



**Washington State
Liquor and Cannabis Board**

Date: June 18, 2024

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

From: Daniel Jacobs, 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 Prohibited Conduct Rulemaking.

The Rules Coordinator requests that the Board adopt the final rules and approve the CR 103 for changes to the following sections of Title 314 WAC:

| | |
|----------|---|
| Amended | WAC 314-03-100 "What types of activities on a licensed premises require notice to the board?" |
| Amended | WAC 314-11-015 "What are my responsibilities as a liquor licensee?" |
| Repealed | WAC 314-11-050 "What types of conduct are prohibited on a premises with a liquor license?" |
| Amended | WAC 314-17-105 "What are the penalties when a permit holder violates a liquor law or regulation?" |
| Amended | WAC 314-29-020 "Group 1 violations against public safety." |
| Amended | WAC 314-29-038 "Group 5 public safety violations for sports entertainment facility licenses." |
| Amended | WAC 314-52-113 "Brand signs and point-of-sale displays on retail licensed premises." |

The Board has been briefed on the rule development background and public comment received for this rulemaking project. A CR 103 memorandum, CR 103 form, concise explanatory statement, and rule text are attached.

If approved, the concise explanatory statement will be sent to everyone who provided public comment or testimony, the CR 103 form and rule text will be filed with the Code Reviser, and the amended rules and repeal of WAC 314-11-050 will be effective July 19, 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

Re: Prohibited Conduct Rulemaking.

Date: June 18, 2024
Presented by: Daniel Jacobs, Rules Coordinator

Background

[WAC 314-11-050](#) (hereinafter “prohibited conduct rule”) defines conduct that is prohibited at liquor licensed premises. The rule language has not been changed since WAC 314-11-050 was initially created [in 2001](#). The language of the rule was taken almost verbatim from a prior iteration, WAC 314-16-125, that was known as the “lewd conduct rule.” WAC 314-16-125 was initially created in [1975](#), and further amended in [1981](#), [1982](#), and [1991](#).

On January 9, 2024, [Senate Bill \(SB\) 6105](#), an act relating to creating safer working conditions in adult entertainment establishments, was first read in the Washington State Senate. The language of SB 6105 appeared to contemplate adult entertainment establishments receiving liquor licenses. None of the language of the bill referenced the prohibited conduct rule.

During the weekend of January 26-27, 2024, Enforcement & Education staff with the Liquor and Cannabis Board (Board) participated in enforcement activity with the City of Seattle’s Joint Enforcement Team (JET). Several of the licensees visited included historically gay venues in the greater Seattle area.

On January 30, 2024, [Substitute Senate Bill 6105](#) was introduced, which specifically instructed the Board to amend rules to allow adult entertainment establishments to receive liquor licenses.

Following the weekend enforcement actions in Seattle, the Board heard substantial concerns expressed by the LGBTQ+ community about the prohibited conduct rule, especially during the Board meeting on [Wednesday, January 31, 2024](#). That same day, the Board received six petitions for rulemaking requesting the repeal of the prohibited conduct rule.

On February 1, 2024, the Board issued a [press release](#) announcing that it was immediately halting enforcement of the prohibited conduct rule, and would be initiating rulemaking proceedings to examine the prohibited conduct rule and determine whether it should be amended or repealed.

During the [February 6, 2024 Board caucus](#), staff with the Director's Office Policy & Rules team discussed the petitions received and a tentative timeline for rulemaking on amending or repealing the prohibited conduct rule. It was further announced that a CR-101 (preproposal statement of inquiry) would be presented at the next week's February 14, 2024 board meeting.

On February 7, 2024, floor amendments to Substitute Senate Bill (SSB) 6105 were accepted, [explicitly directing](#) the Board to repeal WAC 314-11-050 in its entirety, and the proposed legislation passed the Senate.

On February 14, 2024, the Board voted to initiate rulemaking on amending or repealing the prohibited conduct rule ([WSR #24-05-037](#)).

On February 27, 2024, the House passed an [amended](#) SSB 6105 to which now included language preempting the Board from creating or enforcing any rule that restricts what body parts can be shown in liquor licensed establishments.

