



Washington State
Liquor and Cannabis Board

Date: October 17, 2018

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Janette Benham, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Pat Kohler, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director

Subject: **Adoption of final rules (CR 103) to implement 2018 liquor legislation (HB 2517) regarding ancillary activity violations – amending chapter 314-29 WAC.**

The rules coordinator requests that the board approve the final rulemaking (CR 103) for revisions made to chapter 314-29 WAC.

The board was briefed on the rulemaking background and heard public comment on this rulemaking. An issue paper and the text of the rules is attached.

If approved, the rules coordinator will send an explanation of the rulemaking to all persons who submitted comments. After sending this explanation, the rules coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

_____ Approve _____ Disapprove _____
Jane Rushford, Chair Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member Date

Attachment: Issue Paper

Issue Paper

2018 Liquor Legislation – House Bill 2517

Date: October 17, 2018

Presented by: Janette Benham, Policy and Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to recommend that the Washington State Liquor and Cannabis Board proceed with final rulemaking (CR 103) to implement House Bill 2517 which passed during the 2018 legislative session. The rules provide direction regarding schedules of penalties for licensees who have manufacturing licenses and participate in ancillary activities. Ancillary activities are defined as activities involving the public, and could include other retail licenses, permits, privileges, endorsements, and serving samples. The schedules of penalties for ancillary violations ensure that licensees will not have their manufacturing license suspended for ancillary activity violations. The rules revisions also provide clarifying and technical updates.

Why is rule making necessary?

Rulemaking is necessary to implement HB 2517. Additional changes were made to the rules to correct references to the WSLCB and provide clarification where needed.

Public Comment

Two comments were received at the October 3, 2018 public hearing. No written comments were received.

What changes are being made?

WAC 314-29-003, WAC 314-29-010, WAC 314-29-020, and WAC 314-29-040: These sections were amended to correct references to the WSLCB and make technical changes to update and clarify rules language.

WAC 314-29-015 What are the penalties if a liquor license holder violates a liquor law or rule? This section was amended to add the definition of ancillary activities and correct references to the WSLCB. The amendment clarifies that the schedules of penalties already established in rule for ancillary activity violations will apply, but will not affect a licensee's underlying manufacturing license. The amendment also clarifies that if violations are not part of ancillary activities, the schedules of penalties already established in rule will apply to the manufacturing license violations and will extend to all retail activities, associated facilities, privileges, endorsements, and permits.



Notice of Permanent Rules to implement 2018 liquor legislation (HB 2517) regarding ancillary activity violations by manufacturers

This explanatory statement concerns the Washington State Liquor and Cannabis Board's adoption of rules to implement HB 2517, which passed during the 2018 legislative session and added a new section to chapter 66.24 RCW.

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 rulemaking.

The Liquor and Cannabis Board appreciates your involvement in this rule making process. If you have any questions, please contact Janette Benham, Policy and Rules Coordinator, at (360) 664-1760 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting this rule

Rulemaking is necessary to implement HB 2517 which passed during the 2018 legislative session. HB 2517 added a new section to chapter 66.24 RCW and directed the board to adopt rules and establish a schedule of penalties for a licensed alcohol manufacturer who has committed a violation as part of the licensee's ancillary activities. The rules define ancillary activities, and refer to the schedules of penalties for both ancillary activities and manufacturing activities. The rules ensure that the manufacturing license will not be suspended, revoked, or cancelled because of ancillary activity violations. Additional changes were made to the rules to correct references to the WSLCB and provide clarification where needed.

Summary of all public comments received on this rule proposal.

CR 101 – filed April 4, 2018
CR 102 – filed August 8, 2018
Public Hearing held October 3, 2018

Two comments were received at the October 3, 2018 public hearing. No written comments were received.

Below is a summary of comments received.

- 1. Annie McGrath, Washington Brewer's Guild** – Appreciated the clear approach to implementing legislation. Requested that a reference to distribution be added to clarify that distribution won't be affected for ancillary activity violations.



WSLCB response: Thank you for your comments. The change was not made to the rules. Distribution is allowed under manufacturing licenses per chapter 66.24 RCW. If a manufacturing license won't be suspended, revoked, or cancelled because of ancillary activity violations, the ability to distribute under that license will not be affected.

