



Notice of Rule Change – Explanatory Statement How to Apply for a Liquor License

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of changes to rules regarding How to Apply for a Liquor License.**

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. This statement must be provided to anyone who gave comment about the proposed rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Liquor Control Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately June 5, 2010).

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Karen McCall, Rules Coordinator, at (360) 664-1631 or e-mail at rules@liq.wa.gov.

What are the agency's reasons for revising these rules?

These rules are being revised as part of the Rules review process.

What changes are being made?

The Board adopted these rule changes May 5, 2010. The rules will be filed on May 5, 2010 and will be effective on June 5, 2010.

Summary of all public comments received on this rule proposal.

No public comment was received.

Testimony at Public Hearing – April 28, 2010 Olympia, WA

None

WAC Changes

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-010 Definitions. Following are definitions for the purpose of this title. Other definitions are in WAC 314-01-005 and RCW 66.08.010.

(1) "Applicant" or "liquor license applicant" means any person or business entity who is considered by the board as a true party of interest in a liquor license or permit application, as outlined in WAC 314-07-035.

(2) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs, advertising, etc.

(3) "Financier" (~~(--A-- "financier")~~) means any person or entity who has made or will make an investment in the licensed business of more than ten thousand dollars (~~(or of more than ten percent of the initial cash outlay needed to open the business)~~) A "financier" can be someone who provides money as a gift, someone who loans money to the business and expects to be paid back the amount of the loan without interest, or someone who invests money into the business expecting a percentage of the profits, but accepts the risk that there may not be a full return on the investment. These persons or entities shall submit appropriate investigation level "financier" financial documents.

(4) "Licensee" or "liquor licensee" means any person or entity that holds a liquor license or permit, or any person or entity who is a true party of interest in a liquor license or permit, as outlined in WAC 314-07-035.

(5) "Public institution" means a public college or university. (See WAC 314-07-020 regarding the liquor control board notifying public institutions of liquor license applications.)

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.015, and 66.24.025. 05-07-012, § 314-07-010, filed 3/4/05, effective 4/4/05.]

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-015 General information about liquor licenses.

(1) (~~When the board issues a liquor license, it should not be construed as granting a vested right in any of the privileges of the license. Rather,~~) A person or entity must meet certain qualifications to receive a liquor license, which are continuing qualifications in order to maintain the license.

(2) A liquor license applicant may not exercise any of the privileges of a liquor license until the board approves the

license application (see WAC 314-07-055 regarding temporary licenses).

(3) In approving a liquor license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a liquor license.

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.015, and 66.24.025. 05-07-012, § 314-07-015, filed 3/4/05, effective 4/4/05.]

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-020 Liquor license qualifications and application process. Each liquor license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the liquor license application. Following is a general outline of the liquor license application process.

(1) Per RCW 66.24.010, the board shall send a notice to the local authority regarding the liquor license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(a) The local authority may submit a written request to the board for an extension for good cause shown.

(b) If the application is within a board-recognized alcohol impact area, the board will give the local authority sixty days to comment on the liquor license application or assumption (see WAC 314-12-215(7) for more information).

(2) For an application for a new liquor license privilege, the board may require a public posting notice to be posted at the site for fourteen days.

(3) For an application for a new liquor license privilege, the board shall notify any schools, churches, or public colleges or universities within five hundred feet of the business (see RCW 66.24.010(9) for more information).

(4) The board will verify that the proposed business meets the minimum requirements for the type of license or privilege requested.

(5) The board may conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-07-040 and 314-07-045.

(6) The board may conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(7) The board may provide a briefing on liquor laws and rules.

(8) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license or privilege requested.

(9) Per RCW 66.24.010 (2)(a), all applicants must have resided in the state of Washington for at least one month prior to issuance of a liquor license. For (~~true parties of interest in~~) a corporation or a limited liability company, the entity meets this residency requirement if the entity was formed in Washington or has a certificate of authority to do business in Washington.



(10) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application will be administratively closed.





[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.015, and 66.24.025. 05-07-012, § 314-07-020, filed 3/4/05, effective 4/4/05.]

