



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: September 02, 2020

TIME: 10:30 AM

WSR 20-18-099

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: WAC 314-55-035 - What persons or entities have to qualify for a marijuana license? The Washington State Liquor and Cannabis Board (Board) has adopted amendments to existing 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. The rule section has been retitled, “Qualifying for a marijuana license.”

Citation of rules affected by this order:

New:
 Repealed: .
 Amended: WAC 314-55-035
 Suspended:

Statutory authority for adoption: RCW 69.50.342; RCW 69.50.345; RCW 69.50.395.

Other authority: ESHB 1794 (Chapter 380, Laws of 2019)

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 20-14-032 on June 24, 2020 (date).
 Describe any changes other than editing from proposed to adopted version: There were no changes from the proposed rules to the adopted rules.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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 Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New		Amended	1	Repealed	

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New		Amended	6	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New		Amended	7	Repealed	

Date Adopted: September 2, 2020

Name: Jane Rushford

Title: Chair

Signature:



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 equivalent title) and their spouses. • 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).
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>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>

((True party of interest	Persons to be qualified
	<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>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>

Entity	True party(ies) of interest
<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.