



## Washington State Liquor and Cannabis Board

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**Topic:** Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – Mandatory Alcohol Health Warning<sup>1</sup>

**Date:** November 6, 2024

**Presented by:** Daniel Jacobs, Policy & Rules Coordinator

### Background

On September 18, 2024, Lucy Wight submitted a petition for rulemaking to the Washington State Liquor and Cannabis Board (Board) requesting the Board initiate rulemaking to add a health warning to alcohol bottles sold in Washington State.

The petition states as follows:

Hi. My name is Lucy Wight, and together with my child, [name of minor child], I would like to inquire if there is an existing law requiring all alcohol bottles sold in Washington State to contain a warning that says something like....

Patients who receive adequate medical support have a lower risk of death from AWS ... [Minor Child] and I are not affiliated with any organization. We are just voters in Snohomish County. We live in Lake Stevens at [address].

The rationale is according to 2010 statistics, which are pretty consistent since 1990, percentage of alcohol related deaths from AWS is around 6.6 to 7 percent amount people with DTs , cirrhosis, and other chronic conditions.

5 % materiality rate of alcohol related deaths, from AWS amo[]ng normal healthy individuals.

I could talk more about this statistic, and I'm not sure if current statistics remain true to this course, but historically Washington's alcohol statistics according to the CDC and prevention are pretty consistent.

I gave you my address, I'm not sure what authorized means, but is it needed? Absolutely! Alcohol related deaths in 2010 were 2457. Five percent of that represents AWS deaths of I understand correctly, that is 123 people died in 2010 because they were trying to stop drinking and didn't have the appropriate information to do it in a safe manner, I assume. Actually it's not an assumption. I had a near death experience from quitting drinking after my dependence on alcohol became so severe I was experiencing DTs. So I will violate my own anonymity here, but only because I have the luxury of having returned from dying to explain to you I had no idea withdrawals from alcohol could be fatal. Let the consumer have the opportunity to know this, please.

I feel this warning is super needed, although I am unaware of it conflicts or duplicates existing State or Federal rules.

Statistics also show preventive measures could cut the AWS mortality rate in half. So while I believe we are offering some rally against this statistic, according to the CDC, Behavioral Health and school education. Going back to the 2010 statistic of 123 Alcohol Withdrawal Syndrome deaths, if half of those could have been prevented by going upstream and warning the consumer. Wouldn't that be 61 grateful families in 2010 alone that may be didn't have to lose a loved one who was trying to get right on such a horrible way. In fact, if it could save a single life, I don't understand why we aren't doing this.

This rule would apply to all alcohol sold in Washington, I[']m sure it imposes less unreasonable cost than a class action lawsuit suit. Not that a class action lawsuit suit is an unreasonable cost, I don't feel a humane warning is an unreasonable cost.

The suggested warning seems simply stated. I'm not a lawyer who could tell you the perfect verbage. I don't believe it differs without justification from a Federal law. Levi and I would request a new rule or amendment to existing rule as those who know the process seems fit. For our states alcohol bottles to include the warning. Alcohol can cause DTs and withdrawals from it at that point has 1.5 times higher mortality rate. Or simply PATIENTS WHO RECEIVE ADEQUATE MEDICAL SUPPORT HAVE A LOWER RISK OF DEATH FROM AWS.

## **Issue**

Whether the Board should accept the petition to initiate the rulemaking process to consider adding a mandatory health warning to alcohol bottles sold in Washington.

## **Statutes & Regulations**

### ***Statutes***

[27 USC § 214\(2\)](#) defines the term “bottle” as meaning to fill a container with an alcoholic beverage and to seal such a container.

[27 USC § 214\(5\)](#) defines the term “container” as meaning the inner-most sealed container irrespective of the material from which made, in which an alcoholic beverage is placed by the bottler and in which such beverage is offered for sale to members of the general public.

[27 USC § 215\(a\)](#) states that it shall not be lawful for any person to manufacture, import, or bottle for sale or distribution in the United States any alcoholic beverage unless the container of such beverage bears the following statement:

**“GOVERNMENT WARNING:** (1) According to the Surgeon General, woman should not drink alcoholic beverages during pregnancy because the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.”

[27 USC § 216](#) states that no statement relating to alcoholic beverages and health, other than the statement required by section 215 of this title, shall be required under State law to be placed on any container of an alcoholic beverage, or on any box, carton, or other package, irrespective of the materials from which made, that contains such a container.

[RCW 66.08.030](#) identifies the Board's rulemaking authority over alcohol.

### ***Regulations***

[27 CFR § 16.10](#) defines “bottle” as “to fill a container with an alcoholic beverage and seal such container.

