



Washington State
Liquor and Cannabis Board

Date: June 24, 2020

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

From: Kathy Hoffman, Policy and Rules Manager

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

Subject: WAC 314-55-035 – What persons or entities qualify for a marijuana license? (Retitled “Qualifying for a marijuana license”)

The Policy and Rules Manager requests approval to file a rule proposal (CR 102) for the rule making described in the CR102 Memorandum attached to this order and presented at the Board meeting on June 24, 2020.

If approved for filing, the tentative timeline for this rule proposal is as follows:

June 24, 2020	Board is asked to approve filing the proposed rules (CR 102 filing)
July 15, 2020	Code Reviser publishes notice.
August 5, 2020	Public Hearing held.
August 5, 2020	End of written comment period.
September 2, 2020	Board is asked to adopt rules.
September 2, 2020	Agency sends notice to those who commented both at the public hearing and in writing.
September 2, 2020	Agency files adopted rules with the Code Reviser (CR 103).
October 3, 2020	Rules are effective (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: CR 102 Memorandum
 Significant Analysis



CR 102 Memorandum

Re: WAC 314-55-035 – What persons or entities qualify for a marijuana license? (Retitled “Qualifying for a marijuana license”)

Date: June 24, 2020

Presented by: Kathy Hoffman, Policy and Rules Manager

Background

In August 2018, LCB filed a robust CR 102 consisting of omnibus rule changes to implement 2017 legislation. Revisions to WAC 314-55-035 were included in the proposal. At the public hearing on October 3, 2018, multiple stakeholders offered feedback, requesting additional, significant revisions to WAC 314-55-035. When the final rule package was presented to the Board in November, 2018, staff excluded WAC 314-55-035 from the adopted rules to allow for additional development and stakeholder engagement.

In January of 2019, House Bill (HB) 1794 was introduced that proposed amendments to RCW 69.50.395 concerning agreements between licensed marijuana businesses and other people and businesses, including royalty and licensing agreements relating to the use of intellectual property. Since there was potential for the substance of the bill to influence revisions being considered to WAC 314-55-035, the project was temporarily paused until the end of the legislative session. The bill was approved by the Governor on May 13, 2019, and became effective on July 28, 2019.

Rule Necessity

The proposed rules are the result of protracted, extensive stakeholder engagement that began in late 2018, was temporarily paused as a result of enacted legislation described above, and then realigned with the purpose and intent of penalty rule redesign project that implemented Senate Bill (SB) 5318.

The proposed rules accomplish the following:

- Modernizes the section title, redesigns and reorganizes the section structure;

- Modernizes language regarding which entities are considered to be true parties of interest;
- Removes the spousal vetting requirement;
- Expands definitions to include, “control,” “financial institution,” “gross profit,” “net profit,” and “revenue;”
- Clarifies and expands upon what persons or entities are not considered to be true party(ies) of interest;
- Describes the circumstances under which licensees must continue to disclose funds that will be invested in a licensed marijuana business;
- Incorporates reference to amendments to RCW 69.50.395 regarding disclosure agreements and intellectual property; and
- Establishes a new subsection to distinguish the requirements for financiers from that of true party(ies) of interest.

What changes are being made?

Amended Section. Title – WAC 314-55-035. Revised title from “What persons or entities qualify for a marijuana license?” to “Qualifying for a marijuana license.”

Amended Section. WAC 314-55-035(1) True parties of interest. Added language to clarify and more clearly define “true party of interest,” including updates to the existing table identifying business entity types and who, within a particular business structure, would be considered a true party of interest.

New Section. WAC 314-55-035(2) Previous rule required spousal vetting under the premise that any property obtained by either spouse during marriage was considered to be community property. Under that premise, limitations on the number of licenses consistent with WAC 314-55-075(5), WAC 314-55-077(3), and WAC 314-55-079(3) applied to parties considered to be true parties of interest.

However, the proposed rule concentrates on the nature of the business relationship and ownership interest as opposed to whether or not one is a spouse. Under that premise, married couples could potentially be considered as true parties of interest after attesting no interest in the license of their spouse, in up to ten retail licenses under WAC 314-55-079(3), six processor licenses under WAC 314-55-077(3) and six producer licenses under WAC 314-55-075(3).

This new section provides that a married couple may not be a true party of interest in more than five retail licenses, more than three producer or more than three processor licenses, consistent with the limitations in current rule.

Amended Section. WAC 314-55-035 (3) Definitions (formerly “Financiers”)
Establishes a new definition section that provides clarity and an initial framework for words that are specific to this regulatory area. This includes a definition for “control,” “financier,” “gross profit,” and “net profit.”

Amended Section. WAC 314-55-035 (4) –What “true party of interest” does not mean (formerly “Persons who exercise control of business”) Updated and provided a non-exhaustive list of circumstances where a person or entity would not be considered a true party of interest. This section is substantially expanded and enhanced.

New Section. WAC 314-55-035 (5) Notification. Re-establishes a general process for the disclosure of the source of funds invested in a licensed business and includes the provisions of Board Interim Policy (BIP) 06-2018 regarding person funds for business.

New Section. WAC 314-55-035 (6) Disclosure agreements and intellectual property. Provides a cross-reference to agreements described in RCW 69.50.395 where the provisions of HB 1794 are codified. WSLCB did not restate the legislation in rule since its provisions are clear.

New Section. WAC 314-55-035(7) Financiers. Significantly expands and reaffirms former WAC 314-55-035(3) regarding the definition of “financier,” including more fully describing a financier’s ownership interest, and the scope of residency requirements.

Significant Legislative Rule Analysis

WAC 314-55-035
Rules Concerning Qualification for a Marijuana
License

June 24, 2020

SECTION 1:

Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

Existing WAC 314-55-035, describing qualifying for a marijuana license was established in late 2013, and last updated in March of 2016. Current rule provides that all Washington state marijuana licenses must be issued in the name or names of the true party or parties of interest. A true party of interest is currently described as a person who owns, participates in the management of, or otherwise receives a percentage of the profits of a marijuana business in exchange for a monetary loan or in exchange for their expertise in the marijuana business. True parties of interest are held responsible for the conduct of the business, and must undergo a financial investigation, criminal and civil background investigation, interviews, fingerprinting, and other requirements to successfully meet vetting requirements and become eligible for licensing.

