

**WSR 23-16-146
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD**

[Filed August 2, 2023, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-115.

Title of Rule and Other Identifying Information: Washington state liquor and cannabis board (LCB) proposes amendments to existing rules to implement ESHB 1731 (chapter 257, Laws of 2023): Amending WAC 314-24-180 Wine distributors, wine importers—Certain rights granted and 314-24-190 Wine suppliers and distributors.

Hearing Location(s): On September 13, 2023, at 10:00 a.m. All public board activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The boardroom at the headquarters building in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance. The public may also log in using a computer or device, or call in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the boardroom will be staffed during a meeting, board members and agency participants may continue to appear virtually. For more information about board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings.

Date of Intended Adoption: No earlier than September 27, 2023.

Submit Written Comments to: Daniel Jacobs, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, email rules@lcb.wa.gov, fax 360-704-5027, by September 5, 2023.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by September 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed amended rules are to implement ESHB 1731 (chapter 257, Laws of 2023) passed during the 2023 legislative session. This law allows short term rental operators to obtain permits to allow them to provide a complimentary bottle of wine to rental guests over the age of 21. The new law, enacted in RCW 66.20.010(18), allows short term rental operators to obtain a permit to provide complimentary bottles of wine to rental guests who they verify are 21 years of age or older by way of in-person validation of identification, so long as they provide advanced notice to the rental guests that the complimentary wine will be provided, and an opportunity for the rental guests to decline the bottle of wine. The new law also amends RCW 66.24.200 to allow wine distributors to provide wine to short term rental operators obtaining wine pursuant to this permit.

The proposed changes to WAC 314-24-180 and 314-24-190 reflect that wine distributors are now allowed to sell wine directly to holders of the short term rental permit.

Reasons Supporting Proposal: Amendments to current rule sections are needed to implement ESHB 1731, align agency rules with the law, and inform licensees about the option for short term rental operators to obtain wine directly from wine distributors for use under the newly-created permit.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.20.010(18), 66.24.200.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting: Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue, Olympia, WA 98504, 360-480-1238; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753; and Enforcement: Chandra Wax, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). LCB is not a listed agency under RCW 34.05.328 (5)(a)(i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5)(a)(ii). In this case, since the proposed amended rules implement a legislatively mandated permit, the agency did not decide to complete a cost-benefit analysis.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.025(3) through the exemptions in RCW 34.05.310 (4)(c) and (e).

Explanation of exemptions: The proposed amended rules are exempt from the Regulatory Fairness Act's (RFA) small business economic impact statement (SBEIS) requirement under RCW 34.05.310 (4)(c) and (e) for the following reasons identified below:

The amendment to WAC 314-24-180 reflects the new language in section 2, chapter 257, Laws of 2023, which amends RCW 66.24.200 to allow wine distributors to sell wine to holders of annual special permits issued under RCW 66.20.010(18), which is the new section of RCW 66.20.010 added by ESHB 1731. The amendment to WAC 314-24-180 is limited to stating that wine distributors may participate in the activity newly permitted by statute. As such, this amended proposed rule is incorporating the new language of section 2, chapter 257, Laws of 2023, meeting the requirement of RCW 34.05.310 (4)(c). The new language of RCW 66.24.200 now permits wine distributors to sell directly to holders of the annual special permit, and if the language of WAC 314-24-180 were left unchanged, the agency rules would no longer align with the statutory language. Therefore, the proposed amendment to WAC

314-24-180 is dictated by statute, meeting the requirement of RCW 34.05.310 (4) (e), and thus exempt from the RFA's SBEIS requirement.

The amendment to WAC 314-24-190 reflects the new language in section 2, chapter 257, Laws of 2023, which amends RCW 66.24.200 to allow wine distributors to sell wine to holders of annual special permits issued under RCW 66.20.010(18), which is the new section of RCW 66.20.010 added by ESHB 1731. The amendment to WAC 314-24-190 amends the definition of "wine distributor" to include the activity newly permitted by statute. As such, this amended proposed rule is incorporating the new language of section 2, chapter 257, Laws of 2023, meeting the requirement of RCW 34.05.310 (4) (c). The new language of RCW 66.24.200 now permits wine distributors to sell directly to holders of the annual special permit, and if the language of WAC 314-24-190 were left unchanged, the agency rules would no longer align with the statutory language. Therefore, the proposed amendment to WAC 314-24-190 is dictated by statute, meeting the requirement of RCW 34.05.310 (4) (e), and thus exempt from the RFA's SBEIS requirement.

