



Washington State  
**Liquor and Cannabis Board**

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**Date:** January 17, 2024

**To:** David Postman, Board Chair  
 Ollie Garrett, Board Member  
 Jim Vollendroff, Board Member

**From:** Denise Laflamme, Rules Coordinator

**Copy:** William Lukela, Agency Director  
 Toni Hood, Agency Deputy Director  
 Becky Smith, Licensing Director  
 Chandra Brady, Director of Enforcement and Education  
 Justin Nordhorn, Policy and External Affairs Director  
 Cassidy West, Policy & Rules Manager

**Subject: CR 105 regarding implementation of Engrossed Substitute Senate Bill (ESSB) 5365 regarding increased penalties for licensed retailers selling or giving cigarette, tobacco or vapor products to persons under 21 years of age.**

The Rule Coordinator requests approval to file a rule proposal (CR 105) for expedited rulemaking related to implementation of 2023 legislation ESSB 5365 described in the CR 105 Memorandum attached to this order and presented at the Board meeting on January 17, 2024. If approved for filing, the tentative timeline for this rule proposal is as follows:

January 17, 2024	Board is asked to approve filing expedited rules (CR 105). CR 105 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list.
February 7, 2024	Notice published in the Washington State Register.
March 26, 2024.	Deadline to file public objection per RCW 34.05.353.
March 27, 2024	Board is asked to adopt rules if no public objection received by March 26, 2024 (CR 103). CR 103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage updated and notice circulated to all LCB GovDelivery subscribers.
April 27, 2024	Rules are effective 31 days after filing (unless otherwise specified).

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
David Postman, Chair      \_\_\_\_\_  
Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Ollie Garrett, Board Member      \_\_\_\_\_  
Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Jim Vollendroff, Board Member      \_\_\_\_\_  
Date

Attachments: CR 105 Memorandum



**Regarding Implementation of Engrossed Substitute Senate Bill 5365 – Increased penalties for licensed retailers selling tobacco to persons under 21 years.**

Date: January 17, 2024  
Presented by: Denise Laflamme, Rules Coordinator

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**Background**

During the 2023 Legislative Session, the Washington State Legislature passed Engrossed Substitute Senate Bill (ESSB) 5365 (chapter 398, Laws of 2023), and was signed by Governor Inslee on May 9, 2023. In passing this bill, the legislature increased existing monetary penalties the Washington State Liquor and Cannabis Board (Board) can impose on licensed retailers for violations pertaining to selling or giving cigarette, tobacco or vapor products to persons under 21 years of age (under [RCW 70.155.100](#)). These increased penalties are aimed at ensuring better retailer compliance with tobacco and vapor product possession laws. Penalties are increased to the following:

- A monetary penalty of \$1,000 for the 1<sup>st</sup> violation within any three-year period (up from \$200)
- A monetary penalty of \$2,500 for the 2<sup>nd</sup> violation within any three-year period (up from \$600)
- A monetary penalty of \$5,000 and suspension of the license for a period of six months for the 3<sup>rd</sup> violation within any three-year period (up from \$2000)
- A monetary penalty of \$10,000 and suspension of the license for a period of 12 months for the 4<sup>th</sup> violation within any three-year period (up from \$3,000)
- Revocation of the license with no possibility of reinstatement for a period of five years for the 5<sup>th</sup> or more violation within any three-year period (no change)

These increased monetary penalties are explicitly and specifically dictated by Washington state statute [RCW 70.155.100](#).

**WSLCB Stakeholder Engagement**

Implementation of ESSB 5365 increases penalties the Board imposes on licensed retailers that requires amendments to WAC 314-35-075 through rulemaking.

Because these amendments incorporate penalty changes explicitly and specifically dictated by Washington state statute under RCW 70.155.100, the Board is not required to hold a public hearing or engage in stakeholder engagement.

**Rule Necessity**

Amendments are needed to incorporate Section 4 of Engrossed Substitute Senate Bill 5365, effective July 23, 2023.

**Description of Rule Changes**

WAC 314-35-075 – Category I - Violations that create a direct or immediate threat to public health, safety, or both.

For violations of RCW 26.28.100, there is a row added to the penalty table as follows:

<b>Violation Type</b>	<b>1st Violation in a three-year period</b>	<b>2nd Violation in a three-year period</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
Sales to persons under twenty-one.  RCW 26-28-080	\$1,000 monetary penalty	\$2,500 monetary penalty	\$5,000 monetary penalty and a 6-month license suspension	\$10,000 monetary payment and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years



# EXPEDITED RULE MAKING

## CR-105 (December 2017) (Implements RCW 34.05.353)

**Agency:** Washington State Liquor and Cannabis Board

**Title of rule and other identifying information:** (describe subject) Title 314 WAC Liquor and Cannabis Board. The Washington State Liquor and Cannabis Board (LCB) is amending rule section 314-35-075 WAC to implement Section 4 of Engrossed Substitute Senate Bill 5365 (chapter 398, Laws of 2023).