True party of interest rules are designed to preclude the establishment of vertical integration, and the potential for criminal enterprise consistent with RCW 69.50.562(2)(b)(iii). Current rule provides that through the application and vetting process, LCB assures that funds entering the Washington State regulated market are not related to or derived from criminal enterprise, and are not vertically integrated among processors and producers. This is designed to discourage monopolies and organized crime.

In August 2018, LCB filed a robust CR 102 consisting of omnibus rule changes to implement 2017 legislation. Revisions to WAC 314-55-035 were included in the proposal. At the public hearing on October 3, 2018, multiple stakeholders offered feedback, requesting additional, significant revisions to WAC 314-55-035. When the final rule package was presented to the Board in November, 2018, staff excluded WAC 314-55-035 from the adopted rules to allow for additional development and stakeholder engagement.

In January of 2019, House Bill (HB) 1794 was introduced that proposed amendments to RCW 69.50.395 concerning agreements between licensed marijuana businesses and other people and businesses, including royalty and licensing agreements relating to the use of intellectual property. Since there was potential for the substance of the bill to influence revisions being considered to WAC 314-55-035, the project was temporarily paused until the end of the legislative session. The bill was approved by the Governor on May 13, 2019, and became effective on July 28, 2019.

The proposed rules are the result of protracted, extensive stakeholder engagement that began in late 2018, was temporarily paused as a result of enacted legislation described above, and then realigned with the purpose and intent of penalty rule redesign project that implemented Senate Bill (SB) 5318.

The proposed rules accomplish the following:

- Modernizes the section title, redesigns and reorganizes the section structure;

- Modernizes language regarding which entities are considered to be true parties of interest;
- Removes the spousal vetting requirement;
- Expands definitions to include, “control,” “financial institution,” “gross profit,” “net profit,” and “revenue;”
- Clarifies and expands upon what persons or entities are not considered to be true party(ies) of interest;
- Describes the circumstances under which licensees must continue to disclose funds that will be invested in a licensed marijuana business;
- Incorporates reference to amendments to RCW 69.50.395 regarding disclosure agreements and intellectual property; and
- Establishes a new subsection to distinguish the requirements for financiers from that of true party(ies) of interest.

SECTION 2:

Is a Significant Analysis required for this rule?

Under RCW 34.05.328(5)(a)(i), the WSLCB is not required to complete a significant analysis for this or any of its rules. However, RCW 34.05.328(5)(a)(ii) also provides that except as provided by applicable statute, significant analysis applies to any rule of any agency, if voluntarily made applicable by the agency.

The WSLCB voluntarily asserts that the proposed amendments to WAC 314-55-035(1), (2), (4), (5) and (7) meet the definition of legislatively significant as described in RCW 34.05.328(5)(c)(iii)(C) because they are rules other than procedural or interpretive rules that adopt new, or make significant amendments to a policy or regulatory program.

Proposed new subsection (3) regarding definitions is exempt because it does not meet the definition of significant rule under RCW 34.05.328(5)(c). Subsection (5) is exempt under RCW 34.05.328(5)(b)(iii) because it adopts and incorporates by reference without material change a Washington state statute.

For these reasons, the WSLCB voluntarily offers this significant analysis.

SECTION 3:

Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

The proposed rules implement chapter 69.50 RCW. This chapters codified Initiative 502 (2013), known as I-502.

The stated objective of I-502 was to “stop treating adult marijuana use as a crime and try a new approach” to achieve three specific goals, one of which was to bring marijuana into a tightly regulated, state-licensed system similar to that for controlling alcohol.

Similarly, HB 1794, codified in RCW 69.50.395 more broadly describes terminology referencing authorized agreements related to licensed marijuana businesses and trademarks, trade secrets, and other intellectual property, as well as the types of agreements covered, and the types of business entities that may be parties to any such agreement. These codified amendments respond to changes in agreements between licensed marijuana businesses with other people and businesses, including royalty and license agreements relating to the use of intellectual property.

The proposed rules implement the goals and objectives of chapter 69.50 RCW by revising and updating true party of interest rules to incorporate necessary statutory revisions and references while responding to the rapid growth and maturation of the regulated marijuana market, as well as changes in business and management structures over time.

SECTION 4:

Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

The proposed rules realize and embody the intent I-502 and ESHB 1794 by modernizing existing rules and establishing new standards, where appropriate, regarding qualifying for a marijuana license.

Rules are needed to establish clear guidance and enforceable standards for licensees, and assure consistent agency decision making.

SECTION 5:

Explain how the agency determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

1. WAC 314-55-035 – Qualifying for a marijuana license.

Description of the proposed rule:

Existing rule provides that a marijuana license must be issued in the name or names of the true party or parties of interest.

The proposed rule expands on this initial statement by adding language that the Board may conduct an investigation of any party who exercises control of the applicant's business operations, and that the investigation may include financial and criminal background investigation. The proposed additional language originally appeared in subsection (4) of existing rule, but was relocated to the introductory section since background investigation is more closely related to qualifying for a license, rather control of the business.

Cost/Benefit Analysis:

There are no additional compliance costs or administrative burden related to this amended rule section. The cost of the background investigation is a pre-existing regular and customary part of the marijuana licensure process that has been in place since 2013. This amendment does not create new or impose additional compliance costs.

2. WAC 314-55-035(1) – True parties of interest.

Description of the proposed rule:

Existing rule identifies several true party of interest scenarios, along with examples of persons or entities who would qualify as a true party of interest under those scenarios. This initial framework served to guide the agency and marijuana licensees during the establishment of the I-502 system and for a limited period of time thereafter. However, the market has evolved since that time, and as a result of that evolution, licensees and others found the table to contain section headings, words and phrases that would benefit from clearer definition to better guide decision making.

The proposed rule accomplishes significant revision of this table, including reframing headings from “true parties of interest” and “person to be qualified” to “entity” and “true party of interest” to clearly demonstrate which entities are considered to be true party(ies) of interest. Publicly held corporations were removed from the table since the agency does not allow out of state ownership at this time.

More significantly, however, is the removal of the spousal vetting requirement. After extensive, protracted discussion with stakeholders regarding concerns related to this requirement, the agency determined that when assets of a business are or may be held jointly or as a community, the main focus is on business relationship and ownership interest rather than the “spousal” relationship.

