chapter 314-02 WAC? Chapter 314-02 WAC outlines the qualifications for the following liquor licenses and permits:

- (1) Spirits, beer, and wine restaurants;
- (2) Hotels;
- (3) Beer and/or wine restaurants;
- ~~((3))~~ (4) Snack bars;
- ~~((4))~~ (5) Taverns;
- ~~((5))~~ (6) Motels;
- ~~((6))~~ (7) Bed and breakfasts;
- ~~((7))~~ (8) Nonprofit arts organizations;
- ~~((8))~~ (9) Public houses;
- ~~((9))~~ (10) Grocery stores;
- ~~((10))~~ (11) Beer/wine specialty shops; and
- ~~((11))~~ (12) Beer/wine gift delivery business.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-010 Definitions. The following definitions are to clarify the purpose and intent of the rules and laws governing liquor licenses and permits. Additional definitions can be found in RCW 66.04.010.

(1) "Adjacent" means having a common endpoint or border where the extension of the property lines of the licensed premises contacts that common border.



(2) "Banquet room" means any room used primarily for the sale and service of food and liquor to private groups.

~~((2))~~ (3) "Customer service area" means areas where food and/or liquor are normally sold and served to the public, i.e., lounges and dining areas. A banquet room is not considered a customer service area.

~~((3))~~ (4) "Dedicated dining area." In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. See WAC 314-02-025 for more information.

~~((4))~~ (5) "Designated area" means a space where alcohol may be sold, served, or consumed.

(6) "Food counter" means a table or counter set up for the primary purpose of food service to customers who sit or stand at the counter. Any alcohol served is incidental to food service.

~~((5))~~ (7) "Game room" means an area of a business set up for the primary purpose of patrons using games or gaming devices.

~~((6) "Liquor" means beer, wine, or spirits (per RCW 66.04.010(19) Definitions).~~

~~(7))~~ (8) "Liquor bar" means a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.

~~((8))~~ (9) "Lounge" means the portion of a restaurant used primarily for the preparation, sale, and service of beer, wine, or spirits. Minors are not allowed in a lounge (see RCW 66.44.316 for information on employees and professional musicians under twenty-one years of age).

~~((9))~~ (10) "Minor" means a person under twenty-one years of age.

~~((10))~~ (11) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

NEW SECTION

WAC 314-02-041 What is a hotel license? (1) Per RCW 66.24.590, this license allows a hotel to:

(a) Serve spirits by the individual serving at retail for consumption on the licensed premises;

(b) Serve beer, including strong beer, and wine for consumption on the licensed premises;

(c) Sell at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms;

(d) Provide, without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for consumption on the licensed premises at a specified regular date, time, and place. Self-service by guests is prohibited;

(e) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings, that include the hotel;

(f) Sell beer, including strong beer, and wine, in the manufacturer's sealed container at retail sales locations within the hotel premises; and

(g) Place in guest rooms at check-in, complimentary beer, including strong beer, or wine in a manufacturer's sealed container.

(2) The annual fee for a hotel license is two thousand dollars.

NEW SECTION

WAC 314-02-0411 What are the food service requirements for a hotel license? (1) A hotel licensee must have the ability to serve at least four complete meals to hotel guests or any other patron of the hotel who is offered alcohol service for on-premise consumption at a food outlet on the hotel premises. Food outlets include room service, banquets, bars/lounges, restaurants, or coffee shops. "Complete meal" is defined in WAC 314-02-035.

(2) Complete meals must be prepared on the hotel premises.

(3) A menu must be available to hotel guests and patrons offered alcohol service that lists, at a minimum, the required complete meals.

(4) The food items required to maintain the menu must be located on the licensed premises. These items must be edible.

(5) (a) Licensees must maintain complete meal service for a minimum of five hours a day between the hours of 11:00 a.m. and 2:00 a.m. on any day that liquor is served. The board may consider written requests for exceptions to this requirement due to a demonstrated hardship and may allow exceptions under terms and conditions the board determines are in the best interests of the public.

(b) Minimum food service must be available during hours of alcohol service when complete meal service is not offered. Minimum food service includes items such as hamburgers or fry orders. Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

(6) Hours of complete meal service must be listed on the menu. If applicable, a statement must be posted or listed on the menu that minimum food service is available when alcohol is served and complete meal service is unavailable.

