



Comprehensive Alcohol Delivery Policy Recommendations

Substitute Senate Bill 5448
November 01, 2023

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Executive Summary:

Washington Substitute Senate Bill (SSB) 5448 (2023)¹ states *“By November 1, 2023, the liquor and cannabis board shall submit recommendations to the governor and appropriate committees of the legislature for a comprehensive alcohol delivery policy. The recommendations in the report must include a consistent, equitable structure for alcohol delivery licenses, endorsements, permits, and fees, and a comprehensive plan to help ensure all deliveries of alcohol are made only to persons who are 21 years of age or older.”*

Primary concerns related to alcohol delivery focus on youth access to alcohol and appropriate accountability for those involved in alcohol delivery. Preventing service to apparently intoxicated customers is another public safety concern, however this report and its recommendations focus primarily on compliance issues as they relate to youth access and accountability relating to alcohol delivery.

A comparison of active permanent allowances, temporary allowances, and overall fees for these activities demonstrate variations in allowances and fees for similar delivery activities (appendix 1). Variations include overlapping privileges and the utilization of unlicensed entities that are not equally accountable with a licensee for non-compliance, creating gaps in consistency and equity. The LCB is recommending consistent endorsement fees for delivery privileges, and licensing all entities involved in the delivery of alcohol from retail locations to improve consistent and equitable accountability.

The LCB is presenting 9 recommendations for consideration towards a comprehensive plan to ensure all deliveries of alcohol are made only to persons who are over 21 years of age. These include:

- 1) Create a mandatory license for third-party delivery companies.
- 2) Create a mandatory permit with required training approved by the LCB or expand the class 12 Mandatory Alcohol Server Training permit, for all delivery drivers.
- 3) Create (or amend) an alcohol delivery endorsement that is mandatory for all license types engaging in alcohol delivery.
- 4) Create provisions for a Responsible Alcohol Delivery Program.
- 5) Create a mandate that the customer ordering, paying for, and receiving the alcohol is the same person, is over the age of 21, and shows no signs of impairment.
- 6) Mandate age-verification at the time and location of alcohol delivery.
- 7) Ensure LCB has appropriate authority to develop rules for all aspects of alcohol delivery.
- 8) Create mandatory rechecks within 90 days for businesses failing a compliance check.
- 9) Provide funding for compliance check operations and staffing increases, to include funding for officer recruitment and retention.

¹ Washington Substitute Senate Bill 5448 (2023). Alcohol Delivery and Takeout – Extension. (68th Legislature, 2023 Regular Session). Available at: <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/5448-S.SL.pdf?q=20231010102611>

Background:

During the COVID-19 pandemic, the LCB created allowances to support business viability, one of which afforded the opportunity to conduct home delivery of alcohol from restaurants. This was a practice which the LCB had previously allowed in rule for off-premises sales locations, such as grocery stores.

Businesses engaging in alcohol delivery often utilized third party companies to perform this function, until the passage of SSB 5448. Currently, third party delivery companies are not licensed for alcohol sales and service. Any compliance failures are therefore the responsibility of the liquor licensee of record, and not of the third-party delivery company.

Literature reviews from sources which included Substance Abuse and Mental Health Services Administration (SAMHSA), National Institutes of Health (NIH), Pacific Institute for Research and Evaluation (PIRE), and Alcohol Epidemiology Program of the University of Minnesota have identified several best practices for youth access prevention in alcohol sales and service. Takeaways for policy considerations include:

