



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: January 17, 2024

TIME: 11:32 AM

WSR 24-03-089

Agency: Washington State Liquor and Cannabis Board

Title of rule and other identifying information: (describe subject) Title 314 WAC Liquor and Cannabis Board. The Washington State Liquor and Cannabis Board (LCB) is amending rule section 314-35-075 WAC to implement Section 4 of Engrossed Substitute Senate Bill 5365 (chapter 398, Laws of 2023).

Purpose of the proposal and its anticipated effects, including any changes in existing rules: During the 2023 Legislative Session, the Washington State Legislature passed Engrossed Substitute Senate Bill 5365 (chapter 398, Laws of 2023), signed into law by Governor Inslee on May 9, 2023. This legislation increases monetary penalties LCB can impose on licensed retailers under RCW 70.155.100 for violations of RCW 26.28.080 pertaining to selling or giving cigarette, tobacco or vapor products to persons under 21 years of age. This increase in penalties was aimed at ensuring better retailer compliance with tobacco and vapor product possession laws. Penalties are increased to the following:

- A monetary penalty of \$1,000 for the 1st violation within any three-year period (up from \$200)
- A monetary penalty of \$2,500 for the 2nd violation within any three-year period (up from \$600)
- A monetary penalty of \$5,000 and suspension of the license for a period of six months for the 3rd violation within any three-year period (up from \$2000)
- A monetary penalty of \$10,000 and suspension of the license for a period of 12 months for the 4th violation within any three-year period (up from \$3,000)
- Revocation of the license with no possibility of reinstatement for a period of five years for the 5th or more violation within any three-year period (no change)

Reasons supporting proposal: Engrossed Substitute Senate Bill 5365 directs LCB to increase penalties for violations under RCW 70.155.100. LCB is using expedited rulemaking to amend penalties under WAC 314-35-075 that are explicitly and specifically dictated by Washington state statute RCW 70.155.100.

Statutory authority for adoption: RCW 70.155.110; RCW 70.345.020

Statute being implemented: RCW 70.155.100.

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Name of proponent: (person or organization) Washington State Liquor and Cannabis Board

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting: Rules Coordinator	Denise Laflamme, Policy and 1025 Union Avenue SE, Olympia WA 98501	360-974-9336


Implementation: Licensing	Becky Smith, Director of	1025 Union Avenue SE, Olympia WA 98501	360-664-1753
Enforcement: Enforcement	Chandra Wax, Director of	1025 Union Avenue SE, Olympia WA 98501	360-664-1726
Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None			
Expedited Adoption - Which of the following criteria was used by the agency to file this notice:			
<input type="checkbox"/> Relates only to internal governmental operations that are not subject to violation by a person; <input type="checkbox"/> Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; <input type="checkbox"/> Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect; <input checked="" type="checkbox"/> Content is explicitly and specifically dictated by statute; <input type="checkbox"/> Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or <input type="checkbox"/> Is being amended after a review under RCW 34.05.328.			
Expedited Repeal - Which of the following criteria was used by the agency to file notice:			
<input type="checkbox"/> The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule; <input type="checkbox"/> The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute; <input type="checkbox"/> The rule is no longer necessary because of changed circumstances; or <input type="checkbox"/> Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.			
Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): Engrossed Substitute Senate Bill 5365, Section 4 (chapter 398, Laws of 2023) directs LCB to increase penalties for violations under RCW 26.28.080 that are explicitly and specifically dictated by RCW 70.155.100.			

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

Name: Denise Laflamme, Policy & Rules Coordinator
Agency: Washington State Liquor & Cannabis Board
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Other:

AND RECEIVED BY (date) March 26, 2024

Date: January 17, 2024	Signature: 
Name: David Postman	
Title: Chair	

WAC 314-35-075 Category I—Violations that create a direct or immediate threat to public health, safety, or both.

Category I: Violations that create a direct or immediate threat to public health, safety, or both.

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Sales to persons under twenty-one. RCW 26-28-080	\$1,000 monetary penalty	\$2,500 monetary penalty	\$5,000 monetary penalty and a 6-month license suspension	\$10,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
((Sales to persons under twenty-one,)) Allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting. ((RCW 26.28.080)) RCW 70.345.100 WAC 314-35-040	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Obstruction: Misrepresentation of fact; not permitting physical presence. RCW 70.345.030(2)	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Sell, give, or permit to sell or give a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law. RCW 70.345.030 WAC 314-35-055	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Conduct violations: Permitting or engaging in criminal conduct, or both. Title 9 RCW Title 9A RCW Chapter 69.50 RCW Chapter 70.155 RCW Chapter 70.158 RCW Chapter 70.345 RCW Chapter 82.24 RCW Chapter 82.26 RCW WAC 314-35-045	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Selling, giving, or permitting to give a vapor product or products to persons under twenty-one by any person other than a licensed retailer. RCW 26.28.080	\$50 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty