



## CR 103 Memorandum

### **Implementing Engrossed Second Substitute Senate Bill (E2SSB) 5080 related to the Social Equity in Cannabis Program**

Date: December 18, 2024  
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#### **Background**

The rule on the social equity in cannabis program ([WAC 314-55-570](#)) is being amended pursuant to [Engrossed Second Substitute Senate Bill \(E2SSB 5080\) \(chapter 220, Laws of 2023\)](#), related to expanding and improving the Social Equity in Cannabis Program. This legislation builds upon existing efforts to address disparities and injustices caused by the war on drugs, particularly in communities disproportionately impacted by cannabis prohibition and enforcement.

The primary goal of the legislation is to further promote equity within the cannabis industry by providing increased opportunities for individuals from these affected communities to obtain a cannabis license. The legislation mandates the creation of rules that enhance the participation of social equity applicants in the legal cannabis market. It provides the Washington State Liquor and Cannabis Board (LCB or Board) with the authority to clarify eligibility criteria established in E2SSB 5080, develop a scoring system for applications, and establish procedures for the application and licensing. The legislation specifically calls for prioritizing applicants who have been disproportionately affected by the enforcement of cannabis related laws.

The scope of this rulemaking under the legislation includes expanding the eligibility criteria to encompass a broader range of individuals impacted by the war on drugs. Refining the application process to be more inclusive and accessible, and improving the verification methods for eligibility. This includes a clear framework for evaluating and scoring applications, setting requirements for ownership and control, and implementing measures to verify the eligibility of applicants. The rules also establish guidelines for using affidavits and other documentation to support claims of eligibility, ensuring that the process is both rigorous and accessible.

By leveraging statutory authority under E2SSB 5080, the LCB aims to create a more inclusive cannabis industry that reflects the diversity of Washington State and provides meaningful opportunities for those who have been most affected by past cannabis laws. This rulemaking effort seeks to expand and improve the

Social Equity in Cannabis Program, ensuring it effectively addresses the economic and social disparities faced by marginalized communities.

## **Rule Development Process**

The Washington State Liquor and Cannabis Board (LCB) filed the CR-101 initiating the rulemaking on November 8, 2023 ([WSR 23-23-062](#)). The informal comment period was open until February 4, 2024.

Rule development input and collaboration included agency staff from multiple divisions, cannabis industry representatives, community members, Department of Commerce, public health, and the Attorney General's Office.

## **Public Engagement**

To inform the first draft of these proposed rules, extensive stakeholder engagement was held, as follows:

- A survey was administered to applicants who participated under [Engrossed Second Substitute House Bill \(E2SHB\) 2870, \(chapter 236, Laws of 2020\)](#), the legislation that initiated the first round of social equity applications. The survey aimed to gather applicant feedback on the application experiences, highlighting the difficulties of the process such as obtaining necessary documentation and understanding the withdrawal process. These insights garnered from this survey were instrumental in shaping the initial rule proposal.
- Following this first survey, the initial draft of the scoring rubric was presented during a regularly scheduled board meeting, and input from the community on the proposal was provided during these open public meetings.
- A series of engagement sessions were held on May 15, and 22, 2024 to provide stakeholders opportunities to engage LCB staff in discussions and ask questions related to the proposed rules. These sessions also provided a platform for stakeholders to discuss, critique and suggest further refinements to ensure the rules more effectively met the needs of potential applicants and aligned with the objectives of social equity. Insights from these discussions were crucial in developing the subsequent draft, which aimed to enhance inclusivity and fairness in the application process.
- Once feedback was evaluated and incorporated into the next draft of the proposed rules, an online survey accompanying a new draft was publicly disseminated and posted on the LCB's website to facilitate feedback on the subsequent draft. The survey was open from July 11, 2024, until July 18, 2024.

## **Rule Proposal (CR-102)**

The proposed rule filed on August 6, 2024, encompass the community feedback by including detailed definitions and a clear, simplified, and transparent process for determining eligible applicants for the social equity program. The scoring rubric was also refined to reduce barriers to entry and that targets individuals most impacted by the enforcement of cannabis prohibition policies; and provisions are added to enhance accessibility and economic opportunity, including allowing affidavits to demonstrate eligibility for specified criteria, an appeal process, and adjustments to license mobility requirements.

On July 31, 2024, the Board approved filing proposed rules (CR-102) implementing E2SSB 5080. The rules were filed on August 6, 2024, as [WSR 24-16-130](#) and the public hearing on proposed rules was held on September 11, 2024. Two stakeholders testified at the hearing and eleven comments were received on the proposed rules during the formal public comment period.

### **Supplemental Rule Proposal (CR-102)**

Following the public hearing on September 11, 2024 and while examining the public feedback received, the LCB decided to file a supplemental CR-102 on October 23, 2024 as [WSR 24-21-169](#) with the following changes to the initial proposed rules filed on August 6, 2024:

- 1) Registration Window: The updated proposal has a separate registration window for retailers and non-retail licenses (producers and processors) to allow registrants who did not get selected for a retail license, an additional opportunity to register for a non-retail license.
- 2) Scoring Rubric: The goal of the scoring rubric was to provide registrants point accumulation based on the level of impact a person may have experienced based on the war on drugs, and link impacts to qualifications established in statute. Scoring was developed and drafted based on a general assessment of direct impacts to an applicant, and stakeholder feedback from verbal, written, and survey submissions. To ensure familiarity of scores compared to previous rules and proposed changes, the scores in each category match the overall percentage weight on a 300-point scale.
  - a) Lived in a disproportionately impacted area (DIA) [20% of total score]: This was weighted as the second highest impact to applicants, as the evaluation is limited a specific timeframe, and not all people living in a DIA had the same level of adverse impacts based on the war on drugs. This change was supported by stakeholder feedback.
  - b) Criminal arrests and conviction [50% of total score]: This category has the greatest direct impact to the applicant and their family and is not limited by time factors. Escalating scores were identified by level of adverse impacts

of a conviction and subsequent disposition. This change was supported by stakeholder feedback.