On March 5, 2024, the Senate concurred in [Engrossed Substitute Senate Bill \(ESSB\) 6105](#) which both directs the Board to repeal WAC 314-11-050 and precludes the Board from creating or enforcing any rule in the future that restricts the exposure of body parts by any licensee or anyone under their control or patrons, or otherwise restricting sexually oriented conduct of any licensee or anyone under their control or patrons.

The bill was delivered to the Governor on March 8, 2024.

On March 13, 2024, the Board [accepted](#) the petitions for rulemaking seeking repeal of the prohibited conduct rule.

On March 25, 2024, the Governor signed [ESSB 6105 \(chapter 250, Laws of 2024\)](#) into law.

The CR 102 was filed on April 24, 2024 ([WSR 24-10-044](#)) with the proposed rule changes identified in the table below. Two written public comments were received prior to the public hearing in support of the proposed rule changes. The public hearing was held on June 5, 2024 and one person testified in support of the proposed rule changes.

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Rule Necessity & Description of Rule Changes

| Rule Section | Proposed Change | Necessity |
|---|---|---|
| WAC 314-03-100 What types of activities on a licensed premises require notice to the board? (AMENDED) | Changed format of rule title from question to statement. Striking Subsection (1). | Improving clarity without changing effect To make rules consistent with legislative mandate in Sections 4 and 5 of Engrossed Substitute Senate Bill 6105. |
| WAC 314-11-015 What are my responsibilities as a liquor licensee? (AMENDED) | Changed format of rule title from question to statement. Removal of an excess comma in subsection (2) Removed words "or dance" from subsection (4)(b) regarding prohibition on allowing a person to spend time with a patron for direct or indirect compensation. Removed sentence after subsection (4)(b) directing to WAC 314-11-050 for further guidance. | Improving clarity without changing effect. To make rules consistent with legislative mandate in Sections 4 and 5 of Engrossed Substitute Senate Bill 6105. |
| WAC 314-11-050 What types of conduct are prohibited on a premises with a liquor license? (REPEALED) | REPEALED | Mandated by the legislature in Section 5 of Engrossed Substitute Senate Bill 6105. |
| WAC 314-17-105 What are the penalties when a permit holder violates a liquor law or regulation? (AMENDED) | Changed format of rule title from question to statement. Corrected citation in Disorderly Conduct row of penalty table to WAC 314-11-015. Deleted row in penalty table related to violations of WAC 314-11-050. | Improving clarity without changing effect. To make rules consistent with legislative mandate in Sections 4 and 5 of Engrossed Substitute Senate Bill 6105. |
| WAC 314-29-020 Group 1 Violations against public safety. (AMENDED) | Deleted row in penalty table for violations of "Lewd Conduct" rule in WAC 314-11-050. | To make rules consistent with legislative mandate in Sections 4 and 5 of Engrossed Substitute Senate Bill 6105. |
| WAC 314-29-038 Group 5 public safety violations for sports entertainment facility licenses. (AMENDED) | Deleted row in penalty table for violations of "Lewd Conduct" rule in WAC 314-11-050. | To make rules consistent with legislative mandate in Sections 4 and 5 of Engrossed Substitute Senate Bill 6105. |

| | | |
|--|--|--|
| <p>WAC 314-52-113</p> <p>Brand signs and point-of-sale displays on retail licensed premises</p> <p>(AMENDED)</p> | <p>Deleted subsection (3)(c) referencing violations of WAC 314-11-050.</p> | <p>To make rules consistent with legislative mandate in Sections 4 and 5 of Engrossed Substitute Senate Bill 6105.</p> |
|--|--|--|

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

No changes have been made between the proposed rule and final rule language.

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.



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 as described in WSR 24-10-044 to repeal the prohibited conduct rule at WAC 314-11-050 and strike references to it from other parts of Title 314 WAC as described below, and in previous filing WSR 24-10-044:

| | |
|----------|---|
| Amended | WAC 314-03-100 "What types of activities on a licensed premises require notice to the board?" |
| Amended | WAC 314-11-015 "What are my responsibilities as a liquor licensee?" |
| Repealed | WAC 314-11-050 "What types of conduct are prohibited on a premises with a liquor license?" |
| Amended | WAC 314-17-105 "What are the penalties when a permit holder violates a liquor law or regulation?" |
| Amended | WAC 314-29-020 "Group 1 violations against public safety." |
| Amended | WAC 314-29-038 "Group 5 public safety violations for sports entertainment facility licenses." |
| Amended | WAC 314-52-113 "Brand signs and point-of-sale displays on retail licensed premises." |

All of this is being done consistent with, and in part pursuant to, Engrossed Substitute Senate Bill 6105 (Sections 4, 5, chapter 250, Laws of 2024).