WSLCB reasoned that true party of interest could be identified by business type alone, as provided in the revised table described above, and concentrate on who controls, or has a substantial interest in a license, including the nature of the business relationship, and ownership interest as opposed to whether or not one is a spouse. This will move the agency into a vetting process more reflective of the current landscape of ownership and control variances and arrangements, and aligns it with similarly situated community property states. For these reasons, the spousal vetting requirement was removed from the proposed rules.

Cost/Benefit Analysis:

There are no additional compliance costs or administrative burden attributable to these proposed amendments. The rule proposal is anticipated to reduce compliance cost and administrative burden since the spousal vetting requirement would no longer be necessary. These amendments may benefit current and future licensees who have based, may base, or delay personal decisions on the current spousal vetting requirement.

3. WAC 314-55-035(2) – Married couples.

Description of the proposed rule:

Previous rule required spousal vetting under the premise that any property obtained by either spouse during marriage was considered to be community property. Under that premise, limitations on the number of licenses consistent with WAC 314-55-075(5), WAC 314-55-077(3), and WAC 314-55-079(3) applied to parties considered to be true parties of interest.

However, as noted above, the proposed rule concentrates on the nature of the business relationship and ownership interest as opposed to whether or not one is a spouse. Under that premise, married couples could potentially be considered as true parties of interest after attesting no interest in the license of their spouse, in up to ten retail licenses under WAC 314-55-079(3), six processor licenses under WAC 314-55-077(3) and six producer licenses under WAC 314-55-075(3).

This new section provides that a married couple may not be a true party of interest in more than five retail licenses, more than three producer or more than three processor licenses, consistent with the limitations in current rule.

Cost/Benefit Analysis:

There are no additional compliance costs or administrative burden related to this new rule section. The rule does not impose additional fees, administrative or regulatory burden, but rather clarifies and aligns the number of licenses a married couple may have an ownership interest in, consistent with existing rule.

4. WAC 314-55-035(4) – Who and what is not considered to be a true party of interest.

Description of the proposed rule:

Existing subsection (2) describes who is not a true party of interest. The section has been renumbered and updated. Previously, three examples were provided of who is not considered to be a true party of interest, and notably this section mentions that a person or entity contracting with the applicant(s) to sell property, unless the contract holder exercises control over or participates in the management of the licensed business is not considered a true party of interest.

The proposed rule expands, updates, and clarifies this list, removes the reference to control, and offers seven examples of what entities are not considered to be true parties of interest, including but not limited to financial institutions, persons who receive bonuses or commissions based on sales, consultants receiving flat or hourly rate compensation under a written contractual agreement.

The term “control” was relocated to the definition section of the proposal. Previously undefined in this existing rule section, the proposal provides that “control” means the power to independently order, or direct the management, managers, or policies of a licensed business, and is applied in this section.

Cost/Benefit Analysis:

There are no additional compliance costs or administrative burden related to this new rule section. The rule does not impose additional fees, administrative or regulatory burden, but rather clarifies who is not considered to be a true party of interest, and provides the agency the flexibility to consider scenarios beyond what is explicitly provided in rule. Licensees will benefit from clear guidance, and rules that offer the agency agility to respond to business arrangement evolution.

5. WAC 314-55-035(5) – Notification.

Description of proposed rule:

Current rule provides that after licensure, a true party of interest, including financiers, must continue to disclose the source of funds for all moneys invested in the licensed business. The WSLCB must approve these funds prior to investing them into the business.

In December 2018, the Board approved Board Interim Policy 06-2018 for several reasons. First, pre-vetting funds can take up to fifty days or sometimes longer, depending on the complexity of the funding and the responsiveness of the applicants. Licensees and their representatives asked the WSLCB to address concerns about the

length of time it takes for them to use their own funds to support their licensed marijuana businesses. In some cases, applicants need immediate access to funds to support their business expenses. While vetting the source of funds remains a high priority to the WSLCB, the agency also recognized that applicants may be allowed to invest their own money in their businesses at the same time the agency is vetting the source of funds.

LCB assures that funds entering the Washington State regulated market are not related to or derived from criminal enterprise, and are not vertically integrated among processors and producers

To assure that funds entering the Washington State regulated are not related to or derived from criminal enterprise, the application was revised in late 2018 to reflect licensee recognition that no funds from these sources could be used to fund or be invested in licensed marijuana businesses.

Consistent with WAC 314-55-050(6), a license may be revoked “if the source of funds identified by the applicant to be used for the acquisition, startup and operation of the business is questionable, unverifiable, or determined by the WSLCB to be gained in a manner which is in violation of law.” If these rules are adopted, this Board Interim Policy will be withdrawn.

The proposed rules incorporate this allowance, and further clarifies the circumstances under which licensees must disclose the source of funds invested in a marijuana business.

Cost/Benefit Analysis:

There are no additional compliance costs or administrative burden related to this new rule section. The rule does not impose additional fees, administrative or regulatory burden, but rather clarifies and expands the circumstances under which licensees must disclose the sources of funds to be invested in licensed marijuana businesses. Licensees will benefit from clear guidance, and such guidance supports licensee compliance success.

6. WAC 314-55-035(7) – Financiers.

Description of the proposed rule:

Addressed as subsection (3), current rule provides that the LCB “...will conduct a financial investigation as well as a criminal background of financiers.”

Prospective investors in a marijuana business, or financiers, do not need to meet residency requirements. However, even resident financiers cannot share in profits from the business nor are they permitted to exercise control over the operations of the

business. Non-resident financiers are limited to receiving only a basic return on investment, as if they have given a personal loan to the company.

Financiers, or investors in marijuana business are not considered true parties of interest as long as they do not share in the profits of the business or exercise control over the business. Financiers are also required to undergo a financial investigation as well as a criminal background investigation for the LCB to permit the party to finance a marijuana company.

The proposed rule substantially expands on existing language, connects the definition of financier with WAC 314-55-010(11), and clarifies the circumstances under which a financier may be considered a true party of interest.

Cost/Benefit Analysis:

There are no additional compliance costs or administrative burden related to this new rule section. The rule does not impose additional fees, administrative or regulatory burden, but rather clarifies and expands clarifies the circumstances under which a financier may be considered a true party of interest. Licensees will benefit from clear guidance, and such guidance supports licensee compliance success.

