Washington State
Liquor Control Board

Business Advisory Council

Meeting Agenda
January 20, 2010, 9:00 am – 12:00 pm
Liquor Control Board, 3000 Pacific Avenue, Conf. Rm. 201, Olympia, WA

9:00 – 9:10 am	**Sharon Foster – Welcome and Introductions**
9:10 – 10:40 am	**Rick Garza - Business Advisory Council Member Forum** • **2010 Legislative Agenda** • **Policy and Legislative Update** • **Agency Request Legislation**
10:40 – 11:00 am	**Randy Simmons** • **State Auditor's Office Performance Review**
11:00 – 11:20 am	**Rogers Weed – Director, Department of Commerce**
11:20 am – 12:00 pm	**Sharon Foster** • **Closing Comments** • **Next meeting – April 21, date/location**

Attendees:
Sharon Foster
Rick Garza
Randy Simmons
Alan Rathbun / Dora Duval
Anthony Anton
Jean Leonard
Katie Jacoy
Matt McCarthy
Mark Levine
Phil Wayt
Steve
Jeannie Lee
Susan Danby / Karen Ferguson

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Meeting Minutes
January 20, 2010, 9:00 am – 12:00 pm
Liquor Control Board, 3000 Pacific Avenue, Conf. Rm. 201, Olympia, WA

Attendees:

Sharon Foster, LCB
Rick Garza, LCB
Randy Simmons, LCB
Alan Rathbun, LCB
Dora Duval, LCB
Anthony Anton, Washington Restaurant Association
Jean Leonard, Washington Wine Commission and Washington Wine Institute
Katie Jacoy, California Wine Institute
Matt McCarthy, Distillers Representatives Association of Washington (DRAW)
Mark Levine, Distillers Representatives Association of Washington (DRAW)
Phil Wayt, Washington Beer and Wine Wholesalers Association
Steve Lynn, Small Businesses and Distributors
Jeannie Lee, Korean-American Grocers Association of Washington State (KAGRO)
TK Bentler, Washington Association of Neighborhood Stores
Susan Danby, Contract Manager's Advisory Committee (CMAC)
Karen Ferguson, Contract Manager's Advisory Committee (CMAC)

Sharon Foster welcomed the group and explained that due to a number of hearings scheduled at the Capitol, there were several members that were unable to attend.

Alan Rathbun introduced Licensing's new Retail Services Manager, Dora Duval. Dora manages the Retail, Non Retail and MAST program within Licensing.

Caffeinated Alcoholic Energy Drinks

Rick Garza reviewed the agency request legislation HB 2804 which would ban beer or malt beverages containing stimulants. Rick shared that at the request of state attorneys general, the Food and Drug Administration (FDA) sent letters to 30 manufacturers of caffeinated alcoholic beverages, with the intent to look into the safety of their products. This put the manufacturers on notice that there is consideration whether caffeine can lawfully be added to alcoholic beverages. The responses back were to have come within thirty days; however, we are now well past that deadline. Sharon stated that she would prefer Washington State be the forerunner ahead of the FDA, recognizing the danger of these products.

Currently, statistics show that 24% of college students are consuming beverages combining alcohol and stimulants. Medical studies have proven the danger of combining alcohol and stimulants. Both the Attorney General and Department of Health are supportive of the bill. At this time, MillerCoors is taking a neutral position and Anheuser Busch has asked for further clarification. There will be a hearing on this bill this afternoon.

Phil commented that it has now become a supplier issue as the top manufacturers removed themselves from the picture, other companies decided to get into the business. Another concern shared, with some core downtown areas experiencing a 30% loss in business due to Alcohol Impact Areas, the loss in sales they will experience with this ban will cause yet another impact to small businesses.

Privatization
Rick briefly reviewed the privatization bills that were introduced. Privatization has become a popular topic each session, but especially so in what we are experiencing with the economy currently. In prior years, Senator Tim Sheldon's bill would phase in stores over a period of time. This year, he eliminates the state and contract stores following West Virginia's auction model. Representative Alexander has introduced two bills. Both the Senate and House bill have been referred to the Commerce and labor Committee and will continue to be discussed with the revenue picture.

The State Auditor's Office conducted a study giving several privatization recommendations that would lead to an increase in revenue for the state. They did not include in their study the public safety implications that the recommendations for increasing the number of stores in the state would cause.

Additional Bills

Grocery Sampling contains four provisions:

- $200 fee which would cover the additional impact to both Licensing and Enforcement.
- Requirement for MAST training.
- Those stores under 9,000 square feet, typically in more rural areas, need to have a provision that would allow them to sample.
- If violations occur in sampling areas the ability to sample would be lost for two years.

Currently, there is not a problem with this bill in the Senate Committee and as well, is not expected to be a problem in the House.