Citation of rules affected by this order:

New:

Repealed: WAC 314-11-050

Amended: WAC 314-03-100; WAC 314-11-015; WAC 314-17-105; WAC 314-29-020; WAC 314-29-038; WAC 314-52-113

Suspended: _____

Statutory authority for adoption: RCW 66.08.030

Other authority: Engrossed Substitute Senate Bill 6105 (Sections 4 and 5, chapter 250, Laws of 2024).

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 24-10-044 on April 24, 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: Daniel Jacobs, Rules & Policy Coordinator

Address: 1025 Union Avenue SE, Olympia WA 98501

Phone: 360-480-1238

Fax: 360-664-3208

TTY:

Email: rules@lcb.wa.gov

Web site: www.lcb.wa.gov

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 | 6 | Repealed | 1 |

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

| | | | | | |
|-----|-----|---------|--|----------|-----|
| New | ___ | Amended | | Repealed | ___ |
|-----|-----|---------|--|----------|-----|

The number of sections adopted on the agency's own initiative:

| | | | | | |
|-----|-----|---------|---|----------|----------|
| New | ___ | Amended | 6 | Repealed | <u>1</u> |
|-----|-----|---------|---|----------|----------|

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

| | | | | | |
|-----|-----|---------|-----|----------|-----|
| New | ___ | Amended | ___ | Repealed | ___ |
|-----|-----|---------|-----|----------|-----|

The number of sections adopted using:

| | | | | | | |
|--------------------------------|-----|-----|---------|-----|----------|-----|
| Negotiated rule making: | New | ___ | Amended | ___ | Repealed | ___ |
| Pilot rule making: | New | ___ | Amended | ___ | Repealed | ___ |
| Other alternative rule making: | New | | Amended | 6 | Repealed | 1 |

Date Adopted: June 18, 2024

Name: David Postman

Title: Chair

Signature:

Place signature here

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-11-050

What types of conduct are prohibited on a premises with a liquor license?

WAC 314-03-100 ((What types of)) Activities on a licensed premises ((require)) requiring notice to the board(?). Liquor licensees must notify their local enforcement office in writing at least five days prior to conducting the following activities unless the licensee has received an exception from their enforcement officer:

~~(1) ((Male/female dance reviews, subject to the provision of WAC 314-11-050;~~

~~(2)) Live boxing or wrestling;~~

~~((3))~~ (2) Contests or games where patrons are part of the entertainment;

~~((4))~~ (3) Hours of operation in between 2:00 a.m. and 6:00 a.m. for licensees that sell liquor for on-premises consumption;

~~((5))~~ (4) Closing the business to the general public for a private party; and

~~((6))~~ (5) Outside service for one-time events such as a holiday celebration where liquor service and consumption is planned to extend to an area of the premises that does not have board approval for liquor service. The licensee must have leasehold rights to the area where alcohol service and consumption is planned.

WAC 314-11-015 ((What are my)) Responsibilities as a liquor licensee (?). (1)(a) Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee.

(b) The penalties for violations of liquor laws or rules are in: WAC 314-29-015 through 314-29-035, as now or hereafter amended, for licensees; and WAC 314-17-105 and 314-17-110, as now or hereafter amended, for employees who hold mandatory alcohol server training permits. These rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a liquor law or rule.

(2) Licensees and their employees also have the responsibility to conduct the licensed premises in compliance with the following laws, as they now exist or may later be amended:

- Titles 9 and 9A RCW, the criminal code laws;
- Title 69 RCW, which outlines the laws regarding controlled substances; and
- Chapters 70.155((7)) and 82.24 RCW, and RCW 26.28.080 which outline laws regarding tobacco.

