



# Washington State Liquor Control Board

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## Washington State Liquor Control Board Meeting

Wednesday, April 23, 2014, 10:00 a.m.  
LCB Headquarters Building  
3000 Pacific Avenue SE, Olympia WA 98501

### Meeting Minutes

#### 1. CALL TO ORDER

Chair Sharon Foster called the regular meeting of the Washington State Liquor Control Board to order at 10:00 a.m. on Wednesday, April 23, 2014. Member Ruthann Kurose and Member Chris Marr were also present.

#### 2. APPROVAL OF MEETING MINUTES

MOTION: Member Kurose moved to approve the April 9, 2014, meeting minutes.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

#### 3. ACTION ITEM (A)

##### **ACTION ITEM 3A - Board Approval to File (CR 102) for Penalty Assessments on Late Payments**

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 1-7). She provided a brief background noting that postmarks are often absent on mail. Bar codes have replaced postmarks in most cases. Current rules on how penalties will be assessed on late payments revolve on the postmark on the envelope. Language is needed in our rules to explain to licensees how penalties will be assessed on late payments when there is no postmark on the envelope.

##### Proposed Revisions

Amended Section: WAC 314-02-109 - What are the quarterly reporting and payment requirements for a spirits retailer license? Added the following language; "Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed."

Amended Section: WAC 314-19-020 - What if a licensee doesn't report or pay the taxes due, or reports or pays late? (for wine and beer) Added the following language; "Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed."

Amended Section: WAC 314-23-022 - What if a distributor doesn't report or pay the taxes due, or reports or pays late? Added the following language; "Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed."

Amended Section: WAC 314-23-042 - What if a certificate of approval doesn't report or pay the taxes due, or reports or pays late? Added the following language; "Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed."

Amended Section: WAC 314-28-080 - What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late? Added the following language; "Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed."

#### Timeline

April 23, 2014	Board is asked to approve filing the proposed rules (CR 102 filing)
May 7, 2014	Code Reviser publishes notice - LCB sends notice to rules distribution list
May 28, 2014	Public hearing held
May 28, 2014	End of written comment period
June 4, 2014	Board is asked to adopt rules
June 4, 2014	Agency sends notice to those who commented
June 4, 2014	Agency files adopted rules with the Code Reviser (CR 103)
July 5, 2014	Rules are effective (31 days after filing)

Ms. McCall requested approval from the Board to file the CR 102.

MOTION: Member Kurose moved to approve the filing of proposed rules (CR 102) for Penalty Assessments on Late Payments.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

#### **4. PUBLIC HEARINGS (A-B)**

##### **PUBLIC HEARING 4A - Public Hearing for Revisions to Current Marijuana Rules**

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 1-3). She provided a brief background noting that revisions to the proposed rules to current marijuana rules are needed to provide additional clarity for marijuana license applicants and potential licensees. Staff have

received many questions from applicants on some the marijuana rules. Additional clarity in the rules will assist our applicants in better understanding the rules.

### Proposed Changes

Amended Section: WAC 314-55-075 - What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license? Clarified what activities a marijuana producer is allowed to do conduct under the license, such as, harvest, trim, dry, cure, and package marijuana into lots for sale to marijuana processors and other marijuana producers.

Amended Section: WAC 314-55-077 - What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license? Added language to clarify that a marijuana processor must accept return of products and sample jars from a marijuana retailer for destruction. They are not required to provide refunds to the retailer. Also added language banning potential hazardous foods infused with marijuana.

Amended Section: WAC 314-55-079 - What is a marijuana retailer license and what are the requirements and fees related to a marijuana processor license? Added language to clarify that internet and delivery or product "to customers" is prohibited. Added language that a marijuana retailer may transport product to other marijuana retail businesses they own and operate but they must follow the transport rules. Marijuana retailers may not accept return of product that has been opened.

Amended Section: WAC 314-55-084 - Production of marijuana. Section 1 was removed. The language was no longer needed because the Department of Agriculture has posted a list on their website that lists the soil amendments, fertilizers, pesticides, and other crop aides that may be used in the production of marijuana.

Amended Section: WAC 314-55-085 - What are the transportation requirements for a marijuana licensee? Added language to provide information about the transporting vehicle and clarified the transport manifest must be completed on a form provided by the board. Added certified testing labs as entities allowed to transport marijuana and marijuana infused products.

