

WSR 21-09-041
PREPROPOSAL STATEMENT OF INQUIRY
LIQUOR AND CANNABIS
BOARD

[Filed April 14, 2021, 10:21 a.m.]

Subject of Possible Rule Making: The Washington state liquor and cannabis board (WSLCB) is considering rule making to create summary license suspension and petition for stay provisions that would allow for enforcement of governor's proclamations. These permanent rules would supersede and replace emergency rules WAC 314-12-250 and 314-12-275, which established summary license suspension and petition for stay provisions for the enforcement of governor's proclamations issued as a result of the novel coronavirus (COVID-19) outbreak, filed as WSR 21-07-077 on March 17, 2021, and any successive emergency rules that supersede and replace WSR 21-07-077. As part of this rule making, the WSLCB is considering potentially amending or repealing existing summary license suspension and petition for stay provisions, and any related provisions, in Title 314 WAC and consolidating these provisions into new rule sections applicable to all licensees.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 66.08.030, 66.08.150, 66.44.010, 69.50.342, 69.50.345, 70.155.150, 70.345.020.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The WSLCB has the authority and responsibility to adopt rules for the preservation of public health and safety. The WSLCB originally adopted emergency rules WAC 314-12-250 and 314-12-275 establishing summary license suspension and petition for stay provisions for the enforcement of governor's proclamations issued as a result of the COVID-19 outbreak on April 6, 2020, as WSR 20-09-026, after the governor issued a series of proclamations affecting establishments licensed by the WSLCB:

- On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington state, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.
- On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the state. Proclamation 20-13 was based on both guidance from the United States Center[s] for Disease Control and Prevention to reduce the size of gatherings from two hundred fifty persons to fifty persons, and the necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food or beverage service, theater, bowling or other similar activities.
- On March 23, 2020, Governor Inslee issued Proclamation 20-25, first entitled, "Stay Home - Stay Healthy," that among other things, imposed limits on conducting or participating in essential activities and employment in essential activities, temporarily prohibited certain public and private gatherings, and established a list of essential and nonessential businesses in Washington state. Nonessential businesses were prohibited from operation except for performing basic minimum operations. Essential businesses were encouraged to remain open and maintain operations.

Establishments licensed by the WSLCB are subject to the restrictions of Governor's Proclamations 20-05, 20-13, and 20-25. Although some establishments licensed by the WSLCB are considered essential, others are not or are subject to specific limitations. For example, while cannabis licensees are considered essential, alcohol, tobacco, and vapor licensees generally are not and are subject to specific limitations. (See Appendix "WA Essential Critical Infrastructure Workers" to the March 23, 2020, Proclamation 20-25).

Between March 2020 and January 2021, Governor Inslee issued a series of proclamations in response to the changing conditions of the COVID-19 pandemic, including Proclamations 20-25.01 through 20-25.12, which amended Proclamations 20-05 and 20-25 et seq. and incorporated issued amendatory proclamations, including [Proclamation] 20-13.

In response to the changing conditions of the COVID-19 pandemic and the resulting amendments to the governor's proclamations, the WSLCB extended the emergency rules for a first time on July 22, 2020, as WSR 20-15-162, for a second time on November 18, 2020, as WSR 20-23-123, and for a third time on March 17, 2021, as WSR 21-07-077.

The governor's proclamations describe how the conditions of the COVID-19 pandemic and the state of emergency changed over time. An outline of major updates between April 2020 and April 2021 is provided below:

