



PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with [RCW 34.05.330](#), the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at <http://apps.leg.wa.gov/wac/default.aspx?cite=82-05>.

CONTACT INFORMATION *(please type or print)*

Petitioner's Name Christopher Payne
Name of Organization CLIC Risk Retention Group, Inc.
Mailing Address 2 North Central Avenue, Suite 1800
City Phoenix State AZ Zip Code 85004
Telephone 858.260.9000 Email corporate@clicrrg.com

COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: <http://www.leg.wa.gov/CodeReviser/Documents/RClis.htm>.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: Washington State Liquor and Cannabis Board

1. NEW RULE - I am requesting the agency to adopt a new rule.

The subject (or purpose) of this rule is: _____

The rule is needed because: _____

The new rule would affect the following people or groups: _____

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

List rule number (WAC), if known: WAC 314-55-092 (2)

I am requesting the following change: Amend to account for captive insurance companies, and to include other federally-approved rating agencies in the code section. See attached letter.

This change is needed because: There is ambiguity in the code as written, particularly for authorized risk retention groups. Please see attached letter.

The effect of this rule change will be: To increase the availability and lower the cost of liability insurance for cannabis licensees.

The rule is not clearly or simply stated: _____

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: _____

(Check one or more boxes)

It does not do what it was intended to do.

It is no longer needed because: _____

It imposes unreasonable costs: _____

The agency has no authority to make this rule: _____

It is applied differently to public and private parties: _____

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

See attachment

Other (please explain): _____



October 31, 2024

Mr. Will Lukela
Director
Washington State Liquor and Cannabis Board
1058 Capitol Way South
Olympia, WA 98501

Dear Director Lukela,

CLIC Risk Retention Group, Inc. (“CLIC RRG”) is a captive Risk Retention Group that is approved to offer cannabis liability insurance policies within the state of Washington. The Washington State Liquor and Cannabis Board (“LCB”) regulates cannabis licensing and operations, and requires cannabis licensees to maintain certain insurance coverages. CLIC RRG seeks to strictly comply with the LCB’s regulations.

The LCB’s regulation - Washington Administrative Code (“WAC”) 314-55-082(2) - contains an ambiguity as to whether a non-admitted insurer must hold an AM Best’s rating of A- Class VII or better in order to offer General Liability insurance coverage to cannabis licensees within the state.

CLIC RRG requests inclusion on LCB’s upcoming Board Meeting agenda¹ to discuss:

- a) the role of authorized captive insurance companies in the cannabis industry;
- b) CLIC RRG’s goal of issuing General Liability insurance policies to cannabis licensees in the State of Washington;
- c) the issue raised by WAC 314-55-082’s ambiguity, and;
- d) CLIC RRG’s proposed solutions.

CLIC RRG requests that LCB should:

- a) amend WAC 314-55-082(2) to account for captive insurers;

¹ According to the LCB’s website, Board Meetings provide the public an opportunity address members of the Board, either during a scheduled Public Hearing, or during the General Public Comments, which occur at the conclusion of each Board meeting. <https://lcb.wa.gov/laws/rulemaking-overview>.



- b) amend WAC 314-55-082(2) to include other federally approved rating agencies in the code section, and/or;
- c) issue a decision allowing CLIC RRG to issue insurance policies within the state.

By bringing this issue to the attention of LCB, CLIC RRG advocates for regulatory progress specifically as it applies to insurance coverage options for cannabis licensees in Washington.

1. CAPTIVE INSURANCE, CLIC RRG, AND RISK RETENTION GROUPS

A small number of companies dominate the market for cannabis insurance. The insurance companies are not specialists committed to the cannabis industry and none is owned by the policyholders. Their estimated underwriting margin is between 40% to 60%, depending on the line of business. The wholesale agents that control access to these insurance companies charge commissions of 10% or more. These exceptional costs are due, in part, to regulations that prevent captive insurance companies from offering coverage.

Captive insurance companies serve as a correcting mechanism for failures in the insurance market and are formed when insurance is unavailable, policy terms are inadequate or premiums are higher than justified by the exposure. There are over 3,100 captive insurance companies domiciled in the United States, providing insurance to businesses in every area of the economy. Companies in Washington that own captives include Costco, Microsoft, Alaska Airlines and Starbucks. Captives provide benefits that include access to policy coverage, increased risk management support, reduced legal defense costs and direct access to reinsurance markets. Their owners retain the underwriting profits for the benefit of policyholders and build reserves for emerging exposures.

A Risk Retention Group (RRG) is a type of captive insurance company, created under the terms of the 1986 Federal Liability Risk Retention Act, that allows individuals and businesses in the same trade or profession to pool their liability risks.

The advantages of RRGs include:

1. *Customized Coverage*: RRGs allow members to design their insurance coverage to their specific needs.
2. *Profits*: Profits generated are returned to the members as dividends or used to reduce future premiums.
3. *Cost Savings*: Being member-owned, RRGs tend to operate at a lower overhead cost.
4. *Risk Management*: RRGs share best practices among members with similar risks. This reduces the number of injuries, and consequent claim payments.