SECTION 6:

Identify alternative versions of the rule that were considered, and explain how the agency determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated previously.

Rule Development and Stakeholder Engagement Process

As noted above, the proposed rules are the product of a protracted rule development process that began in November of 2018, paused during the 2019 legislative session in response to the introduction of HB 1794, and restarted in July 2019. Initially, the WSLCB had hoped to develop these rules along with the penalty reform rule project implementing HB 5318. Unfortunately, that was not possible given the complexity of this subject, the desire to complete the penalty reform rules, and the multiple perspectives on TPI that emerged during the course of discussion.

The WSLCB's stakeholder engagement process encouraged parties to:

- Identify burdensome areas of existing and proposed rules;
- Propose initial or draft rule changes; and
- Refine those changes.

From August 2019 to February 2020, WSLCB hosted multiple meetings, engaging the same group of industry members and their representatives who worked on the development of the penalty rule redesign that began in March 2019. A Listen and Learn session was scheduled for early March 2020, but this session was postponed based on the Washington State response to the COVID-19 pandemic. A Listen and Learn session was held virtually in May 2020 after messaging was delivered by GovDelivery in early

May. The session was well attended by over sixty participants. Comments received from that session are attached hereto. While these comments are considered informal because they were received before the CR102 was filed, WSLCB offers these here to demonstrate the interest and broad range of perspectives presented during this session.

WSLCB considered these comments, and made a number of revisions to the draft conceptual rules offered at the May 20, 2020 Listen and Learn session based on these comments. The proposed rules are a result of this iterative and inclusive process.

Summarized below is a brief description of the main discussion topic that emerged during the Listen and Learn session related to the proposed rule set, and how the agency collaborated with stakeholders to mitigate potential burden associated with rule compliance:

Issue	Potential Burden	Mitigation Strategy
Definition of "control"	An overly prescriptive definition of may result in a variety of unintended consequences, including but not limited to disproportionate impact on the smallest marijuana businesses, and result in suboptimal outcomes when applied to this specific industry that continues to rapidly evolve. Prescriptive regulations do not support the goals and objectives of chapter 69.50 RCW, and instead impose special interest solutions on all that benefit a limited number of licensees.	The benefit of a rule must justify its burden. Here, after many months of exhaustive discussion with industry members and their representatives, the WSLCB opted for a less prescriptive definition to plainly, and broadly describe "control" in this context. This definition closely aligns with other states, and in alignment with industry members, WSLCB prefers to encourage disclosure rather than imposing prescriptive regulations that limit, rather than encourage, compliance.

SECTION 7:

Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The rules do not require those to whom it applies to take action that violates requirements of federal or state law.

SECTION 8:

Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The rules do not impose more stringent performance requirements on private entities than on public entities.

SECTION 9:

Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The rules do not differ from any applicable federal regulation or statute.

SECTION 10:

Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

These rules did not require coordination with federal, state, or local laws.

Marijuana True Party of Interest
May 20, 2020 Listen and Learn Session Comments

Source	Commenter	WAC Reference	Theme	Comment	Date Received
WebEx Live	David Otto	WAC 314-55-035 (first paragraph)	Control	Add the word demonstrable before control. The board may conduct an investigation of any true party of interest who exercises <i>demonstrable</i> control. Control should be something demonstrable. Suspicion, Innuendo, and Accusation is not helpful in my experience.	5/20/2020
WebEx Live	Emily Gant	WAC 314-55-035(1)	Control	“Exercising control”—in my experience there isn’t an analysis of whether there is control, usually it’s just a determination of the type of entity—LLC, etc.	5/20/2020
WebEx Live	Lukas Hunter	WAC 314-55-035(2)	Control	Definition of control working in a larger scale biz; in a bigger biz, you could have middle level managers that start to meet this definition of control but aren’t on the license. Want to take a look at the language to really make sure that the language can work for small businesses up to large-scale businesses. It seems like the intent is to prevent an individual from owning multiple licenses	5/20/2020
WebEx Live	David Otto	WAC 314-55-035(2)	Control	LLC, how do they determine control? Voting power. The definition as its currently written is a little incoherent. This definition needs a lot of development	5/20/2020
WebEx Live	Jeff Andersen	WAC 314-55-035(2)	Control	This doesn’t prevent the managers from managing their team. E.g. in his company, the CEO has control and the shareholders vote	5/20/2020
WebEx Live	Mitzi Vaughn	WAC 314-55-035(2)	Control	Provided background on how the workgroup spent a lot of time on the definition of control	5/20/2020
WebEx Chat Comment	Casey Craig	WAC 314-55-035(2)	Control	Subjecting midlevel managers (purchasers and the like) to true party of interest might have two positive effects on the industry. It might expose shadow vertical integration or cartel-like behavior, as well as limit the turnover of management which could expose diversion that is being misdirected by frequent staff turnovers.	5/20/2020
WebEx Chat Comment	David Otto	WAC 314-55-035(2)	Control	The "control" definition needs to distinguish between "enterprise control" versus "operational control". The definition as is, conflates the two types of control.	5/20/2020
WebEx Live	Jeff Andersen	WAC 314-55-035 Generally	Control	In reply to David Otto about the control/ “Demonstrably” language. Many different modifiers were considered in the committee but ultimately it became too confusing because those modifiers would have to be defined too. Trying to strike a balance	5/20/2020
WebEx Live	Mitzi Vaughn	WAC 314-55-035 Generally	Control	With the word “demonstrable,” the rabbit hole was –how do you define that? Would like to hear from David Otto about the definition of demonstrable	5/20/2020
Email/ Redline	Ryan Lee	WAC 314-55-035 (first paragraph)	Control	Revise the language added to the first paragraph about the board's authority to conduct investigations of any TPI who exercises control over the applicant's business operations with the following language: "The board may conduct an investigation of any true party of interest <u>either (i) as defined in WAC 314-55-035(1) or (ii) who exercises entity control over the applicant's business operations. The board's investigation is may extend to investigation of the person's include financial and criminal background investigations.</u> "	5/28/2020
Email/ Redline	Ryan Lee	WAC 314-55-035 (2)	Cost of goods sold	Add a definition for "cost of goods sold:" "(f) “Cost of goods sold” means the cost of inventory of a licensed business over a particular period of time plus purchases and other costs, minus inventory of that licensed business over the same period of time."	5/28/2020
Email/ Redline	Ryan Lee	WAC 314-55-035 (2)	Demonstrable	Add a definition for "demonstrable:" "(c) "Demonstrable" means the existence of, through clear and convincing evidence, a legally cognizable and/or enforceable agreement, arrangement, or other document that expressly grants actual rights, privileges, or authority to a party, and which agreement, arrangement, or other document can be produced or otherwise identified with sufficient particularity to satisfy the evidentiary standard set forth herein."	5/28/2020

Marijuana True Party of Interest
May 20, 2020 Listen and Learn Session Comments

Email/Redline	Ryan Lee	WAC 314-55-035 (1)	Entities with right to receive revenue, gross profit, or net profit, or exercising control over a licensed business	In the 5th row of the TPI table, revise the entity category to read "Any entity(ies) or person(s) with a right to receive revenue, gross profit, or net profit, or exercising who exercise(s) entity control over a licensed business." and define TPI for these entities as follows: "Any entity(ies) or person(s) with a right to receive some or a fixed percentage of the revenue, gross profit, or net profit from the licensed business during any full or partial calendar or fiscal year, <u>where such right arises from a demonstrable agreement whose primary purpose is to transfer such right to receive revenue, gross profit, or net profit from the licensee to the entity.</u> " and "Any entity(ies) or person(s) who exercise(s) <u>entity</u> control over the licensed business."	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Entity control	Remove the definition of "control" and replace with two definitions, one for "entity control" and one for "operational control." (a) "Entity control" means the demonstrable authority to make or otherwise direct the occurrence of fundamental changes to, and strategic decisions of, a licensed business as a result of either (i) a party's ability to exercise voting power, either individually or in concert with other stakeholders, that is equal to or greater than fifty percent (50%), or any such other percentage ownership amount as is required by the entity's governing documents to make or otherwise direct the occurrence of such fundamental changes and strategic decisions, or (ii) a party's ability to override the authority of any manager's and/or employee's exercise of operational control.	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Financial institution	Revise the definition of "financial institution" as follows: "(d) "Financial institution" means any bank, mutual savings bank, consumer loan company, credit union, savings and loan association, trust company, or other lending institution under authorized to do business in the State of Washington and otherwise subject to the jurisdiction of the department of financial institutions	5/28/2020
WebEx Live	Lukas Hunter	WAC 314-55-035(6)	Financier	Subsection (a)- consider including language allowing for govt entities to provide finances; There could be opportunities for a nonfinancial institution to be able to provide funds to a cannabis licensee/ provide for alternate sources	5/20/2020
WebEx Live	David Otto	WAC 314-55-035(6)	Financier	Provision of Money as a gift or a loan to a business? Seems clear its okay to provide money as a gift or loan to an applicant, but what about a business; again, would like to clarify definitions. If ambiguity exists, decisions or findings should be in favor of the licensee.	5/20/2020
WebEx Live	Emily Gant	WAC 314-55-035(6)	Financier residency	Subsection (c) –says must reside in the United States. Unsure if there is a statutory basis for it. Without a statutory basis, doesn't believe this language is an appropriate inclusion in the rule.	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035(6)	Financiers	Revise subsection (6)(b) as follows: "(b) A financier may not receive <u>any of the following items in exchange for a loan or gift of funds, unless the financier, if directly involved in the loaning of funds, receives board approval and has qualified on the license as a true party of interest: (i) an ownership interest in the licensed business, (ii) entity control of the licensed business, (iii) a share percentage of revenue, gross profits, or net profits from the licensed business, (iv) a profit sharing interest in the licensed business, or (v) a percentage of the profits in exchange for a loan or gift of funds, unless the financier, if directly involved in the loaning of funds, receives board approval and has qualified on the license as a true party of interest of the licensed business.</u> "	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Gross profit	Revise the definition of "gross profit" as follows: "(g) "Gross profit" means <u>revenue over a particular period of time (e.g., daily, monthly, quarterly, or annually)-sales</u> minus the cost of goods sold <u>over the same period of time.</u> "	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Net profit	Revise the definition of "net profit" as follows: "(h) "Net profit" means <u>gross profits over a particular period of time (e.g., daily, monthly, quarterly, or annually)</u> minus all other operating, <u>interest, and tax</u> expenses of the <u>licensed business over the same period of time.</u> "	5/28/2020
WebEx Live	Casey Craig	WAC 314-55-035(2)	Notification obligation	Enforcement officers might be surprised to walk into a facility and see a lot of new expensive equipment/capital. Might help to give notice to the enforcement officer that capital investments have been made from revenue	5/20/2020