Amended Section: WAC 314-55-089 - What are the tax and reporting requirements for marijuana licensees? Added language to clarify that a marijuana producer must pay the 25% marijuana excise tax on sales to another producer.

Amended Section: WAC 314-55-092 - What if a marijuana licensee fails to pay or report, or reports or pays late? Added language to clarify how the board will determine if a payment or report is late if there is no postmark.

Amended Section: WAC 314-55-104 - Added language to clarify the use of a closed loop extraction system and define the requirements of a closed loop extraction system.

Amended Section: WAC 314-55-105 - Packaging and labeling requirements. Added the word "infused" to marijuana products. Removed language that allowed marijuana retailers to destroy sample jars of marijuana. The sample jars must be returned to the marijuana processor for destruction.

Ms. McCall provided a brief overview of the comments received to date.

Member Kurose stated that we have adopted practices that are endorsed by a lot of organizations.

Member Marr requested clarification on amended Section: WAC 314-55-089 asking if sales between processor to processor are allowed without taxation. Ms. McCall said yes.

Chair Foster opened the public hearing but no comments were offered and the public hearing was closed.

## **PUBLIC HEARING 4B - Public Hearing for Fair Trade Practices**

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 1-2). She provided a brief background noting that Michael Cho, Washington Liquor Store Association, petitioned the Board for rulemaking to clarify RCW 66.28.170. The Board currently has Advisory No. 2012-02 on the website that clarifies this statute. The Advisory needs to be placed into rule in a new section in Chapter 314-23 WAC. The Board held a work session on Fair Trade Practices on September 11, 2013, to hear comment from stakeholders on these issues. Additional rule language needs to be created to fully clarify the statute.

### Proposed Changes

New Section: WAC 314-23-060 - What are "volume discounts"? Defines "volume discounts".

New Section: WAC 314-23-065 - What are "bona fide business practices"? Defines "bona fide business practices".

New Section: WAC 314-23-070 - What is "marketplace"? Defines "marketplace".

New Section: WAC 314-23-075 - What constitutes "undue influence"? Defines "undue influence".

New Section: WAC 314-23-080 - Are licensed distributors or other licensed suppliers of spirits and wine allowed to provide volume discounts to on-premises or off-premises retail licensees? Explains what is allowed under "volume discounts".

New Section: WAC 314-23-085 - What type of discounts are not allowed? Explains what is not allowed under "volume discounts".

Chair Foster opened the public hearing and invited the first citizen to the podium to provide comments. (18) citizens came forward for comment.

### Tim Martin - Vinum Importing & Distributing in Seattle

Mr. Martin provided his statement (CITIZEN HANDOUT 1) and noted he has been in the business in Washington for over 30 years. His testimony focused on two primary areas:

1. Different discount pricing for on premises and off premises licenses

He referenced the Sherman Act which defines price discrimination as "when a provider charges competing purchasers different prices for the same good". When a restaurant purchases wine and resells the wine for three to four times the cost and a retail off-premises account purchases wine and resells the same wine for a 30% margin, these are not competing purchasers.

The Washington State Tax Code effect a similar situation be leveeing a higher spirits tax to the on premises licensee than the off premises licensee, therefore, the State has already acknowledged that there is a primary difference in the on premises and off premises markets.

## 2. Discounts limited to one delivery site or multiple delivery sites

He referenced the central warehousing provision passed in I-1183 which does not incent a multi-unit retailer to purchase using a central warehouse since purchasing in larger quantities must still be paid for upon delivery. No Terms or credit are allowed. This provision is unworkable for the smaller regional chain retailers since the cost of operating a central warehouse is cost prohibitive. To level the pating field, smaller retailers should be provided quantity discounts that consider single purchases to multiple locations that aggregate into a chain wide quantity discount with per store minimum deliveries of at leave one case. He stated that his position that as long a deals to chain retailers buying as a central buying agent are equal and do not discriminate as to the terms of the deal, then it should not matter how the purchase is delivered to each individual store. He also stated that the discounts should be limited to brand only family plans.

Member Marr asked Mr. Martin if he had additional suggestions for “bona fide business practices” that may deserve consideration?

