



## **Notice of Permanent Rules**

**Regarding Chapter 314-55 WAC – Marijuana Licenses, Application Process, Requirements, and Reporting, pertaining specifically to enforcement of marijuana regulations.**

**This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of new sections and amendments to existing rules regarding Chapter 314-55 WAC – Marijuana Licenses, Application Process, Requirements, and Reporting, pertaining specifically to enforcement of Marijuana regulations.**

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 Kathy Hoffman, Policy and Rules Coordinator, at (360) 664-1622 or e-mail at [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

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### **Background and reasons for adopting this rule**

In 2013, the Washington State Liquor and Cannabis Board (Board) adopted rules that established penalties for violations of marijuana statutes and rules. Over time, those statutes and rules have been revised in response to industry evolution, business practices and market fluctuation.

Currently, rules related to marijuana penalties are separated into five main categories:

- Group 1 violations against public safety
- Group 2 regulatory violations
- Group 3 license violations
- Group 4 marijuana producer and/or processor violations
- Group 5 license violations

The current framework includes guidelines regarding the use of mitigating and aggravating circumstances. Penalties include monetary fines, license cancellation and suspension, and may vary according to the category of violation and how many similar violations a licensee has within a four-year window. In some circumstances, licensees may opt for a monetary fine or a license suspension.

The Board's current rules also include a process of offering settlement conferences to licensees who have received notice of an alleged administrative violation, which may be held with a hearing examiner or Board designee. In this process, if a settlement agreement is reached at the settlement conference, the Board may disapprove of the terms. If this occurs, the Board notifies the licensee of the decision and the licensee is provided with an opportunity to renegotiate with the hearings examiner or Board designee, accept the originally recommended penalty, or request an administrative hearing.

In late 2018, the Board initiated inquiry into revising rules related to the marijuana penalty framework by approving a broadly-scoped preproposal statement of inquiry (CR101) for chapter 314-55 WAC. Shortly thereafter, Engrossed Senate Substitute Bill (ESSB) 5318 (Chapter 324, Laws of 2019), originally introduced in February, 2019 guided and directed activities associated with that inquiry. ESSB 5318 provided several directives, including but not limited to the following:

- Specified when the Board may issue a notice of correction under a technical assistance program. The adopted rules establish and frame the notice of correction; a separate rule project is underway to establish the technical assistance program in alignment with the directives of ESSB 5318;
- Expanded on existing programs for compliance education;
- Required rule making regarding penalties, with limits, such as the effect of cumulative violations;
- Specified the types of violations that may result in license cancellation;
- Required consideration of aggravating and mitigating circumstances;
- Provides that the terms of a settlement agreement entered into by a licensee and hearing officer or designee of the Board be given substantial weight by the Board;
- Allowed a licensee to correct violations unrelated to public health and safety within a reasonable amount of time.

The adopted rules reflect the outcome of an inclusive and engaged rule development process occurring from late March of 2019 to October 31, 2019 that shifts focus to a compliance and education-based regulatory approach designed to encourage and support licensee success. Board leadership and staff met with industry representatives and licensees to develop draft conceptual rules nearly a dozen times until draft conceptual rules were released to the public for review and comment on August 29, 2019. Two "Listen and Learn" sessions were held on September 26, and October 31, 2019 respectively. The first session, scheduled for four hours lasted a total of approximately 30 minutes. The second session, also scheduled for four hours, lasted approximately 20 minutes. Few, minor revisions were offered at the "Listen and Learn" sessions. These were considered by staff, and some minor revisions were made to the draft conceptual rules. These are reflected in the proposed and subsequently adopted rules.

The adopted rules accomplish the following:

- Establish a process for the issuance of a notice of correction as opposed to a civil penalty when appropriate;
- Reduce the cumulative effect of escalating penalties from three to two years;
- Provide a deferral option;

- Restructure existing penalty grids by establishing penalty categories based on violation severity and relationship to public health and safety;
- Significantly reduce the number of violations that could result in license cancellation, while balancing penalties across license types;
- Reincorporate and associate statutory references with violation type; reduces all fines by 50% or more; and
- Incorporate the mandates, directives and requirements of ESSB 5318, recently codified in chapter 69.50 RCW.