- 2. Josh McDonald, Washington Wine Institute** – Agreed with testimony from Annie McGrath and also requested that a reference to distribution be added to clarify that distribution won't be affected for ancillary activity violations.

WSLCB response: Thank you for your comments. The change was not made to the rules. Distribution is allowed under manufacturing licenses per chapter 66.24 RCW. If a manufacturing license won't be suspended, revoked, or cancelled because of ancillary activity violations, the ability to distribute under that license will not be affected.

WAC Changes

See attachment.

AMENDATORY SECTION (Amending WSR 08-17-056, filed 8/15/08, effective 9/15/08)

WAC 314-29-003 Purpose. The purpose of chapter 314-29 WAC is to outline what a liquor licensee or a mandatory alcohol server training permit holder can expect if a licensee or permit holder receives an administrative violation notice alleging a violation of a liquor (~~control~~) and cannabis board statute or regulation.

[Statutory Authority: RCW 66.08.030. WSR 08-17-056, § 314-29-003, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 03-09-015, § 314-29-003, filed 4/4/03, effective 5/5/03.]

AMENDATORY SECTION (Amending WSR 16-19-106, filed 9/21/16, effective 10/22/16)

WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?

(1) A licensee or a mandatory alcohol server training permit holder has twenty days from receipt of the notice to:

(a) Accept the recommended penalty; or

(b) Request a settlement conference in writing; or

(c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

(2) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?

(a) If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect. After twenty days and up to thirty days from the date of the administrative violation notice, and if the violation includes a monetary penalty, the licensee may pay a twenty-five percent fee in addition to the recommended penalty in lieu of suspension.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(c) When a licensee fails to submit payment of monetary fine proceedings, provisions to collect shall take effect immediately or other actions such as revocation, will be instituted as deemed appropriate by the WSLCB.

(d) An attempt to advise the debtor of the existence of the debt, and twenty-five percent late fee per (b) of this subsection, will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least thirty days have elapsed from the time notice was attempted.

(e) Licensees failing to respond to an administrative violation notice or having outstanding fines shall not be eligible to renew their liquor license.

(f) Failure to address monetary penalties for two or more administrative violations notices in a two-year period will result in license cancellation.

(3) What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?

(a) If the licensee or permit holder requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner

or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

[Statutory Authority: RCW 66.08.030 and chapter 66.44 RCW. WSR 16-19-106, § 314-29-010, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 66.08.030. WSR 09-13-037, § 314-29-010, filed 6/10/09, effective 7/11/09; WSR 08-17-056, § 314-29-010, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030, 66.44.010. WSR 01-03-086, § 314-29-010, filed 1/17/01, effective 2/17/01.]

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

WAC 314-29-015 What are the penalties if a liquor license holder violates a liquor law or rule? (1) The purpose of WAC 314-29-015 through 314-29-040 is to outline what penalty a liquor licensee can expect if a licensee or employee violates a liquor (~~control~~) and cannabis board law or rule (the penalty guidelines for mandatory alcohol server training permit holders are in WAC 314-17-100 through 314-17-110). WAC rules listed in the categories provide reference areas, and may not be all inclusive. For purposes of this section, ancillary activities are defined as activities an alcohol manufacturer participates in and include all activities, licenses, and privileges involving the public, such as serving samples, operating a tasting room, conducting retail sales, serving alcohol under a restaurant license, or serving alcohol with a special occasion license.

(2) Penalties for violations by liquor licensees or employees are broken down into (~~four~~) five categories:

(a) Group One—Public safety violations, WAC 314-29-020.

(b) Group Two—Regulatory violations, WAC 314-29-025.

(c) Group Three—License violations, WAC 314-29-030.

(d) Group Four—Nonretail violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-29-035.

(e) Group Five—Public safety violations for sports entertainment facility licenses, WAC 314-29-038.

(3) For the purposes of chapter 314-29 WAC, a two year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor (~~control~~) and cannabis board may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension during a settlement conference as outlined in WAC 314-29-010(3).