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-035 What persons or entities have to qualify for a liquor license? Per RCW 66.24.010(1), a liquor license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest** - For purposes of this title, "true party of interest" means:

<u>((Type of Entity)) True party of interest</u>	<u>Persons ((considered "true party of interest")) to be qualified</u>
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership ((or), limited liability partnership, <u>or limited liability limited partnership</u>)	<p> All general partners and spouses;</p> <p> All limited partners that have more than 10% interest in the partnership and their spouses.</p>

Limited liability company	<p> All members with more than 10% interest in the LLC and spouses. (Note: In order for the liquor control board to identify the ((true parties of interest)) <u>persons to be qualified</u>, we will need to know all parties that have an interest in the limited liability company or have a pending interest.)</p> <p> All managers and their spouses.</p>
Privately held corporation	<p> All corporate officers (or persons with equivalent title).</p> <p> All stockholders who hold more than 10% of the issued or outstanding stock. (Note: In order for the liquor control board to identify the ((true parties of interest)) <u>persons to be qualified</u>, we will need to know all parties who have been issued or will be issued corporate stock.)</p>
Publicly held corporation	All corporate officers (or persons with equivalent title).
Multi-level ownership structures	The liquor control board will review each entity to determine which individuals are ((true parties of interest)) <u>to qualify</u> according to the guidelines in this rule.

Any entity	<p>Any person who is in receipt of, or has the right to receive, more than ten percent of the gross or net sales from the licensed business during any full or partial calendar or fiscal year. For the purposes of this chapter:</p> <p>✂ "Gross sales" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business.</p> <p>✂ "Net sales" means gross sales minus cost of goods sold.</p>
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(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 or percentage 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.

(d) A person or entity receiving payment of franchise fees on a fixed or percentage basis under a bona fide franchise agreement, unless the person or entity receiving payment of franchise fees exercises control over or participates in the management of the licensed business.

(3) **Financiers**--The board may conduct a financial investigation of financiers.

(4) **Persons who exercise control of business**--The board may conduct an investigation of any person or entity who exercises any control over the applicant's business operations.

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.015, and 66.24.025. 05-07-012, § 314-07-035, filed 3/4/05, effective 4/4/05.]

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-055 Temporary retail license. Applicants may apply for a temporary retail liquor license in addition to an annual license for the same business. If granted, the temporary license allows the applicant to operate for a period of up to sixty days while the annual license application is being processed.

Type of Application	Qualification and process to receive a temporary retail license
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<p>((1) Existing licensed business: Applicant is applying for a license for a business that has an existing license at the location, and all of the following apply:</p> <ul style="list-style-type: none"> ✍ The applicant is applying for the same license privilege(s). ✍ The current license privilege is valid and has not expired. ✍ There are no liquor violations pending on the current license. 	<p>In order to receive a temporary license, the applicant(s) must:</p> <ul style="list-style-type: none"> ✍ Fill out a form provided by the board signed by both the current licensee and the current landlord. ✍ Pay a \$50 fee. ✍ Turn in all documents necessary to complete the initial licensing investigation. ✍ Clear a criminal history check, per WAC 314-07-040. ✍ Complete a briefing on liquor laws and regulations, per WAC 314-07-020(7).)
<p>((2)(a)) (1) New business, existing licensed business, or new license type:</p> <ul style="list-style-type: none"> ✍ Applicant is applying for a license at a business location that does not hold a current, valid liquor license. ✍ Applicant is applying for the same license privilege at a location that has a valid license that has not expired. ✍ Applicant is applying for a license or a business that has an existing license at the location, but the applicant is applying for a different license privilege(s). <p>((or</p> <p>(b) Existing licensed business as described in subsection (1))</p>	<p>In order to receive a temporary license, the applicant(s) must:</p> <ul style="list-style-type: none"> ✍ ((Fill out a form provided by the board.)) Sign the acknowledgment form. ✍ Clear a criminal history check, per WAC 314-07-040. ✍ Complete a briefing on liquor laws and regulations, per WAC 314-07-020(7). ✍ The local authority and any churches, schools, or public colleges or universities within 500 feet of the proposed licensed business must have responded to the liquor control board's notice of liquor license application, or the time period must have passed. See WAC 314-07-020, subsections (1), (2), and (3) for more information. ✍ When the annual liquor license is issued, the fee will be pro-rated back to the date of issuance of the temporary license.

~~((3))~~ (2) For the purposes of this section, "retail liquor license" shall include all classes of liquor licenses that allow the holder to sell liquor directly to the public.

~~((4))~~ (3) The privilege of having a temporary license issued upon an application for license does not apply to breweries or wineries (~~(, even though these licensees have limited distributor and retail privileges under their manufacturers' licenses)~~).

~~((5))~~ (4) A temporary license under subsection (1) above may be issued for a (~~nonretail~~) distributor license applicant.

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.015, and 66.24.025. 05-07-012, § 314-07-055, filed 3/4/05, effective 4/4/05.]