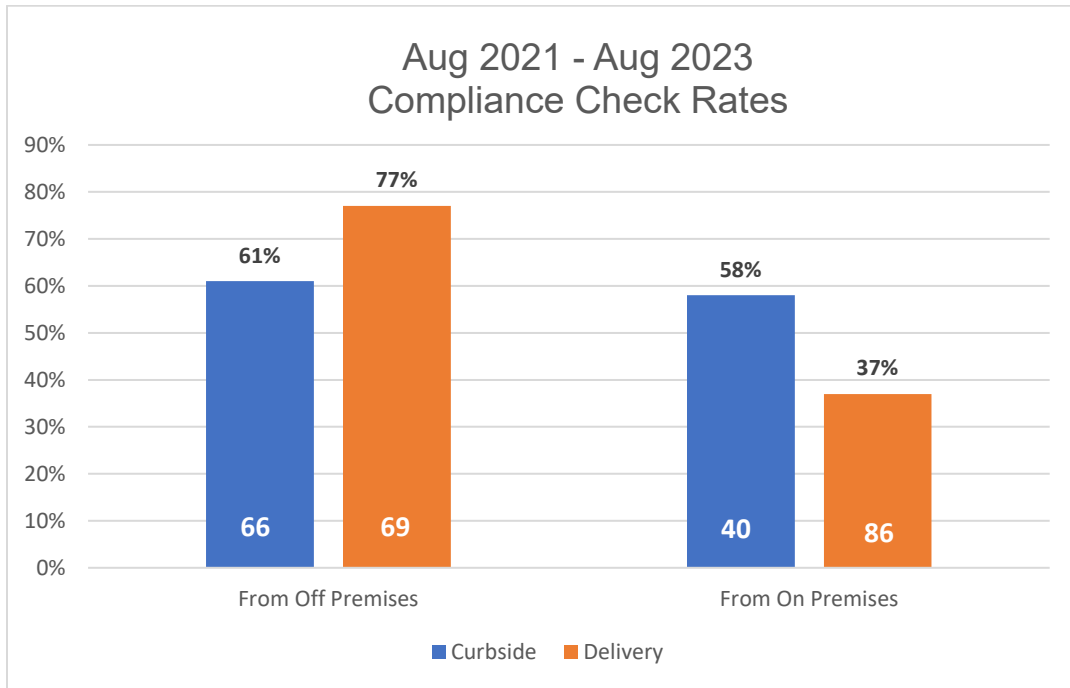
- Consistent and frequent youth access compliance checks using underage buyers.
- Timely rechecks for those failing previous compliance checks.
- Licensing entities involved in alcohol service.
- Permitting drivers conducting deliveries.
- Mandatory training for delivery drivers.
- Mandatory age-verification regulations.

Description of the problem:

Expansion of home delivery of alcohol from on-premises licensed businesses helped sustain many businesses through the COVID-19 pandemic. Alcohol delivery involves service away from the licensed business, which has less oversight at the point of furnishing the alcohol to the consumer increasing risks of youth access. Recent compliance results demonstrate delivery activities have lower compliance levels than on-sight service transactions. During the time of the pandemic, and following the passage of HB 1480, delivery of alcohol from on-premises and off-premises locations could be conducted by employees of the licensee or third-party companies. After the passage of SSB 5448, third-party delivery options were prohibited for specific on-premises and manufacturer license types, but allowed to continue for off-premises license types which allowed the activity prior to the pandemic. Accountability for furnishing alcohol to a minor has been the sole responsibility of the licensee and not the third-party company.