(3) Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not:

(a) Be disorderly or apparently intoxicated on the licensed premises;

(b) Allow any disorderly person to remain on the licensed premises;

(c) Engage in or allow behavior that provokes conduct which presents a threat to public safety;

(d) Consume liquor of any kind while working on the licensed premises; except that:

(i) Entertainers per WAC 314-02-010 may drink while performing under the following conditions:

(A) Alcohol service must be monitored by MAST servers;

(B) Drinks must be served in unlabeled containers;

(C) Entertainers may not advertise any alcohol brands or products;

(D) Entertainers may not promote drink specials; and

(E) If any member of the entertainment group is under 21 years of age, alcohol may not be consumed by any member of the group while performing.

(ii) Licensed beer manufacturers and their employees may sample beer of their own manufacture for manufacturing, evaluating or pricing product in areas where the public is not served, so long as the licensee or employee does not become apparently intoxicated;

(iii) Licensed wine manufacturers and their employees may:

(A) Sample wine for manufacturing, evaluating, or pricing product, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public; and

(B) Sample wine of their own manufacture for quality control or consumer education purposes, so long as the licensee or employee does not become apparently intoxicated.

(e) Engage in, or allow others to engage in, conduct on the licensed premises which is prohibited by any portion of Titles 9, 9A, or 69 RCW;

(f) Engage in the consumption of any type of cannabis, useable cannabis, or cannabis-infused products in a liquor licensed business, including outdoor service areas or any part of the property owned or controlled by the licensee;

(g) Allow any person to consume any type of cannabis, useable cannabis, or cannabis-infused products in a liquor licensed business, including outdoor service areas or any part of the property owned or controlled by the licensee;

(h) Allow any person consuming, or who has consumed on any part of the licensed premises, any type of cannabis, useable cannabis, or cannabis-infused products to remain on any part of the licensed premises; or

(i) Sell or serve liquor by means of drive-through service from pickup or pass-through windows.

(4) Licensees have the responsibility to control the interaction between the licensee or employee and their patrons. At a minimum, licensees or employees may not:

(a) Solicit any patron to purchase any beverage for the licensee or employee, or allow a person to remain on the premises for such purpose;

(b) Spend time (~~or dance~~) with, or permit any person to spend time (~~or dance~~) with, any patron for direct or indirect compensation by a patron.

(~~(See WAC 314-11-050 for further guidelines on prohibited conduct.)~~)

AMENDATORY SECTION (Amending WSR 10-12-124, filed 6/2/10, effective 7/3/10)

WAC 314-17-105 (~~(What are the)~~) Penalties when a permit holder violates a liquor law or regulation(~~(?)~~). Penalties assessed for violations within a three-year period will normally be as follows:

| Violation Type | 1st Violation | 2nd Violation | 3rd Violation | 4th Violation |
|--|---|--|--|-------------------------------------|
| AFTER HOURS: Selling, serving or allowing alcohol to be consumed between 2 a.m. and 6 a.m. See WAC 314-11-070. | 5-day permit suspension OR \$100 monetary option | 10-day permit suspension OR \$200 monetary option | 30-day permit suspension OR \$400 monetary option | Revocation of permit |
| DISORDERLY CONDUCT: Disorderly conduct by a licensee or employee, or allowing patrons to engage in disorderly conduct. See WAC ((314-11-050)) <u>314-11-015</u> . | 5-day permit suspension OR \$100 monetary option | 10-day permit suspension OR \$200 monetary option | 30-day permit suspension OR \$400 monetary option | Revocation of permit |
| FALSIFICATION OF PERMIT: Falsifying a class 12 or 13 permit or possessing a class 12 or 13 permit contrary to this title. See RCW 66.20.310 and WAC 314-17-025. | 5-day permit suspension OR \$100 monetary option | 10-day permit suspension OR \$200 monetary option | 30-day permit suspension OR \$400 monetary option | Revocation of permit |
| INTOXICATED PERSONS: Selling or serving to an apparently intoxicated person or allowing such a person to possess or consume alcohol. See RCW 66.44.200 and WAC 314-11-035. | 5-day permit suspension OR \$100 monetary option | 10-day permit suspension OR \$200 monetary option | 30-day permit suspension OR \$400 monetary option | Revocation of permit |
| ((LEWD CONDUCT: Allowing lewd conduct on a retail licensed premises. See WAC 314-11-050.)) | 5-day permit suspension OR \$100 monetary option | 10-day permit suspension OR \$200 monetary option | 30-day permit suspension OR \$400 monetary option | Revocation of permit)) |
| MISCELLANEOUS: Violation of other retail liquor laws or regulations. | 5-day permit suspension OR \$100 monetary option | 10-day permit suspension OR \$200 monetary option | 30-day permit suspension OR \$400 monetary option | Revocation of permit |
| MINORS: Selling or serving alcohol to a person under twenty-one years of age. See RCW 66.44.310 and WAC 314-11-020. | 5-day permit suspension OR \$200 monetary option | 10-day permit suspension OR \$400 monetary option | 30-day permit suspension OR \$500 monetary option | Revocation of permit |
| MINORS: Allowing a person under twenty-one years of age to frequent a restricted premises or area. See RCW 66.44.310 and WAC 314-11-020. | 5-day permit suspension OR \$100 monetary option | 10-day permit suspension OR \$200 monetary option | 30-day permit suspension OR \$400 monetary option | Revocation of permit |
| OBSTRUCTING AN OFFICER: Obstructing a law enforcement officer, or failure to allow an inspection. See RCW 66.28.090. | 5-day permit suspension OR \$100 monetary option | 10-day permit suspension OR \$200 monetary option | 30-day permit suspension OR \$400 monetary option | Revocation of permit |

