



Notice of Rule Change – Explanatory Statement Official forms of identification to show proof of age to purchase alcohol

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of changes to the rule regarding official forms of identification to show proof of age to purchase alcohol.**

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 rule with the Office of the Code Reviser. This rule change will become effective 31 days after filing (approximately February 16, 2008).

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

What are the agency's reasons for revising this rule?

Legislation enacted during the 2005 legislative session eliminated certain documents and added tribal enrollment cards to a list of officially issued documents that can be used to prove age when purchasing liquor and alcohol. In addition to the changes in the list of official documents, additional policies contained in the current agency rule were evaluated by the agency and modified. The policy regarding use of expiration dates on official documents was modified and language regarding use of Washington's temporary driver's license was repealed.

Legislative changes. The Legislature changed RCW 66.16.040 as follows:
1. SHB 1496 (2005 session) - Authorizes enrollment cards issued by the governing authority of a federally recognized Indian tribe located in Washington

to be used as identification for the purchase of alcohol or tobacco. The enrollment card must incorporate security features comparable to those implemented by the Department Of Licensing for Washington drivers' licenses. The tribe must give the liquor control board at least 90 days notice of intent to use the tribal enrollment card for the purpose of purchasing alcohol or tobacco. The liquor control board will notify licensees of the new tribal enrollment card.

2. HB 1621 (2005 session) – Eliminates the liquor control authority identification card as an official form of identification for proving age to purchase alcohol. The Board stopped issuing cards in 1971. Two other states and four Canadian provinces allowed use of the card as recently as 2005. When this bill was passed, it did not include reference to similar language in the tobacco statutes. The result is that the list for alcohol is different from the list for tobacco.

Military identification now uses an imbedded signature and state law was clarified to allow use of an imbedded non-visible signature to meet the requirement that the document have a signature.

Expiration dates. The agency rule addresses the use of expiration dates on official documents. Expiration dates are not required by state law. To require an expiration date by rule would conflict with forms of identification the Legislature recognized as valid. The Board eliminated the regulation that all forms of official ID must have an expiration date but maintained a requirement that if a document has an expiration date, it cannot be used for proving age passed the date it expires.

A limited survey of LCB enforcement staff and a small sample of urban retail licensees reveals that there is limited use of expired ID by individuals. This was confirmed by LCB staff at 32 state liquor stores throughout the state. One reason offered is that people know they are not acceptable. Many other states require that official identification be valid to be used which means that the document not be expired. This is a common policy. When asked if they favored accepting identification that has expired, the opinion was overwhelming no. The primary reason was that it is too easy to pass it on to those who are underage and would add to the pool of fake identification.

Temporary Washington driver's license. The current rule allows an expired Washington driver's license to be used as identification as long as it is accompanied by a "temporary paper license" or a current expiration extension sticker. The format of a temporary Washington driver's license has changed to include a photo of the person to whom it is issued. It meets the statutory criteria for an official form of identification. State law passed several years ago directed the Department of Licensing to design a temporary license to include a photo and make it acceptable as ID for purposes of age verification.

What changes are being made?

Based on legislative changes, the current WAC conflicts with RCW 66.16.040 as follows:

1. New forms of identification are added to WAC 314-11-025.

The agency rule will be modified to include tribal enrollment cards for federally recognized Indian Tribes located in Washington.

2. Forms of identification no longer recognized are removed from WAC 314-11-025.

The liquor control authority card of identification of any state or province of Canada is removed from the agency rule.

3. Signature requirement met by use of imbedded signature for military ID.

The agency rule will allow an imbedded signature used on military ID to satisfy the requirement that official identification must bear the signature of the holder.

Additional policy changes include:

4. Expiration dates no longer required.

The agency rule will no longer require that an expiration date be required on an official form of identification listed in statute. However, if a document has an expiration date, the document may not be used if it is expired.

5. Remove reference to use of temporary driver's licenses

Whether a licensee or his or her employees accept a temporary license should be a business practice decision since the reason to check ID is to prevent sales and service of alcohol to persons under the age of 21 years.

Rule Adoption

The Board adopted this rule change on January 9, 2008. The rule will be filed on January 16, 2008 and will be effective February 16, 2008.

Summary of all public comments received on this rule proposal.

1. Repealing requirement that a temporary Washington driver's license must be accompanied by an expired permanent license or have an extension sticker.

Comment: A temporary driver's license has no security features and is easily scanned and reproduced. Allowing the use of a temporary license standing alone will result in a glut of fake licenses used by minors to gain access to alcohol.