2 NORTH CENTRAL AVENUE, SUITE 1800, PHOENIX, AZ 85004

P: 858.260.9000 E: CORPORATE@CLICRRG.COM



5. *Fair Claims Handling*: Members of an RRG know the best practices of their industry, leading to quicker settlement of meritorious claims, and vigorous defense of good conduct.
6. *Stability*: RRGs provide stability and continuity of coverage, which is particularly advantageous for businesses with hard-to-insure risks such as cannabis.

CLIC RRG is registered with the Insurance Commissioner for the State of Washington and is authorized to offer General Liability and Product Liability coverages to the cannabis industry. It estimates that its premium costs are 15% to 20% lower than the current market.

2. LCB REGULATIONS AND THE AMBIGUITY AT ISSUE

CLIC RRG is committed to being a good member of the insurance industry, and prioritizes compliance with the regulations promulgated by the LCB. We therefore seek to clarify an ambiguity that exists within WAC 314-55-082, and specifically its subsection (2), as discussed below.

A. The Rating Requirement within WAC 314-55-082(2) is Ambiguous as to its Applicability to Non-Admitted Insurers.

WAC 314-55-082 sets forth requirements for cannabis insurance, and states:

Insurance requirements. Cannabis licensees must obtain insurance coverage. Insurance is required to protect the consumer if any claims, suits, actions, costs, damages or expenses arise from any negligent or intentional act or omission of the cannabis licensees. Cannabis licensees will provide the board with a certificate of insurance demonstrating that the following types and minimum amounts of insurance have been obtained:

(1) Commercial general liability insurance: The licensee must carry and maintain commercial general liability and property damage arising out of licensed activities at all times. The limits of liability insurance will not be less than \$1,000,000. Upon board request, a licensee must provide proof of insurance.

(a) This insurance must cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury.

(2) Insurance carrier rating: The insurance required in subsection (1) of this section must be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A - Class VII or



better in the most recently published edition of Best's Reports. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) Additional insured. The state and its employees, agents, and volunteers shall be named as an additional insured on insurance policies required under this section. All policies shall be primary over any other valid and collectable insurance.

(4) Failure to maintain or provide proof of insurance as required may result in license cancellation.

As written, subsection (2) is ambiguous as to whether a non-admitted insurer must have the stated rating if the insurance policies and procedures for issuing the insurance policies comply with chapters 48.15 RCW and 284-15 WAC.

In analyzing the text, the first consideration is that the insurance “must be issued by an insurance company *authorized to do business in the state of Washington.*” This requirement is clear. CLIC RRG is registered with the Insurance Commissioner for the State of Washington and has been authorized to write General Liability and Product Liability policies. Thus, CLIC RRG is authorized to do business in the state of Washington.

Additionally, the rule set forth in the subsection’s third sentence also appears clear to CLIC RRG. The third sentence is directed to non-admitted insurers and states in relevant part that “all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.”

Because CLIC RRG is a non-admitted insurer, its policies and procedures for issuing policies must comply with chapters 48.15 RCW and 284-15 WAC.

RCW 48.15 and WAC 284-15 concern what is known as “excess and surplus lines” business. The Liability Risk Retention Act 1985 exempts CLIC RRG from such regulation, and RCW 48.15.160 explicitly exempts insurance “issued by a registered eligible captive insurer under 48.201 RCW.” CLIC RRG is a registered captive insurer. As such, CLIC RRG meets this standard.

The second sentence of the subsection, however, appears ambiguous when read together with the rest of the subsection. The second sentence states, “**Insurance is to be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of Best's Reports.**” When read in tandem with the third sentence, it is unclear whether the rating requirement is moot in the context of non-admitted insurance. In other words, must a non-



admitted insurer have a rating of A- Class VII or better in the most recent edition of AM Best's Reports, even if the insurer meets all the other requirements for non-admitted insurers?

A reasonable interpretation of the rating requirement is that it does **not** survive the accepted use of non-admitted insurance. RCW 48.201.020 and RCW 48.201.030 define eligible captive insurers and their registration in the state, and CLIC RRG meets these standards. Additionally, RCW 48.15 and WAC 284-15 do not contain a rating requirement. (These are the sections identified by WAC 314-55-082(2) applicable to non-admitted insurers.)

Although CLIC RRG believes that a non-admitted insurer acting in compliance with 48.15 RCW and 284-15 WAC satisfies the subsection, it asks the LCB to clarify that intent, or applicability of this WAC subsection.