(a) Mitigating circumstances	(b) Aggravating circumstances
<p>Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • Having a signed acknowledgment of the business' alcohol policy on file for each employee; • Having an employee training plan that includes annual training on liquor laws. 	<p>Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of a liquor license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor (control) and cannabis board officer, or when people have sustained injuries; • Not checking to ensure employees are of legal age or have appropriate work permits.

(a) Mitigating circumstances	(b) Aggravating circumstances
(c) In addition to the examples in (a) and (b) of this subsection, the liquor ((control)) <u>and cannabis</u> board will provide and maintain a list of business practices for reference as examples where business policies and/or practices may influence mitigating and/or aggravating circumstances. The established list will not be all inclusive for determining mitigating and/or aggravating circumstances, and may be modified by the liquor ((control)) <u>and cannabis</u> board. The list shall be accessible to all stakeholders and the general public via the internet.	

(5) Ancillary activity violations:

(a) When a violation or violations are part of ancillary activities, all ancillary activities including those at the manufacturing facility or associated locations involving the public will be subject to the schedules of penalties outlined in WAC 314-29-020 through 314-29-038. When violations are part of ancillary activities, the manufacturing license will not be suspended, revoked, or canceled.

(b) When a violation or violations are not part of ancillary activities, the manufacturing license is subject to the schedules of penalties outlined in WAC 314-29-020 through 314-29-038 and will extend to all retail activities, associated facilities, privileges, endorsements, and permits.

[Statutory Authority: RCW 66.08.030. WSR 09-21-050, § 314-29-015, filed 10/14/09, effective 11/14/09. Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 03-09-015, § 314-29-015, filed 4/4/03, effective 5/5/03.]

AMENDATORY SECTION (Amending WSR 16-19-106, filed 9/21/16, effective 10/22/16)

WAC 314-29-020 Group 1 violations against public safety. (1)

Group 1 violations are considered the most serious because they present a direct threat to public safety. Violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor (~~control~~) and cannabis board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-29-015(4).

(2) Group 1 violations will be counted sequentially rather than independently by group. For example, if a licensee received a violation for over service on one day and a violation for sale to a minor a week later, the sale to a minor would be treated as a second offense since both violations are in the same violation group.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Violations involving minors: Sale or service to minor: Sale or service of alcohol to a person under 21 years of age. Minor frequenting a tavern, lounge, or other restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Sale or service to apparently intoxicated person: Sale or service of alcohol to, or permitting consumption or	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150				
Conduct violations: Disorderly conduct by licensee or employee, or permitting on premises. Licensee and/or employee intoxicated on the licensed premises and/or drinking on duty. Criminal conduct: Permitting or engaging in criminal conduct. WAC 314-11-015	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Lewd conduct: Engaging in or permitting conduct in violation of WAC 314-11-050.	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Condition of suspension violation: Failure to follow any suspension restriction while liquor license is suspended. WAC 314-29-040	Original penalty plus 10 day suspension with no monetary option	Cancellation of license		

[Statutory Authority: RCW 66.08.030 and chapter 66.44 RCW. WSR 16-19-106, § 314-29-020, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 66.08.030. WSR 09-21-050, § 314-29-020, filed 10/14/09, effective 11/14/09. Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 03-09-015, § 314-29-020, filed 4/4/03, effective 5/5/03.]

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

WAC 314-29-040 Information about liquor license suspensions.

(1) On the date a liquor license suspension goes into effect, a liquor (~~control agent~~) and cannabis board enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor (~~control~~) and cannabis board due to a violation of a board law or rule.

(2) During the period of liquor license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable liquor laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice (see WAC 314-01-005 for the definition of "licensed premises").

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor (~~control~~) and cannabis board's suspension notice.

(3) During the period of liquor license suspension:

(a) A retail liquor licensee may operate his/her business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor. No banquet permit or special occasion function may be held on the premises during a period of liquor license suspension.

(b) A nonretail licensee may operate his/her business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor.

(c) A manufacturer of alcohol may do whatever is necessary as a part of the manufacturing process to keep current stock that is on hand at the time of the suspension from spoiling or becoming unsaleable during a suspension, provided it does not include bottling the product. The manufacturer may not receive any agricultural products used in the production of alcohol, crush fruit, or bottle alcohol during the period of suspension.

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 03-09-015, § 314-29-040, filed 4/4/03, effective 5/5/03.]