These adopted rules are necessary for the following reasons:

- To establish enforceable standards that support licensee compliance and business viability, are responsive to the current market landscape, and can withstand the test of time;
- To modernize and update the existing penalty structure; and
- To assure that the intent and directives of ESSB 5318 are realized in rule.

These adopted rule sections and amendments, in addition to adopted technical and clarifying revisions support the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current, dynamic regulatory environment.

#### **Rulemaking history for this adopted rule:**

**CR-101** – filed November 5, 2018 as WSR #18-22-099;  
**CR 102** – filed November 13, 2019 as WSR #19-23-043.  
 Public hearing held January 8, 2020.

#### **Public comment received on the rule proposal**

The following comments were received as indicated below, and are presented in their native form, including formatting, text and spelling. A response to each comment is provided, along with an indication regarding whether the comment was reflected in the adopted rule.

##### **1. Oral testimony provided during CR102 hearing, held January 8, 2020:**

From Kristin Baldwin, Executive Director, Cannabis Alliance: General support for rule proposal and appreciation of rule development process.

**WSLCB response:** The WSLCB appreciates this comment, in-person attendance at the public hearing, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to continued partnership on future policy and rule development projects.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

**2. Letter, dated January 8, 2020, attached to email message received January 8, 2020:**

“SUBJECT: Comments Regarding Proposed Rule RCW 34.05.320 (WSR 19-23-043)

Proposed changes to the existing rules of the enforcement of marijuana regulations may impact the health of minors. Violations related to minors and general advertising, listed below, are currently and should remain listed as a direct threat to public health and safety. These violations should continue to be considered the most serious violations. Marijuana use by minors is associated with numerous negative health and psychological outcomes on the developing brain. An adverse effect of reducing penalties may result in an increase of violations related to minors and general advertising, consequently underage marijuana use may increase.

Between January 1, 2019 and November 26, 2019, the total number of violations to marijuana producers, processors, and retailers in Washington State was 516; approximately 7% (N=34) of those violations were for general advertisement, 13% (N=66) were for sales and service to minors and allowing minors to frequent restricted areas<sup>1</sup>. Maintaining strict regulation will keep these percentages low, ultimately limiting marijuana use by minors.

**Category I - Group 1 violation type: Furnishing to minor, allowing a minor to frequent retail store, allowing a minor to frequent a nonretail licensed premise or occupy a transport vehicle.**

- 1) **Furnishing to minor.**
  - a) Penalties should not be reduced or modified.
- 2) **Allowing a minor to frequent.**
  - a) Penalties should not be recategorized and remain under Category I – Group 1.
  - b) Penalties should not be reduced or modified.
- 3) **Allowing a minor to frequent a nonretail licensed premise or occupy a transport vehicle.**
  - a) Penalties should not be recategorized and remain under Category I – Group 1.
  - b) Penalties should not be reduced or modified.

Recategorizing and reducing fines for penalties involving minors and general advertising will have an adverse effect on the use of marijuana by minors, normalizing marijuana and increasing the perception that marijuana is harmless. Advertising of marijuana can lower perceptions of harm which is associated with greater intentions to use and more frequent and intense use of marijuana.<sup>2</sup>

**Category VI - Group II violation types: General Advertising.**

- 4) **General advertising violations.**
  - a) Penalties should not be reduced or modified.

Significantly restructuring and revising existing rules regarding enforcement of marijuana regulation could have negative consequences to Washington State minors.

Thank you for this opportunity to provide comment.

