



Washington State
Liquor and Cannabis Board

Date: March 27, 2024

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

From: Denise Laflamme, Rules Coordinator

Copy: Will Lukela, Director
Toni Hood, Deputy Director
Justin Nordhorn, Director of Policy and External Affairs
Becky Smith, Director of Licensing and Regulation
Chandra Wax, Director of Education and Enforcement
Cassidy West, Policy & Rules Manager

Subject: Request for approval of final rules (CR 103) regarding implementing Engrossed Substitute Senate Bill (ESSB) 5365 (2023) to increase penalties for licensed retailers who sell tobacco, cigarette or vapor products to minors

The Rules Coordinator requests that the Board adopt the final rules and approve the CR 103 for revisions to WAC 314-35-075 to implement ESSB 5365 from the 2023 legislative session. This law increases penalties the LCB may impose for violations under RCW 70.155.100 for licensed retailers who sell tobacco, cigarette, or vapor products to persons under 21.

The Board approved this rulemaking as expedited on January 17, 2024, which provided for a 45-day period for objections. No objections have been submitted during this time and we are able to file the CR 103 for final adoption of the rule. A CR 103 memorandum, CR 103 form, concise explanatory statement, and rule text are attached.

If approved, the CR 103 form and rule text will be filed with the Code Reviser, and the rules will be effective April 27, 2024.

_____ Approve _____ Disapprove _____
David Postman, Chair Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member Date

_____ Approve

_____ Disapprove

Jim Vollendroff, Board Member Date

Attachments: CR 103 Memorandum
Concise Explanatory Statement



CR 103 Memorandum

Regarding Title 314 WAC – Engrossed Substitute Senate Bill 5365 increasing penalties to retail licensees who sell or give cigarette, tobacco or vapor products to people under 21.

Date: March 27, 2024
Presented by: Denise Laflamme, Policy and Rules Coordinator

Background

The Washington State Legislature passed [Engrossed Substitute Senate Bill 5365](#) (ESSB 5365) (Chapter 398, Laws of 2023) on April 20, 2023. In passing this bill, the legislature increased monetary penalties the Washington State Liquor and Cannabis Board (Board) may impose under [RCW 70.155.100](#) against licensed retailers who sell or give cigarette, tobacco, or vapor products to persons under 21. The legislation increased penalties for violations of [RCW 26.28.080](#) such that:

- A monetary penalty of \$1,000 for the first violation within any three-year period.
- A monetary penalty of \$2,500 for the second violation within any three-year period.
- A monetary penalty of \$5,000 and suspension of the license for a period of six months for the third violation within any three-year period.
- A monetary penalty of \$10,000 and suspension of the license for a period of 12 months for the fourth violation within any three-year period.
- Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any three-year period.

Because these changes are explicitly and specifically dictated by statute, the expedited rulemaking process was used, consistent with the Administrative Procedures Act ([RCW 34.05.353](#)). A CR 105 initiating the expedited rulemaking proceedings to update [WAC 314-35-075](#) was [filed](#) on January 17, 2024.

Stakeholder Engagement

Implementation of ESSB 5365 was dictated by statute and completed through expedited rulemaking. The amendments necessary to update penalties in Title 314 WAC are technical.

Technical amendments do not change the form or substance of these rules and stakeholder engagement was not necessary or required.

Rule Necessity

Amendments were needed to implement Section 4 of ESSB 5365, effective July 23, 2023.

Description of Rule Changes

Amended Title 314 WAC - WAC 314-35-075

Variance between proposed rule (CR 105) and final rule:

- There were no changes between the proposed rule and the final rule.

Rule Implementation

Informing Persons Impacted by the Rule

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

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

Promoting and Assisting Education

LCB will promote and assist education through technical assistance.

- LCB staff are available to respond to phone and email inquiries about the rule.
- Agency leadership and staff have proactively coordinated updates to agency websites, forms, and publications to replace the term “marijuana” with “cannabis”.
- Rule 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 rule.