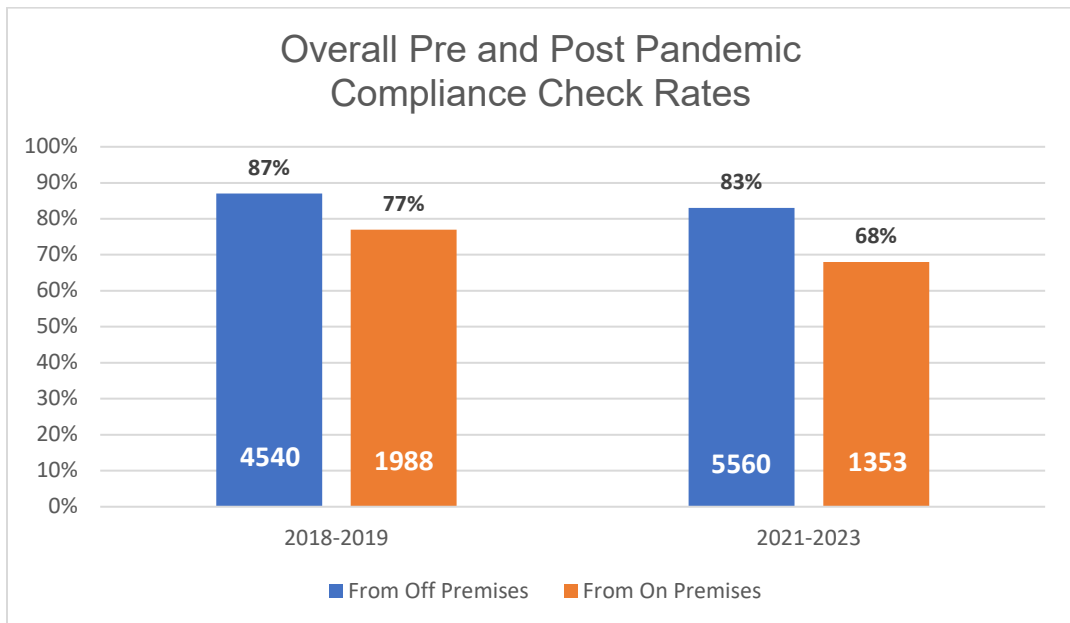
Alcohol delivery involves transporting beer, wine, and spirits from a licensed business to off-site locations such as residences and hotels, sometimes using licensed business employees and other times contracting with a third-party delivery company. During the height of the pandemic, the LCB suspended youth access compliance checks for the safety of all involved. Once it was safe to restart compliance checks, new curbside and delivery checks were implemented. The LCB observed significantly low compliance results related to home delivery of alcohol services, see figure 1 (number of compliance checks and compliance rate percent.) From August of 2021 through August of 2023, the LCB conducted 155 delivery compliance checks resulting in an overall 55% compliance rate.

Fig.1



The LCB also observed an overall decrease in compliance compared to pre-pandemic compliance rates, see figure 2 (number of compliance checks and compliance rate percent.)

Fig.2



Data from all on-site and curbside compliance checks from August 2021 through August 2023 indicate an overall compliance rate of 80%, while the overall compliance rate for alcohol delivery activities have an average of 55%. It is important to recognize only delivery activities would involve unlicensed third-party companies but were not exclusive to third party companies.

Identifying Best Practices:

Preventing youth access to alcohol has been a long-standing policy priority. There have been numerous research projects analyzing and discussing best practices to improve responsible sales related to youth access. In 1992 the U.S. Department of Health and Human Services (DHHS) indicated alcohol is one of the most common contributors to injury, death, and criminal behavior among youth. In 1999, the Pacific Institute reported youth alcohol use cost the nation over \$58 billion annually. The Sobering Truth on Preventing Underage Drinking Act (STOP) enacted by Congress in 2006 and reauthorized in 2016, referenced in their 2021 report the economic burden of excessive alcohol use was \$249 billion in 2010. Of this total, underage drinking accounted for 9.7% of these costs, specifically \$24.3 billion (Sacks et al., 2015.) The 2021 STOP Act report also indicated alcohol use is responsible for over 3500 deaths annually among those under 21 years of age in the United States (Centers for Disease Control Prevention (CDC) 2021). As part of the STOP Act reporting, SAMHSA releases a State Performance & Best Practices policy summary on compliance check protocols.

Supported by the Office of Juvenile Justice and Delinquency Prevention the Pacific Institute for Research and Evaluation (PIRE) produced a guide on “A Practical Guide to Compliance Investigations, Reducing Alcohol Sales to Underage Purchasers.” An “Alcohol Compliance Checks procedure manual for enforcing alcohol age-of-sale laws” was produced by the Alcohol Epidemiology Program at the University of Minnesota, updated in 2013. Best practices were also identified through the Institute of Medicine, focusing on youth access for tobacco.