Mr. Martin said they are dealing with local and national chains and they are selling to the same consumer at competing prices and he believes they should be treated the same way.

### Holly Chisa - NW Grocery Association

Ms. Chisa provided a letter (CITIZEN HANDOUT 2) from the Northwest Grocery Association (NWGA) which opposed the proposed rules. Ms. Chisa’s testimony coupled with the NWGA letter identified the following concerns: The proposed rules reflect a lack of knowledge of the businesses in which stakeholders are involved, the operations of the free market for products other than liquor, and the laws governing pricing practices for other products. The proposed rules attack common marketing practices that benefit the supplier that chooses to offer the price differential, the retailer that can offer service, cost reduction or other advantages to the supplier, and ultimately the consumer. The NGWA requested that the Board reject the proposed rules and stated that if they proceed with the adoption, the Board should stay the effective date of the rules until a Court can resolve whether the Boar’s interpretation of the law withstands scrutiny. In addition,

Ms. Chisa noted that the language under “WAC 314-23-085 What type of discounts are not allowed?” is much too vague for a retailer to operate - they could violate the rules without even knowing it.

### Jon Martin - Owner of Martin Bruni Liquor in Ocean Shores

Mr. Martin owns a former state owned liquor store. He is supportive of the rules and we need clarity on pricing. When they bought the liquor store the stores were selling to restaurants. He stated that when he buys a case of liquor he wants to pay the same price as the restaurants pay. He is supportive on how the rules are written.

Member Marr asked Mr. Martin to address “bona fide differences” from his perspective.

Mr. Marin responded that he pays taxes retail and for wholesale which places him in the same market as the distributor. He purchases form one source and resells to restaurants.

#### Biniam Habte - Owner of University Liquor Store in Seattle

Mr. Habte provided a written statement to the Board (CITIZEN HANDOUT 3). He said that discriminatory pricing is putting small liquor stores out of business. The majority of former state and contract liquor stores are closing at a rapid rate and some blame this irresponsible practice. He believes the LCB has failed to protect the stores after paying over 60 million to purchase the stores. When the stores were purchased they understood that channel pricing was illegal until two distributors interpreted the rules their own way and have discriminated against the small stores for two years. He said he has talked with many liquor store owners from other states and they do not have this problem. Channel pricing is illegal and it will create a market place that would not be controlled. It also victimizes certain channels and he urged the Board to stop channel pricing now.

#### Adam Smith - DISCUS

Mr. Smith represented Distilled Spirits Council of the United States (DISCUS) which represents a national trade association of producers and marketers of distilled spirits and importers of wines. Mr. Smith stated that DISCUS submitted comments in writing (CITIZEN HANDOUT 4) which stated that they adamantly support channel pricing noting that it is clearly permissible and authorized by RCW 66.28.170. They are opposed to the draft rules. They believe there is a bona fide difference between on premises and off premises licensees. They are different consumers with different business models.

#### John Guadnola - AWSWD

Mr. Guadnola, Executive Director and General Counsel for Association of Washington Spirits & Wine Distributors (AWSWD) spoke in support of channel pricing. He thanked the LCB staff for all of the various discussions they have had over the last year. He agrees with the basic approach the Board is taking but he did not agree with the idea that any business justification would allow price differentials as it would open the door too widely. The right approach would be to recognize that the overall market place, in terms of off premises and off premises retailers, are two different markets and do not compete with each other. Channel pricing exists in most states and they support it. They also support the rules the Board has adopted on cumulative discounts.

#### Brenden Choker - Rainier Liquor in Seattle

Mr. Choker he requested the Board save the previously state owned liquor stores. He stated that his customers are not happy that his prices are much higher than his competitors and explaining is difficult and his customers feel cheated.

#### Harold McGovern - Young's Market

Mr. McGovern provided a statement to the Board (CITIZEN HANDOUT 5) stating that during the September 2013 initial Channel Pricing Hearing, Young's Market supported the concept and practice of Channel Pricing. The role of an on premises license is vastly different when it comes to their ability to feature, sample, activate and build the image of a brand. In the highly regulated wine and spirits category, there are very few levers suppliers and distributors can utilize to market and educate consumers. Pricing is one of the few areas suppliers and distributors can use on a large scale to help gain market exposure. Additionally, the unique fact that Washington, despite being an "open" / license state, remains a COD for transactions putting additional pressure on bars and restaurants with small buying power. Channel pricing allows these accounts to improve profitability or feature brands to attract patrons. He asked them to keep in mind, the drink price a consumer pays at a bar or restaurant is not competing with the retail shelf price in an off premises account. Trends, innovation and brand trial happen primarily in the on premises which then aid in retail sales. He added that he understands the position the Board has been put in as they interpret I- 1183 language and he asked that they look at the commercial realities of the market, not just the statute's language.