Training and Informing LCB Staff

The LCB will 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

The LCB will evaluate the effectiveness of these rules in the following ways, including but not limited to:

- Monitoring questions received after the effective date of these rules, and adjusting training and guidance accordingly.
- Monitoring requests for rule language revisions or changes.
- Monitoring requests for rule interpretation.
- Monitoring licensee feedback including, but not limited to, requests for assistance.



RULE-MAKING ORDER

PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: The Washington State Liquor and Cannabis Board (Board) has adopted amendments to the rules below to implement Engrossed Substitute Senate Bill 5365 (Chapter 398, Laws of 2023) that increases penalties the Board can impose on licensed retailers who sell or give cigarette, tobacco, or vapor products to persons under 21 years of age.

Citation of rules affected by this order:

New:
 Repealed:
 Amended: WAC 314-35-075
 Suspended:

Statutory authority for adoption: RCW 70.155.110: RCW 70.345.020

Other authority: None.

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 24-03-089 on January 17, 2024 (date).
 Describe any changes other than editing from proposed to adopted version: No changes.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
 Address:
 Phone:
 Fax:
 TTY:
 Email:
 Web site:
 Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>1</u>	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>1</u>	Repealed	___

Date Adopted: March 27, 2024

Name: David Postman

Title: Chair

Signature:

Place signature here

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
<u>Sales to persons under twenty-one.</u> <u>RCW 26-28-080</u>	<u>\$1,000 monetary penalty</u>	<u>\$2,500 monetary penalty</u>	<u>\$5,000 monetary penalty and a 6-month license suspension</u>	<u>\$10,000 monetary penalty and a 12-month license suspension</u>	<u>Cancellation of license with no possibility of reinstatement for 5 years</u>
((Sales to persons under twenty-one,)) Allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting. ((RCW 26.28.080)) RCW 70.345.100 WAC 314-35-040	\$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
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 Chapter 70.345 RCW Chapter 82.24 RCW Chapter 82.26 RCW WAC 314-35-045	\$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

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
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



Notice of Permanent Rules

Regarding Amendment to Title 314 Chapter 35 Section 075 WAC – Engrossed Substitute Senate Bill 5365 Increasing Penalties.

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of amendments to Title 314 WAC.

The Administrative Procedure Act ([RCW 34.05.325\(6\)](#)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. The concise explanatory statement must be provided to any person upon request, or from whom the WSLCB received comment.

The WSLCB appreciates and encourages your involvement in the rule making process. If you have questions, please contact Denise Laflamme, Policy and Rules Coordinator, by mail at 1025 Union Avenue SE, Olympia WA 98501, Phone (360) 819-0452, Fax (360) 664-3208, or by e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules:

The Washington State Legislature passed [Engrossed Substitute Senate Bill \(ESSB\) 5365 \(Chapter 398, Laws of 2023\)](#) on April 20, 2023. In passing this bill, the legislature increased monetary penalties the Washington State Liquor and Cannabis Board may impose against cigarette, tobacco, and vapor product retailer licensees for violations under [RCW 70.155.100](#) related to selling or giving cigarette, tobacco, and vapor products to persons under 21. The legislation increased penalties for violations of [RCW 26.28.080](#) such that:

- A monetary penalty of \$1,000 for the first violation within any three-year period.
- A monetary penalty of \$2,500 for the second violation within any three-year period.
- A monetary penalty of \$5,000 and suspension of the license for a period of six months for the third violation within any three-year period.
- A monetary penalty of \$10,000 and suspension of the license for a period of 12 months for the fourth violation within any three-year period.
- Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any three-year period.

The expedited rule-making process was used since the content of the proposed rules is explicitly and specifically dictated by statute, consistent with the Administrative Procedures Act ([RCW 34.05.353](#)).

On March 27, 2024, the Washington State Liquor and Cannabis Board adopted rule amendments to Title 314 Chapter 35 Section 075 WAC to implement ESSB 5365.

Rulemaking history for this adopted rule:

- **CR 105** – filed January 17, 2024, as WSR #24-03-089.

The effective date of these rules is April 27, 2024.

Changes from Proposed Rules (CR-105) to the Rules as Adopted:
There were no changes from the proposed rules to the rules as adopted.