Katie weighed in that given the current economy; the sampling program is a good idea. She stated concerns with Alexander's bill pertaining to the contract liquor Stores and wine provisions. 90% of shelving is filled with spirits; statute versus decision of the LCB.

Steve commented that specialty wine stores are not able to keep up with the grocery stores. The smaller stores are being pushed out. Differential based on access level rather than business model which places pressure on the smaller retailers. Rick offered that if the Small Business group would like to pursue an amendment in committee, our staff could help with the draft.

Farmer's Markets

- Allow ten markets to sell beer and wine; two markets per day and would require MAST training.

Craft Distilleries

- To qualify as a craft distillery, the distiller must produce no more than 20,000 gallons of spirits with at least half of the raw materials used to produce grown in Washington. Craft distilleries can only sell spirits of their own production to on-premise customers, the LCB, and out-of-state entities. Craft distilleries cannot sell spirits directly to in-state retailers, distributors, or manufacturers.
- The amount of spirits that can be distilled is increased from 20,000 to 60,000 gallons.
- Domestic distillers, or their accredited representatives, may pour or dispense spirits for a special occasion licensee.

Craft Wine and Wineries

- Creates a "craft winery" license for wineries that produce less than 25,000 gallons of wine. The craft winery would not be subject to RCW 66.28.170 pertaining to uniform pricing and quantity discounts.

Special Occasion License

- Special occasion licensees could pay for beer or wine immediately following the end of a special occasion event. Also allows the wineries and breweries which participate in a special occasion to pay a reasonable table fee to a special occasion licensee.

Legalizing Marijuana

- Would legalizes marijuana those 21 years of age and older.
- Would remove marijuana off the controlled substance list in the Uniformed Controlled Substance Act.
- Authorizes the sales of marijuana in liquor stores regulated by the LCB.
- The possession and sale of marijuana would be subject to the same rules, regulations, and penalties as those that apply to liquor.
- Would create a license for farmers of marijuana, and manufacturers to produce, manufacture, grow, transport within the state of Washington, and sell marijuana. The license fee would be $500.

Rick stated that a legislative update would be sent to the group later this afternoon with updates to the information he had shared.

Legislative Agenda Roundtable

Mark

- Monitoring privatization and new taxes that would ultimately affect the spirits beverage industry.

Matt

- Emphasized DRAW is not anti-wine, but pro-profit. Focus on maximizing shelf space.

Phil

- Currently working 20 bills; worked amendments our with Jean
- Of concern is the caffeinated malt beverage bill that the agency is running, by getting out ahead of the FDA.

TK

- Asked for clarification of the use of coffee as an additive as it is contained in some microbrews. Sharon clarified that caffeine is naturally occurring in coffee.
- Interest in Dry Fly bill (Craft Distilleries) as currently Dry Fly is having difficulty keeping up with current demand.
- Capital tight for business owner operations.

Anthony

- Watchful of economy as October and November have been the slowest of the recession, showing a 6% decline in sales, taxes and increased regulation.
- Concern retarding misappropriation of liquor markup. Each time the price is increased the customer chooses to "buy down."
- Focus on keeping membership, finances for restaurant operations.

Discussion

The question was raised about how figures from Social Responsibility were used in business decisions and if the information was held in confidence. Sharon explained, that with all other criteria being equal, that it is considered. We seek to do business with mission driven companies and the importance of companies being socially responsible.

Current projections put the LCB at $83 million, with a forecasted target of $86 million. We are on track with the $3 million being made up in our sales. People's trend is to buy down rather than change consumption habits.

Spokane has recently requested an Alcohol Impact Area. They have done the necessary background work and determined over time that a voluntary ban has been unsuccessful. The Board will hold a public meeting in Spokane within the next few months. Further information will be communicated to the group at the next meeting.

Winery Definition Project - Comeback with a proposal by April 1 (Jean). Currently, wineries are not required to have MAST training unlike other serviced locations. TB has seminars scheduled in May which may give the opportunity for stakeholders to discuss.

The next BAC meeting is scheduled for April 21, 2010 at a location to be determined. The meeting time will be from 9:30a-12p and will be similar in format to today's meeting.

Handouts:

1. Benefits of Washington's Liquor Retail and Distribution System
2. Time to scrutinize caffeinated booze (Seattle Times)
3. Banning Alcoholic Energy Drinks, 2010 Agency Request Legislation

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Benefits of Washington's Liquor Retail and Distribution System

Agency Mission

The mission of the Washington State Liquor Control Board is to contribute to the safety and financial stability of our communities by ensuring the responsible sale, and preventing the misuse of, alcohol and tobacco.