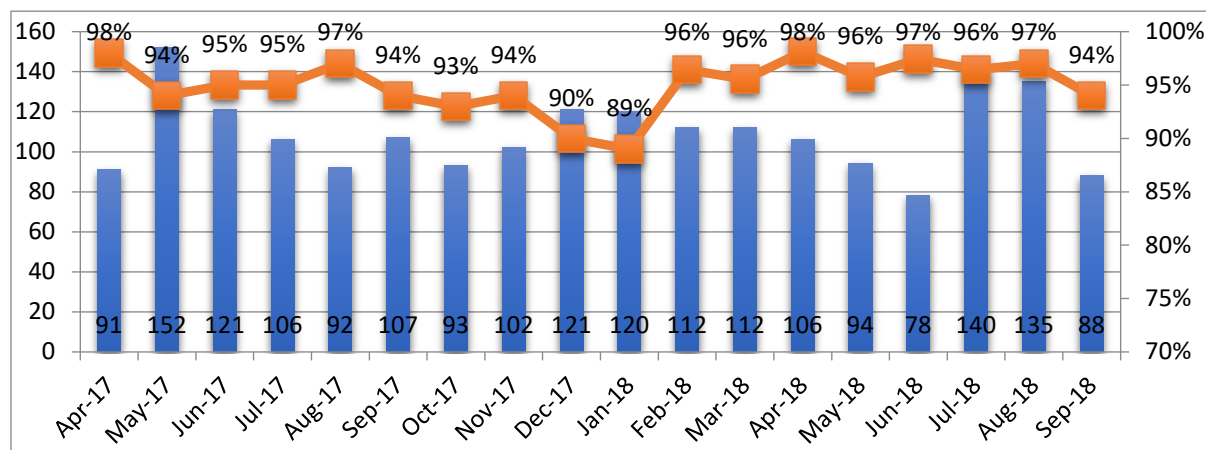
There is no one best practice or approach that will solve the youth access challenges. The licensing of retailers has been identified as an important issue. “The licensing approach has been endorsed by the DHHS in its model law and by nearly every study that has examined youth access interventions.” In the late 1980’s, King County Department of Health implemented licensing requirements for tobacco retailers, and in 1993, about 4 years after enacting the ordinance, they had reduced sales to minors from 79% to 7% over the 4-year period.

Compliance checks (also known as decoy or underage buyer programs) are identified as one of the most cost-effective ways to reduce youth access at the point of sale. Results focus on a deterrent effect and on-going voluntary compliance. According to the National Institute of Health (NIH) publication, citing a Wagenaar et al. 2005 study, the likelihood of selling alcohol to a minor immediately after compliance checks have been conducted decreases as much as 17%. However, these effects tend to decay after about three months, suggesting compliance check frequency is important. The Erickson (NIH) study indicates the “deterrent effect was seen only in establishments that had been checked by law enforcement with no spillover deterrent effect onto other establishments in the same community that had not been checked.” Erickson further suggests compliance checks should optimally be conducted three to four times per year in establishments to effectively decrease alcohol sales to underage buyers.

Additionally, rechecks of those who failed the compliance check should occur within a few months. “If establishments are not rechecked within three to six months of a compliance check failure, communities may never reach the failure threshold necessary to remove problem establishments.” Accountability is also suggested to occur to the server/seller and the license holders, as they [license holders] “are ultimately responsible for setting and enforcing expectations” for their business. (Erickson et al., 2015, p. 3)

The LCB found the best practice of three checks per location per year to be true, demonstrated by the compliance check results for cannabis retailers. During the first several years of cannabis retail sales after Initiative 502 implementation, the LCB conducted compliance checks at every retailer three times per year. This approach, coupled with rechecks for compliance failures and on-going retailer education, provided an average 95% compliance rate. A snapshot of data between April 2017 and September 2018, shows this pattern of compliances in figure 3.

Fig. 3 Cannabis Compliance Check Rates



In 2020, the National Liquor Law Enforcement Association (NLLEA) published *Best Practice Guidance for Alcohol Sales and Deliveries During and After the COVID-19 Pandemic*. This guide discusses public health implications, risky and impaired driving, compliance, enforcement capacity, and checking customers identification. The guide offers nine best practices and recommendations:

1. Check identification (IDs) for all alcohol sales and deliveries.
2. Conduct effective compliance checks.
3. Develop evidence-based policies for delivery drivers.
4. Develop evidence-based policies for servers and bartenders at restaurants and bars.
5. Conduct training for servers, bartenders, and delivery drivers.
6. Package and label alcohol products properly.
7. Establish and enforce liability and penalties for illegal sales.
8. Increase funding for Alcohol Law Enforcement.
9. Use science and data to inform policies and practices.