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Email/Redline	Ryan Lee	WAC 314-55-035(4)	Notification obligation	Revise the first sentence in subsection (4)(a)(iii) to read as follows: "(iii) If the source of funds is an identified true party of interest on the license, or a previously approved financier associated with the license, or a previously approved revolving loan, the board will allow these funds to be used upon receipt of an application to use such funds prior to any notification and vetting by the board. Licensees shall keep an accurate and complete accounting of all funds invested in the licensed business pursuant to this section and report such accounting on or before the final day of the fiscal quarter in which such funds were received. The board will then investigate the source of funds. If the board cannot verify the source of funds after reasonable inquiry, or the board determines that the funds were obtained in a manner in violation of the law, the board may take actions consistent with the provisions of this chapter.	5/28/2020
WebEx Live	David Otto	WAC 314-55-035(4)	Notification obligation	Vet the money on a quarterly basis, after the money is received; Notification obligation should be restructured and revised in line with business needs; overly burdensome from an operational standpoint.	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Operational control	Remove the definition of "control" and replace with two definitions, one for "entity control" and one for "operational control." (b) "Operational control" means the authority to control normal day-to-day operations of a licensee, including but not limited to the authority to make decisions with respect to financial operations, inventory, production, processing, and retail operations, managing employees, and otherwise acting pursuant to the direction of any individual and or entity that possesses entity control.	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (1)	Privately held corporation	In the 2nd row of the TPI table applicable to a "privately held corporation," add "directors" i.e. "All corporate officers <u>and directors</u> (or persons with equivalent title) All stockholders")	5/28/2020
WebEx Live	David Otto	WAC 314-55-035(1)	Publicly held corporation	Publicly held corporation—having all the stockholders have to vetted is not practical since those can change frequently—perhaps should be limited to shareholders that have control/ controlling interest	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (1)	Publicly held corporation	In the 3rd row of the TPI table applicable to a "publicly held corporation," revise as follows: "All corporate officers <u>and directors</u> (or persons with equivalent title) All Stockholders <u>who either (i) own, directly or indirectly, at least 10% of all issued and outstanding shares in the corporation or (ii) exercise entity control of the corporation individually or in concert with other stakeholders</u> "	5/28/2020
WebEx Live	Emily Gant	WAC 314-55-035(1)	Residency	Residency restrictions—debate as to whether it’s appropriate. Also confusing for clients—do you just have to have residency at outset, or do you need to continue to maintain residency? What is LCB’s position about whether there’s a continuing residency requirement?	5/20/2020
WebEx Live	Lukas Hunter	WAC 314-55-035(1)	Residency	Concerns about residency requirements? Could these rules incorporate language from ch 69.50 RCW to give room for rules to adapt in the future.	5/20/2020
WebEx Live	Sami Saad	WAC 314-55-035(2)	Residency	The residency requirement should be around 2 years.	5/20/2020
WebEx Live	Jim MacRae	WAC 314-55-035(3)	Retroactivity	Wants to make sure that these rules are not applied retroactively to licensees	5/20/2020
WebEx Live	Mitzi Vaughn	WAC 314-55-035(3)	Retroactivity	(Responding to Jim MacRae) Generally, as a legal concept the rules that apply are those that are in effect at the time of violation	5/20/2020
WebEx Live	David Otto	WAC 314-55-035(4)	Revenue	Be careful with the defined term “revenue.” Needs work to tie it in to the way it is used in the notification section.	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Revenue	Add a definition for "revenue:" "(e) "Revenue" means the cumulative aggregate U.S. dollar amount received by the licensed business for the sale of all goods and services associated with the principal operations of the licensed business over a particular period of time (e.g., daily, monthly, quarterly, or annually) before deducting any costs or expenses over that same period of time."	5/28/2020

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WebEx Chat Comment	David Otto	WAC 314-55-035(2)	Revenue, Gross profit, and Net profit	The definitions of gross and net profit, and revenue must be revised to be consistent with the concept of those terms.	5/20/2020
WebEx Live	Emily Gant	WAC 314-55-035(1)	Spouses	I think it's appropriate from a policy perspective that spouses have been removed	5/20/2020
WebEx Live	Crystal Oliver	WAC 314-55-035(1)	Spouses	Supportive of the removal of the spousal vetting requirements	5/20/2020
WebEx Live	Jim MacRae	WAC 314-55-035(1)	Spouses	Spousal requirements—does the removal of the spousal requirement effectively double the number of licenses that a couple could receive?	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (1)	TPI generally	Revise the first sentence in subsection (1) concerning TPI requirements to read as follows: "True parties of interest must qualify meet all qualifications to be listed on the license, and meet residency requirements as consistent with this chapter, <u>including the applicable residency requirements</u> . For purposes of this title, "true party of interest" means <u>any person(s) or entity(ies) that exercise entity control over a licensed business and the following</u> ."	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (3)	What a TPI is not	Add a new subsection (3)(i) as follows: "(3) For purposes of this chapter, "true party of interest" does not include: . . . (i) Any person(s) or entity(ies) that have (i) neither an ownership stake in the licensed business, (ii) nor entity control of the licensed business, but still maintain business, legal, and other relationships with the licensee or applicant, including but not limited to, non-marijuana related business relationships, attorney-client relationships, or sharing the same business or mailing address."	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (3)	What a TPI is not: Branding/Staffing Company	Revise subsection (3)(f) as follows: "(3) For purposes of this chapter, "true party of interest" does not include: . . . (f) Any business or individual with a contract or agreement for services with a licensed business, such as a branding or staffing company, will not be considered a true party of interest, as long as the licensee retains the right to and controls such business or individual does not also possess entity control over the licensed business."	5/28/2020
WebEx Live	Emily Gant	WAC 314-55-035(3)	What a TPI is not: IP License	Also would be helpful to talk about whether the IP license arrangements are inside or outside the TPI requirements (typically--royalty + measure of control)	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (3)	What a TPI is not: Landlord	Revise subsection (3)(a) as follows "(3) For purposes of this chapter, "true party of interest" does not include: (a) A person or entity receiving <u>entitled to receive</u> payment for rent on a fixed basis under a lease or rental agreement."	5/28/2020
WebEx Live	Emily Gant	WAC 314-55-035(3)	What a TPI is not: Management Company	Unclear under (f) whether a management company comes in operating day to day operations would come in under the TPI requirements	5/20/2020
WebEx Live	David Otto	WAC 314-55-035(3)	What a TPI is not: nonexhaustive list	Section 3 indicates what a TPI is not. Should there be Clarifying information about what a TPI is not? Important to emphasize that this is not an exhaustive list.	5/20/2020
WebEx Live	Emily Gant	WAC 314-55-035(3)	What a TPI is not: Option contract	Subsection (e): would be helpful to clarify about options that there is usually down payment upfront and then a larger payment when the option is exercised	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (3)	What a TPI is not: Option contract	Revise subsection (3)(e) as follows "(3) For purposes of this chapter, "true party of interest" does not include: . . . (e) A person with an option to purchase the applied-for or licensed business, so long as no money has been <u>shall be</u> paid to the licensee under an option contract or agreement for the purchase or sale of the licensed business, or a business that is applying for a license, <u>until after the exercise or expiration of the option agreement</u> ."	5/28/2020

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Email/ Redline	Ryan Lee	WAC 314-55-035 (3)	What a TPI is not: Person exercising operational control	Add a new subsection (3)(h) as follows: "(3) For purposes of this chapter, "true party of interest" does not include: . . . (h)Any person(s) exercising operational control over a licensed business, provided such person does not either (i) possess any ownership stake in the licensed business or (ii) entity control over the licensed business."	5/28/2020
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PROPOSED RULE MAKING



CR-102 (December 2017) (Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-22-054 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WAC 314-55-035 - What persons or entities have to qualify for a marijuana license? The Washington State Liquor and Cannabis Board (Board) proposes amendments to existing rule and new sections of rule regarding qualifications for a marijuana license, and to implement the directives of Engrossed Substitute House Bill (ESHB) 1794 (Chapter 380, Laws of 2019) regarding agreements by licensed marijuana businesses – intellectual property, now codified in RCW 69.50.395.