NEW SECTION

WAC 314-02-0412 Are minors restricted from any areas of the hotel premises? (1) If an area of the hotel premises is used primarily for alcohol service on a continuing basis, the area must be designated by the licensee as restricted to access by minors.

(2) The board may restrict alcohol service in areas of the hotel premises where:

(a) The designated area is designed as an attraction for minors; or

(b) Consumption of alcohol in a designated area presents an increased risk to public safety.

NEW SECTION

WAC 314-02-0413 What are the requirements if the hotel licensee does not operate the business serving alcohol or food within the hotel premises? (1)(a) If any facilities within the hotel premises used for alcoholic beverage service and the preparation, cooking, and serving of food are operated under contract or joint venture agreement with a business separate from the hotel business, the operator may hold a license separate from the license held by the operator of the hotel.

(b) Food and beverage inventory used in separately licensed operations on the hotel premises may not be shared and shall be separately owned and stored by the separate licensees.

(c) The board may require a hotel licensee to submit a copy of the contract or joint venture agreement when a party other than the hotel operator provides food and alcoholic beverage service. Such contract or agreement must require the provider of food and alcoholic beverage services to meet the food service requirements of WAC 314-02-0411.

(d) The hotel licensee is responsible for the conduct of alcohol sales and service by a separately licensed business and violation incurred by the separately licensed business may result in an administrative violation for the hotel licensee.

(2)(a) If alcohol is consumed in an area of the hotel premises operated by a business separate from the hotel business but under a contract or joint venture agreement with the hotel licensee to conduct activities other than food service, the hotel licensee is responsible for violations of alcohol laws and regulations resulting from conduct of the separate business.

(b) The board may require a hotel licensee to submit a copy of the contract or joint venture agreement between the licensee and the separate business.

NEW SECTION

WAC 314-02-0414 Can a hotel licensee use its alcohol inventory for sales and service at events outside of the hotel premises? Per RCW 66.24.590, a licensee may:

(1) Remove from the hotel licensee's liquor stocks at the licensed premises, liquor to be sold and served at an event on a specified date at a specified location not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization defined under RCW 66.24.375.

(2) If requested by the board, the licensee must notify the board or its designee of the date, time, and location of these events.

(3) Licensees may sell and serve liquor under this section on the premises of a domestic winery.

NEW SECTION

WAC 314-02-0415 What are the requirements for instructing employees on spirits, beer, or wine? (1) Per RCW 66.24.590, a licensee or its manager may furnish spirits, beer, or wine to the licensee's employees who are twenty-one years of age or older, free of charge, as a necessary part of instruction and training on spirits, beer, and wine.

(2) The licensee must use spirits, beer, and wine he or she obtains under the license for purposes of instruction.

(3) The instruction must be given at the hotel premises.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-080 What are the requirements for a motel licensee or a hotel (~~(with a spirits, beer, and wine restaurant license)~~) licensee to sell liquor in honor bars? For the purposes of this chapter, an "honor bar" is a cabinet, box, cooler, or refrigerator in a guest room that can be opened only with a key, combination, magnetic card, or similar device. The following requirements apply to the use of an honor bar:

(1) The licensee must require proof of age before providing a guest access to an honor bar. The guest must sign a declaration, under penalty of perjury, verifying that:

(a) The guest is twenty-one years of age or older; and

(b) No one under twenty-one years of age will have access to the liquor in the honor bar.

(2) The honor bars must remain locked whenever the room is rented to a guest under twenty-one years of age.

(3) All liquor stored on the licensed premises must be either locked in an honor bar or locked in a secured liquor storage room.

(4) No person under twenty-one years of age may have access to the honor bars, liquor storage rooms, or keys, combinations, etc., to the locked honor bars or storage rooms.

(5) A honor bar or storage room may only be replenished during those hours when liquor may legally be sold (not between 2:00 a.m. and 6:00 a.m.), and only by employees who are twenty-one years of age or older. Beer and wine wholesalers may deliver, price, and stock product only in storage rooms.

(6) Liquor in honor bars may only be sold in individual containers in the following sizes:

(a) Spirits - not to exceed fifty milliliters;

- (b) Beer - not to exceed twelve ounces; and
- (c) Wine - not to exceed one hundred eighty-seven milliliters.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-02-040

Can a hotel with a spirits, beer, and wine restaurant license sell liquor by the bottle to guests?