In 2021, pursuant to the enactment of a new law, the Virginia Alcohol Beverage Control Authority (ABC) convened a workgroup of 40 stakeholders to make “recommendations of the permanence of offering cocktails to go in the Commonwealth.” Although there were mixed perspectives on making cocktails to go permanent, “the stakeholder group recommends that a focus be placed on creating standards for third party delivery entities regarding training and responsibility for delivery personnel to achieve a much improved rate of public safety compliance...” Two primary recommendations included creating legislation to license third-party delivery entities, and legislation modifying the lawful containers to be used for cocktails to go. Information also observed in Virginia (VA) delivery regulations were more restrictive hours for delivery, prohibiting alcohol deliveries after 11:00PM.

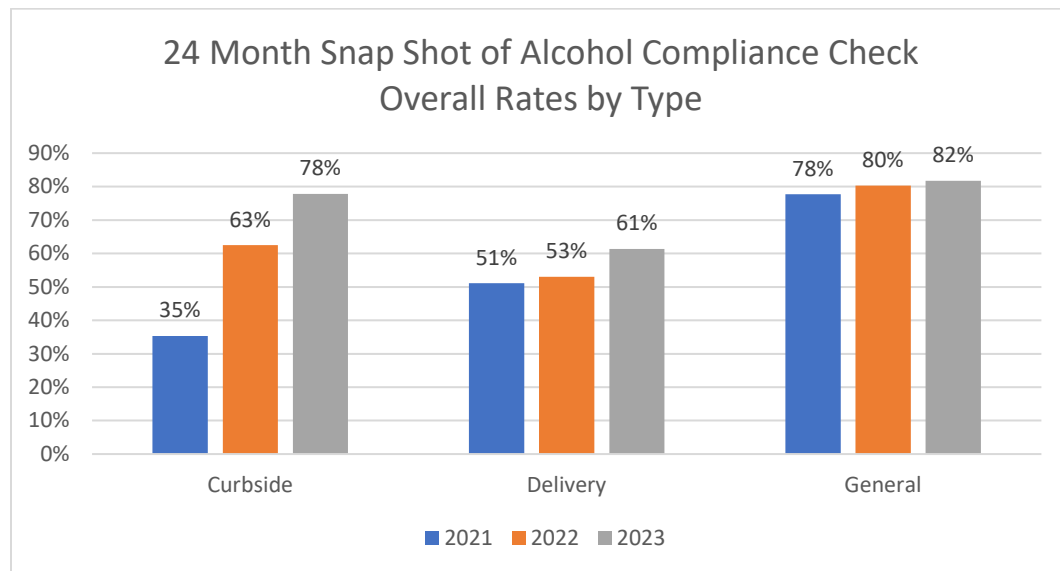
Other documents reviewed included perspectives of best practices offered by the Washington Association for Substance misuse and Violence Prevention (WASAVP) and Instacart. Similar themes offered included licensing and permitting, accountability, training for delivery drivers, and mandatory age verification. These themes are also observed in VA ABC regulations, and Oregon state law stemming from HB 3308.

Policies, Approaches, and Costs:

The LCB conducts frequent compliance checks at licensed businesses. As a result of HB 1480 in 2021 the LCB began conducting delivery compliance checks. As shown in figures 1 and 2, compliance rates for alcohol delivery are significantly lower than other types of compliance checks conducted at licensed businesses. The overall reduction in compliance rates is associated with a significant drop in the number of checks conducted during COVID-19. Comparing LCB data with the effects of the NIH study (Erickson et al., 2015) the deterrence decay effect of lower numbers of checks and rechecks can be observed in LCB compliance check results.

As the number of compliance checks increased after the height of the pandemic, so did the compliance rate, as can be observed in figure 4. This demonstrates the value compliance checks add towards improving compliance. An identified best practice of conducting compliance checks with two officers (Erickson et al.), has been long utilized by the LCB. With the introduction of delivery compliance checks, resource allocation to this type of compliance check required an increase to the number of officers involved to effectively conduct these checks. Due to the logistical nature and safety factors of delivery checks, up to eight officers are utilized to conduct the compliance checks.

Figure 4.



This factor has limited the ability to conduct as many compliance checks compared to those conducted in 2018 and 2019, as seen in figure 5 with the overall compliance check numbers, and in figure 6 with the average amount of compliance checks conduct monthly.

Figure 5.