| Violation Type | 1st Violation | 2nd Violation | 3rd Violation | 4th Violation |
|--|--|---|---|----------------------|
| OTHER VIOLATION OF LAWS: Conviction of liquor laws, driving under the influence or felony. | 5-day permit suspension OR \$100 monetary option | Revocation of permit | | |
| PERMIT: Failure to produce permit or identification upon request. See RCW 66.20.310 and 66.20.180. | 5-day permit suspension OR \$100 monetary option | 10-day permit suspension OR \$200 monetary option | 30-day permit suspension OR \$400 monetary option | Revocation of permit |
| PRIVATE CLUBS: Prohibitions involving club liquor and use by the general public. See WAC 314-40-010. | 5-day permit suspension OR \$100 monetary option | 10-day permit suspension OR \$200 monetary option | 30-day permit suspension OR \$400 monetary option | Revocation of permit |

[Statutory Authority: RCW 66.08.030 and 66.20.330. WSR 10-12-124, § 314-17-105, filed 6/2/10, effective 7/3/10. Statutory Authority: RCW 66.08.030, 66.12.160, 66.44.010, 66.44.200, 66.44.240, 66.44.270, 66.24.291 [66.44.290], 66.44.310. WSR 04-18-038, § 314-17-105, filed 8/25/04, effective 9/25/04. Statutory Authority: RCW 66.08.030, 66.20.300, 66.20.310, 66.20.320, 66.20.330, 66.20.340, 66.20.350. WSR 01-03-085, § 314-17-105, filed 1/17/01, effective 2/17/01.]

AMENDATORY SECTION (Amending WSR 18-21-115, filed 10/17/18, effective 11/17/18)

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 and cannabis 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 |
| (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 |

| 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 |
|---|---|------------------------------------|------------------------------------|------------------------------------|
| 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 | | |

AMENDATORY SECTION (Amending WSR 16-19-106, filed 9/21/16, effective 10/22/16)

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 \$0.50 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 | Penalty to be determined by the board, including possible 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 \$0.50 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 | Penalty to be determined by the board, including possible 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 | 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 \$0.50 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 | Penalty to be determined by the board, including possible 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 |
|---|---|---|--|---|
| ((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 \$0.50 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 | Penalty to be determined by the board, including possible 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 \$0.50 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 | Penalty to be determined by the board, including possible 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* | Penalty to be determined by the board, including possible cancellation of license |
| 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* | Penalty to be determined by the board, including possible cancellation of license |
| 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* | Penalty to be determined by the board, including possible cancellation of license |

* "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.

WAC 314-52-113 Brand signs and point-of-sale displays on retail licensed premises. Manufacturers, importers or distributors may furnish brand signs and point-of-sale material to retailers under the following conditions:

(1) The brand signs and point-of-sale material shall have no value to the retailer except as brand advertisement; such signs as those that provide illumination for cash registers, pool tables, and other parts of the premises, have a functional value and are not authorized. The brand signs and point-of-sale material shall remain the property of, and be the responsibility of, the manufacturers, importers or distributors.

