

Washington State Liquor Control Board

Issue Paper

Rule Making on Internet Sales and Direct-to-Consumer Delivery

Date: May 13, 2009

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Description of the Issue

The purpose of this issue paper is to request approval from the Liquor Control Board (LCB) to file the first stage of rule making (CR 101) addressing Internet sales and direct-to-consumer delivery of beer and wine by retail licensees.

Why is rule making necessary?

Since the mid 1990s, the Liquor Control Board has used their discretionary authority to approve direct-to-consumer delivery of beer and wine by off-premises liquor licensees under certain conditions. Since the late 1990s Internet sales of beer and wine by off-premises licensees have also been approved under certain conditions. There are limited provisions in current law, and little regulation in rule for either of these activities. The Washington Administrative Code (WAC) must be updated to reflect these activities, and to formalize associated public-safety regulations.

Background

Home Delivery: The Revised Code of Washington (RCW) allows for two types of direct-to-consumer delivery: (1) A business uses a direct employee to make a delivery (i.e. home delivery), and (2) a business uses a private carrier (a.k.a. third-party carrier). The RCW contains language that allows a Beer and Wine Gift Delivery licensee to make home deliveries; however the law is silent on home delivery for all other license types.

Many chain grocery stores offer internet shopping and home delivery. This practice has become very popular over the past ten years. The current practice for grocery stores and beer/wine specialty shops has been to approve these activities under certain conditions.

The RCW also contains language that allows a Domestic Winery licensee, a Winery Certificate of Approval holder with a Wine Shipper's permit, a Bonded Wine Warehouse licensee, and other licensees with a direct shipment endorsement, to ship alcohol directly to consumers via a private carrier. However, neither the RCW nor the WAC provides explicit regulations to ensure public safety. Furthermore, a U.S. Supreme Court case that was decided in 2007 (Rowe, Attorney General of Maine *v.* New Hampshire Motor Transport Association *et al.*) ruled that a private carrier shall not be held responsible for ensuring that a regulated substance is not delivered to an under-aged person.

In the past, measures have been taken to ensure public safety and to minimize youth access to alcohol by the following conditions:

- All purchases must be by persons 21 years of age or older;
- All purchases must be prepaid at the premises;
- All deliveries must be made only to persons 21 years of age or older; and
- All deliveries shall be made by employees 21 years of age or older.

Internet Sales: Internet sales go hand in hand with direct-to-consumer delivery. Currently, licensed retail businesses are allowed to sell alcohol over the Internet. Like direct-to-consumer delivery, specific regulations must be in place to ensure public safety, particularly for youth access. Issues associated with direct-to-consumer delivery and Internet sales include youth access, community opposition, and the cost of regulatory enforcement. Associated issues also include community support, consumer convenience, and business revenue.

In the past, measures have been taken to ensure public safety and to minimize youth access to alcohol by the following conditions:

- The actual purchase must occur at the licensed retail location. Internet, phone or mail orders accompanied by cash, charge card or customer's charge account number have been determined acceptable to meet this requirement.
- The sale and delivery can only be made to persons 21 years of age or older. Items shipped via the mail or UPS must be stamped with a notice that the shipment contains alcohol and may not be delivered to persons under 21 years of age.

There are other public safety measures to be explored, such as:

- restricting when alcohol may be delivered to residential addresses;
- restricting the amount of alcohol that may be sold or delivered at any given time;
- requiring that a delivery person works directly for the licensee; and
- verifying and documenting the legal age of the person who purchases and/or accepts the delivery.

Process

The rule making process begins by announcing the Liquor Control Board's (LCB) intent to change existing rules and propose new rules by filing a CR 101 form. This allows staff and stakeholders to begin discussing necessary changes and new rules. No proposed language is offered at this stage. The public may comment during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule changes. The notice will identify the public comment period and where comments can be sent. Based on public input received, staff will draft proposed changes for presentation to the Board at the next phase of the rule making process.

A tentative timeline for the rule making process is outlined below:

May 13, 2009	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
June 3, 2009	Code Reviser publishes notice, LCB sends notice to rules distribution list
July 3, 2009	End of first written comment period
August 5, 2009	Board is asked to approve proposed rule making (CR 102)
September 2, 2009	Public hearing (Wednesday)
September 11, 2009	End of written comment period
September 16, 2009	Board is asked to adopt rules (CR 103)
September 16, 2009	Agency sends notice to those who commented both at the public hearing and in writing.
September 16, 2009	Agency files adopted rules with the Code Reviser
October 17, 2009	Rules are effective (31 days after filing)