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<sup>1</sup> <https://data.lcb.wa.gov/dataset/Violations-Dataset/dx3i-tzh2/data>

<sup>2</sup> <https://pediatrics.aappublications.org/content/113/6/e632.full>



# Washington State Liquor and Cannabis Board

## Proposed Rule Making WSR 19-23-043

| Violation Group/Category |  | Violation Type   | 1 <sup>st</sup> violation   | 2 <sup>nd</sup> violation in a 3-yr. window   | 3 <sup>rd</sup> violation in a 3-yr. window | 4 <sup>th</sup> violation in a 3-yr. window |
|--------------------------|--|--|---|---|---|---|
| <b>Current</b>           | Category I - Group 1 violations are considered the most serious because they present a direct threat to public safety. | <b>Furnishing to minor:</b> Sale or otherwise provide marijuana and/or paraphernalia to a person under twenty-one years of age. Chapter 314-55 WAC Chapter 69.50 RCW | Retailer/transporter: 10-day suspension or \$2,500 monetary option<br><br>Producer/processor: Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine | Retailer/transporter: 30-day suspension<br><br>Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine | Cancellation of license                     |   |
|                          |  | <b>Allowing a minor to frequent retail store.</b> Chapter 69.50 RCW  | \$1,000 monetary fine   | \$1,000 monetary fine   | \$1,000 monetary fine                       | \$1,000 monetary fine                       |
|                          |  | <b>Allowing a minor to frequent a nonretail licensed premise or occupy a transport vehicle.</b> Chapter 314-55 WAC   | \$1,000 monetary fine   | \$1,000 monetary fine   | \$1,000 monetary fine                       | \$1,000 monetary fine                       |
|                          |  | Violation Type   | 1 <sup>st</sup> violation   | 2 <sup>nd</sup> violation in a 2-yr. window   | 3 <sup>rd</sup> violation in a 2-yr. window | 4 <sup>th</sup> violation in a 2-yr. window |
| <b>Proposed</b>          | Category II – Violations that create a direct or immediate threat to public health, safety, or both                    | <b>Furnishing to persons under twenty-one years of age, except as allowed in RCW 60.50.357.</b> WAC 314-55-079(1) RCW 69.50.354                                      | 5-day suspension or \$1,250 monetary option   | 10-day suspension or \$7,500 monetary option  | 30-day suspension                           | License cancellation                        |
|                          |  | Violation Type   | Penalty   |   |   |   |
| <b>Proposed</b>          | Category VI – Statutory penalty violations   | <b>Allowing a minor to frequent a retail store.</b> RCW 69.50.357(2)   | \$1,000 monetary fine   | -   | -   | -   |



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|                 |   |  |  |   |   |   |
|-----------------|---|--|--|---|---|---|
|                 |   | <b>Allowing persons under twenty-one years of age to frequent a retail licensed premises.</b><br>RCW 69.50.357 | \$1,000 monetary fine  |   |   |   |
|                 | <b>Violation Group/Category</b>   | <b>Violation Type</b>  | <b>1<sup>st</sup> violation</b>  | <b>2<sup>nd</sup> violation in a 3-yr. window</b>   | <b>3<sup>rd</sup> violation in a 3-yr. window</b>   | <b>4<sup>th</sup> violation in a 3-yr. window</b> |
| <b>Current</b>  | <b>Category VI - Group II</b> – violations involving general regulation and administration of retail or nonretail licenses. | <b>General Advertising: Violations</b><br>Chapter 314-55 WAC   | Retailer/transporter:<br>5-day suspension or \$1,000 monetary option<br><br>Producer/processor:<br>\$1,000 monetary option | Retailer/transporter:<br>10-day suspension or \$2,500 monetary option<br><br>Producer/processor:<br>Tier 1: \$2,500<br>Tier 2: \$5,000<br>Tier 3: \$7,500 monetary fine | Reailer[sic]/transporter:<br>30-day suspension<br><br>Producer/processor:<br>Tier 1: \$15,000<br>Tier 2: \$30,000<br>Tier 3: \$60,000 monetary fine | Cancellation of license                           |
|                 |   | <b>Violation Type</b>  | <b>1<sup>st</sup> violation</b>  | <b>2<sup>nd</sup> violation in a 2-yr. window</b>   | <b>3<sup>rd</sup> violation in a 2-yr. window</b>   | <b>4<sup>th</sup> violation in a 2-yr. window</b> |
| <b>Proposed</b> | <b>Category V</b> – Procedural and Operation Violations   | <b>General advertising violations.</b><br>RCW 69.50.369<br>WAC 314-55-155                                      | \$1,250 monetary fine  | 5-day suspension or \$2,500 monetary option   | 10-day suspension or \$5,000 monetary option  | 30-day suspension or \$10,000 monetary option     |