Liquor Control Board Revenue Fiscal Year (FY) 2009 Facts-at-a-Glance

- Fiscal Year 2009 gross sales: $848.8 million
- Fiscal Year 2009 net return to state and local government: $332.7 million
- Projected annual growth rate: 3 percent

Public Safety and Societal Benefits of Washington's System

- **Lower Consumption.** Studies show consumption is between 5-20 percent less in control states with limited access (like Washington) compared to open states (like California). Lower consumption translates to lower societal costs in other areas such as medical costs and alcohol-related crimes and violence.
- **No-Sales-to-Minors Compliance Rate.** The WSLCB 12 month rolling no-sales-to-minors compliance rate is 94 percent. The private sector compliance rate is 76-84 percent.
- **No Employee Incentive to Sell.** Salary employees with an average pay scale of $27-32K per year. Retail employee's longevity is an average 17 years.
- **Ban on Advertising.** WSLCB is restricted from liquor advertising.
- **Greater Financial Return.** Profits derived from the sale of alcohol in Washington's state and contract stores flow directly to essential state and local government services. On average, control states return about twice the revenue of non-control states.
- **Greater Selection.** WSLCB retail stores typically carry a significantly broader selection of products (on average 1,400 Stock Keeping Units (SKUs)) to meet diverse customer demand. Open state retail stores typically carry fewer products, limited to the biggest sellers and most profitable.
- **Coordinated Enforcement and Licensing.** Coordinated enforcement and licensing functions allow for: sharing critical information needed for decision making, that licenses are granted to law abiding citizens and that the Board can act quickly to restrict or cancel a license for illegal activity.

Independent Studies Support Washington's System

Two studies under different Governors support existing system

- Gov. Spellman (1983) study supports existing system rather than an open market
- Gov. Locke (2000) 18-member task force concluded that the existing model should be retained

State Auditor's Office (SAO) Performance Review – Liquor Sales and Distribution
Additional Considerations

1. The report affirms what citizens, the Legislature, and previous governors have said for decades: if you dramatically open up outlets, you can sell more liquor and generate additional revenue for the state.

2. All SAO models assume large increases in consumption (6-14 percent).*

3. None of the savings assumed in the study would be available this biennium.

4. Many of the options favor big box stores over small business. In fact, some options assume the Legislature will cancel $34 million in leases already under contract.

5. Of the options that increase the number of liquor stores, none factor additional costs of licensing or enforcement to the LCB and tax compliance to the Dept. of Revenue.

SAO Options at a Glance

Option 2: *Convert stores to contract stores at 9.65 percent commission*
- With no increase in the number of stores, this option loses $47 million over five years
- 797 state employees lose jobs

Option 3: *Privatize distribution.*
- One-time benefit of $33 million
- Iowa and Maine converting back to public systems after privatizing due to higher costs.
- 83 state employees lose jobs

Option 4: *Auction off liquor stores to highest bidder (West Virginia model)*
- Average Washington license fee range: $119,000 - $1.5 million
- Only largest retailers will be able to compete (Rite Aid primary licensee in West Virginia)
- Price of liquor could go up to both restaurants and consumers
- 797 state employees lose jobs

Option 5: *Open market for liquor licenses (Alberta model)*
- Increases the number of liquor stores from 315 to 1,000
- Price of liquor could go up to both restaurants and consumers
- 797 state employees lose jobs

Option 6: *Full privatization of distribution and retail sales (Open state model)*
- Increases the number of liquor stores from 315 to 3,357
- Price of liquor could go up to both restaurants and consumers
- 932 state employees lose jobs

***CDC Review (December 2009)**

The Centers for Disease Control and Prevention (CDC) recently published a review of societal costs associated with increased outlets and consumption.
- Most of the studies in the review found that greater alcohol outlet density is associated with increased alcohol consumption and related harms including medical harms, injury, crime and violence.

- Privatization typically results in not only a substantial increase in the number of outlets but also in changes in alcohol price, days and hours of sale, and marketing.

Published November 24, 2009

Caffeine plus alcohol equals a dangerous mix

THE OLYMPIAN

Under pressure from state attorneys general, the federal Food and Drug Administration has announced plans to crack down on 30 manufacturers of caffeinated alcoholic beverages.

Dr. Joshua Sharfstein, principal deputy commissioner of food and drugs, said it's time for the FDA to look into the safety and legality of the products and pull them from the marketplace if they don't meet federal standards..

We agree.

Washington Attorney General Rob McKenna was one of those pushing the federal government to crack down on the super-caffeinated alcoholic concoctions with names such as "Joose" and "Max Fury." McKenna says the manufacturers market the products to young people. Surveys show that as many as 26 percent of college-age students are consuming the caffeinated alcoholic beverages.

"Alcohol plus caffeine equals a serious health threat, especially for young people," McKenna said. "The jolt of caffeine or other stimulants masks the feeling of intoxication. Health professionals say that leads to more risk-taking behavior, traffic accidents, violence, sexual assault, and suicide."