3. CLIC RRG'S PROPOSED SOLUTIONS

The LCB's website indicates that "We may decide to start rulemaking based on changes in federal or state law, when we learn of changes in technology or the environment, or when we receive requests from our partners or the public. The rulemaking process is used to create, change, or delete a rule."² The website further clarifies that the Administrative Procedure Act requires the LCB to engage the public in rule development, and the Regulatory Fairness Act requires it to consider the impact of its rules on small businesses.³

The cannabis industry has fueled sweeping changes in federal and state laws, and CLIC RRG's request to be heard by the LCB on this matter serves as a request from the public to engage in the rulemaking process regarding an issue that impacts businesses of all sizes within the state's cannabis industry.

Accordingly, CLIC RRG respectfully proposes the following solutions in light of the identified ambiguity and the implications for captive insurers and the cannabis industry.

1. Rewrite WAC 314-55-082

First, we propose that the LCB rewrite WAC 314-55-082. It does not appear that the regulation was written with captives in mind and it does not provide adequate direction for captive insurers. It moreover refers non-admitted insurers to a code section that explicitly excludes Risk Retention Groups from its rules. Rewriting this section would allow for better clarity and broader regulation to include captive insurers, which benefits cannabis licensees within the state.

² <https://lcb.wa.gov/laws/rulemaking-overview>

³ *Id.*



2. Amend the Relevant Portion of Subsection WAC 314-55-082(2)

As a second option, the LCB should amend subsection (2) of WAC 314-55-082 with respect to the rating requirement to include other federally approved rating agencies.

A requirement that allows only for an AM Best rating is discriminatory against all other Nationally Recognized Statistical Rating Organizations currently registered with the SEC. There are 10 such agencies that offer ratings to insurance companies (including Fitch, S&P, Kroll, Demotech, and Moody's), and the LCB's current regulation inadvertently grants AM Best a monopoly of this function that is harmful to the interests of cannabis licensees.

Expanding the list of federally approved rating agencies broadens the pool of eligible insurers, especially captive groups, capable of insuring cannabis licensees within the state. As it stands, the AM Best rating requirement is extremely narrow and discriminates against captive insurance companies that choose to be rated by other rating agencies approved by the federal government.

3. Issue a Decision Allowing CLIC RRG to Issue Cannabis Insurance Policies in Washington

If the LCB opts not to rewrite the regulation or amend any part of it, it is still within the LCB's purview to decide whether CLIC RRG complies with its regulations. The LCB should therefore issue a decision clarifying that CLIC RRG satisfies the applicable regulations and has permission to issue cannabis insurance policies within the state of Washington.

4. THE NECESSITY AND BENEFIT OF ENACTING A SOLUTION

CLIC RRG embraces the need for insurance regulation to obtain direction and security for the cannabis industry. By engaging in the rulemaking process to enact a solution to the section's ambiguity issue, the LCB would benefit captive insurers seeking to issue cannabis policies in Washington State, as well as cannabis licensees seeking to obtain cannabis insurance in the state.

First, the ambiguity within WAC 314-55-082 disadvantages CLIC RRG, and all captive groups that may seek to comply. The section, as written, essentially places non-admitted insurers in an impossible situation. On the one hand, non-admitted insurers without the AM Best rating do not know if they are in compliance with the subsection, as it is unclear whether the rating is required for non-admitted insurers. Further, if an AM Best rating remains the only rating acceptable to the LCB, this subsection discriminates against captive insurers that choose to be rated by other agencies approved by the federal government. The WAC section currently does not provide adequate direction for captive insurers and is written in a manner that appears at odds with the



very existence of captives. The certainly unintended result is that captive insurers are deterred or unable to provide services to cannabis licensees within the state of Washington.

This omission also disadvantages cannabis licensees in Washington. Cannabis insurance continues to be expensive and limited to a small number of insurance providers. The LCB should allow the companies it regulates the same opportunity to self-insure through an RRG, similar to the right granted to many other regulated industries in the state of Washington.

Another significant consideration is the growing importance of tribal nations in the cannabis industry who are potentially exempt from the regulation of the LCB. CLIC RRG is in discussion with several tribes who are frustrated by the cost and quality of insurance offerings available in the traditional market. CLIC RRG would like to have these nations become owners of the company and participate in its activities. Clarifying the LCB regulations would make it easier for these nations to make that choice.

Finally, enacting a solution to this issue also benefits the LCB by furthering its stated goal to provide clarity as to its rules and expectations so they can be strictly followed more feasibly. CLIC RRG's request is consistent with the LCB's commitment to transparency, accountability, equity and inclusion in rulemaking.

CONCLUSION

CLIC RRG is a captive Risk Retention Group that seeks to service the cannabis industry in Washington State. To that end, CLIC RRG has identified a problematic ambiguity within the regulations that govern cannabis insurance within the state, and it proposes three separate options as a potential solution. At this juncture, the LCB should allow CLIC RRG a place on its upcoming Board Meeting Agenda, as doing so will benefit captive insurers and cannabis licensees, and furthers the LCB's rulemaking initiatives.

We thank you for considering this letter and look forward to discussing it with you.

Yours sincerely,

A handwritten signature in black ink that reads "Christopher J. Payne".

Chris Payne

Treasurer