



# Washington State Liquor and Cannabis Board

**Topic:** Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – WAC 314-17-015 – What are the two types of alcohol server training permits?

**Date:** December 7, 2022

**Presented by:** Kathy Hoffman, Policy and Rules Manager

## Background

On October 12, 2022, John Clifford of Pagliacci Pizza submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petition requests that the agency amend WAC 314-17-015 to allow Class 13 permit holders to pour alcohol and open bottles at the counter in the same way that Class 12 permit holders are permitted to.

In the rule petition, Mr. Clifford stated:

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: WAC 314-17-015

- I am requesting the following change: Allow Class 13 permit holders to pour alcohol and open bottles at the counter just as Class 12 permit holders do.
- This change is needed because: There was an allowance to do this during the Covid-19 pandemic. There were likely no detrimental effects occurred. Employees are allowed to perform the duties already.
- The effect of this rule change will be: Minimal. Class 13 holders can already do these - the only issue is where they are standing in the location. An allowance was made during Covid it was positive.
- The rule is not clearly or simply stated: \_\_\_\_\_

## Issue

Whether the Board should initiate the rulemaking process to consider amending WAC 314-17-015 to allow Class 13 permit holders to pour alcohol and open bottles at the counter just as Class 12 permit holders do.

## Authority

### Laws

**RCW 66.04.010(1)** defines “alcohol” as “that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the

possession of a manufacturer or distiller of alcohol fuel, as described in RCW [66.12.130](#), which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.”

**RCW 66.04.010(3)** defines “beer” as “any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.”

**RCW 66.04.010(43)** defines “spirits” as any beverage that contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent alcohol by volume.

**RCW 66.04.010(48)(a)** defines “wine” as “any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as “table wine,” and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as “fortified wine.” However, “fortified wine” shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.”

**RCW 66.20.300(2)** defines “alcohol server” as “any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premises consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the laws of this state to serve alcoholic beverages with meals.”

**RCW 66.20.310** describes alcohol server permits, known as class 12 and class 13 permits:

- (1)(a) There is an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on premises licensed facility.
- (b) There is an alcohol server permit, known as a class 13 permit, for a person who **only serves** alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility (emphasis added).
- (c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

**RCW 66.44.350** provides that under certain circumstances, employees eighteen years and over are allowed to serve and carry liquor and perform other duties for certain licensed employers. Specifically, notwithstanding the provisions of RCW 66.44.310, employees of businesses holding beer and/or wine restaurant; beer and/or wine private club; snack bar, spirits, beer, and wine restaurants; spirits, beer, and wine private club; catering, and sports entertainment licenses who are between the ages of eighteen and twenty-one may take orders for, serve, and sell liquor on any part of the licensed premises, except cocktail lounges, bars, or other areas classified by LCB as off-limits. Such employees may enter such restricted areas to perform work assignments including picking up liquor for service in other parts of the licensed premises, performing cleanup work, setting up and arranging tables, delivering supplies, delivering messages, serving food, and seating patrons. Importantly, *such employees are not permitted to perform the activities of a bartender.*

#### *Rule*

**WAC 314-17-015** describes two types of alcohol server training permits for persons who serve, mix, sell, or who supervise the sale of alcohol at a licensed premises.

#### **Analysis**

##### *Statutory and Regulatory Backdrop*

Although the Board has statutory authority under RCW 66.08.030 to make regulation pertaining to alcohol generally, RCW 66.20.330 describes the Board's authority to adopt rules pertaining to specifically to alcohol servers.

RCW 66.20.310 describes two types of alcohol server permits, described as class 12 and class 13. These permits are distinguished by the types of activities permitted under the license, and the age at which the license may be issued. A class 12 permit holder (manager or bartender) can **sell or mix** alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility. A class 13 permit holder can only **serve** alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility. The statute also describes qualification requirements, exemptions, and circumstances under which a permit may be suspended or revoked.

Consistent with this statutory authority, WAC 314-17-015 establishes and further distinguishes class 12 and class 13 permits:

Class 12 permit	Class 13 permit
(1) A class 12 permit holder must be at least twenty-one years of age.	(5) A class 13 permit holder must be at least eighteen years of age.
(2) A class 12 permit is required for any person who:	(6) A class 13 permit is required for any person who:
(a) Manages a retail licensed premises licensed to sell alcoholic beverages for on-premises consumption;	(a) Takes orders for alcoholic beverages for on-premises consumption;
(b) Sells, mixes or draws from a dispensing device alcoholic beverages for on-premises consumption; or	(b) Delivers alcoholic beverages to customers for on-premises consumption; or
(c) Supervises a class 13 permit holder.	(c) Opens or pours beer or wine into a customer's glass at a customer's table.
(3) A class 12 permit includes all authorities granted under a class 13 permit.	(7) See RCW 66.20.310 for exceptions for grocery store employees.
(4) See RCW 66.20.310 for exceptions for grocery store employees.	

