



## Washington State Liquor and Cannabis Board

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**Topic:** Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – Request an exemption to the prohibition of minors under 16 on the premises of licensed cannabis producers and processors as required by WAC 314-55-015.

**Date:** August 31, 2022

**Presented by:** Robert DeSpain, Policy and Rules Coordinator

### Background

On July 6, 2022, Crystal Oliver submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petition requests that the agency amend WAC 314-55-015 to allow for an exemption to the prohibition of minors under 16 years of age on the premises of licensed cannabis producers and processors, provided the person under 16 years of age is a child or grandchild of the licensee, is not engaging in any work or act of employment on the premises, and does not possess any products associated with the production, processing, or sales of cannabis.

In the rule petition, Crystal Oliver states:

#### **2. AMEND RULE- I am requesting the agency change an existing rule.**

##### **List rule number (WAC), if known:**

WAC 314-55-015

##### **I am requesting the following change:**

Codification of the ‘Minors Present on Premises to Support Families Impacted by School Closures’ advisement that has been in place since March 2020.

Specifically, I am requesting an exemption to the prohibition of minors being present on premises of licensed cannabis producers/processors in limited circumstances provided the person under 16 years of age is a child or grandchild of the licensee, the person under 16 years of age is not engaging in any work or act of employment for the licensed business, the person under 16 years of age does not possess any products associated with the production, processing or sales of cannabis.

##### **This change is needed because:**

1. RCW does not prohibit persons under twenty-one to enter or remain on the licensed premises of a producer or processor.
2. This prohibition, when enforced, has a significant negative impact on family owned and women owned farms.
3. Family owned and women owned farms have found the agencies current approach of allowing their children and grandchildren on site to be extremely helpful. Licensees report seeing their children more frequently, eating more

- meals with their families, and being able to support their children as they complete homework.
4. Producers and processors have demonstrated over the last two plus years that this prohibition is not necessary.
  5. Increasing equity in the cannabis industry requires change to current rules to increase opportunities for small independent businesses to succeed, this change is small business, women and minority owned business friendly.

**The effect of this rule change will be:**

To allow grandchildren and children of licensees the ability to be present on the premises of licensed cannabis producers and processors provided the children are under 16 years of age and not engaged in any work activities.

In the email accompanying the petition, Crystal Oliver writes:

“Firstly, I want to thank the WSLCB for their swift action in adopting the advisement to allow minors on site in March of 2020 to support our women owned and family-owned farms when COVID-19 first began impacting our communities. This allowance which has been in place for more than two years has greatly improved the quality of life for our farmers and their families. Family owned and women owned farms report being able to see their children more frequently, eat meals with their children on site, and support them while they complete homework. It needs to be permanently adopted into rule, see attached rule petition.”

**Issue**

Whether the Board should initiate rulemaking to consider an exemption to the prohibition of minors under 16 years of age on the premises of licensed cannabis producers and processors, as required in WAC 314-55-015.

**Authority**

*Laws*

RCW 69.50.325 establishes three types of cannabis licenses and describes how each will be regulated.

RCW 69.50.325(1) establishes “a cannabis producer’s license **regulated by the board** and subject to annual renewal.” (emphasis added)

RCW 69.50.325(2) establishes “a cannabis processor's license to process, package, and label cannabis concentrates, useable cannabis, and cannabis-infused products for sale at wholesale to cannabis processors and cannabis retailers, **regulated by the board** and subject to annual renewal.” (emphasis added)

RCW 69.50.342 grants the Board authority to adopt rules to put Initiative 502 into effect. The Board is authorized, among other things, to “**adopt rules not inconsistent with the spirit of chapter 3, Laws of 2013** as are deemed necessary or advisable.” (emphasis added)

RCW 69.50.345 directs the Board to adopt rules that establish the procedures and criteria necessary to implement agency functions.

RCW 69.50.345(6)(a) advises that the Board shall take into consideration “**Security and safety issues.**” (emphasis added)

RCW 69.50.345(9)(b) directs the Board to **minimize “exposure of people under twenty-one years of age” to cannabis** or anything that would encourage or normalize cannabis use. (emphasis added)

### *Rules*

WAC 314-55-015 contains the general information about cannabis licenses.

WAC 314-55-015(2) states:

“(2) All applicants, licensees, and employees working in each licensed establishment must be at least twenty-one years of age. **No one under twenty-one years of age is allowed to enter or remain on a cannabis licensed premises** except as provided in RCW 69.50.357.” (emphasis added)

WAC 314-55-015(3) states:

“(3) **Minors restricted signs must be posted at all cannabis licensed premises** consistent with the requirements in WAC 314-55-086.” (emphasis added)

WAC 314-55-086(1) states:

“(1) All licensed cannabis processors, producers, and retailers, with the exception of licensed retailers with a medical cannabis endorsement, must conspicuously post a notice provided by the board about persons under 21 years of age at each entry to all licensed premises. The notice must contain all of the following language: “**Persons under 21 years of age not permitted on these premises.**”” (emphasis added)

### **Analysis**

Initiative 502 legalized cannabis for recreational use under certain conditions. I-502 also created three new license types and requirements for each license type. Requirements were also created for the producing, processing, and retail sales of cannabis. Using authority from RCW 69.50.325, RCW 69.50.331, RCW 69.50.342, and RCW 69.50.345,

the Board filed the first permanent rules to implement I-502 on October 21, 2013, as WSR 13-21-104<sup>1</sup>, with an effective date of November 21, 2013.

