



CR 102 Memorandum

Regarding WAC 314-55-040 – What criminal history might prevent a marijuana [cannabis] license applicant from receiving or keeping a marijuana [cannabis] license?

Date: July 7, 2021
Presented by: Jeff Kildahl, Policy and Rules Coordinator

Background

The Washington State Liquor and Cannabis Board (Board) proposes to amend current rules that frame the standards and thresholds for criminal history checks for marijuana [cannabis] licensees.

Initiative 502 (I-502) established a legal framework for the Board to review the criminal history of marijuana [cannabis] license applicants, along with broad rulemaking authority to create rules related to criminal history background check standards. The initial rules concerning this subject were initially established in late 2013, and the most recent revision occurred in early 2016.

Socially Equitable Conditions

This proposal moves toward creation of socially equitable conditions for individuals who have been disproportionately impacted by marijuana [cannabis] criminalization by revising and more fully describing the background check threshold review process for cannabis license applicants and renewing licensees. Among other things, it redesigns the existing criminal history point system that may have created barriers to entry in the legal cannabis market.

Reasons Why Rules May Be Needed

The Board intends to remove unnecessary barriers to entry in the legal marijuana [cannabis] market by adopting a threshold review process for reviewing and evaluating the criminal conviction history of cannabis license applicants and renewing licensees.

Stakeholder Engagement

A CR-101 was filed on February 17, 2021 and the notice to stakeholders was sent by GovDelivery. The public comment period for the CR-101 ended on March 31, 2021. No comments were received during the public comment period. However, four written comments unrelated to the draft conceptual rules were received after the end of comment period. These comments concerned the future availability of cannabis licenses.

As part of the rule development process, a public Listen and Learn session was planned for May 13, 2021, but was rescheduled and held on June 1, 2021. The session was attended virtually by approximately 25 people. Attendees of the Listen and Learn session shared a small amount of feedback on the draft conceptual rules, and their feedback is collected in the comment table as Attachment A. Feedback received in the Listen and Learn session included the following subjects:

- The effect of the changes to cannabis license applicant background checks on true parties of interest contained in WAC 314-55-035
- Possible changes to draft conceptual rule language to expand beyond WSP and FBI background checks only
- Possible changes to draft conceptual rule language to state that delegated LCB staff review background check information
- Reordering subsections of the draft conceptual rule related to the criminal history threshold review
- Differences between the threshold review and the existing criminal history review
- Concerns about consideration of active state supervision and active federal supervision status in the threshold review
- Concerns for applicants who are paying monetary sanctions to Washington courts
- Increasing or eliminating the 90 day hold period for applicants with pending criminal convictions, and the basis for the 90 day hold period
- Appeal rights of a threshold review
- The need for fingerprinting each time an applicant submits information for a background check

Estimated Costs of Compliance

Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. However, an analysis of potential administrative costs was conducted, and is described more fully in the CR 102 form. That analysis

indicates that these rules are not anticipated to result in more than minor costs on businesses as defined in RCW 19.85.020(2).

Description of Rule Changes

Amended section. WAC 314-55-040: The proposal amends the title of WAC 314-55-040 from “What criminal history might prevent a marijuana [cannabis] license applicant from receiving or keeping a marijuana [cannabis] license?” to “Cannabis applicant or licensee background checks”.

Amended subsection. WAC 314-55-040(1): The existing point system table was updated and relocated to amended subsection WAC 314-55-040(3) described below. Language was revised to describe the purpose of background checks and what background checks include.

Amended subsection. WAC 314-55-040(2): Existing language was updated to remove reference to the point system and administrative closure. The subsection was retitled “Review and evaluation of information produced by background checks,” and describes the purpose of background check information review and evaluation.

Amended subsection. WAC 314-55-040(3): Existing language was amended to remove reference and description of exceptions to the prior point system. A new threshold review table was created, describing conviction type, conviction class, time consideration, and determination for threshold review. Additional language was added describing threshold review for any applicant or renewing licensee under active state or federal supervision.

Amended subsection. WAC 314-55-040(4): Existing language requiring the licensee to report any criminal convictions within fourteen days was removed. The subsection was retitled “Pending criminal charge review and evaluation” and describes review and evaluation criteria the Board will consider.

New subsection. WAC 314-55-040(5): The new subsection is titled “Threshold review evaluation criteria” and describes threshold review criteria the Board will consider.

New subsection. WAC 314-55-040(6): The new subsection is titled “Continued reporting” and describes conviction reporting requirements.