McKenna and other legal officers have pressed the FDA to recognize the potential harm of energy drinks with alcohol.

They finally got the attention of FDA officials this month.

"The increasing popularity of consumption of caffeinated alcoholic beverages by college students and reports of potential health and safety issues necessitates that we look seriously at the scientific evidence as soon as possible," said Sharfstein, the deputy FDA commissioner.

He noted that under federal law, a substance added intentionally to food — such as caffeine in alcoholic beverages — is deemed "unsafe" unless the additive has been approved by FDA regulation. The FDA has not approved the use of caffeine at any level in alcoholic beverages. Sharfstein said for a substance to meet standards as "generally recognized as safe" under FDA standards, there must be evidence of its safety at the levels used.

In its letter to manufacturers, FDA officials said the agency is considering whether caffeine can lawfully be added to alcoholic beverages.

The Seattle Times

Sunday, November 29, 2009 - Page updated at 04:00 PM

Time to scrutinize caffeinated booze

THE U.S. Food and Drug Administration's investigation into caffeinated alcoholic beverages throws a much-needed spotlight on the drinks' lack of safety and illegal sale to minors.

Super-caffeinated alcoholic concoctions are marketed to young people under names such as "Max Fury" or "Joose." These drinks are intended to capitalize on the popularity of energy drinks such as Red Bull. But adding alcohol and marketing the drinks to minors crosses the line.

The role of the FDA is appropriate. Scientists and medical experts argue that adding caffeine and other stimulants to alcoholic beverages poses serious public-health risks. Nearly a third of U.S. college students use drinks that combine caffeine and alcohol, according to one of the few federal studies on the drinks.

Under the federal Food, Drug and Cosmetic Act, purposely adding a substance to food — for example, caffeine in alcoholic beverages — is unlawful unless it has been federally approved or is generally recognized as safe. Caffeine in alcoholic beverages has not received FDA approval. The FDA has only approved adding caffeine to soft drinks.

Now manufacturers of caffeinated alcohol are on notice to produce within weeks evidence of their drinks' safety. This federal spotlight ought to discourage more than a few to simply cease making these types of drinks.

Some already have stopped. Last year, Washington state Attorney General Rob McKenna, joining with 24 other attorneys general, successfully pressed MillerCoors Brewing to drop Sparks Red, a caffeinated alcoholic drink.

The same year, investigations were launched into MillerCoors and Anheuser-Busch, major producers of other such drinks. The companies discontinued their caffeinated alcoholic beverages — Tilt and Bud Extra — and agreed to not produce similar drinks in the future.

Good. These drinks are marketed in ways meant to appeal to people under the legal drinking age of 21.

Internet commercials include music downloads and unverified claims about the health effects of the drinks. One commercial slogan was, "You can sleep when you're 30" and "You'll last longer than most Hollywood marriages."

The FDA's scrutiny should lead to a ban on these drinks.

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2010 Agency Request Legislation
Banning Alcoholic-Energy Drinks

Problem:
Medical and scientific research suggests that alcohol-energy drinks create a dangerous mix—especially for youth. The combined use of caffeine and alcohol is increasing sharply and studies suggest that such combined use may increase the rate of alcohol-related injury.

Most alcoholic energy drinks are categorized as "malt beverage" even though their alcohol by volume is significantly greater than that of beer. This classification allows alcoholic energy drinks to be more accessible because malt beverages can be purchased in many more retail outlets and at significantly lower prices than distilled spirits.

Hundreds of different brands of energy drinks are marketed with caffeine content ranging from 50 to 505 mg per can or bottle. There is a belief that energy drinks improve energy, mental alertness, and physical fitness. People who mix alcohol and energy drinks only feel less drunk but they are still intoxicated. Alcohol is a sedative, while ingredients of energy drinks such as caffeine, guarana, and taurine have a stimulant effect. The effects of combined use are partly comparable with those of the combination of alcohol and cocaine.

Alcohol is the number one drug problem among youth, and is involved in teen automobile crashes, homicides, and suicides, the three leading causes of teen death. Adding caffeine (and other stimulants) to alcohol may increase risk to youth because the additives tend to reduce the perception of intoxication and make greater quantities of alcohol palatable.

At the request of state attorneys general, on November 13, 2009, the Food and Drug Administration (FDA) sent letters notifying nearly 30 manufacturers of caffeinated alcoholic beverages that it intends to look into the safety of their products. FDA alerted manufacturers that it is considering whether caffeine can lawfully be added to alcoholic beverages. The FDA informed each company that if it determines that the use of caffeine in the firm's alcoholic beverages is not "generally recognized as safe, or prior sanctioned, it will take action to ensure the products are removed from the marketplace.

Solution:
Ban all alcohol-energy enhanced malt beverages.

2/22/2010