Hearing location(s):

Date: **Time:** **Location:** (be specific) **Comment:**

August 5, 2020	10:00 am	1025 Union Ave SE, Olympia, WA 98501	
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Date of intended adoption: September 2, 2020 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Katherine Hoffman

Address: 1025 Union Ave SE , Olympia, WA 98501

Email: rules@lcb.wa.gov

Fax: 360-664-9689

Other:

By (date) August 22, 2020

Assistance for persons with disabilities:

Contact Claris Nhanabu, ADA Coordinator, Human Resources

Phone: 360-664-1642

Fax: 360-664-9689

TTY: 7-1-1 or 1-800-833-6388

Email: Claris.Nhanabu@lcb.wa.gov

Other:

By (date) August 15, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rules significantly modernize, reorganize, and clarify the existing regulatory framework regarding qualifying for a marijuana license in the following ways: clearly identifies business entity type and which entity or entities within that business type are considered true parties of interest; reaffirms residency and background investigation requirements; removes the spousal vetting requirement; creates a definition section, specifically defining, among other things, "control"; provides an updated description of persons not considered to be true parties of interest; updates and modernizes notification requirements; provides that licensed marijuana businesses may enter into agreements consistent with RCW 69.50.395; and establishes a new subsection distinguishing financiers from true parties of interest.

Reasons supporting proposal: Originally, revisions to WAC 314-55-035 were part of a larger, rule project designed to implement 2017 marijuana legislation. During public hearing on the proposal in October of 2018, many stakeholders objected to the proposed revisions to this specific section. Subsequently, WAC 314-55-035 was pulled from that rule proposal, and new CR101 was approved and filed to allow additional stakeholder engagement and rule development on this specific rule section. During the 2019 legislative session, ESHB 1794 regarding agreements by licensed marijuana businesses – intellectual property was introduced and subsequently enacted, influencing the developmental path of this project. This rule proposal was developed with and in response to industry and stakeholder feedback regarding what constitutes a true party of interest, and is designed to assure and protect the integrity of marijuana businesses licensed in Washington state.

Statutory authority for adoption: RCW 69.50.325, 69.50.342, and 69.50.345.

Statute being implemented: RCW 69.40.395

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Washington State Liquor and Cannabis Board Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting: Coordinator	Katherine Hoffman, Rule	1025 Union Avenue SE, Olympia WA 98501	360-664-1622
Implementation: Director	Becky Smith, Licensing	1025 Union Avenue SE, Olympia, WA 98501	360-664-1615
Enforcement: Enforcement Chief	Justin Nordhorn,	1025 Union Avenue SE, Olympia, WA 98501	360-664-1726

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name: Katherine Hoffman
Address: 1025 Union Avenue SE, Olympia WA, 98501
Phone: 360-664-1622
Fax:
TTY:
Email: katherine.hoffman@lcb.wa.gov
Other:

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|--|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW WAC 314-55-035(5) is exempt under 34.05-310(4)(c).

Explanation of exemptions, if necessary: WAC 314-55-035(5) adopts and incorporates by reference the directives of Engrossed Substitute House Bill (ESHB) 1794 (Chapter 380, Laws of 2019) regarding agreements by licensed marijuana businesses – intellectual property, now codified in RCW 69.50.395, without material change.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency’s analysis showing how costs were calculated. There are no costs associated with these rules. The WSLCB applied a default cost of compliance (\$100) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all license types based on the best analogous NAICS types. Although it is unlikely these rules would result in even the full default cost of compliance, the minor cost does not exceed any of the thresholds for any of the license types. Therefore, implementation of these rules will not result in any administrative, intrinsic or actual costs to the regulated community. The amendments and new rules offer increased public benefit by assuring that money invested in licensed marijuana businesses are fully vetted, supports robust foundations of local participants in Washington State businesses, and assures that funds entering the Washington State regulated market through Washington State residents are not related to or derived from criminal enterprise. For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll . (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
31199	\$ 100.00	Marijuana Processors	All Other Food Manufacturing	\$22,986.58	\$9,214.26 2018 Dataset pulled from USBLS	\$22,986.58 2018 Dataset pulled from DOR
111	\$ 100.00	Marijuana Producers	Crop Production	\$4,010.47	\$4,010.47 2018 Dataset pulled from USBLS	\$2,399.33 2018 Dataset pulled from DOR
453	\$ 100.00	Marijuana Retailers	Miscellaneous Store Retailers	\$2,503.84	\$2,365.88 2018 Dataset pulled from USBLS	\$2,503.84 2018 Dataset pulled from DOR

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Date: June 24, 2020

Name: Jane Rushford

Title: Chair

Signature:



AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-035 (~~(What persons or entities have to qualify for a marijuana license?)~~) Qualifying for a marijuana license. A marijuana license must be issued in the name(s) of the true party(ies) of interest. The board may conduct an investigation of any true party of interest who exercises control over the applicant's business operations. This may include financial and criminal background investigations.

(1) **True parties of interest** ~~(-)~~. True parties of interest must qualify to be listed on the license, and meet residency requirements consistent with this chapter. For purposes of this title, "true party of interest" means:

(True party of interest	Persons to be qualified
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	<ul style="list-style-type: none"> • All general partners and their spouses. • All limited partners and spouses.
Limited liability company	<ul style="list-style-type: none"> • All members and their spouses. • All managers and their spouses.
Privately held corporation	<ul style="list-style-type: none"> • All corporate officers (or persons with

(True party of interest	Persons to be qualified
	<p style="text-align: right;">equivalent title) and their spouses.</p> <ul style="list-style-type: none"> • All stockholders and their spouses.
Publicly held corporation	<p>All corporate officers (or persons with equivalent title) and their spouses.</p> <p>All stockholders and their spouses.</p>
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).
<p>Any entity or person (inclusive of financiers) that are expecting a percentage of the profits in exchange for a monetary loan or expertise. Financial institutions are not considered true parties of interest.</p>	<p>Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year.</p> <p>Any entity or person who exercises control over the licensed business in exchange for money or expertise.</p> <p>For the purposes of this chapter:</p> <ul style="list-style-type: none"> • "Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business. • "Net profit" means gross sales minus cost of goods sold.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