WAC 314-55-015, titled “General information about marijuana licenses,” was among the first permanent rules adopted to implement I-502. When first adopted WAC 314-55-015 established rules prohibiting minors on the premises of cannabis licensees. When first adopted WAC 314-55-015(2) stated: “All applicants and employees working in each licensed establishment must be at least twenty-one years of age.”<sup>2</sup> WAC 314-55-015(3) stated: “Minors restricted signs must be posted at all marijuana licensed premises.”<sup>3</sup> No exceptions to the prohibition of persons under twenty-one years of age being allowed to enter or remain on cannabis licensed premises were provided in the initial rules.

In order to implement legislation that passed in the 2015 legislative session (SB 5052 and HB 2136, known as the Cannabis Patient Protection Act) and align the medical marijuana market with the existing recreational market, the Board filed a permanent rule change on May 18, 2016, as WSR 16-11-110<sup>4</sup>, with an effective date of June 18, 2016. Based on the legislative change, WAC 314-55-015(2) was amended to allow for an exception to the prohibition of minors on licensed premises:

“(2) All applicants and employees working in each licensed establishment must be at least twenty-one years of age. No one under twenty-one years of age is allowed to enter or remain on a marijuana licensed premises except as provided in RCW 69.50.357.”

The exception contained in RCW 69.50.357 is specific to licensed cannabis retailers, not licensed cannabis producers or processors. The exception is only for qualifying patients under twenty-one years of age with a medical cannabis recognition card.<sup>5</sup>

There are several statutes currently applicable to minors and cannabis<sup>6</sup>, with the focus on the creation of an access barrier. These statutes pertain to prohibition of the delivery, sale, or possession of controlled substances – here, usable cannabis, cannabis concentrates, or cannabis-infused products to persons under twenty-one years of age. The sole exception to the age restriction in these statutes is the same as the exception contained in WAC 314-55-015(2).

### *Covid-19 outbreak*

On March 16, 2020, Governor Inslee issued Proclamation 20-13 in response to the COVID-19 outbreak in Washington State. Proclamation 20-13 placed statewide limits on food and beverage services and areas of congregation, prohibiting the onsite consumption of food or beverages in a public venue, including restaurants, bars, taverns,

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<sup>1</sup> <https://lawfilesexxt.leg.wa.gov/law/wsr/2013/21/13-21-104.htm>, accessed on 8/4/2022.

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> <https://lawfilesexxt.leg.wa.gov/law/wsr/2016/11/16-11-110.htm>, accessed on 8/4/2022.

<sup>5</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=69.50.357>, accessed on 8/8/2022.

<sup>6</sup> RCW 69.50.4012, RCW 69.50.4015, RCW 69.50.406, RCW 69.50.414

and other venues where liquor is served. The proclamation expired on March 31, and could be extended.

On March 23, 2020, Governor Inslee issued a “Stay Home - Stay Healthy” proclamation, or Proclamation 20-25, that included an extension of Proclamation 20-13. This proclamation prohibited people in Washington from leaving their homes except to conduct or participate in essential activities, conduct or participate in employment in essential business activities, or both. Although business activity related to cannabis production and processing was deemed essential, there was an indirect impact to business conducted under cannabis licenses such as school and daycare closures as a result of the state-wide COVID-19 response.

WSLCB worked with cannabis licensees, industry representatives, and others to explore business options. This included temporary relaxation of certain regulations and practices, including WAC 314-55-015, which prohibits minors being present on the premises of licensed cannabis producers and processors. The allowance temporarily permitted minors under sixteen years of age on licensed cannabis producer and processor premises under the following conditions:

- The person(s) under sixteen years of age is the child or grandchild of the licensee;
- The person(s) under sixteen years of age is not engaging in any work or act of employment for the licensed business; and
- The person(s) under sixteen years of age does not possess any products associated with the production, processing, or sales of cannabis.

#### *Current petition*

In this petition, Crystal Oliver requests that the Board initiate rulemaking to consider making a permanent rule change to WAC 314-55-015, modeled on the temporary allowance during the Covid-19 outbreak that allowed minors under sixteen years of age on the premises of licensed cannabis producers and processors, under specific conditions.