- c) Household income [15% of total score]: This category has limited direct impact representation of the war on drugs, as the evaluation is only for the one year prior to license application window, based on state statute.
  - d) Socially and Economically Disadvantaged [15% of total score]: Although the statute uses this as a qualification, this is the only qualification category that does not have specific impacts associated for scoring purposes. Scoring was designed to capture direct impacts, such as losing a cannabis business when law changes occurred in 2015, and previously qualifying as a social equity applicant under previous standards but did not receive a license. The weight of this category was determined based on balancing statutory specifics, direct impacts of cannabis law and enforcement, and stakeholder input. Stakeholder feedback was split on point evaluation for this category, with a majority not supporting substantial points. However, stakeholder feedback did demonstrate direct adverse impacts based on the loss of a business, and LCB felt this impact met the spirit of social and economic disadvantages.
- 3) E2SHB 2870 Applicants – License Mobility: In the updated proposal, the effective date for allowing E2SHB 2870 applicants who are unable to secure a location in the county where the license was initially issued is January 1, 2026. In the original proposal, the effective date is 90-days after the license application window closes. This approach provides a more equitable time frame for applicants applying under E2SSB 5080 to compete for locations statewide.

Setting a specific date for when licenses without a location can be moved to another location provides clarity for all license holders. The approach eliminates ambiguity about when those who applied under E2SHB 2870 can start securing an initial location outside of county they had originally applied, allowing businesses to plan accordingly to secure an initial location with greater certainty. Furthermore, a specific date simplifies the process for overseeing and managing relocations as it allows for better resource allocation and ensures all relocation applications are processed under the same regulatory framework.

- 4) Title Certificate Holders (TCH): The approach for license mobility requirements for Title Certificate Holders (TCH) in the updated proposal is consistent with the previously established board policy in the existing rule under [WAC 314-55-570](#). Although the license mobility requirements for a TCH is broader under the original proposal, the updated proposal affords the TCH an opportunity to reinstate their title certificate in addition to applying for a social equity license under provisions of E2SSB 5080.

Under the updated proposal, TCHs cannot modify the ownership structure after registering and submitting the application materials to the social equity contractor for an eligibility determination.

The public hearing on the Supplemental CR-102 was held on December 4, 2024. Two stakeholders testified at that hearing and two stakeholders provided written comment during the formal comment period. Responses to those comments and testimony are detailed in the Concise Explanatory Statement.

**Variance between proposed rule (CR-102) and final rule:**

The changes below have been made to the proposed rule language (CR 102):

WAC 314-55-570 Social equity in cannabis program			
Section	Proposed Rule (CR 102)	Final Rule (CR 103)	Reason for Change
(4)(a)(i)(B)	... The social equity contractor reserves the right to verify the authenticity...	...The social equity contractor <u>may</u> verify the authenticity ...	Technical wording change without changing effect.
(4)(a)(ii)(B)			

**Rule Implementation (RCW 34.05.328(3)(a))**

Informing and Educating Persons Impacted by the Rule (RCW 34.05.328(3)(b))

To help inform and educate persons impacted by the rule, the LCB will:

- Email notice with the adoption materials to persons who commented on the rules, the rule making and licensee distribution lists, and the general LCB GovDelivery list;
- Post rule adoption materials, including final rule language, response to comments, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.

Promoting and Assisting Voluntary Compliance (RCW 34.05.328(3)(c))

LCB will promote and assist voluntary compliance through technical assistance.

- LCB staff are available to respond to phone and email inquiries about the rules.
- Agency leadership and staff have actively participated in rule development and revisions and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule will be supported.
- Rule and guidance documents will be available on the LCB website.
- LCB will use available and customary resources to disseminate materials and information to all persons impacted by the rules.

These actions are designed to inform and educate all persons impacted by the rules to support and promote voluntary compliance.

### Training and Informing LCB Staff

Several LCB staff responsible for implementing these adopted rules work directly with impacted parties and are already familiar with the nuances of the rule changes. Additional internal guidance documents may be prepared as necessary. The LCB will also consider:

- Provision of internal and external training and education, as needed. potentially including webinars, training, and videos if appropriate;
- Coordinating and centrally locating decisions to assure consistency between agency, staff, and industry.

### **Rule Effectiveness Evaluation (RCW 34.05.328(3)(d))**

After the rule becomes effective, the LCB will evaluate the effectiveness of this rule in the following ways, including but not limited to:

- Monitoring questions received after the effective date of this rule, and adjusting training and guidance accordingly;
- Monitoring the number of enforcement actions, including type, resolution, and the outcome;
- Monitoring the number of requests for rule language revisions or changes;
- Monitoring the number of requests for rule interpretation;
- Monitoring licensee feedback including, but not limited to, the number of requests for assistance.