Response: A temporary Washington driver's license now has a photo along with a person's date of birth and signature. It does not contain security features similar to a permanent license. The Department of Licensing recommends that a temporary license be used along with a punched expired permanent license. The responsibility to prove age is on the person purchasing alcohol. The person selling or providing alcohol must be satisfied that the purchaser is 21 years of age or older. Identification may be refused if it doesn't verify age to the licensee or employee's satisfaction. It is not necessary to adopt an LCB rule since it is not a licensee violation to accept other documents. It is not a prudent practice to do so.

2. Requiring an expiration date on official ID document used to verify age when purchasing alcohol.

Comment: Allowing the use of a document beyond its expiration date may result in an increase in the number and use of false IDs.

Response: The person selling alcohol must be sure that the customer is 21 years of age or older before providing that person with alcohol. Officially designated documents all contain a photo along with the name and date of birth. That information does not change with an expiration date. If a photo does not represent the person presenting the document to the satisfaction of the licensee or employee, that person can always ask for additional identification or refuse to accept identification that doesn't clearly show the person using it is 21 or older. Enforcement officers are still able to verify personal information for an expired Washington driver's license.

Comment: Prohibiting use of a document if its expiration date is passed, subjects licensees to a potential violation.

Response: The person selling alcohol must be sure that the customer is 21 years of age or older before providing that person with alcohol. The license

violation in this case is based on whether the customer is 21, not whether the licensee chose to base his or her decision on a document that is expired. There is no requirement that the customer carry any ID. It becomes an issue if it is requested by the licensee or law enforcement because the person's age is questioned. The only penalty to anyone involved if no ID is available and the customer's age cannot be verified is to have the customer leave the restricted area and stop consuming alcohol.

3. Deleting statement in rule about ID showing a photo, date of birth, and signature.

Comment: Removing language from the rule that is contained in the statute may cause confusion over whether these are still requirements.

Response: Rules are a description of an agency's approach to implementing state law. The language of RCW 66.16.040 is the law that is being enforced. Rules add clarification to an agency's approach and typically a rule will not repeat what is already in state law. The added clarification in the proposed rule is that expiration dates are not required but if they are used on a piece of official ID, they may not be used to verify age after the expiration date has passed. The rule does repeat the list of documents to provide context for the statements about the expiration date.

Public Comment Participant List

Name and Affiliation

Written comments

Kevin Zellmer, Assistant General Manager, Hotel Monaco

Robert Knowles, Enforcement Agent, Washington State Liquor Control Board

Pat McFerran, Enforcement Agent, Washington State Liquor Control Board

Jacqueline Eliason, Enforcement Agent, Washington State Liquor Control Board

Michael Transue, Washington State Restaurant Association

Testimony at Public Hearing – December 5, 2007 at Olympia, WA

None

Note: In addition to individual comments listed above, several staff in the Enforcement and Education Division and at state retail liquor stores participated in an internal survey to determine the agency's experience with individuals using expired official identification to purchase alcohol or enter restricted liquor establishments. They also submitted opinions on changing the current policy.

Text of modified rule (Estimated effective date is February 16, 2008)
**Official forms of identification to show proof of age to
purchase alcohol**

AMENDATORY SECTION (Amending WSR 01-06-014, filed 2/26/01,
effective 3/29/01)

**WAC 314-11-025 What are the forms of acceptable
identification?** (1) Per RCW 66.16.040, following are the
forms of identification that are acceptable to verify a
person's age for the purpose of selling, serving, or
allowing a person to possess or consume alcohol:

(a) (~~Liquor control authority card of identification
of any state or province of Canada;~~

~~(b))~~ Driver's license, instruction permit, or
identification card of any state or province of Canada, or
"identocard" issued by the Washington state department of
licensing per RCW 46.20.117;

~~((e))~~ (b) United States armed forces identification
card issued to active duty, reserve, and retired personnel
and the personnel's dependents, which may include an
embedded, digital signature in lieu of a visible signature;

~~((d))~~ (c) Passport; ~~(and~~

~~(e))~~ (d) Merchant Marine identification card issued
by the United States Coast Guard; and

(e) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington driver's licenses.

~~(2) ((In order for the identification to be acceptable to verify a person's age, it must:~~

~~(a) Show the person's photo, date of birth, signature, and expiration date; and~~

~~(b) Not be expired (except that an expired Washington driver's license card together with a current temporary paper license or a current expiration extension sticker is acceptable).))~~ If the identification document has an expiration date, a person may not use the document after the expiration date to verify his or her age.

[Statutory Authority: RCW 66.08.030, 66.28.100, 66.28.040, 66.28.090, 66.44.010, 66.44.070, 66.44.200, 66.44.270, 66.44.291, 66.44.292, 66.44.310, 66.44.316, 66.44.318, 66.44.340, 66.44.350, and chapter 66.44 RCW. 01-06-014, § 314-11-025, filed 2/26/01, effective 3/29/01.]