Agency staff identified several key issues to consider when evaluating the risks and benefits of creating an exemption to the prohibition of minors under 16 years of age on the premises of licensed cannabis producers and processors:

- Youth access and safety risks
- Enforcement
- Gender equality

#### *Youth access and safety risks*

Allowing children and grandchildren of cannabis producer/processor licensees on premises, under specific conditions, allows access to a product, cannabis, that is otherwise age restricted for all persons under twenty-one years of age. There are risks associated with, expanding access that could lead to accidental or intentional

consumption of cannabis. There is risk of increased exposure to cannabis creating a normalizing effect. Additional risks include supervision and safety of the minors under sixteen years of age, particularly while the licensee is working and otherwise unable to monitor the minors, and being exposed to industry machinery, equipment, and products that may pose a safety risk to children. For these reasons, if an exemption to the prohibition of minors on cannabis licensed producer/processor premises is considered, agency staff suggests that determining an appropriate age range for this exemption should be considered. These access and safety risks should also be further explored in the context of federal guidance. Additional safeguards need to be explored with stakeholders to ensure youth access and safety risks are discussed.

### *Enforcement*

Compared to a prohibition of all minors under twenty-one years of age being allowed to enter or remain on the premises of licensed cannabis premises, there are risks related to potential enforcement of such a rule revision. The targeted exception group, minors under sixteen years of age, may not carry identification to verify age. One other condition, that the person(s) be children and grandchildren of licensed cannabis producers/processors may also present challenges. Currently there is only one permanent exemption to the prohibition of minors under twenty-one years of age being allowed on cannabis licensed premises, but it is for retail cannabis and requires person(s) maintain a medical cannabis recognition card. Although there is a temporary allowance in place, related to the Covid-19 outbreak, it was not initially constructed as a permanent exemption. For these reasons, if this exception is considered, agency staff suggest that it is important to develop a procedure or process that identifies the person(s) to whom this exemption will apply.

### *Gender equality*

Gender equality in the cannabis industry was a common stakeholder discussion topic prior to the COVID-19 outbreak, and the outbreak served to amplify the concern. The economic downturn caused by the pandemic had substantial implications for gender equality, both during the slowdown and the subsequent recovery. Compared to “regular” recessions, which affect men’s employment more severely than women’s employment, the employment drop related to social distancing measures and other responsive measures had a large impact on sectors with high female employment shares and in women-owned businesses. Sharing childcare with neighbors, friends, and elderly grandparents was not necessarily an option any longer. This had a particularly significant impact on working mothers who are business owners.<sup>7</sup> However, now that schools are open again and child care restrictions have been lifted, such exemptions may no longer be necessary. For this reason, if an exemption to the prohibition of minors on cannabis licensed producer/processor facilities is considered, agency staff suggest that it is important to explore needs with stakeholders related to the appropriate age range of minors on premises as well as ongoing school and child care needs.

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<sup>7</sup> [https://faculty.wcas.northwestern.edu/mdo738/research/COVID19\\_Gender\\_March\\_2020.pdf](https://faculty.wcas.northwestern.edu/mdo738/research/COVID19_Gender_March_2020.pdf), last accessed August 11, 2022.

*Conclusion*



The Board has the statutory authority to amend WAC 314-55-015 regarding the prohibition of persons under twenty-one years of age being allowed to enter or remain on a cannabis licensed premises. Considering the issues related to the prohibition of minors under 16 years of age on the premises of licensed cannabis producers and processors, agency staff find that opening up this subject for further public discussion would be beneficial. Initiating the rulemaking process as requested in the petition would allow the agency to begin collaboratively engaging with stakeholders and any interested members of the public to explore the possibility of creating an exemption to the prohibition of minors under 16 years of age on the premises of licensed cannabis producers and processors.

**Recommendation**

For the reasons described above, Director’s Office staff recommends that consistent with RCW 34.05.330(1)(b), the Board accept Crystal Oliver’s rule petition request, received on July 6, 2022, and initiate rulemaking proceedings in accordance with RCW 34.05.310 and 34.05.320 to consider an exemption to the prohibition of minors under 16 years of age on the premises of licensed cannabis producers and processors, as required in WAC 314-55-015.

**Board Action**

After considering the recommendation of Director’s Office staff, the Board accepts/denies the petition for rulemaking received from Crystal Oliver on July 6, 2022.

<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 David Postman, Chair	<u>8.31.2022</u> Date
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 Ollie Garrett, Board Member	<u>8.31.2022</u> Date
<input type="checkbox"/> Accept <input type="checkbox"/> Deny	<i>Not Present</i> Jim Vollendroff, Board Member	<u>8.31.2022</u> Date

## **Attachments**

1. Rule petition from Crystal Oliver received July 6, 2022.
2. Letter from Crystal Oliver received July 6, 2022, with agency reply sent July 6, 2022.
3. Laws and Rules cited under the “Authority” section above.