(2) Giant inflatables, such as inflated beer cans, bottles, and banners may be provided as point-of-sale to retailers for display purposes inside the licensed premises, provided the following conditions are met:

(a) Novelty items as defined in WAC 314-52-080 are not provided by manufacturers, importers, or distributors to customers in conjunction with the display;

(b) Inflatables are not targeted or appeal principally to youth; and

(c) The display shall be removed if objected to by local officials, or if the board finds it contrary to the public interest.

(3) Costumed individuals representing beer, wine, or liquor manufacturers may be provided as point-of-sale to retailers for display and promotion purposes on their property, provided the following conditions are met:

(a) The costumed individual is limited to the manufacturer, importer, distributor, or employee thereof and the costumed individual's activities on-premises are limited to socializing with customers and not conducting any activity that the retail licensee would otherwise have to assign employees to;

(b) Novelty items as defined in WAC 314-52-080 and the purchase of drinks, are not to be provided to customers by the costumed individual in conjunction with such displays;

(c) ~~((The costumed individual must comply with the regulations regarding lewd and obscene conduct (WAC 314-11-050);~~

~~(d))~~ The costumed individual may not be targeted or appeal principally to youth; and

~~((e))~~ (d) The board may prohibit the use of costumed individuals if the use is contrary to the public interest.



*Equal
Rights Washington*

Together for justice and equity.

Dear LCB Rules Coordinator,

Equal Rights Washington (ERW) is our states' leading LGBTQ+ advocacy non-profit, and we wanted to take this opportunity to provide feedback regarding proposed rules CR 102 to repeal WAC 314-11-050 and to remove references to it in other sections of Title 314 WAC.

During the 2024 legislative Session ERW spent a lot of time on lobbying efforts and public testimony as to ESSB 6105. During this time we have been very consistent regarding our desire for the full repeal of the WAC because of the actions taken by the LCB and city of Seattle's Joint Enforcement Team (JET) in late January. We expressed our organization's concern regarding the impact these actions have left on our community.

We thank you for your continued partnership in listening to our concerns, and want to recognize how well you have received our frustrations. As your rules seem to coincide with ESSB 6105, we want to denote our support for your proposed Rules. The repealing of these antiquated rules will prevent future events such as those taken in late January of this year.

Often times these kinds of spaces are the only ways the LGBTQ+ community can come together. As these spaces are exclusively for adults not having licenses tied to clothing allow us to celebrate our difference without fear of further violations, and without fear of unintentional identification of LGBTQ+ Washingtonians who may not be ready for such attention. Additionally, ESSB 6105 was being supported by Dancers in adult clubs who have a high population of LGBTQ+ members. This makes their workplaces safer, and allows them opportunities to more sustainably make money as your licensees can now sell alcohol for income during their performances.

If there are any opportunities to coordinate on efforts to make Washington safer for LGBTQ+ residents, please reach out to us in the future.

Signed,

Jarel Sanders- Board Chair
info@equalrightswashington.org

From: [Eric Kotz](#)
To: [LCB DL Rules](#)
Subject: Prohibited Conduct Comments
Date: Wednesday, June 5, 2024 1:11:10 AM

External Email

I am submitting a comment regarding the CR-102 that requests repeal of WAC 314-11-050, filed as WSR 24-10-044. I am asking the WA LCB to approve the CR-102, file the CR-103 and fully repeal WAC 314-11-050. Additionally, I am requesting that the board not make any new rules similar to WAC 314-11-050 now or in the future, including any rules that are restrictions on the exposure of body parts or restricting sexually oriented conduct by any licensee.

WAC 314-11-050 negatively impacts the LGBTQ+ community by restricting our freedom of expression, and fostered body image problems that are already too common in the LGBTQ+ community.

In addition to repealing 314-11-050 being the right thing to do, the WA LCB has been mandated to repeal WAC 314-11-050 via ESSB 6105 §5, which states “The liquor and cannabis board shall repeal WAC 314-11-050 in its entirety. The liquor and cannabis board is preempted from adopting any similar rule as provided under section 4 of this act.” For these reasons, I request that the WA LCB file the CR-103 and repeal WAC 314-11-050.

Thank you,
Eric Kotz



Notice of Permanent Rules Regarding Prohibited Conduct Rulemaking

Concise Explanatory Statement

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (LCB) adoption of rule amendments that repeal [WAC 314-11-050](#) (hereinafter "prohibited conduct rule") and strike references to that rule from other parts of 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 LCB received comment.

