

WSR 24-03-089
EXPEDITED RULES
LIQUOR AND CANNABIS
BOARD

[Filed January 17, 2024, 11:32 a.m.]

Title of Rule and Other Identifying Information: Title 314 WAC, Liquor and cannabis board (LCB). LCB is amending WAC 314-35-075 to implement section 4 of ESSB 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 ESSB 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 first violation within any three-year period (up from \$200).
- A monetary penalty of \$2,500 for the second 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 third violation within any three-year period (up from \$2,000).
- A monetary penalty of \$10,000 and suspension of the license for a period of 12 months for the fourth 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 fifth or more violation within any three-year period (no change).

Reasons Supporting Proposal: ESSB 5365 directs LCB to increase penalties for violations under RCW 70.155.100. LCB is using expedited rule making 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, 70.345.020.

Statute Being Implemented: RCW 70.155.100.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting: Denise Laflamme, Policy and Rules Coordinator, 1025 Union Avenue S.E., Olympia, WA 98501, 360-974-9336; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-1753; and Enforcement: Chandra Wax, Director of Enforcement, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-1726.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: ESSB 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 Denise Laflamme, Policy and Rules Coordinator, LCB, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-974-9336, fax 360-704-5027, email rules@lcb.wa.gov, AND RECEIVED BY March 26, 2024.

January 17, 2024
David Postman
Chair

OTS-5152.1

AMENDATORY SECTION (Amending WSR 20-01-074, filed 12/11/19, effective 1/1/20)

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
<u>Sales to persons under twenty-one.</u> <u>RCW 26-28-080</u>	<u>\$1,000 monetary penalty</u>	<u>\$2,500 monetary penalty</u>	<u>\$5,000 monetary penalty and a 6-month license suspension</u>	<u>\$10,000 monetary penalty and a 12-month license suspension</u>	<u>Cancellation of license with no possibility of reinstatement for 5 years</u>
((Sales to persons under twenty-one,)) <u>Allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting.</u> ((RCW 26.28.080)) <u>RCW 70.345.100</u> <u>WAC 314-35-040</u>	\$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
<u>Obstruction: Misrepresentation of fact; not permitting physical presence.</u> <u>RCW 70.345.030(2)</u>	\$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
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
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