[27 CFR § 16.10](#) defines a container as “[t]he innermost sealed container, irrespective of the material from which made, in which an alcoholic beverage is placed by the bottler and in which such beverage is offered for sale to members of the general public.”

[27 CFR § 16.21](#) states that [t]here shall be stated on the brand label or separate front label, or on a back or side label, separate and apart from all other information, the following statement:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects.

(2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

[27 CFR § 16.32](#) states that [n]o statement relating to alcoholic beverages and health, other than the statement required by § 16.21, shall be required under State law to be placed on any container of an alcoholic beverage, or on any box, carton, or other package, irrespective of the material from which made, that contains such a container.

## **Analysis**

RCW 34.05.330(4) states that when petitioning for repeal or amendment of a rule, a person is encouraged to address whether the rule is authorized, whether it conflicts or duplicates other federal, state, or local laws, and whether the rule is different from a federal law applicable to the same activity or subject matter without adequate justification. See [RCW 34.05.330\(4\)\(a\), \(c\), and \(i\)](#). These factors are repeated in WAC 82-05-220(1)(c). See [WAC 82-05-220\(1\)\(c\)\(i\), \(iii\), and \(i\)\(x\)](#).

Here, federal law states that “no statement relating to alcoholic beverages and health, other than the statement required by section 215 of this title, shall be required under State law to be placed on any container of an alcoholic beverage, or any box, carton, or other package, irrespective of the materials from which made, that contains such a container.” [27 USC § 216](#).

Because a bottle of alcohol, as described in the petition, would qualify as a container of alcohol, as defined in Federal statute ([27 USC § 214\(5\)](#)) and regulation ([27 CFR § 16.10](#)), the preemption provisions in both Federal statute ([27 USC § 216](#)) and regulation ([27 CFR § 16.32](#)) apply and prohibit any state law that requires any health statement other than the government warning required at [27 USC § 215](#) and [27 CFR § 16.21](#).

Additionally, there are existing advisories issued by the U.S. Department of the Treasury, Alcohol and Tobacco, Tax and Trade Bureau (TTB) on the label requirements for health warnings for malt beverages ([TTB-G 2023-4](#)), distilled spirits ([TTB-G 2021-6](#)) and wine ([TTB-G 2019-5](#)).

As such, even if the Board were to accept this petition and create a new section of Title 314 WAC that required an additional health statement on alcohol bottles sold in

Washington like the statement described by the petitioner, such a requirement would be preempted by Federal law.

***Divisional Coordination***

Licensing – Current Licensing rules are consistent with the federal requirement that labels state: GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery and may cause health problems. If the petition is denied, the label requirement remains unchanged. Potential impacts if the rule petition is accepted include process changes in the division to incorporate new rules, including communications to affected licensees, new label review standards, increased costs to licensees.

Enforcement & Education – no additional feedback provided.

Finance – no additional feedback provided.

IT – no additional feedback provided.

Public Health – While the Board recognizes the importance of this issue, especially from a public health standpoint, the preemption identified above prevents the Board from deviating from the health warning via rulemaking.

***Interagency Coordination***

Department of Labor & Industries – no immediate impact identified.

Department of Health - no immediate impact identified.

***Sovereign to Sovereign Consultations***

There has not been an immediate impact identified that may impact Tribal governments any more so than any other licensee.

**Recommendation**

The Director’s Office recommends the Board deny the petition for rulemaking submitted on September 18, 2024 because, based on staff understanding of the relevant Federal statute and regulations, any rule that the Board may create as a result of rulemaking on this topic would likely be preempted by Federal law and would be invalidated by a court in a legal challenge, which in turn would be very likely given the strong industry stakes and increased costs to alcohol manufacturers that such a rule would entail.

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**Board Action**

After considering the recommendation of Director’s Office staff, the Board accepts/denies the petition for rulemaking submitted by Lucy Wight on September 18, 2024.

<input type="checkbox"/> Accept <input checked="" type="checkbox"/> Deny	 _____	<u>11/6/2024</u>
	David Postman, Chair	Date
<input type="checkbox"/> Accept <input checked="" type="checkbox"/> Deny	 _____	<u>11/6/2024</u>
	Ollie Garrett, Board Member	Date
<input type="checkbox"/> Accept <input checked="" type="checkbox"/> Deny	 _____	<u>11/6/2024</u>
	Jim Vollendroff, Board Member	Date

Attachments:

- 1) Petition email from Petitioner
- 2) Laws and Rules related to Petition Analysis

<sup>1</sup> This response to a petition for adoption, repeal or amendment of a state administrative rule is drafted pursuant to [RCW 34.05.330](#) and [chapter 82.05 WAC](#). This is for general information purposes only and should not be construed as legal advice or individual advice for specific problems.