WAC 314-55-040 Cannabis License Applicant Background Checks
Public Comments

Comment number	Comment Source	Commenter	Theme	Comment	Date Received
1	Email	Adam	License availability	Hi Katherine my name is Adam I'm looking for cannabis licenses from 2013 until now I never have chance to have one let me know where I should go to get A cannabis licenses thanks you Kathy	4/23/21
2	Email	Deborah Kernes-Nicholson	License availability	Ms. Hoffman I am trying to keep up in WA with rules, regs and requirements. Am I wrong that all licensing is out and no more licensing is open to apply for? I am setting up in Spokane valley and am a holistic health practitioner who is wanting to keep treating patients & clients I'd like to add cannabis for my cancer patients and in doing so I am wanting to apply for licensing to grow, process and scribe to patients/clients in the future. Where would I go to gain the most knowledge so I can apply for licensing in the near future. Best regards, Deborah Kernes-Nicholson	4/23/21
3	Email	Shauna Ballestrasse	License availability	Hello! Are there any plans to open the licensing back up or any protocol where you make the people who are just sitting on them relinquish the license? Black Woman owned business looking to get licensed and I see the ones for resale but wanted to check with you if there is another process. Thank you! Shauna Ballestrasse	4/23/21

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4	Email	Flip Gutierrez	License availability	Good afternoon Katherine, I've been patiently waiting for my opportunity at a retail license. Any idea or on potential expansions of licensees in Yakima valley??	4/23/21
5	Listen and Learn Session	Lukas Hunter	WAC 314-55-040(1)	Lukas Hunter commented about how this subsection applies with true party of interest in WAC 314-55-035, possibly anticipating of potential licensees coming from outside the scope of WSP or FBI background checks.	6/1/2021
6	Listen and Learn Session	Neil Zurawell	WAC 314-55-040(1)	Neil Zurawell suggested changing language regarding background checks by WSP and FBI to say "indices checks conducted by the LCB".	6/1/2021
7	Listen and Learn Session	Lukas Hunter	WAC 314-55-040(2)	Lukas Hunter suggested changing "board" to "delegated LCB staff" because review of background check information is done by LCB staff.	6/1/2021
8	Listen and Learn Session	Lukas Hunter	WAC 314-55-040(3)	Lukas Hunter noted that subsection (6) in the conceptual draft is about threshold review, and suggests moving subsection (6) up to take the place of subsection (3), and placing existing subsections (3) and (5) as sub-subsections below.	6/1/2021
9	Listen and Learn Session	Micah Sherman	WAC 314-55-040(3)	Micah Sherman asked (in chat) the following question: "Would it be possible to have a quick executive summary of the overall changes being proposed here? How would this work in real life vs how it works now? I'm having trouble feeling like I can add value to this without a little context." Nicola Reed and Justin Nordhorn responded and explained the issue of applicants remembering past convictions, the types of convictions, and reducing barriers. Micah responded, "Very Helpful, thank you".	6/1/2021

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9	Listen and Learn Session	Lukas Hunter	WAC 314-55-040(4)	Lukas Hunter asked what the agency considers the benefit of including this language. Nicola Reid responded that the grid in the current rule contains language about supervision, and this is needed to show what factors the board would consider.	6/1/2021
10	Listen and Learn Session	Bailey Hirschburg	WAC 314-55-040(4)	<p>Bailey Hirschburg asked (in chat) the following question: "To get her voting rights back, my friend had to finish paying monetary sanctions to WA courts. If an applicant was nearly done paying fines/fees for a conviction, would LCB consider them, or would it be 'active supervision' by the state?"</p> <p>Nicola Reid responded that the grid in the current rule contains language about supervision, and this is needed to show what factors the board would consider. Kevin responded that including the language shows that the application would be considered.</p>	6/1/2021
11	Listen and Learn Session	Lukas Hunter	WAC 314-55-040(5)	<p>Lukas Hunter commented regarding the 90 day period. He said that if the applicant was a liquor applicant, they could reapply immediately if rejected, but the application window for cannabis would likely be closed after 90 days. This could be prohibitive for innocent. The 90 day timeline should be eliminated unless the application time remains open.</p> <p>Nicola Reid responded that only if the pending convictions would put the applicant over the threshold would the applicant be rejected.</p>	6/1/2021

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12	Listen and Learn Session	Lukas Hunter	WAC 314-55-040(5)	<p>Lukas Hunter asked where the 90 day period comes from in this draft and in the current rule, and why is there a 90 day limitation on the application.</p> <p>Nicola Reid replied that 90 days is mirrored in the liquor rules. It would be possible to maybe extend to 120 days.</p>	6/1/2021
13	Listen and Learn Session	Lukas Hunter	WAC 314-55-040(6)	Lukas Hunter commented about appeal rights of the threshold review.	6/1/2021
14	Listen and Learn Session	Jonathan Moulton	WAC 314-55-040	<p>Jonathan Moulton asked why fingerprinting was required each time an applicant submits information for a background check.</p> <p>Nicola Reid researched this question, and after the session forwarded an email response from Andrea Lee: "Because they are just for licensing – they are not criminals. So WSP destroys them. We do not have the right to keep that information. "</p>	6/1/2021