



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initiating rulemaking proceedings to examine the prohibited conduct rule and determine whether it should be amended or repealed.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	Changed format of rule title from question to statement.	Improving clarity without changing effect
What types of activities on a licensed premises require notice to the board? (AMENDED)	Striking Subsection (1).	To make rules consistent with legislative mandate in Sections 4 and 5 of Engrossed Substitute Senate Bill 6105.
WAC 314-11-015	Changed format of rule title from question to statement.	Improving clarity without changing effect.
	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.	To make rules consistent with legislative mandate in Sections 4 and 5 of Engrossed Substitute Senate Bill 6105.
	Removed sentence after subsection (4)(b) directing to WAC 314-11-050 for further guidance.	
What are my responsibilities as a liquor licensee? (AMENDED)		
WAC 314-11-050	REPEALED	Mandated by the legislature in Section 5 of Engrossed Substitute Senate Bill 6105.
What types of conduct are prohibited on a premises with a liquor license? (REPEALED)		
WAC 314-17-105	Changed format of rule title from question to statement.	Improving clarity without changing effect.
What are the penalties when a permit holder violates a liquor law or regulation? (AMENDED)	Corrected citation in Disorderly Conduct row of penalty table to WAC 314-11-015.	To make rules consistent with legislative mandate in Sections 4 and 5 of Engrossed Substitute Senate Bill 6105.
	Deleted row in penalty table related to violations of WAC 314-11-050.	
WAC 314-29-020	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.
Group 1 Violations against public safety. (AMENDED)		
WAC 314-29-038	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.
Group 5 public safety violations for sports entertainment facility licenses. (AMENDED)		

<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>
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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.