

WA Hospitality Association Request	LCB Response
<p>WAC 314-03-035: Curbside/delivery for beer and wine. WHA requests consideration of an amendment to WAC 314-03-035 to allow the sale of beer and wine to go under Spirits/Beer/Wine restaurant license and Beer/Wine restaurants license types.</p> <p>Does the LCB have statutory authority to amend WAC 314-03-035 to allow beer and wine to be sold with to go orders under both the spirits/beer/wine restaurant and beer/wine restaurant license types?</p>	<p>Statute frames and provides for two beer/wine license types: restaurant and retail.</p> <p>Beer/wine restaurant licenses allow sale for consumption of beer/wine on the licensed premises, but only wine/sake that is recorked/recapped and consumed with a meal may be removed from the premises.</p> <p>Beer/wine retail licenses can be combined with beer/wine restaurant licenses to allow sale for consumption of beer/wine off the premises under three scenarios:</p> <ul style="list-style-type: none"> • Beer/wine is sold in original, factory sealed manufacturer sealed package/bottle; • Beer sold to consumer was filled at the tap at the time of purchase; • Four gallons or more malt liquor in registered kegs or other containers. <p>Statute also frames and provides for spirits/beer/wine restaurant (retailers) license that provides:</p> <ul style="list-style-type: none"> • Mixed drink/cocktail, beer, and wine by the glass for consumption on premises; • Wine/sake that is recorked/recapped and consumed with a meal may be removed from the premises (the same as the beer/wine restaurant license); • Endorsement to allow a spirits, beer, and wine restaurant license to only sell bottled wine for off-premise consumption; Endorsement to allow the sale of four gallons or more malt liquor in registered kegs or other containers (same as the beer/wine retail license). <p><i>Spirits/beer/wine licensees are expressly prohibited from selling spirits and beer for off premise consumption, unless selling four or more gallons of malt liquor.</i></p> <p>Can LCB amend WAC 314-03-035 to allow beer and wine to be sold with to go orders under the beer/wine restaurant license type without additional endorsement? RCW 66.24.320 does not provide the WSLCB statutory authority to provide this privilege unless the beer/wine restaurant obtains a beer/wine retailer’s license. Otherwise, the statute is clear that only wine/sake that is recorked/recapped and consumed with a meal may be removed from the premises.</p> <p>Can LCB amend WAC 314-03-035 to allow beer and wine to be sold with to go orders under the spirits/beer/wine restaurant license type without additional endorsement? RCW 66.24. 400 does provide the WSLCB statutory authority to provide this privilege for beer. The statute expressly allows bottled wine to be sold for off-premise consumption, or for wine/sake that is recorked/recapped and consumed with a meal to be removed with a meal. The statute is silent as to beer with the exception of the sale of four or more gallons of beer.</p>

Conclusion: The LCB does not have statutory authority to amend WAC 314-03-035 to allow canned and bottled beer to be sold with to go orders for the spirits/beer/wine restaurant license type as requested. Spirits/beer/wine restaurants may only sell wine, beer in kegs, and beer in growlers with to go orders under existing statute.

Beer/wine restaurant licenses, on the other hand, already have the opportunity to sell beer and wine with to go orders if they obtain a beer/wine retailer's license.

WAC 314-02-025 – Floor Plan Requirements.

WHA requests provision of temporary exception to the requirements of WAC 314-02-025 regarding floor plan requirements.

Is the LCB able to permit temporary changes to floor plans that would allow minors to enter areas that are currently classified as off-limits to minors (consistent with RCW 66.44.290 and 66.44.310) to accommodate social distancing requirements?

Effective Date: Immediately May 14, 2020

Expiration of Reclassification: Within 30 days following the county where the business exists entering of phase 4 of the Governor's reopening plan.

Impacted License Types:

- Beer/Wine Restaurants, licensed under 66.24.320
- Spirits, Beer, and Wine Restaurants licensed under 66.24.410

Effective immediately, areas of a restaurant license classified as off limits to persons under the age of 21 are being declassified as age restricted, except for seating at the actual bar counter. This declassification is to assist in facilitating the Governor's phase in approach to reopen restaurants with bars. This declassification allows affected restaurants to utilize the area normally restricted to minors as additional dedicated dining to allow for table spacing in the restaurant to meet social distancing requirements.

