



Notice of Rule Change Concise Explanatory Statement Emergency suspension of a liquor license

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of new rules regarding emergency suspension of 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 rule with the Office of the Code Reviser. This rule change will become effective 31 days after filing (approximately September 14, 2008).

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Rules Coordinator, at (360) 664-1648 or e-mail at rules@liq.wa.gov.

What are the agency's reasons for revising this rule?

The authority to suspend a liquor license prior to a hearing (emergency suspension) is found in RCW 66.08.150. It is not clear whether a licensee has the right to an administrative hearing to contest the validity of the emergency suspension or whether a challenge to the emergency suspension may only be advanced to a superior court. These rules clarify and set out the process for emergency or summary suspension of a liquor license and the process by which a licensee's administrative appeal from an order of emergency suspension may be taken.

What changes are being made?

These rules set out the process and timelines for a licensee's administrative appeal of the emergency suspension order, which takes the form of a request for

stay of the emergency suspension order. The licensee bears the burden of proof to the administrative law judge. The administrative law judge conducts a hearing in the form of a brief adjudicative proceeding (based on review of documentary evidence). If the emergency suspension order is stayed (and the stay order is not reversed by the Board), the licensee is allowed to continue operations (in whole or in part) until a Final Board Order is issued in the related proceeding for permanent license revocation.

Rule Adoption

The Board adopted this rule change on August 6, 2008. Repeal of this rule will be filed on August 14, 2008 and will be effective September 14, 2008.

Summary of all public comments received on this rule proposal.

None

Public Comment Participant List

Name and Affiliation

Written comments

None

Testimony at Public Hearing – July 9, 2008 at Olympia, WA

None

Emergency suspension of a liquor license

NEW SECTION

WAC 314-29-006 What is the process once the board summarily suspends a liquor license? (1) The board may summarily suspend any license or permit after the board's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate cessation of the licensed or permitted activities is necessary for the protection or preservation of the public health, safety or welfare.

(2) Suspension of any license or permit under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary suspension order unless otherwise provided in the order.

(3) When a license or permit has been summarily suspended by the board, an adjudicative proceeding for revocation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee or permit holder, then a hearing shall be held within ninety days of the effective date of the summary suspension ordered by the board.

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NEW SECTION

WAC 314-29-007 How may a licensee challenge the summary suspension of his or her liquor license? (1) Upon summary suspension of a license or permit by the board pursuant to WAC 314-29-006, an affected licensee or permit holder may petition the board for a stay of suspension pursuant to RCW 34.05.467 and 34.05.550(1). A petition for a stay of suspension must be received by the board within fifteen days of service of the summary suspension order. The petition for stay shall state the basis on which the stay is sought.

(2) A hearing shall be held before an administrative law judge within fourteen days of receipt of a timely petition for stay. The hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified to allow the conduct of limited activities under current licenses or permits.

(3) Any hearing conducted pursuant to subsection (2) of this section shall be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing shall consist of the documentary information upon which the summary suspension was based. The licensee or permit

holder shall have the burden of demonstrating by clear and convincing evidence that:

(a) The licensee or permit holder is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee or permit holder will suffer irreparable injury. For purposes of this section, elimination of income from licensed or permitted activities shall not be deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay shall be effective immediately upon service unless another date is specified in the order.

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NEW SECTION

WAC 314-29-008 Review of orders on stay. (1) The licensee, permit holder, or agency may petition the board for review of an initial order on stay. Any petition for review must be in writing and received by the board within ten days of service of the initial order. If neither party

has requested review within ten days of service, the initial order shall be deemed the final order of the board for purposes of RCW 34.05.467.

(2) If the board receives a timely petition for review, the board shall consider the petition within fifteen days of service of the petition for review. Consideration on review shall be limited to the record of the hearing on stay.

(3) The order of the board on the petition for review shall be effective upon personal service unless another date is specified in the order and is final pursuant to RCW 34.05.467. Final disposition of the petition for stay shall not affect subsequent administrative proceedings for suspension or revocation of a license or permit.

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