Both the statute and rule provide that in the temporary absence of a class 12 permit holder, a class 13 permit holder may perform the functions of a class 12 permit holder until a class 12 permit holder arrives to fulfil those duties (see RCW 66.20.310(1)(c) and WAC 314-17-015(8)). The rule further clarifies the limited circumstances under which this activity may occur: the class 13 permit holder must be twenty-one years of age or older; *and* the class 13 permit holder must function as a class 12 permit holder for no more than thirty calendar days per year (see WAC 314-17-015(8)(a) and (b)).

### *COVID-19 Temporary Allowances*

In response to the COVID-19 pandemic, and subsequent business reopening, the agency offered a number of temporary allowances designed to support the businesses it licenses. These were offered during various stages of the pandemic, and several were extended to continue that support as the economy began to recover, social distancing was still required, and labor shortages began to emerge.

One of the temporary allowances provided an option for class 13 permit holders to pre-pour samples, flights, and glasses of wine or beer for customers away from the table

instead of pouring these products at the table. The allowance was available to licensees until September 30, 2022:

**Mandatory Alcohol Server Training (MAST) – Temporary Allowance for Class 13 Permit Holders**

Effective Until: September 30, 2022

Applies To: Class 13 Permit Holders

A MAST Class 13 permit is typically issued to workers of a liquor licensed establishment that are between the ages of 18-21, and allows them to take orders of alcohol, deliver alcohol to customers at their tables for on-premises consumption, and to open or pour beer or wine into a customer's glass at their table. Class 13 permit holders may perform these duties as long as there is a person 21 years or older on duty supervising the sale of alcohol.

In order to minimize interactions between customers and workers, the WSLCB is temporarily allowing holders of a Class 13 MAST permit to **pre-pour samples, flights, and glasses of wine or beer** for customers away from the customer's table instead of having to open or pour wine or beer into a customer's glass at their table. A person 21 years or older must be on duty supervising the sale. (Emphasis added).

*The Petitioner's Request*

Mr. Clifford asks the Board to "allow Class 13 permit holders to pour alcohol and open bottles at the counter just as the Class 12 permit holders do" because "there was an allowance to do this during the Covid-19 pandemic. There were likely no detrimental effects occurred. Employees are allowed to perform these duties already." Mr. Clifford further asserts that the rule change would have minimal effect because "Class 13 holders already do these – the only issue is where they are standing in the location. An allowance was made during Covid it was positive."

Turning first to the allowance, and as noted above, Mr. Clifford references a temporary allowance for class 13 permit holders to pre-pour samples, flights and glasses of *wine* or *beer* for customers at a location other than a customer's table. The purpose of the allowance was to support social distancing and business re-entry. The agency did not extend this allowance to include all alcohol, which could include spirits as defined in RCW 66.04.010(43) and other beverages containing alcohol beyond beer as defined in RCW 66.04.010(3) and wine as defined in RCW 66.04.010(48)(a).

RCW 66.44.350 describes the employment of persons eighteen years and over in businesses holding certain liquor licenses. Under certain circumstances, employees eighteen years and over are allowed to **serve and carry liquor** and perform other duties for certain licensed employers. The statute further provides that such employees, who are between the ages of eighteen and twenty-one may take orders for, serve, and sell liquor on any part of the licensed premises, except cocktail lounges, bars, or other areas

classified by LCB as off-limits. Specifically, *such employees are not permitted to perform the activities or function as a bartender.*

This statutory framework is further clarified in RCW 66.20.310 that distinguishes the privileges of the class 12 permit and class 13 permit holder. Specifically, RCW 66.20.310(1)(b) clearly limits the activities of a class 13 permit holder to **only service** of alcohol, spirits, wines or beer for consumption at an on-premises licensed facility. This is reflected in rule, providing that class 13 permit holder may deliver, or **serve** alcoholic beverages to consumers for on-premises consumption. Rule further clarifies that a class 13 permit holder may also open and pour *beer* or *wine* into a customer's glass at a customer's table (see WAC 314-17-015(5)(b) and (c)).

The temporary allowance aligned with statutory framework and rule, but also allowed the activity described in current rule to be performed at an alternate location – away from the table to support social distancing – under supervision, and limited to pre-poured samples, flights, and glasses of wine or beer. These activities are statutorily authorized by RCW 66.44.350 and RCW 66.20.310(1)(b).