Scope of exemption for rule proposal:

Is fully exempt.

August 2, 2023
David Postman
Chair

OTS-4828.1

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-24-180 Wine distributors, wine importers—Certain rights granted. (1) Wine distributors may sell to retailers, export wine from the state, and purchase wine from or sell wine to another wine distributor.

(2) Wine distributors must sell and deliver product from their licensed premises.

(3) Wine importers may sell to the board, export wine from the state, or sell to wine distributors, but may not sell to another wine importer or to retailers.

(4) Wine distributors may sell to holders of annual special permits for short-term rental operators under RCW 66.20.010.

[Statutory Authority: RCW 66.08.030 and 66.08.050. WSR 12-17-006, § 314-24-180, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. WSR 98-18-097, § 314-24-180, filed 9/2/98, effective 10/3/98; Order 5, § 314-24-180, filed 8/7/69, effective 9/8/69; Rule 78, filed 6/13/63.]

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-24-190 Wine suppliers and distributors. (1) Definitions

- For the purposes of this chapter:

(a) A "wine supplier" means a domestic winery, certificate of approval holder, wine importer, wine distributor acting as the first United States importer, or a distributor selling wine to another distributor.

(b) A "wine distributor" means a distributor selling to a retailer or a holder of an annual special permit for short-term rental owners under RCW 66.20.010, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) **Products** - All products must be made available to all retail licensees to the extent it is reasonably practical to do so.

(3) Distributor changes:

(a) The following guidelines apply when a wine supplier makes a distributor change. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor.

(b) A wine supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

(4) **Accommodation sales** - The provisions of this rule do not apply when a wine distributor makes an accommodation sale to another wine distributor and this sale is made at a selling price that does not exceed the laid-in cost of the wine being sold. Accommodation sales may only be made when the distributor purchasing the wine is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

[Statutory Authority: RCW 66.24.170, 66.24.640, 66.24.695, and 66.08.030. WSR 18-02-006, § 314-24-190, filed 12/20/17, effective 1/20/18. Statutory Authority: RCW 66.08.030 and 66.08.050. WSR 12-17-006, § 314-24-190, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 66.08.030 and 66.28.320. WSR 10-01-090, § 314-24-190, filed 12/16/09, effective 1/16/10. Statutory Authority: RCW 66.08.030, 66.20.360 through [66.20].380, 66.20.390, 66.24.170, 66.24.206, 66.24.210, 66.24.240, 66.24.244, 66.24.270, 66.24.290, 66.28.170, 66.28.180, and 42.56.270. WSR 07-02-076, § 314-24-190, filed 12/29/06, effective 1/29/07. Statutory Authority: RCW 66.08.030, 66.28.180, and 2004 c 160. WSR 04-19-155, § 314-24-190, filed 9/22/04, effective 10/23/04. Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. WSR 98-18-097, § 314-24-190, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030. WSR 87-15-111 (Order 222, Resolution No. 231), § 314-24-190, filed 7/22/87. Statutory Authority: RCW 66.08.030, 66.98.070 and 66.08.060. WSR 86-16-060 (Order 173, Resolution No. 182), § 314-24-190, filed 8/5/86. Statutory Authority: RCW 66.08.030. WSR 82-16-069 (Order 91,

Resolution No. 100), § 314-24-190, filed 8/2/82. Statutory Authority: RCW 66.08.030 and 66.98.070. WSR 81-22-026 (Order 85, Resolution No. 94), § 314-24-190, filed 10/28/81. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. WSR 78-02-056 (Order 62), § 314-24-190, filed 1/20/78, effective 7/1/78; Order 54, § 314-24-190, filed 5/24/77, effective 7/1/77; Order 51, § 314-24-190, filed 12/15/76; Order 26, § 314-24-190, filed 8/14/73; Order 18, § 314-24-190, filed 1/13/72, effective 2/14/72; Order 15, § 314-24-190, filed 5/13/71, effective 7/1/71; Order 5, § 314-24-190, filed 8/7/69, effective 9/8/69; Rule 81, filed 6/13/63.]