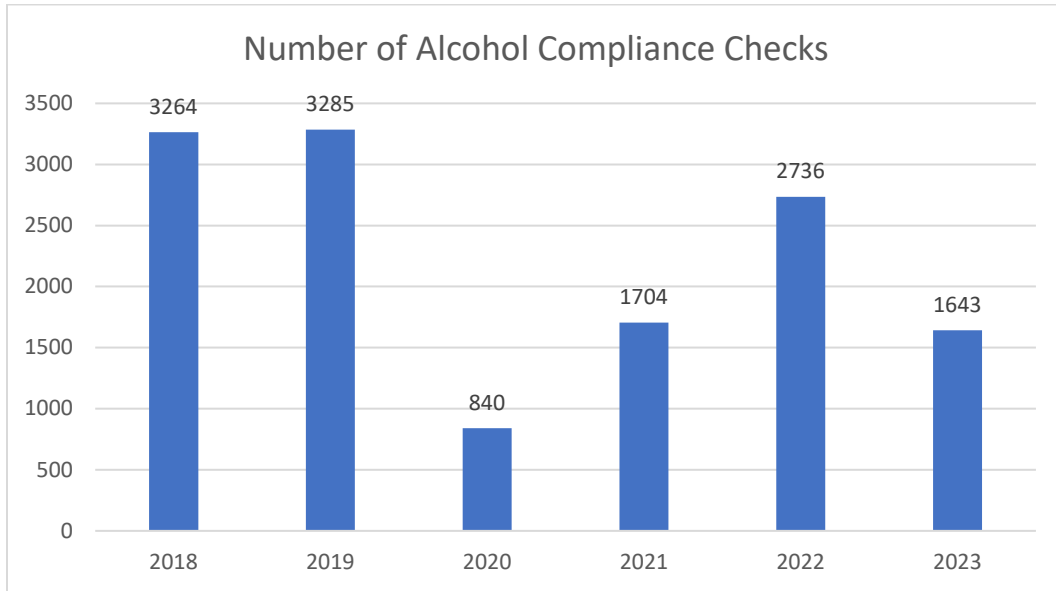
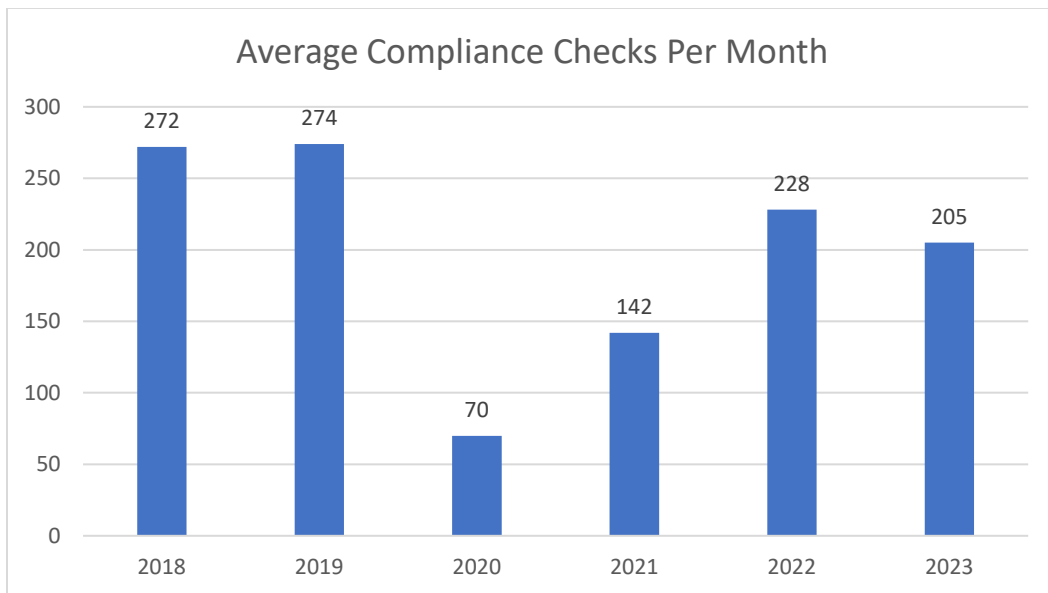


Figure 6.



