



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.