The LCB appreciates and encourages your involvement in the rule making process. If you have questions, please e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules:

The prohibited conduct rule defines conduct that is prohibited at liquor licensed premises. The rule language has not been changed since WAC 314-11-050 was initially created [in 2001](#). The language of the rule was taken almost verbatim from a prior iteration, WAC 314-16-125, that was known as the "lewd conduct rule." WAC 314-16-125 was initially created in [1975](#), and further amended in [1981](#), [1982](#), and [1991](#).

On January 9, 2024, [Senate Bill \(SB\) 6105](#), an act relating to creating safer working conditions in adult entertainment establishments, was first read in the Washington State Senate. The language of SB 6105 appeared to contemplate adult entertainment establishments receiving liquor licenses. None of the language of the bill referenced the prohibited conduct rule.

During the weekend of January 26-27, 2024, Enforcement & Education staff with the Liquor and Cannabis Board (Board) participated in enforcement activity with the City of Seattle's Joint Enforcement Team (JET). Several of the licensees visited included historically gay venues in the greater Seattle area.

On January 30, 2024, [Substitute Senate Bill 6105](#) was introduced, which specifically instructed the Board to amend rules to allow adult entertainment establishments to receive liquor licenses.

Following the weekend enforcement actions in Seattle, the Board heard substantial concerns expressed by the LGBTQ+ community about the prohibited conduct rule,

especially during the Board meeting on [Wednesday, January 31, 2024](#). That same day, the Board received six petitions for rulemaking requesting the repeal of the prohibited conduct rule.

On February 1, 2024, the Board issued a [press release](#) announcing that it was immediately halting enforcement of the prohibited conduct rule, and would be initiating rulemaking proceedings to examine the prohibited conduct rule and determine whether it should be amended or repealed.

During the [February 6, 2024 Board caucus](#), staff with the Director's Office Policy & Rules team discussed the petitions received and a tentative timeline for rulemaking on amending or repealing the prohibited conduct rule. It was further announced that a CR-101 (preproposal statement of inquiry) would be presented at the next week's February 14, 2024 board meeting.

On February 7, 2024, floor amendments to Substitute Senate Bill (SSB) 6105 were accepted, [explicitly directing](#) the Board to repeal WAC 314-11-050 in its entirety, and the proposed legislation passed the Senate.

On February 14, 2024, the Board voted to initiate rulemaking on amending or repealing the prohibited conduct rule ([WSR #24-05-037](#)).

On February 27, 2024, the House passed an [amended](#) SSB 6105 to which now included language preempting the Board from creating or enforcing any rule that restricts what body parts can be shown in liquor licensed establishments.

On March 5, 2024, the Senate concurred in [Engrossed Substitute Senate Bill \(ESSB\) 6105](#) which both directs the Board to repeal WAC 314-11-050 and precludes the Board from creating or enforcing any rule in the future that restricts the exposure of body parts by any licensee or anyone under their control or patrons, or otherwise restricting sexually oriented conduct of any licensee or anyone under their control or patrons.

The bill was delivered to the Governor on March 8, 2024.

On March 13, 2024, the Board [accepted](#) the petitions for rulemaking seeking repeal of the prohibited conduct rule.

On March 25, 2024, the Governor signed [ESSB 6105 \(chapter 250, Laws of 2024\)](#) into law.

The CR 102 was filed on April 24, 2024 ([WSR 24-10-044](#)) with the proposed rule changes identified in the table below. Two written comments were submitted in support of the proposed draft rules prior to the public hearing. The Public hearing was held on June 5, 2024 and one person testified in support of the proposed rule changes.

Rulemaking history for this adopted rule:

CR 101 – filed February 14, 2024 as WSR #24-05-037

CR 102 – filed April 24, 2024, as WSR #24-10-044

Public hearing held June 5, 2024

The effective date of this amended rule is July 19, 2024.

The Board received two public comments on the rule proposal in the time between the filing of the CR 102 and the public hearing:

1. Equal Rights Washington, June 2, 2024

Dear LCB Rules Coordinator,

Equal Rights Washington (ERW) is our states' leading LGBTQ+ advocacy non-profit, and we wanted to take this opportunity to provide feedback regarding proposed rules CR 102 to repeal WAC 314-11-050 and to remove references to it in other sections of Title 314 WAC.