**WSLCB response:** The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB offers the following response:

- The adopted penalties, even when reduced, are significantly more stringent than similar WSLCB penalties concerning vapor, tobacco, and liquor products.
- WSLCB records indicate that the majority of sales to minors are inadvertent. If WSLCB Enforcement finds that a sale to a minor or minors was intentional or purposeful, penalties may be aggravated and fines increased.
- Advertising regulations now more closely align with current statute, consistent with the intent of ESSB 5318.
- Certain fines related to allowing persons under twenty-one years of age to frequent a premises addressed in RCW 69.50.357 are established in statute. The WSLCB does not have the authority to modify these fines and penalties, as noted in RCW 69.50.357 below:



## Washington State Liquor and Cannabis Board

RCW [69.50.357](#)

### Retail outlets—Rules.

(1)(a) Retail outlets may not sell products or services other than marijuana concentrates, useable marijuana, marijuana-infused products, or paraphernalia intended for the storage or use of marijuana concentrates, useable marijuana, or marijuana-infused products.

(b)(i) Retail outlets may receive lockable boxes, intended for the secure storage of marijuana products and paraphernalia, and related literature as a donation from another person or entity, that is not a marijuana producer, processor, or retailer, for donation to their customers.

(ii) Retail outlets may donate the lockable boxes and provide the related literature to any person eligible to purchase marijuana products under subsection (2) of this section. Retail outlets may not use the donation of lockable boxes or literature as an incentive or as a condition of a recipient's purchase of a marijuana product or paraphernalia.

(iii) Retail outlets may also purchase and sell lockable boxes, provided that the sales price is not less than the cost of acquisition.

(2) Licensed marijuana retailers may not employ persons under twenty-one years of age or allow persons under twenty-one years of age to enter or remain on the premises of a retail outlet. However, qualifying patients between eighteen and twenty-one years of age with a recognition card may enter and remain on the premises of a retail outlet holding a medical marijuana endorsement and may purchase products for their personal medical use. Qualifying patients who are under the age of eighteen with a recognition card and who accompany their designated providers may enter and remain on the premises of a retail outlet holding a medical marijuana endorsement, but may not purchase products for their personal medical use.

(3)(a) Licensed marijuana retailers must ensure that all employees are trained on the rules adopted to implement this chapter, identification of persons under the age of twenty-one, and other requirements adopted by the state liquor and cannabis board to ensure that persons under the age of twenty-one are not permitted to enter or remain on the premises of a retail outlet.

(b) Licensed marijuana retailers with a medical marijuana endorsement must ensure that all employees are trained on the subjects required by (a) of this subsection as well as identification of authorizations and recognition cards. Employees must also be trained to permit qualifying patients who hold recognition cards and are between the ages of eighteen and twenty-one to enter the premises and purchase marijuana for their personal medical use and to permit qualifying patients who are under the age of eighteen with a recognition card to enter the premises if accompanied by their designated providers.

(4) Except for the purposes of disposal as authorized by the state liquor and cannabis board, no licensed marijuana retailer or employee of a retail outlet may open or consume, or allow to be opened or consumed, any marijuana concentrates, useable marijuana, or marijuana-infused product on the outlet premises.

**(5) The state liquor and cannabis board must fine a licensee one thousand dollars for each violation of any subsection of this section. Fines collected under this section must be deposited into the dedicated marijuana account created under RCW 69.50.530.**

[ 2017 c 317 § 13; 2017 c 131 § 1; 2016 c 171 § 1; 2015 2nd sp.s. c 4 § 203; 2015 c 70 § 12; 2014 c 192 § 4; 2013 c 3 § 14 (Initiative Measure No. 502, approved November 6, 2012).]

**Was the comment reflected in the adopted rule?** The comments were not reflected in part the final rule

### **Public Hearing, January 8, 2020:**

One attendee provided comment in support of the rule proposal as noted above.

### **Changes from Proposed Rules (CR-102) to the Rules as Adopted:**

There were no changes to the proposed rules.