~~(2) For purposes of this section, "true party of interest" does not mean:~~

~~(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.~~

~~(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.~~

~~(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.~~

~~(3) **Financiers** - The WSLCB will conduct a financial investigation as well as a criminal background of financiers.~~

~~(4) **Persons who exercise control of business** - The WSLCB will conduct an investigation of any person or entity who exercises any control over the applicant's business operations. This may include both a financial investigation and/or a criminal history background.~~

~~(5) After licensure, a true party of interest, including financiers, must continue to disclose the source of funds for all moneys invested in the licensed business. The WSLCB must approve these funds prior to investing them into the business.))~~

<u>Entity</u>	<u>True party(ies) of interest</u>
<u>Sole proprietorship</u>	<u>Sole proprietor</u>
<u>General partnership</u>	<u>All partners</u>
<u>Limited partnership, limited liability partnership, or limited liability limited partnership</u>	<u>All general partners</u> <u>All limited partners</u>

<u>Entity</u>	<u>True party(ies) of interest</u>
<u>Limited liability company (LLC)</u>	<u>All LLC members</u> <u>All LLC managers</u>
<u>Privately held corporation</u>	<u>All corporate officers and directors (or persons with equivalent title)</u> <u>All stockholders</u>
<u>Multilevel ownership structures</u>	<u>All persons and entities that make up the ownership structure</u>
<u>Any entity(ies) or person(s) with a right to receive revenue, gross profit, or net profit, or exercising control over a licensed business</u>	<u>Any entity(ies) or person(s) with a right to receive some or all of the revenue, gross profit, or net profit from the licensed business during any full or partial calendar or fiscal year</u> <u>Any entity(ies) or person(s) who exercise(s) control over the licensed business</u>
<u>Nonprofit corporations</u>	<u>All individuals and entities having membership rights in accordance with the provisions of the articles of incorporation or bylaws</u>

(2) A married couple may not be a true party of interest in more than five retail marijuana licenses, more than three producer licenses, or more than three processor licenses. A married couple may not be a true party of interest in a marijuana retailer license and a marijuana producer license or a marijuana retailer license and a marijuana processor license.

(3) The following definitions apply to this chapter unless the context clearly indicates otherwise:

(a) "Control" means the power to independently order, or direct the management, managers, or policies of a licensed business.

(b) "Financial institution" means any bank, mutual savings bank, consumer loan company, credit union, savings and loan association, trust company, or other lending institution under the jurisdiction of the department of financial institutions.

(c) "Gross profit" means sales minus the cost of goods sold.

(d) "Net profit" means profits minus all other expenses of the business.

(e) "Revenue" means the income generated from the sale of goods and services associated with the main operations of business before any costs or expenses are deducted.

(4) For purposes of this chapter, "true party of interest" does not include (this is a nonexclusive list):

(a) A person or entity receiving payment for rent on a fixed basis under a lease or rental agreement. Notwithstanding, if there is a common ownership interest between the applicant or licensee, and the entity that owns the real property, the board may investigate all funds associated with the landlord to determine if a financier relationship exists. The board may also investigate a landlord in situations where a rental payment has been waived or deferred.

(b) A person who receives a bonus or commission based on their sales, so long as the commission does not exceed ten percent of their

sales in any given bonus or commission period. Commission-based compensation agreements must be in writing.

(c) A person or entity contracting with the licensee(s) to receive a commission for the sale of the business or real property.

(d) A consultant receiving a flat or hourly rate compensation under a written contractual agreement.

(e) A person with an option to purchase the applied for or licensed business, so long as no money has been paid to the licensee under an option contract or agreement for the purchase or sale of the licensed business, or a business that is applying for a license.

(f) Any business or individual with a contract or agreement for services with a licensed business, such as a branding or staffing company, will not be considered a true party of interest, as long as the licensee retains the right to and controls the business.

(g) A financial institution.

(5) **Notification.**

(a) Except as provided in this subsection (4) (a) (i), (ii), and (iii), after licensure the licensee must continue to disclose the source of all funds to be invested in the licensed business, including all funds obtained from financiers, prior to investing the funds into the licensed business.

(i) Revenues of the licensed marijuana business that are reinvested in the business do not require notification or vetting by the board.

(ii) Proceeds of a revolving loan where such loan has been approved by the board within the three previous years do not need to be vetted by the board, unless the source of the funds has changed or the approved loan amount has increased.

(iii) If the source of funds is an identified true party of interest on the license, or a previously approved financier associated with the license, or a previously approved revolving loan, the board will allow these funds to be used upon receipt of an application to use such funds. The board will then investigate the source of funds. If the board cannot verify the source of funds after reasonable inquiry, or the board determines that the funds were obtained in a manner in violation of the law, the board may take actions consistent with the provisions of this chapter.

(b) Licensees must receive board approval before making any ownership changes consistent with WAC 314-55-120.

(c) Noncompliance with the requirements of this section may result in action consistent with this chapter.

(6) Disclosure agreements and intellectual property.

(a) Licensed marijuana businesses may enter into agreements consistent with the provisions of RCW 69.50.395.

(b) Notwithstanding the foregoing, no producer or processors may enter into an intellectual property agreement with a retailer.

(7) **Financiers.**

(a) Consistent with WAC 314-55-010(11), a financier is any person or entity, other than a financial institution or a government entity, that provides money as a gift, a grant, or loans money to an applicant, business, or both, and expects to be paid back the amount of the loan, with or without reasonable interest.

(b) A financier may not receive an ownership interest, control of the business, a share of revenue, gross profits or net profits, a profit sharing interest, or a percentage of the profits in exchange for a loan or gift of funds, unless the financier, if directly involved in the loaning of funds, receives board approval and has qualified on the license as a true party of interest.

(c) Washington state residency requirements do not apply to financiers who are not also a true party of interest, but all financiers must reside within the United States.

(d) The board will conduct a financial and criminal background investigation on all financiers.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-035, filed 5/18/16, effective 6/18/16. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-035, filed 10/21/13, effective 11/21/13.]