During this period of time, persons under 21 years of age are allowed to be seated in the area normally restricted to minors without being in criminal violation of RCW 66.44.310, minor frequenting an off limits area. Persons under 21 years of age are still restricted from sitting or standing at the actual bar.

Once phase 4 begins, allowing for full occupancy in restaurants, normal classifications will considered in place based on the permanently approved floor plans. Once phase 4 begins, minors will not be permitted to frequent the areas classified by the Board as age restricted areas.

Licensees should keep this declassification notice readily available, or posted with the license, in case questions arise from local law enforcement conducting checks in age restricted areas.

<p>WAC 314-02-035 – Food Service Requirements. WHA requests relaxation of spirits, beer, and wine restaurant license food service requirement under WAC 314-02-035(1) providing that licensees must serve at least eight complete meals. WHA asks for consideration of reduction in the meal requirements, such as four or five meals as opposed to eight.</p> <p>Additionally, WAC 314-02-035(8) provides that restaurants with less than one hundred percent dedicated dining area must maintain complete meal service for a minimum of five hours a day during the hours of 8:00 a.m. and 11:00 p.m., three days a week. WHA offers that restaurants with one hundred percent dedicated dining area may need to limit hours of service a meal, such as beverage service from 11:00AM – 12:00PM, with meal service ending at 9PM.</p>	<p>The LCB will allow temporary reduction in the minimum requirement of eight complete meals currently provided in WAC 314-02-035(1) under the following conditions:</p> <ul style="list-style-type: none"> • Until commencement of Safe Start Phase 4, there is no minimum complete meal requirement for spirits/beer/wine restaurants as long as a reasonable number of meals are offered. • All meals offered must be prepared on site by the licensee and may not be offered or prepared by a contractor. <p>The LCB is temporarily not enforcing the minimum hours of service provided under WAC 314-02-035(8).</p>
<p>WAC 314-03-200 – Outside or extended alcohol service. WHA requests relaxation of sidewalk dining requirements and flexibility in restrictions to outside alcohol service currently provided in rule in response to municipality allowances that expand outdoor dining beyond sidewalks and into closed streets.</p>	<p>The LCB will allow temporary relaxation of the requirements described in WAC 314-03-200 as follows:</p> <ul style="list-style-type: none"> • Licensee must request temporary floor plan approval to extend outdoor service from LCB licensing (Specific contact?). Floor plan revisions must be adjacent and contiguous to a licensed premise. Areas of responsibility must not be communal or shared with other licensees. • Allowance may be provided, as long as does not extend to commercial areas. • Consistent with WAC 314-03-200(4) licensees must have leasehold rights to the area and have and be connected to the licensed premises. • Consistent with WAC 314-03-200(7), the board may grant limited exceptions to the required forty-two inch high barrier for outside alcohol service areas. <ul style="list-style-type: none"> (a) The licensee must have exclusive leasehold rights to the outside service area (Consider allowing w/o board approval?)

WAC 314-20-070 –Claims for defective beer

WHA requests provision of an exception for beer returns under WAC 314-20-070 allowing a similar product to be exchanged instead of an identical item that may no longer be in season or no longer be available by the distributor

The LCB currently offers this allowance as follows:

Defective Beer Returns

The LCB has been asked to provide clarity on defective beer returns as it relates to the COVID-19 crisis and accompanying restaurant reopening strategies. Current rule treats keg and package beer slightly differently. In efforts to accommodate businesses during this challenging time, we are providing the following guidance which will be applied for a period of 60 days.

- Overage beer will be considered defective for the purposes of WAC 314-20-070, so long as:
 - The beer is overage based on the expiration date
 - Overage keg beer has not been tapped
- Claim adjustments are allowable for full kegs of beer
 - If the keg has not been tapped
 - Refunds for kegs are not allowable
 - Claim adjustments may occur in the form of exchanging the overage product
- Product exchanges will be allowed for keg and packaged beer as follows:
 - Product must be exchanged for identical product if available
 - If identical product is not available, then product may be exchanged for like valued product

Please keep in mind, it is not mandatory for a distributor to take back overage or defective product, or provide claim adjustments for product. The exchange is at the sole discretion of the distributor