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** During the 2023 Legislative Session, the Washington State Legislature passed Engrossed Substitute Senate Bill 5365 (chapter 398, Laws of 2023), signed into law by Governor Inslee on May 9, 2023. This legislation increases monetary penalties LCB can impose on licensed retailers under RCW 70.155.100 for violations of RCW 26.28.080 pertaining to selling or giving cigarette, tobacco or vapor products to persons under 21 years of age. This increase in penalties was aimed at ensuring better retailer compliance with tobacco and vapor product possession laws. Penalties are increased to the following:

- A monetary penalty of \$1,000 for the 1<sup>st</sup> violation within any three-year period (up from \$200)
- A monetary penalty of \$2,500 for the 2<sup>nd</sup> violation within any three-year period (up from \$600)
- A monetary penalty of \$5,000 and suspension of the license for a period of six months for the 3<sup>rd</sup> violation within any three-year period (up from \$2000)
- A monetary penalty of \$10,000 and suspension of the license for a period of 12 months for the 4<sup>th</sup> violation within any three-year period (up from \$3,000)
- Revocation of the license with no possibility of reinstatement for a period of five years for the 5<sup>th</sup> or more violation within any three-year period (no change)

**Reasons supporting proposal:** Engrossed Substitute Senate Bill 5365 directs LCB to increase penalties for violations under RCW 70.155.100. LCB is using expedited rulemaking to amend penalties under WAC 314-35-075 that are explicitly and specifically dictated by Washington state statute RCW 70.155.100.

**Statutory authority for adoption:** RCW 70.155.110; RCW 70.345.020

**Statute being implemented:** RCW 70.155.100.

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Name of proponent:** (person or organization) Washington State Liquor and Cannabis Board

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting: Rules Coordinator	Denise Laflamme, Policy and 1025 Union Avenue SE, Olympia WA 98501	360-974-9336

Implementation: Licensing	Becky Smith, Director of	1025 Union Avenue SE, Olympia WA 98501	360-664-1753
Enforcement: Enforcement	Chandra Wax, Director of	1025 Union Avenue SE, Olympia WA 98501	360-664-1726
<b>Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:</b> None			
<b>Expedited Adoption - Which of the following criteria was used by the agency to file this notice:</b>			
<input type="checkbox"/> Relates only to internal governmental operations that are not subject to violation by a person; <input type="checkbox"/> Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; <input type="checkbox"/> Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect; <input checked="" type="checkbox"/> Content is explicitly and specifically dictated by statute; <input type="checkbox"/> Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or <input type="checkbox"/> Is being amended after a review under RCW 34.05.328.			
<b>Expedited Repeal - Which of the following criteria was used by the agency to file notice:</b>			
<input type="checkbox"/> The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule; <input type="checkbox"/> The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute; <input type="checkbox"/> The rule is no longer necessary because of changed circumstances; or <input type="checkbox"/> Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.			
<b>Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4):</b> Engrossed Substitute Senate Bill 5365, Section 4 (chapter 398, Laws of 2023) directs LCB to increase penalties for violations under RCW 26.28.080 that are explicitly and specifically dictated by RCW 70.155.100.			

**NOTICE**

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO**

Name: Denise Laflamme, Policy & Rules Coordinator  
Agency: Washington State Liquor & Cannabis Board  
Address: 1025 Union Avenue SE, Olympia WA 98501  
Phone: 360-974-9336  
Fax: 360-704-5027  
Email: rules@lcb.wa.gov  
Other:

**AND RECEIVED BY** (date) March 26, 2024

<b>Date:</b> January 17, 2024	<b>Signature:</b>
<b>Name:</b> David Postman	
<b>Title:</b> Chair	

WAC 314-35-075 Category I—Violations that create a direct or immediate threat to public health, safety, or both. Category I: Violations that create a direct or immediate threat to public health, safety, or both.

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
<del>Sales to persons under twenty-one. RCW 26-28-080</del>	<del>\$1,000 monetary penalty.</del>	<del>\$2,500 monetary penalty.</del>	<del>\$5,000 monetary penalty and a 6-month license suspension.</del>	<del>\$10,000 monetary payment and a 12-month license suspension.</del>	<del>Cancellation of license with no possibility of reinstatement for 5 years.</del>
<del>Allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting. RCW 70.345.100 WAC 314-35-040</del>	<del>\$200 monetary penalty</del>	<del>\$600 monetary penalty</del>	<del>\$2,000 monetary penalty and a 6-month license suspension</del>	<del>\$3,000 monetary penalty and a 12-month license suspension</del>	<del>Cancellation of license with no possibility of reinstatement for 5 years</del>
Obstruction: Misrepresentation of fact; not permitting physical presence. RCW 70.345.030(2)	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Sell, give, or permit to sell or give a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law. RCW 70.345.030 WAC 314-35-055	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Conduct violations: Permitting or engaging in criminal conduct, or both. Title 9 RCW Title 9A RCW Chapter 69.50 RCW Chapter 70.155 RCW Chapter 70.158 RCW	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years

Deleted: Sales to persons under twenty-one, a

Deleted: RCW 26.28.080¶

<b>Violation Type</b>	<b>1st Violation in a three-year period</b>	<b>2nd Violation in a three-year period</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
Chapter 70.345 RCW Chapter 82.24 RCW Chapter 82.26 RCW WAC 314-35-045					
Selling, giving, or permitting to give a vapor product or products to persons under twenty-one by any person other than a licensed retailer. RCW 26.28.080	\$50 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty

[Statutory Authority: Chapter 70.345 RCW, RCW 82.24.250, 82.32.300, and 2019 c 15 and 2019 c 445. WSR 20-01-074, § 314-35-075, filed 12/11/19, effective 1/1/20.]