

WSR 21-18-125  
PERMANENT RULES  
LIQUOR AND CANNABIS  
BOARD

[Filed September 1, 2021, 10:52 a.m., effective October 2, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 314-55-040 What criminal history might prevent a marijuana (cannabis) license applicant from receiving or keeping a marijuana (cannabis) license? The Washington state liquor and cannabis board (board) has adopted rule amendments that frame the standards and thresholds for criminal history checks for marijuana (cannabis) licensees.

Citation of Rules Affected by this Order: Amending WAC 314-55-040.

Statutory Authority for Adoption: RCW 69.50.331, 69.50.342.

Adopted under notice filed as WSR 21-14-111 on July 7, 2021.

A final cost-benefit analysis is available by contacting Jeff Kildahl, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1781, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 1, 2021.

David Postman  
Chair

OTS-3139.1

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-040 ((What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license?)) Cannabis applicant or licensee background checks.** ((-1) When the WSLCB processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The WSLCB will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

~~(2) If a case is pending for an alleged offense that would earn eight or more points, the WSLCB will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the WSLCB will administratively close the application.~~

~~(3) The WSLCB may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:~~

~~**Exception to criminal history point assignment.**~~

~~(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.~~

~~(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;~~

~~(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.~~

~~(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.~~

~~(4) Once licensed, marijuana licensees must report any criminal convictions to the WSLCB within fourteen days.) (1) The board conducts a background check of a new applicant or for license renewals to evaluate whether the applicant or licensee qualifies or regualifies for a license. The background check includes a criminal record check through the Washington state patrol and the Federal Bureau of Investigations database.~~

~~(2) **Review and evaluation of information produced by background checks.** The board will review the information produced by background checks to determine whether the applicant or licensee qualifies for a new or renewed license. Information from the background check may not preclude approval, but will be considered in determining the applicant's eligibility for licensure.~~

~~(3) The board will conduct a threshold review for the following types of convictions:~~

<u>Conviction Type</u>	<u>Conviction Class</u>	<u>Time Consideration</u>	<u>Determination</u>
<u>Felonies</u>	<u>Class A and B convictions</u>	<u>10 years</u>	<u>Threshold review if 1 or more</u>
	<u>Class C convictions</u>	<u>7 years</u>	<u>Threshold review if 2 or more</u>
<u>Misdemeanors</u>	<u>Gross misdemeanors and misdemeanors</u>	<u>3 years</u>	<u>Threshold review if 3 or more</u>

(a) Active state supervision and active federal supervision resulting in determination of threshold review.

(b) The board will conduct a threshold review of any license applicant or license renewal if the background check indicates that the applicant or renewing licensee is under active state supervision, active federal supervision, or both.

(4) **Pending criminal charge review and evaluation.** The board will review and evaluate the applicant or renewing licensee's pending criminal charges. Review and evaluation criteria include, but are not limited to:

(a) A determination of whether the convictions of pending charge(s) alone or compiled would put an individual over the conviction allowance above.

(b) The application may be placed on hold for ninety days and if no disposition within ninety days, the application will be withdrawn.

(5) **Threshold review evaluation criteria.** When a background check results in a determination for a threshold review, the board will consider the following criteria:

(a) Time since the conviction, or pending offenses;

(b) Nature and specific circumstances of the offense;

(c) Relationship of the offense or incident to the nature of the work performed;

(d) Number of offenses or incidents;

(e) If criminal, any relevant evidence of rehabilitation, such as information about compliance with conditions of parole or probation, including orders of no contact with victims and witnesses, and the individuals conduct and experience since the time of the offense; and

(f) Any other relevant information, including information submitted by the applicant or licensee, or requested by the board.

(6) **Continued reporting.** Cannabis licensees must report any criminal convictions to the board within thirty days. New convictions will be considered upon receipt or at the time of renewal.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-040, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-040, filed 5/20/15, effective 6/20/15. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-040, filed 10/21/13, effective 11/21/13.]