

**WSR 21-07-077
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD**

[Filed March 17, 2021, 11:29 a.m., effective March 17, 2021, 11:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 314-12 WAC, General—Applicable to all licensees, the Washington state liquor and cannabis board (WSLCB) (board) has adopted emergency rules that establish summary license suspension and petition for stay provisions that are necessary for the enforcement of violations of any governor's proclamation issued as a result of the COVID-19 outbreak. This filing supersedes and replaces emergency rules filed as WSR 20-23-123 on November 18, 2020.

Citation of Rules Affected by this Order: New WAC 314-12-250 and 314-12-275.

Statutory Authority for Adoption: RCW 66.08.0501 and 66.08.030.

Other Authority: RCW 66.08.150, 66.44.010, 70.155.150, and 70.345.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: WSLCB has the authority and responsibility to adopt rules for the preservation of public health. The immediate readoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of governor's proclamations issued as a result of the COVID-19 outbreak.

On February 29, 2020, Governor Inslee issued Proclamation 20-05 (linked here [contact agency for link]) 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 (linked here [contact agency for link]) 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" (linked here [contact agency for link]), 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 board are subject to the restrictions of Governor's Proclamations 20-05, 20-13, and 20-25. Although

some establishments licensed by the board are considered essential, others are not or are subject to specific limitations.

Between March 2020 and January 2021, Governor Inslee issued a series of proclamations in response to the evolving COVID-19 situation, 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. The updates are described in sequential order below:

In April and early May 2020, Governor Inslee issued Proclamations 20-25.2 and 20-25.3, making certain adjustments and modifications to the "Stay Home, Stay Healthy" order. (See Proclamation 20-25.2 issued April 27, 2020; and Proclamation 20-25.3 issued May 4, 2020.)

On May 31, 2020, Governor Inslee issued Proclamation 20-25.4,, entitled "Safe Start - Stay Healthy—County-By-County Phased Reopening" (linked here [contact agency for link]; see Proclamation 20-25.4). 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 (linked here [contact agency for link]), 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 (linked here [contact agency for link]), again extending and modifying certain statewide restrictions. On July 24, 2020, Governor Inslee issued Proclamation 20-25.07 (linked here [contact agency for link]) and the secretary of health issued Order of the Secretary of Health 20-03.1 (linked here [contact agency for link]), 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 (linked here [contact agency for link]; See governor's news release dated October 6, 2020) to align guidance and adjustments to regulations of several industries.

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—Roll-back of County-by-County Phased Reopening Responding to a COVID-19 Outbreak Surge" (See Proclamation 20-25.8).

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 (linked here [contact agency for link]), entitled "Healthy Washington - Roadmap to Recovery" (see also, PDF document with the same name issued by the office of the governor on February 14, 2021, linked here [contact agency for link]). 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.

These emergency rules serve a two-pronged purpose. These rules are needed to:

- Allow the board to serve an order of summary license suspension after a preliminary staff investigation indicates that a liquor, tobacco, or vapor product licensee has violated any governor's proclamation issued as a result of the COVID-19 outbreak, and that immediate cessation of licensed activities are necessary for the preservation of public health and welfare; and
- Provide a framework and process for an affected WSLCB licensee to petition the board for a stay of summary suspension, consistent with the provisions of chapter 34.05 RCW.

These rules may be extended, rescinded, or considered for inclusion in adopted rules at a later date as appropriate.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: March 17, 2021.

David Postman
Chair

OTS-2191.1

NEW SECTION

WAC 314-12-250 Summary license suspension. (1) The board may serve an order of summary suspension of any license under this Title 314 WAC after the board's enforcement division has:

(a) Completed a preliminary staff investigation of a violation of a governor's proclamation; and

(b) Upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this section is effective twenty-four hours after personal service of the summary suspension order on the licensee or employee thereof, unless the licensee becomes compliant as provided in the order before the expiration of the twenty-four hour period.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding 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, then a hearing will be held within ninety calendar days of the effective date of the summary suspension ordered by the board. The ninety day period may be extended for good cause.

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NEW SECTION

WAC 314-12-275 Petition for stay. (1) When the board summarily suspends a license under WAC 314-12-250, an affected licensee may petition the board for a stay of suspension. A petition for a stay of suspension must be received by the board within ten calendar days of service of the summary suspension order on the licensee. The petition for stay must clearly describe the basis for the stay.

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

(3) Any hearing conducted under subsection (2) of this section will be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing must consist of the documentary information upon which the summary suspension was based. The licensee is permitted to supplement the record with additional documentation during the brief adjudicative proceeding. The licensee must demonstrate by clear and convincing evidence that:

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

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, income alone from licensed activities is not 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 is effective immediately upon service unless another date is specified in the order.

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