There are currently over 18,000 liquor licensed businesses in the state, and almost 2000 businesses hold a delivery endorsement, as seen in figure 7. This represents only the businesses required to obtain an endorsement under SSB 5448. Other licenses, such as grocery stores, are not included in the count, as they are not currently required to have an endorsement for alcohol delivery.

Figure 7.

HB 1480 Temporary Alcohol Endorsements		
Manufactured Sealed Curbside/Delivery	Cocktails/Wine to-Go	Growlers Curbside/Delivery-
September- 808	September- 688	September- 483

The cost basis for a standard compliance check averages \$160 per check, while the delivery check is about \$1450 per check. If all locations were checked based on best practices, with a standard check, three times per year, the cost would exceed \$8.6M. This number would increase for each delivery compliance check in lieu of a standard check, and for each recheck for those locations with a previous sale. Meeting the best practice of conducting three to four compliance checks per location per year is not attainable by LCB alone. The number of staff it would take to conduct this many checks, full time with no other responsibilities, would exceed 51 officers. Based on standard budget allocations, conducting this many checks would not be possible.

To increase the compliance rates seen in figures 1, 2 and 4, a risk-based approach can be used for different types of alcohol service, such as deliveries versus on premises sales. This approach would not have every business checked, however would focus more limited resources on the higher risk activities, such as delivery as identified in current compliance check rates. Focusing compliance checks on delivery services also aligns with the increasing concern across the U.S. that alcohol delivery services may increase alcohol-related harm for those who are underage (Duthie et al., 2023; Noel & Rosenthal, 2023).

Another current policy that could be utilized to mitigate youth access risk, aside from law enforcement compliance checks, is found in [RCW 66.44.290](#). This statute allows licensees to receive authorization from the LCB to conduct their own compliance checks through a controlled purchase program with underage buyers. This could also be incorporated into a responsible vendor program like provisions in [RCW 66.24.035](#) and [RCW 66.24.630](#). Licensees engaging in these in-house compliance checks could significantly increase the number of overall checks creating greater awareness for employees of the need to check IDs and follow company policy.

Reviewing fee policy (appendix 1), the current endorsement for delivering alcohol pursuant to SB 5448 has no cost, and there is no specific license for third-party delivery companies. Fees for alcohol licenses and endorsements in Washington are set by statute, and LCB funding is based on direct allocations versus a fee for service model. Alcohol licenses often have license fees associated with the type of alcohol sold. Typically, beer and wine licenses have lower fees than spirits licenses. A common endorsement fee for a liquor license is \$120 per endorsement. Licensing fees for locations selling spirits for on premises consumption have the highest fees, up to \$2500 annually for a Sports and Entertainment Facility, \$2000 annually for a Spirits, Beer, Wine Restaurant, and \$2000 annually for a nightclub. However, Spirits Retailer license fees for off premises sales are \$166 annually. Each business must pay the fee for each location they operate alcohol sales and service, regardless of the number of different locations they operate.

In Virginia, a state that has similar approaches, ABC scope of responsibility, and number of licensees, approaches licensing fees on a sliding scale. Licensing fees increase based on the size or capacity of a licensed location, or number of employees for the licensed business. For delivery, VA uses the following in determining the fee amount for delivery licenses:

A third-party delivery license authorizes the licensee to deliver alcoholic beverages to a consumer pursuant to an order for such alcoholic beverages placed with a licensee vested with delivery privileges.

Fees are based on the following classifications:

No more than 25 delivery personnel—\$2,500

More than 25 delivery personnel—\$7,500

Consistency and Equity:

- State law establishes fees for liquor licenses and endorsements. Fees for off-premises licenses can be significantly less than on-premises licenses. Fees for endorsements vary from no cost to \$120 for alcohol delivery privileges.
- Some licensees have added regulations to include meal service with alcohol delivery if the endorsement is free, but no additional regulation if the licensee receives an endorsement with a \$120 fee.
- Currently, mandatory training for alcohol delivery drivers varies from no required training to securing a MAST 12 permit to be able to deliver alcohol.
- Generally, third party delivery companies are currently prohibited from delivering alcohol from on-premises locations, such as restaurants, but are allowed to deliver for grocery stores.
- All liquor licensees pay an annual fee for alcohol sales and service. Third party businesses are not currently licensed, and have no fees associated with alcohol delivery on behalf of a liquor licensee.
- Liquor licensed businesses may seek approval from the LCB to engage in a controlled purchase program, conducting in house compliance checks with underage buyers to assess employee compliance and mitigate youth access risks. Unlicensed third-party companies are not legally able to use underage buyers for policy compliance, nor can the LCB authorize program participation for unlicensed entities.

