Washington State
Liquor and Cannabis Board

Notice of Permanent Rules

Regarding Implementing 2023 Liquor Legislation

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (LCB) adoption of rules that align existing regulations on wine distributors with new language in RCW 66.20.010(18) and RCW 66.24.200 that allows holders of permits for short term rental operators to obtain wine directly from wine distributors.

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. The concise explanatory statement must be provided to any person upon request, or from whom the LCB received comment.

The LCB appreciates and encourages your involvement in the rule making process. If you have questions, please e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules:

On May 24, 2023, the Washington State Liquor and Cannabis Board (LCB) filed a CR 101 preproposal statement of inquiry (WSR# 23-11-115) to consider creating new rule sections and amending existing rule sections to implement 2023 liquor legislation of three bills: House Bill (HB) 1730 (RCW 66.44.316(1)(e)), ESHB 1731 (chapter 257, Laws of 2023) and HB 1772 (RCW 66.28.380, RCW 69.50.3271). During the collaborative rule development process, it was determined that HB 1730 and HB 1772 did not require the creation of new rules or changes to existing rules.

ESHB 1731 (chapter 257, Laws of 2023) amends state law to allow owners of short-term rentals to obtain a permit to provide a complimentary bottle of wine to those who rent the unit, so long as the owner of the short-term rental complies with age-verification requirements, provides the prospective renter with advance notice that a complimentary bottle of wine will be provided, advises the prospective renter of certain laws against illegal public consumption, and provides the prospective renter with an opportunity to decline the complimentary wine bottle prior to the rental period. Owners of short-term rentals who obtain these special permits are allowed to purchase wine from wine distributors.

To develop potential rule language, a set of conceptual draft rules was shared publicly through GovDelivery on July 3, 2023. As part of the collaborative rule development process, the messaging asked for stakeholder feedback and suggestions for revisions to the conceptual draft rules by July 17, 2023.

Only one comment was submitted, and it asked for additional terms to be put in rule that were either beyond the scope of the enabling statute or already stated in statute. Based on the feedback received, the LCB did not make any changes to the conceptual draft rule language.

Rulemaking history for this adopted rule:

> **CR 102** – filed August 2, 2023, as WSR #23-16-146
> Public hearing held September 13, 2023

The effective date of these rules is October 28, 2023.

Public comment received on the rule proposal:

1. Email exchange between Scott Waller and Daniel Jacobs, Aug. 16–28, 2023.

From: Scott Waller <tumh2o99@comcast.net>
Sent: Wednesday, August 16, 2023 11:09 PM
To: LCB DL Rules <rules@lcb.wa.gov>
Subject: CR 102 for rules implementing HB 1731

External Email

Hello,

My name is Scott Waller. I am with Washington Association for Substance use and Violence Prevention (WASAVP). I am hoping you can un-confuse me regarding rules for implementing HB 1731.

As currently posted on your website, the current proposed changes only deal with making it legal for wine distributors to sell wine to short-term rental operators.

I'm wondering what happened with the remainder of the topics described in the CR 102 memorandum: 1) checking IDs to make sure persons of legal age are receiving the complementary products, 2) providing an opt out for renters if they do not want to receive the complementary wine, and 3) communication with renters about the risks of consuming alcohol and driving? Additionally, there was a public comment received suggesting that a simple accountability report be required in order to determine how widespread the complementary wine practice is. There is nothing in the proposed rule about any of these topics.

Is it your contention that existing rules cover the new requirements and processes identified in the memorandum? Or will there be additional rules proposed to deal with these other issues?

Scott Waller
Tumh2o99@comcast.net

Continued on next page →

From: Jacobs, Daniel (LCB) <daniel.jacobs@lcb.wa.gov>
Sent: Thursday, August 17, 2023 2:21 PM
To: tumh2o99@comcast.net
Cc: LCB DL Rules <rules@lcb.wa.gov>; Segawa, Mary (LCB) <mary.segawa@lcb.wa.gov>
Subject: RE: CR 102 for rules implementing HB 1731

Mr. Waller:

You pose several questions below, so allow me to address them in order:

1. The requirement for permit holders / short-term rental owner/operators to check ID is in the statute itself, as is the requirement to provide renters on opportunity to decline the wine bottle, so there was not felt to be a need to repeat these requirements in rule. See ESHB 1731.
2. While there is no requirement in statute to provide information about the risks of drinking and driving, the law requires discussion of laws against consumption of alcohol on public property, but similar to the ID check and opportunity to opt-out, these are already specified in statute, so there isn't a need to repeat this in rule. I don't recall mention of the risks of drinking and driving in the CR 102 itself.
3. Regarding the public comment received, the CR 102 Memo mentions that this comment was not ultimately incorporated into the proposed rule, and there was a robust discussion during the board meeting on the topic regarding why the comment was not incorporated into the proposed rules. That being said, we at LCB will know how many rental property owners apply for the permit. We will know whether any of them are acquiring the wine from distributors because distributors will report that. We have the ability to survey permit holders as to how many times they used the privilege and whether they had anyone decline the wine. At this time we don't believe rulemaking is needed to get this information. However, during the board meeting, it was discussed that this topic could be revisited after the permit has been in place for a certain amount of time.
4. I am not arguing that existing rules cover these topics. However, the statutory language passed by the legislature is fairly specific and rather than potentially giving too much language in rule that could potentially confuse licensees and stakeholders, the agency felt that, at this time, it makes more sense to let the statutory language speak for itself.
5. We have not ruled out future rulemaking if it becomes necessary. That is always a possibility. However at this time, the agency does not feel that additional rulemaking on this bill is necessary in order to implement this new law.

Feel free to follow up with any further questions,

Sincerely,

Daniel Jacobs, Esq. (*he/him/his*)

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From: Scott Waller <tumh2o99@comcast.net>
Sent: Friday, August 18, 2023 9:43 AM
To: Jacobs, Daniel (LCB) <daniel.jacobs@lcb.wa.gov>
Cc: LCB DL Rules <rules@lcb.wa.gov>; Segawa, Mary (LCB) <mary.segawa@lcb.wa.gov>
Subject: RE: CR 102 for rules implementing HB 1731

External Email

Daniel,

Thank you so much for your responses. I appreciate both the promptness and the completeness of the responses.

Regarding ID-checking, I know the language in the bill. During testimony in the legislature, proponents stated that they were expecting that ID checks would be in person. However, the bill is silent about how ID checking should occur which means an operator could simply ask in an online registration form whether the renter has valid identification that proves they are 21 or older. If the renter responds positively, they will meet the minimum test for having their ID checked.

Many operators – at least in my personal experience – do not actually have contact with the renter. The rental will be cleaned in advance of the rental, and afterward. And the keys are often left in a realtor lockbox on the door that is opened with a code sent by the operator.

If clarification about ID checks is not going to be in the rule, is LCB planning to develop educational materials itself - or to work with partners in the hospitality industry – to develop educational materials for operators that clarify what is recommended in terms of checking ID?

Thanks for your work on this.

Scott Waller

From: Jacobs, Daniel (LCB)
Sent: Friday, August 18, 2023 1:02 PM
To: tumh2o99@comcast.net
Cc: LCB DL Rules <rules@lcb.wa.gov>; Segawa, Mary (LCB) <mary.segawa@lcb.wa.gov>
Subject: RE: CR 102 for rules implementing HB 1731

Scott:

I want to say that I completely understand where you are coming from on this. I've used AirBnb several times throughout Washington, California and internationally, and I've never met any of my hosts in person.

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But, there is some wording in the bill language itself that throws a little bit of a wrench in your scenario below regarding the online registration and the operator asking ahead of time for the renter to simply verify online they are over 21.

The law says, in lines 23-29 of page 6 of ESHB 1731 as hyperlinked below:

> The provision of the complimentary bottle of wine may occur only after an operator or staff person of the short-term rental, who is present at the short-term rental property, verifies that each rental guest who will consume the complimentary bottle of wine is age 21 or over by checking a valid form of identification of each such rental guest at the time rental guests arrive. (emphasis added).

I mentioned this in my presentation during the Board caucus and board hearing, openly discussing this issue. Most AirBnb rental operators don't meet the guests in person, nor do they especially want to, and also, I think the feeling is probably mutual with rental guests. But that seems to be what the bill requires.

I explained that I think the use of the word "present", and Chair Postman seemed to agree when I was discussing this, prevents the scenario you describe where ID is simply verified through virtual means. I don't believe doing a Skype/Zoom/Team video conference where the owner/operator video chats with the renter and shows the ID, would suffice either, so I wanted to leave the statutory language as is.

LCB isn't even sure how many owner/operators are going to take advantage of this permit, given how many requirements are in the bill. That's part of why we plan on doing a retrospective review after the permit goes live to see if there are issues and if these permits get widely purchased and utilized. And if we start getting a significant number of questions about ID checking from owner/operators, renters, local authorities, etc., complaints that laws are not being followed, or other concerns are raised, we can certainly do rulemaking at that time to address and/or clarify those issues.

Regarding education of permit holders, our Licensing Division regularly clarifies the restrictions regarding permits. As an example, if you click on the link for Banquet Permits on the front page of our website, you will go directly to this page that explains all of the restrictions/requirements for Banquet Permits before you apply. Another example is information provided on a permit application. These applications routinely reiterate the requirements. I will share with our Licensing Division the concerns you have expressed from the prevention community that permit holders are clear as to the laws and requirements this permit.

I appreciate your feedback and questions to help ensure the safety of the public and the prevention of youth use of alcohol.

Daniel Jacobs, Esq. (*he/him/his*)
Rules & Policy Coordinator
Washington State Liquor and Cannabis Board

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Sent: Monday, August 28, 2023 9:58 AM
To: tumh2o99@comcast.net
Cc: LCB DL Rules <rules@lcb.wa.gov>; Segawa, Mary (LCB) <mary.segawa@lcb.wa.gov>
Subject: RE: CR 102 for rules implementing HB 1731

Hi Scott:

I also wanted to confirm whether or not you'd like this thread included as a comment prior to the public hearing scheduled for September 13, just because I'll need to mark it as such in my rule file.

If you don't, feel free to send this via email to the rules inbox, ideally before the September 13 hearing, or testify during said hearing. Your input is valuable and I think it is important that there are community stakeholders actively interested in this rulemaking.

Please feel free to follow up with any questions or concerns,

Sincerely,

Daniel Jacobs, Esq. (*he/him/his*)
Rules & Policy Coordinator
Washington State Liquor and Cannabis Board
Daniel.jacobs@lcb.wa.gov
Mobile: (360) 480-1238

From: Scott Waller <tumh2o99@comcast.net>
Sent: Monday, August 28, 2023 11:07 AM
To: Jacobs, Daniel (LCB) <daniel.jacobs@lcb.wa.gov>
Cc: LCB DL Rules <rules@lcb.wa.gov>; Segawa, Mary (LCB) <mary.segawa@lcb.wa.gov>
Subject: RE: CR 102 for rules implementing HB 1731

External Email

Daniel,

Thank you for being so thorough. I have appreciated your explanations to my questions and I think that your responses add detail that should be included in the public comment. I may not agree, but I now understand the rationale better. Please feel free to include this thread in the public comment. I also will likely testify on September 13.

Scott Waller
Tumh2o99@comcast.net
(360) 701-8658

LCB response: The LCB appreciates this comment, and participation in the rulemaking process. The LCB looks forward to your participation in future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

No oral testimony was received or submitted during the public hearing.

No changes were made between the Proposed Rules as filed in the CR 102 and the Rules as Adopted.