

Washington State Liquor and Cannabis Board

Issue Paper

Rule Making on Chapter 314-29 WAC Penalty Guidelines

Date: May 4, 2016

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) to revise Chapter 314-29 WAC Penalty guidelines.

Why is rule making necessary?

As part of the Liquor Control Board's on-going rules review process, rules regarding how to apply for a liquor license are being reviewed for relevance, clarity, and accuracy.

What changes are being proposed?

Amended Section. WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation? Explained actions the board may take if a monetary penalty is not paid by the due date.

Amended Section. WAC 314-29-020 Group 1 violations against public safety. Added language that group 1 violations will be counted sequentially rather than independently by group.

New Section. WAC 314-29-038 Group 5 public safety violations for sports entertainment facility licenses. Created a new section for sports entertainment facility license public safety violations. Since this license type is unique from all other on-premises licenses, the penalties should be different.

WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?

(1) A licensee or a mandatory alcohol server training permit holder has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

(2) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?

(a) If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(c) When a licensee fails to submit payment of monetary fine proceedings, provisions to collect shall take effect immediately or other actions such as revocation, will be instituted as deemed appropriate by the WSLCB.

(d) An attempt to advise the debtor of the existence of the debt, and twenty-five percent late fee per subsection (2)(b) of this section, will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least thirty days have elapsed from the time notice was attempted.

(e) Failure to address monetary penalties for two or more administrative violations notices in a three-year period will result in license cancellation.

(f) Licensees failing to respond to an administrative violation notice or having outstanding fines shall not be eligible to renew their liquor license.

(g) Failure to address monetary penalties for two or more administrative violations notices in a two-year period will result in license cancellation.

(3) What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?

(a) If the licensee or permit holder requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee or permit holder will be notified of the decision. The licensee or

permit holder will be given the option to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

WAC 314-29-020 Group 1 violations against public safety. (1)

Group 1 violations are considered the most serious because they present a direct threat to public safety. Violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-29-015(4).

(2) Group 1 violations will be counted sequentially rather than independently by group. For example, if a licensee received a violation for over service on one day and a violation for sale to a minor a week later, the sale to a minor would be treated as a second offense since both violations are in the same violation group.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Violations involving minors: Sale or service to minor: Sale or service of alcohol to a person under 21 years of age. Minor frequenting a tavern, lounge, or other restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Sale or service to apparently intoxicated person: Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Conduct violations: Disorderly conduct by licensee or employee, or permitting on premises. Licensee and/or employee intoxicated on the licensed premises and/or drinking on duty. Criminal conduct: Permitting or engaging in criminal conduct. WAC 314-11-015	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Lewd conduct: Engaging in or permitting conduct in violation of WAC 314-11-050.	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Condition of suspension violation: Failure to follow any suspension restriction while liquor license is suspended. WAC 314-29-040	Original penalty plus 10 day suspension with no monetary option	Cancellation of license		

NEW SECTION

WAC 314-29-038 Group 5 public safety violations for sports entertainment facility licenses. Sports entertainment facility licenses are unique and different from other on-premises licenses since they are not open on a daily basis, but rather for specific events. Public safety violations are considered the most serious because they present a direct threat to public safety. All other violations and penalties are the same for sports entertainment facility licensees as other liquor licenses.

(1) General public safety violation penalties.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th and Subsequent violation in a two-year window
Violations involving minors: Sale or service to minors outside of WAC 314-29-038(c): Sale or service of alcohol to a person under 21 years of age. Minor frequenting a restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.75 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Cancellation of license
Sale or service to an apparently intoxicated person: Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.75 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th and Subsequent violation in a two-year window
Conduct violations: Disorderly conduct by licensee or employee, or permitting on premises. Licensee and/or employee intoxicated on the licensed premises and/or drinking on duty. Criminal conduct: Permitting or engaging in criminal conduct. WAC 314-11-015	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.75 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Cancellation of license
Lewd conduct: Engaging in or permitting conduct in violation of WAC 314-11-050.	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.75 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Cancellation of license
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.75 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Cancellation of license

(2) If documented ticket sales for an event are unavailable, in order to assess penalties set forth in this section, the facility maximum occupancy will be used for the penalty assessment.

(3) WSLCB youth access compliance checks, in accordance with chapter 314-31 WAC.

License Class	Compliance Threshold	1st Violation	2nd Violation	3rd Violation	4th Violation
Sports and entertainment facility	Events: 1 to 20 points of sale (1st incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Cancel
Sports and entertainment facility	Events: 21 to 45 points of sale (2nd incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Cancel
Sports and entertainment facility	Events: 45 or more points of sale (3rd incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Cancel
* "I" signifies the total cumulative incidents of sales to underage person during an alcohol compliance check.					

A point of sale is defined as each different concession stand, or service area (such as a lounge), not each individual cash register.



Liquor and Cannabis Board Revised Interim Policy BIP-01-2016

Subject: Registered Cooperatives Purchasing Direct from Licensed Producers

Effective Date: July 1, 2016

Ending Date: Upon adoption of rules to implement this policy.

Approved:

Jane Rushford, Chair

Ruthann Kurose, Board Member

Purpose:

When SB 5052 passed during the 2015 legislative session, it created medical marijuana cooperatives allowing up to four patients to grow medicinal marijuana for their own use. However, the bill did not provide a legal pathway for these cooperatives to acquire plants to grow in the cooperative. Additionally, I-502 did not allow for the retail sale of plants directly to consumers.