RCW 66.20.310 does not specify or limit where service can take place or even expressly authorize the class 13 permit holder to open (as opposed to serve) beer or wine. This activity has already been addressed in rule as noted above. If Mr. Clifford had requested an expansion of the location at which a class 13 permit holder could open beer and wine to locations where only beer and wine and not spirits are sold, this could possibly be achieved through rule making. However, Mr. Clifford requests allowing class 13 permit holders between the ages of eighteen and twenty-one to engage in activity beyond *service* of alcohol, spirits, wine and beer, aligning the activities of the class 12 permit, even though the legislature intended there to be a difference between these permit types.

Based on this analysis, staff conclude that the request conflicts with current statute and for that reason, the petition should be denied.

## **Divisional, Interagency, Intergovernmental, DEIB, Social Equity and Other Impacts**

### ***Divisional***

#### **Licensing**

The Licensing division did not identify any impacts

#### **Enforcement & Education**

The Enforcement and Education division did not offer additional information, finding that the analysis above sufficiently addresses the request. No additional impacts were identified.

### Finance

The Finance division did not identify any impacts.

### Information Technology/Infrastructure

The IT division did not identify any impacts to support this rule request if the proposed revision was related to activities that are already allowable. However, there would be IT impact if a new permit type was created or current permit types were expanded through statutory revision.

### Public Health/Prevention

In many situations, persons under twenty-one years of age can legally serve alcohol. However, concern related to alcohol normalization through increased exposure, particularly before reaching the age of twenty-one may be amplified in these circumstances. While allowing this practice to continue and to potentially expand may support business viability and possibly reduce certain costs, it is unclear what impacts, unintended or otherwise, such provisions may have on persons between eighteen and twenty-one years of age. The greatest concern with this particular request, however, is that blurring the lines between the class 12 and class 13 permits may result in persons under twenty-one years of age acting as bartenders.

### **Interagency**

#### Department of Health

This request does not appear to have any direct impact on programs or services offered by the Department of Health. However, there may be public health and prevention concerns related to increased access and exposure to alcohol products by persons between the ages of eighteen and twenty-one if the differences between class 12 and class 13 alcohol server permits were reduced.

#### Labor & Industries

This request does not appear to have any direct impact on programs or services offered by the Department of Labor and Industries.

### **Intergovernmental**

#### Tribes

This request does not appear to have any direct impact on Tribes. However, note concerns related to Public Health and Prevention above, and DEIB and Social Equity below.

## ***DEIB, Social Equity***

Inequities in alcohol-related harm can arise from many factors at many levels. Health inequities are defined as systemic differences in health that can be avoided by appropriate policy intervention and are therefore deemed to be unfair or unjust. To be able to devise effective action, it is necessary first to understand that the causes of these inequities in health. Health inequities are not solely related to access to health care services; there are many other determinants related to living and working conditions, as well as the overall macro-policies prevailing in a country or region.

Inequities in alcohol-related harm in the United States exist based on factors including economic status, education, gender, ethnicity and place of residence. In general, lower socioeconomic groups experience higher levels of alcohol-related harm than wealthier groups with the same level of alcohol consumption. Experiencing the multiple aspects of socioeconomic disadvantage amplifies inequities in alcohol-related harms. This request could further amplify those inequities by not only increasing underage exposure, availability and marketing a broader range of alcohol products, but connecting those elements to required employment activities and the working conditions under which they occur.

## **Conclusion**

Under the statutory framework described above, class 12 and class 13 alcohol service permit holders each have separate and distinct privileges. Current statute does not authorize class 13 permit holders to pour alcohol and open bottles at the counter just as the Class 12 permit holders do because those privileges belong exclusively to the class 12 permit holders.

The Board is not authorized to adopt rules that conflict with statutes. This petition request would require statutory changes which can be made by the Legislature but are beyond the Board's rulemaking authority provided in RCW 66.08.030 and RCW 66.20.330. For this reason, agency staff do not recommend initiating rulemaking as requested in this petition.

## **Recommendation**

For the reasons described above, Director's Office staff recommend that consistent with RCW 34.05.330(1)(a), the Board deny Mr. Clifford's rule petition request, received on October 12, 2022.

## **Board Action**

After considering the recommendation of Director's Office staff, the Board accepts/denies the petition for rulemaking received from John Clifford on October 12, 2022.



\_\_\_\_\_ Accept \_\_\_\_\_ Deny

\_\_\_\_\_  
David Postman, Chair

\_\_\_\_\_  
Date

\_\_\_\_\_ Accept \_\_\_\_\_ Deny

\_\_\_\_\_  
Ollie Garrett, Board Member

\_\_\_\_\_  
Date

\_\_\_\_\_ Accept \_\_\_\_\_ Deny

\_\_\_\_\_  
Jim Vollendroff, Board Member

\_\_\_\_\_  
Date

**Attachments**

1. Email from containing rule petition.
2. Laws and Rules cited under the "Authority" section above.