



NOTICE OF ADOPTION OF INTERPRETIVE STATEMENT

Title of Interpretive Statement: 401K, Individual Retirement Account (IRA), and Trusts as True Parties of Interest in Liquor Licenses – Interpretive Statement Number IS21-03.

Issuing Entity: Washington State Liquor and Cannabis Board

Subject Matter: This interpretive statement offers the Washington State Liquor and Cannabis Board's position on 401K, Individual Retirement Account (IRA), and trusts as true parties of interest in liquor licenses.

Effective Date: October 6, 2021

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Interpretive Statement

Title: 401K, Individual Retirement Account (IRA), and Trusts as True Parties of Interest in Liquor Licenses *Number: IS21-03*

References: [RCW 66.24.010](#)
[RCW 66.24.025](#)
[WAC 314-07-035](#)

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[RCW 34.05.230 – Interpretive and policy statements](#)

- (1) An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.

INTRODUCTION

This interpretive statement is intended to describe how 401K, individual retirement accounts (IRA), and trusts are evaluated by the agency when such entities are identified as true parties of interest on a liquor license.

This interpretive statement supersedes and replaces previous agency guidance concerning this topic.

SUMMARY

WSLCB will not approve a 401K, IRA, or a nonfamilial trust with greater than ten percent ownership interest in a liquor license as a true party of interest.

BACKGROUND

In early 2021, the WSLCB received two similar but unrelated questions concerning the treatment of trusts as true parties of interest in a liquor license. The first questioned the agency’s denial of an application to restructure a company to establish an Employee Stock Option Plan (ESOP) where a trust would hold a 30% ownership interest in business shares on

behalf of business employees. The second was in the form of a rule petition concerning whether the agency should amend WAC 314-07-035 to require that the trustees of a 401K, IRA, or business trust be qualified as true parties of interest in a liquor license, while exempting the beneficiaries from the requirement. The Board ultimately denied this petition.

The agency's licensing division indicated that although questions concerning these issues do not arise frequently, an interpretive statement may assist with consistent rule application, and serve to inform rule revisions in the future.

AUTHORITY

RCW 66.24.010 authorizes the Board to issue liquor licenses under certain conditions, and includes, among other things, the types of information and criteria that the Board is required or allowed to consider when reviewing any application for a license.

RCW 66.24.025 provides that the proposed sale of more than ten percent of the outstanding and/or issued stock of a licensed corporation or any proposed change in the officers of a licensed corporation must be reported to the board, and board approval must be obtained before such changes are made.

WAC 314-07-035 describes who qualifies as a true party of interest on a liquor license.

ANALYSIS

The purpose of true party of interest rules, authorized by RCW 66.24.010 and implemented through WAC 314-07-035, is to ensure that the persons or entities with a controlling interest in a liquor license are appropriately evaluated by the Board. This evaluation includes consideration of certain factors such as criminal history, location and proximity of the business to schools, churches, public institutions, and objections from local authorities. The statute gives the Board broad discretion to grant or deny a license.¹

WAC 314-07-035 became effective on April 4, 2005, and was proposed to "better 'define' true parties of interest for the purposes of licensing investigations."² WAC 314-07-035(2)(e) was added in in 2015 as part of "...the liquor and cannabis board's ongoing rules review process..." It is unclear why 401K, IRA, and nonfamilial trusts were expressly excluded from being recognized as true parties of interest. For purposes of this analysis, it is assumed that these three types of plans, although administered by different rules, are generally established for purposes of asset or capital management, and do not fall within any of the statutorily recognized business structures or entities evaluated as true parties of interest.

With that as a backdrop, true party of interest evaluation components described in rule are based on the agency's statutorily described responsibility to curb "[c]hronic illegal activity" (see

¹ RCW 66.24.010(2): "Subject to the provisions of this section, the board may, in its discretion, grant or deny the renewal or license applied for."

² <http://lawfilesexst.leg.wa.gov/law/wsr/2004/24/04-24-095.htm>

RCW 66.24.010(12)) by giving “due consideration” to a variety of elements (see RCW 66.24.101(2) and (9)).

RCW 66.24.010 does not specifically address how the Board might evaluate whether IRAs, 401Ks, or nonfamilial trusts qualify for a liquor license. However, subsection (2) frames restrictions on the issuance for licenses for certain types of entities, such as sole proprietorships, partnerships, and corporations:

“No retail license of any kind may be issued to:

- (a) A person doing business as a sole proprietor who has not resided in the state for at least one month prior to receiving a license, except in cases of licenses issued to dining places on railroads, boats, or aircraft;
- (b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;
- (c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;
- (d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.”

RCW 66.24.025(2) further provides that the proposed sale of more than ten percent of the outstanding and/or issued stock of a licensed corporation or any proposed change in the officers of a licensed corporation must be reported to the Board, and Board approval must be obtained before such changes are made.

WAC 314-07-035(1) includes a table listing certain types of entities and the persons that must be qualified if those entities are considered to be true parties of interest. This subsection of rule also includes a general category for “any entity” (emphasis added):

“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:

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 spouses;• All limited partners that have more than 10% interest in the partnership and their spouses.