HB 2520 was agency-request legislation to amend RCW 69.50.325 and 69.51A.250 to allow members of a registered cooperative to purchase marijuana plants directly from licensed producers for use in the cooperative to provide legal access to marijuana plants. The bill becomes effective July 1, 2016. This interim policy will provide guidance and clarity to licensed producers and members of registered cooperatives for the purchase of marijuana plants by members of registered cooperatives from licensed producers.

Policy Statement

(1) Medical marijuana patients who enter into the authorization database established and maintained by the Department of Health, receive a recognition card, and are members of a cooperative that has been granted a registration by the Washington State Liquor and Cannabis Board (WSLCB) may purchase marijuana plants to be grown in the cooperative from a licensed marijuana producer.

(2) Members of a cooperative who wish to purchase plants from a licensed producer must provide proof of identification in the form of a state-issued identification card, a valid recognition card, and a copy of the letter from the WSLCB confirming the person is part of a registered cooperative to be able to purchase marijuana plants from a licensed producer.

(3) Licensed producers must adhere to the requirements of WAC 314-55-083 when allowing entry to the licensed premises and conducting the sales with members of a registered cooperative.

(4) Due to the 24-hour waiting period required under WAC 314-55-083 for all transfers of marijuana plants, registered cooperative members who wish to purchase plants from a licensed producer must contact a licensed producer they wish to purchase from at least 24 hours in advance of arriving at the licensed producer's place of business to ensure the producer has plants available for sale and can allow for the required waiting period to pass prior to physically taking possession of marijuana plants the registered cooperative member is purchasing.

(5) Members of a registered cooperative, listed on the letter from WSLCB confirming the registration of the cooperative, must personally go to the licensed producer to complete the purchase and transfer of any marijuana plants purchased.

(6) The physical transfer of marijuana plants must take place on the premises of the licensed producer. Deliveries of marijuana plants by a licensed producer to members of a cooperative are prohibited.

(7) Sales tax applies to sales of plants by licensed producers to members of a registered cooperative. The marijuana excise tax does not apply to these sales.



Date: June 15, 2016

To: Jane Rushford, Board Chair
Ruthann Kurose, Board Member

From: Joanna Eide, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Peter Antolin, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Karen McCall, Agency Rules Coordinator

Subject: **Approval for filing a pre-proposal statement of inquiry (CR 101) for rule changes in Chapter 314-55 Marijuana Licenses, Application Process, Requirements, and Reporting, related to creating a warning symbol for marijuana products and labeling requirements.**

A new warning symbol is needed to notify consumers and children that a marijuana product contains THC. Concerns have been raised about the risk of accidental consumption of marijuana products by children and ways for adults that have over consumed marijuana products to contact the Washington Poison Center when experiencing adverse effects. The WSLCB is considering adopting a warning symbol to deter accidental consumption of marijuana products by children and to provide emergency services contact information in cases of accidental exposure or over consumption. Labeling requirements may also require adjustments or clarification to ensure that consumers and children are properly notified that products contain THC.

Process

The Rules Coordinator requests approval to file the pre-proposal statement of inquiry (CR 101) for the rule making described above. An issue paper on this rule was presented at the Board meeting on June 15, 2016, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

June 15, 2016	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
July 6, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
August 10, 2016	End of written comment period
August 10, 2016	Board is asked to approve filing the proposed rules (CR 102 filing)
September 7, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list

October 5, 2016	Public Hearing held
October 5, 2016	End of written comment period
October 19, 2016	Board is asked to adopt rules
October 19, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
October 19, 2016	Agency files adopted rules with the Code Reviser (CR 103)
January 17, 2016	Rules are effective (90 days after filing)*

* The WSLCB plans to adopt a delayed effective date (90 days after adoption) as part of this rulemaking to allow sufficient time for licensees to make adjustments to labeling to comply with new requirements.

_____ Approve _____ Disapprove _____
Jane Rushford, Chairman Date

_____ Approve _____ Disapprove _____
Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Issue Paper

Warning Symbol for Marijuana Products

Date: June 15, 2016

Presented by: Joanna Eide, Policy and Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file the first stage of rulemaking (CR 101) to amend rules in Chapter 314-55 WAC Marijuana Licenses, Application Process, Requirements, and Reporting, to create a warning symbol for use on marijuana products and to consider clarifying rules related to labeling requirements.

Why is rule making necessary?

A new warning symbol is needed to notify consumers and children that a marijuana product contains THC. Concerns have been raised about the risk of accidental consumption of marijuana products by children and ways for adults that have over consumed marijuana products to contact the Washington Poison Center when experiencing adverse effects. The WSLCB is considering adopting a warning symbol to deter accidental consumption of marijuana products by children and to provide emergency services contact information in cases of accidental exposure or over consumption. Labeling requirements may also require adjustments or clarification to ensure that consumers and children are properly notified that products contain THC.

Process

The rule making process begins by announcing WSLCB's intent to add and make changes to existing rules by filing a CR 101 form. This allows staff and stakeholders to begin discussing necessary rule changes. At the CR 101 stage of the process, no proposed language is offered. The public may comment on the subject of this rulemaking 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. The WSLCB plans to adopt a delayed effective date as part of this rulemaking to allow sufficient time for licensees to make adjustments to labeling to comply with new requirements.