During the 2024 legislative Session ERW spent a lot of time on lobbying efforts and public testimony as to ESSB 6105. During this time we have been very consistent regarding our desire for the full repeal of the WAC because of the actions taken by the LCB and city of Seattle's Joint Enforcement Team (JET) in late January. We expressed our organization's concern regarding the impact these actions have left on our community.

We thank you for your continued partnership in listening to our concerns[,] and want to recognize how well you have received our frustrations. As your rules seem to coincide with ESSB 6105, we want to denote our support for your proposed Rules. The repealing of these antiquated rules will prevent future events such as those taken in late January of this year.

Often times these kinds of spaces are the only ways the LGBTQ+ community can come together. As these spaces are exclusively for adults not having licenses tied to clothing allow us to celebrate our difference without fear of further violations, and without fear of unintentional identification of LGBTQ+ Washingtonians who may not be ready for such attention. Additionally, ESSB 6105 was being supported by Dancers in adult clubs who have a high population of LGBTQ+ members. This makes their workplaces safer[,] and allows them opportunities to more sustainably make money as your licensees can now sell alcohol for income during their performances.

If there are any opportunities to coordinate on efforts to make Washington safer for LGBTQ+ residents, please reach out to us in the future.

Signed,
Jarel Sanders- Board Chair
info@equalrightswashington.org

2. Eric Kotz, June 5, 2024

I am submitting a comment regarding the CR-102 that requests repeal of WAC 314-11-050, filed as WSR 24-10-044. I am asking the WA LCB to approve the CR-102, file the CR-103 and fully repeal WAC 314-11-050. Additionally, I am requesting that the board not make any new rules similar to WAC 314-11-050 now or in the future, including any rules that are restrictions on the exposure of body parts or restricting sexually oriented conduct by any licensee.

WAC 314-11-050 negatively impacts the LGBTQ+ community by restricting our freedom of expression, and fostered body image problems that are already too common in the LGBTQ+ community.

In addition to repealing 314-11-050 being the right thing to do, the WA LCB has been mandated to repeal WAC 314-11-050 via ESSB 6105 §5, which states “The liquor and cannabis board shall repeal WAC 314-11-050 in its entirety. The liquor and cannabis board is preempted from adopting any similar rule as provided under section 4 of this act.”

For these reasons, I request that the WA LCB file the CR-103 and repeal WAC 314-11-050.

Thank you,
Eric Kotz

Oral testimony was received during the public hearing held on June 5, 2024.

1. Eric Kotz

My name's Eric Kotz. I'm here to comment on the CR-102 that request repeal of WAC 314-11-050. As a member of the LGBT community who lives in Seattle, I've seen a negative impact that WAC 314-11-050 has had on both members of the community and small businesses that cater to the LGBT community. The targeted enforcement of this rule has unfairly burdened these establishments. Repealing WAC 314-11-050 is essential to relieving this burden and will grant local jurisdictions in our state autonomy to regulate nudity in their communities. I urge the board to approve the CR-102, file the CR-103 and fully repeal WAC 314-11-050. In addition to repealing the 314-11-050 being the right thing to do, the Washington Liquor and Cannabis Board has been mandated to repeal the WAC via Senate Bill 6105, which states in Section 5, the Liquor and Cannabis Board shall repeal WAC 314-11-050 in entirety. The Liquor and Cannabis Board is preempted from adopting any similar rule as provided under Section 4 of this act. Additionally, I'm echoing the 6105's request to not make any similar rules to WAC 314-11-050 now or in the future, including any rules that are restrictions on exposure of body parts or restricting sexually oriented conduct by licensees. For these reasons, I request that the Washington Liquor and

Cannabis Board approve the CR-102, file the CR-103, and repeal WAC 314-11-050.
Thank you.

LCB response: Thank you for your input. The rule language filed in the CR 103 is consistent with ESSB 6105 and the repeal of WAC 314-11-050 requested by the testimony.

Was the comment reflected in the adopted rule? The comment is not requesting any changes to the proposed rules.

Were any changes made between the proposed and final adopted rules? No. No changes have been made between the proposed rules in the CR 102 and the final rules.