Limited liability company	<ul style="list-style-type: none"> • All members (or persons with equivalent title) with more than 10% interest in the LLC and spouses. (Note: In order for the liquor control board to identify the persons to be qualified, we will need to know all parties that have an interest in the limited liability company or have a pending interest.) • All managers (or persons with equivalent title) 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 (or persons with equivalent title) and their spouses who hold more than 10% of the issued or outstanding stock. (Note: In order for the liquor control board to identify the persons to be qualified, we will need to know all parties who have been issued or will be issued corporate stock.)
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 to qualify according to the guidelines in this rule.
Any entity	<p><i>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:</i></p> <ul style="list-style-type: none"> • <i>"Gross sales" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business.</i> • <i>"Net sales" means gross sales minus cost of goods sold.</i>

WAC 314-07-035(2) lists the types of entities or persons that are generally *not* considered true parties of interest, including IRAs, 401Ks, and nonfamilial trusts. Specifically, WAC 314-07-035(2)(e) states *"For purposes of this section, "true party of interest" does not mean: . . . (e) A 401K, IRA, or nonfamilial trust."*

Defining "Entity" and "Nonfamilial Trust"

The terms "entity" and "nonfamilial trust" are not specifically defined in statute or rule with respect to liquor licensees. For example, WAC 314-07-010(1) defines "applicant" or "liquor

license applicant” as “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.”

Entity

The term “entity” is defined chapter 23.95 RCW, also known as the Uniform Business Organizations Code. Although unrelated to liquor statute or rule, RCW 23.95.105(6) provides that entity means,

- (a) A business corporation;
- (b) A nonprofit corporation;
- (c) A limited liability partnership;
- (d) A limited partnership;
- (e) A limited liability company;
- (f) A general cooperative association; or
- (g) A limited cooperative association.

Generally, an entity is defined as a person or organization possessing separate and distinct legal rights, such as an individual, partnership, or corporation. An entity can, among other things, own property, engage in business, enter into contracts, sue and be sued.³

Nonfamilial Trust

A trust, in its most basic form, is a legal entity created by a grantor for the benefit of designated beneficiaries under the laws of a state and a valid trust instrument.⁴ WAC 314-07-035(2)(e) distinguishes “nonfamilial trust” from other trust types, but does not define “nonfamilial.” For this reason, the agency turns to the “plain meaning rule” for guidance. Although the plain meaning rule is generally applied to statute,⁵ it is reasonable to extend its application to the regulatory context. The plain meaning rule directs that the plain meaning of language in a provision must be discerned from consideration of all language in the chapter. If after such consideration the language is susceptible to more than one meaning, the language is ambiguous, and it is appropriate to resort to aids to construction, including legislative history.⁶ Here, the word “nonfamilial” does not appear anywhere else in WSLCB regulation, nor does it appear in any Washington State statute. While it could be assumed that the agency used “nonfamilial” to reference anything other than a family-type trust, we explore the word here to determine whether there are distinguishing characteristics between nonfamilial and family trusts.

³<https://www.law.cornell.edu/wex/entity#:~:text=A%20person%20or%20organization%20possessing,taxes%2C%20sue%20and%20be%20sued.>

⁴ Cite Blacks

⁵ See *Ecology v. Campbell & Gwinn*, L.L.C., 146 Wn.2d 10, 43 P.3d 4 (2002)

⁶ *Ecology v. Campbell & Gwinn* at 12.

To thoroughly analyze whether the word “nonfamilial” has more than one reasonable meaning in this context, we turn to legislative intent. RCW 66.24.010 has been recodified over time, but its structure has remained largely intact since 1935.⁷ While the word “nonfamilial” does not appear there, the intent of the legislation was clear: protection of health, welfare and public safety, with emphasis on assuring that the Board had the discretion to review applications and applicants thoroughly, including but not limited to residency, citizenship, criminal history, business structure, with specific reference to corporations. The breadth and depth of that discretion has remained static.

This leads the agency to rely on the Webster’s dictionary definition of nonfamilial: “not of or relating to a family.”⁸ Family trusts are generally created for the benefit of families, either through a testamentary trust (through a will identifying a trustee, beneficiaries, and a grantor) or a living trust (created during a grantors lifetime, also identifying a trustee and beneficiaries). Nonfamilial trusts are constructed in the same way, but are not created for families. There are several types of nonfamilial trusts, such as grantor trusts, simple trusts, and complex trusts. Whether a family or nonfamilial trust, the basic trust structure is the same: grantor, trustee and beneficiaries.

Trusts have certain legal rights. However, for purposes of determining whether it is an entity under WAC 314-07-035(1), a trust is not a separate legal entity that can respond to actions on its own. Rather, the trustee can be sued individually or in their representative capacity as trustee. As a result, trusts are not considered to be entities under WAC 314-07-035(1), and therefore are not considered to be true parties of interest.

401K and IRA

A 401K or IRA is not considered to be a person or organization possessing distinct legal rights. Rather, both are accounts to which contributions may be made. Neither can sue nor be sued, and neither has legal standing to enter into contracts or any other form of agreement. For these reasons, a 401K or IRA would not be considered true parties of interest.

“Entity” Threshold

The agency has interpreted the “entity” threshold to be triggered once ownership exceeds ten percent consistent with RCW 66.24.025(2). 401K, IRA or nonfamilial trusts are not prohibited from holding interest in a liquor license as long as that interest falls below the ten percent threshold identified in RCW 66.24.025(2). However, if these business structures hold, own, or otherwise have the right to receive more than ten percent interest in a license, an evaluation is necessary consistent with RCW 66.24.010.

⁷ [1935c174.pdf \(wa.gov\)](#)

⁸ [Nonfamilial | Definition of Nonfamilial by Merriam-Webster](#)

Based on the structure of 401K, IRA, and nonfamilial trusts, the agency is not practically able to investigate whether these business structures qualify as true parties of interest. These types of investment accounts do not have corporate officers or others tied to or connected with ownership of the account who can be investigated consistent with long standing statutory intent.

CONCLUSION

WSLCB will not approve a 401K, an IRA or a nonfamilial trust with greater than ten percent ownership interest in a liquor license as a true party of interest.