NEW SECTION

WAC 314-07-060 Reasons for denial or cancellation of a temporary license. Following is a list of reasons a temporary permit may not be issued or can be revoked. Per RCW 66.24.010, the board has broad discretionary authority to approve or deny a liquor license or permit application. Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing.

(1) An applicant who has received a temporary license and their application is later administratively closed, and they reapply for a liquor license at the same location.

(2) The local authority objects for any reason.

(3) The applicant affirmatively refuses to submit documents requested by the board to conduct the application investigation.

(4) The applicant accrues or is involved in a violation committed while operating under a temporary license.

(5) The investigator is unable to determine the true party of interest.

(6) The applicant fails to meet the basic requirements of the license.

(7) Denial of the permanent license is recommended to the board.

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AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-065 Reasons the board may deny a liquor license application. Following is a list of reasons the board may deny a liquor license application. Per RCW 66.24.010, the board has broad discretionary authority to approve or deny a liquor license or permit application.

(1) Failure to meet qualifications or requirements for the specific liquor license or privilege, as outlined in this Title 314 WAC and Title 66 RCW.

(2) Failure to submit information or documentation requested by the board.

(3) Misrepresentation of fact by any applicant or financier.

(4) Failure to meet the criminal history standards outlined in WAC 314-07-040.

(5) Failure to meet the liquor law or rule violation history standards outlined in WAC 314-07-045.

(6) Source of funds used for the acquisition, startup and operation of the business is questionable or unverified.

(7) Objection from the local authority or from the public (see WAC 314-09-010 and RCW 66.24.010(8)). ~~((The objection must state specific reasons and facts that show issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health, or welfare of the community.))~~

(8) Objection from the following entities if they are within five hundred feet of the proposed business: A public school, a private school that meets the requirements of chapter 28A.195 RCW, a church, or a public college or university. See WAC 314-09-010 and RCW 66.24.010(9) for more information. Note: Per RCW 66.24.010(9), the board may not issue a new liquor license if the board receives objection from a public school within five hundred feet of the proposed licensed business.

(9) The board determines that the issuance of the liquor license will not be in the best interest of the welfare, health, or safety of the people of the state.

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.015, and 66.24.025. 05-07-012, § 314-07-065, filed 3/4/05, effective 4/4/05.]

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-080 Ownership changes. (~~(a)~~) (1) Licensees must receive prior board approval before making any of the following ownership changes (see WAC 314-07-035 for the definition of "true party of interest"):

Type of change	Type of application	Fee
Change in (any of the true party(ies) of interest) <u>the qualifying persons</u> in a: <u>Sole proprietorship, general partnership, limited partnership, or limited liability partnership.</u>	New application	Annual fee for current license privilege.

Change in ((any of the true party(ies) of interest)) <u>the qualifying persons</u> for a publicly or privately held corporation. The board will waive the fee for a corporate change when the proposed change consists solely of dropping an approved officer.	Application for change in corporate officer and/or stockholder	\$75
Change in ((any of the true party(ies) of interest)) <u>the qualifying persons</u> in a limited liability company.	Application for change of limited liability company member and/or manager	\$75

~~((b))~~ (2) The board may inquire into all matters in connection with any such sale of stock/units or proposed change in officers/members.

~~((c))~~ (3) The "proposed sale of more than ten percent of the stock/units" will be calculated as a cumulative total and must be reported to the board when the accumulation of stock/units transfers or newly issued stock/units totals more than ten percent of the outstanding and/or issued stock/units of the licensed corporation or limited liability company.

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.015, and 66.24.025. 05-07-012, § 314-07-080, filed 3/4/05, effective 4/4/05.]

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-085 Change of location. (1) Changing your liquor license to a new location requires an application, per the process outlined in WAC 314-07-015(2).

(2) Type of change of location application:

Submit a change of location application and pay a \$75 fee if:	Submit a <u>new</u> liquor license application and pay the appropriate fee for the type of liquor license you are applying for if:
<input checked="" type="checkbox"/> You are not changing the type of liquor license that you have at the current location; <input checked="" type="checkbox"/> There is no change in any of the true parties of interest; and <input checked="" type="checkbox"/> Your liquor license is current.	<input checked="" type="checkbox"/> You are changing the type of liquor license from what you have at the current location; <input checked="" type="checkbox"/> There is a change in any of the true parties of interest; or <input checked="" type="checkbox"/> Your liquor license is not current.

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.015, and 66.24.025. 05-07-012, § 314-07-085, filed 3/4/05, effective 4/4/05.]