- On April 27, 2020, Governor Inslee issued Proclamation 20-25.2, making certain adjustments and modifications to the "Stay Home, Stay Healthy" order.
- On May 4, 2020, Governor Inslee issued Proclamation 20-25.3, making additional adjustments and modifications to the "Stay Home, Stay Healthy" order.
- On May 31, 2020, Governor Inslee issued Proclamation 20-25.4, entitled "Safe Start - Stay Healthy—County-by-County Phased Reopening." Limitations established were gradually relaxed based on county-by-county phasing established according to metrics provided by the secretary of health.
- On June 24, 2020, the secretary of health first issued Order of the Secretary of Health 20-03 which, among other things, requires (with exceptions) the use of face coverings throughout the state. (See department of health news release dated June 24, 2020.)
- On July 1, 2020, Governor Inslee issued Proclamation 20-25.05, extending and modifying certain statewide restrictions. The following day, on July 2, 2020, Governor Inslee ordered a freeze on all counties moving forward to a subsequent phase due to increased COVID-19 infection rates across the state (see governor's news release dated July 2, 2020).
- On July 7, 2020, Governor Inslee issued Proclamation 20-25.06, again extending and modifying certain statewide restrictions.
- On July 24, 2020, Governor Inslee issued Proclamation 20-25.07 and the secretary of health issued Order of the Secretary of Health 20-03, extending the requirement (with exceptions) to use face coverings throughout the state.
- On October 7, 2020, Governor Inslee announced several updates to the "Safe Start Washington - Phased Reopening County-by-County" plan to align guidance and adjustments to regulations of several industries. (See governor's news release dated October 6, 2020.)
- On November 15, 2020, in response to a large surge of new COVID-19 cases and increased hospitalizations and deaths, Governor

Inslee issued Proclamation 20-25.8, entitled "Stay Safe - Stay Healthy—Rollback of County-by-County Phased Reopening Responding to a COVID-19 Outbreak Surge."

- In December 2020, Governor Inslee amended Proclamation 20-25 several times, extending and modifying some statewide restrictions. (See Proclamation 20-25.9 issued December 10, 2020; Proclamation 20-25.10 issued December 21, 2020; and Proclamation 20-25.11 issued December 30, 2020.)
- On January 11, 2021, Governor Inslee issued Proclamation 20-25.12, entitled "Healthy Washington - Roadmap to Recovery." Proclamation 20-25.12 introduced a new phased recovery plan with a regional recovery approach that replaced the previous county-by-county approach. Proclamation 20-25.12 was based on evidence of increasing COVID-19 infection rates across the state, evidence of how the virus is spread through very small droplets called aerosols, the known factors that increase the risk for person-to-person COVID-19 transmission, and the knowledge that two vaccines have been approved for use in the United States and efforts to vaccinate vulnerable populations are underway.
- On March 11, 2021, Governor Inslee announced that "Healthy Washington - Roadmap to Recovery" would transition from a regional approach back to a county-by-county evaluation process. The governor also announced that a new third phase of the Roadmap to Recovery had been added, and effective March 22, 2021, the entire state would enter Phase 3.
- On April 9, 2021, Governor Inslee updated the criteria for counties to stay in Phase 3 of the "Healthy Washington - Roadmap to Recovery" pandemic reopening plan. In addition to being individually evaluated, large and small counties have different sets of appropriate criteria based on case counts and hospitalizations. (See PDF issued by the office of the governor on April 9, 2021, <https://www.governor.wa.gov/sites/default/files/HealthyWashington.pdf>.)

At this point, it is impossible to know precisely when the state of emergency as a result of COVID-19 will end. Given the uncertainty about the duration of the current state of emergency and the possibility of future states of emergency, the WSLCB is considering permanent rule making to create summary license suspension and petition for stay provisions that would allow for enforcement of governor's proclamations. The ability to use summary license suspension and petition for stay provisions to enforce governor's proclamations will support efforts to preserve public health and safety.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Collaborative rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Audrey Vasek, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504, phone 360-664-1758, fax 360-704-5027, email rules@lcb.wa.gov, website lcb.wa.gov.

Additional comments: Interested persons can participate in the rule process through open public meetings and by submitting written comments, and are encouraged to sign up for the interested parties list (GovDelivery) at <https://public.govdelivery.com/accounts/WALCB/subscriber/new>. Rule-making notices and stakeholder engagement oppor-

tunities will be emailed via GovDelivery and posted to the WSLCB website at lcb.wa.gov.

April 14, 2021
David Postman
Chair