Appendix 1 compares current license and endorsement fees for different license types and includes current mandatory training requirements. The table also includes recommendations for equitable endorsement fees, an annual license fee for a third-party delivery company license, and consistent mandatory training for all alcohol deliveries.

Recommendations (9):

Based on the assessment of best practices, costs, and comparison with other states, the LCB is recommending the following for comprehensive alcohol delivery compliance.

- 1) Create a mandatory license for third-party delivery companies.
 - a. This creates consistent and equitable access to business opportunities.
 - b. This improves accountability away from the licensed restaurant or store, relieving the store of liability once the alcohol is transferred to the third-party delivery driver.
 - c. A \$2500 fee is recommended based on a single license for operations in WA.
- 2) Create a mandatory permit with required training approved by the LCB or expand the class 12 Mandatory Alcohol Server Training permit, for all delivery drivers.
 - a. Improves accountability at the point of alcohol delivery.
 - b. Ensures initial training received covers laws and rules of the state.
 - c. Mandate drivers to receive training and the permit prior to any alcohol delivery.
- 3) Create (or amend) an alcohol delivery endorsement that is mandatory for all license types engaging in alcohol delivery.
 - a. Add a \$120 fee to the alcohol delivery endorsement.
 - b. An exception is recommended for Beer and Wine Gift Delivery license, as is it the purpose of the base license.
- 4) Create provisions for a Responsible Alcohol Delivery Program.
 - a. Double fines for violations and allow standard penalties for those qualifying businesses participating in good standing.
 - b. Provide penalty mitigation opportunities for businesses engaging in LCB approved controlled purchase programs (in-house compliance checks) with mandatory results reporting to the LCB.
 - c. Criteria for program qualification should include:
 - i. Supplemental company training for delivery drivers (on procedures, app use, etc.)
 - ii. Mandatory policy and procedure on returning alcohol if the purchaser is not present, or underage.
- 5) Create a mandate that the customer ordering, paying, and receiving the alcohol is the same person, is over the age of 21, and shows no signs of impairment.
- 6) Mandate age-verification at the time and location of alcohol delivery.
- 7) Ensure LCB has appropriate authority to develop rules for all aspects of alcohol delivery.
- 8) Create mandatory rechecks within 90 days for businesses failing a compliance check.
- 9) Provide funding for compliance check operations and staffing increases, to effectively conduct oversight utilizing best practices. This includes funding for officer recruitment and retention so a consistent program can be operated statewide.

Sources:

- Alcohol Epidemiology Program. Alcohol compliance checks: A procedures manual for enforcing alcohol age-of-sale laws. Minneapolis: University of Minnesota; originally published 2000, updated 2013. <https://aep.umn.edu/sites/aep.umn.edu/files/2023-01/commercial-access-policies.pdf>
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 - https://www.stopalcoholabuse.gov/media/ReportToCongress/2020/profile_summaries/8_compliance_check_protocols.pdf
- Virginia Alcohol Beverage Control - *VIRGINIA ABC REPORT ON “COCKTAILS TO GO”* <https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:ff7a9b87-0769-3854-a369-cbd229412dca>
- Washington State RCW [66.24.035](https://app.leg.wa.gov/rcw/default.aspx?cite=66.24.035) (2017). Combination spirits, beer, and wine license. Available at: <https://app.leg.wa.gov/rcw/default.aspx?cite=66.24.035>
- Washington State RCW [66.24.630](https://app.leg.wa.gov/rcw/default.aspx?cite=66.24.630) (2021). Spirits retail license. Available at: <https://app.leg.wa.gov/rcw/default.aspx?cite=66.24.630>

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Appendix 1: [License, Endorsement, and Training Comparison Spreadsheet](#)