Paul Beveridge - Family Wineries of Washington State

Mr. Beveridge stated that he feels compassion for the owners of the former state owned liquor stores however he does not believe that the proposed rules are the solution. He noted that his organization was started to address economic reform in the wine industry and they want to be treated like any other business in terms of economics. Pricing freedom was one of their original goals when they started their business. They believe this would be a big step backward. He thinks the LCB is inserting itself into something that should be a private business activity and the LCB should be focusing on public safety. He asked the the Board allow them to negotiate price and compete.

Katie Jacoy - Wine Institute of California

Ms. Jacoy stated that represents 925 wineries. She stated that channel pricing is very important to wineries. They have worked hard to try to clarify the laws through the legislature but it was not effective so they are back before the Board. She said if the Board prohibits channel pricing you will create a price floor which will hurt wineries trying to use a key promotional tool.

Member Kurose suggested that they continue to work on a legislative solution.

John Bell - Willis Hall Winery in Marysville

Mr. Bell stated that he owns a winery in Marysville. He cautioned language sensitivity in the language toward large distributors distributing to retailers. He thinks the language is not focused on smaller wineries. He asked for sensitivity in the wording that will recognize that the vast majority of wine industry in Washington State is comprised of small wineries of 10,000 or fewer cases. Please be mindful of the collateral damage as you address one portion of the industry.

Jean Leonard - Washington Wine Institute

Ms. Leonard stated that the Washington Wine Institute supports channel pricing noting that there is a distinct difference between a restaurant and an off premises retailer. She believes businesses are attempting to fairly compete in the new I-1183 environment including wineries, large a small. Wineries have restricted access to market now and shelf space has gone down. Wineries need access to restaurants to promote their products through tastings and events. Allowing channel pricing maintains a balance that allows access to markets for Washington wineries and then allows access to additional shelf space in the off premises retail establishments. The proposed solution will create additional problems for wineries and access to market. They view this as a partnership and want to continue to offer their wines in restaurants at a preferential price. The law clearly allows for bona fide business factors to differentiate price.

Julia Gorton - Washington Restaurant Association

Ms. Gorton represents the Washington Restaurant Association (WRA) with 5,400 members statewide. She provided a report containing several documents and comments (CITIZEN HANDOUT 6). She stated that they are opposed to the proposed rules as they violate the law and will result in significant financial and irreversible harm to thousands of businesses. She said that the LCB has not prepared a Small Business Economic Impact Statement (SBEIS) and for that reason they ask that if the Board does adopt the rules they Board stay its own rules so they can determine the legality of the proposed rules. She said they have submitted very detailed legal concerns and are joined by a number of legal opinions. She said they have commissioned a study by Dr. Jeffery Schulman, a market economist, to provide comments and she asked the the Board carefully consider those comments. She expressed disappointment that the Board believes that restaurants and bars can just absorb the price increases without any impact. They are fundamentally opposed to any prohibition on negotiating price and she urged the Board to reconsider.

Chair Foster clarified that the Board has never stated nor believed that this would not have an impact on businesses and that they could simply absorb the costs.

Michael Cho - Washington Liquor Store Association

Mr. Cho stated that he is the owner of a former state owned liquor store. He testified on behalf many owners of former state owned liquor stores noting that about half have gone out of business due to the pricing disadvantages they suffer. He stated that when their price goes up the consumer price goes up. Pricing differentials will make them fail or succeed. He stated that this is a monopolized market manipulated by big players. He feels this is not an efficient market place and he supports the rules as they are written. He also and asked for an immediate and strong enforcement action and asked that they are compensated retroactively for paying higher prices for the last two years.

Frances Choe - Owner of Premium Wine & Liquor

Ms. Choe stated that they are not asking for distributors to increase their prices to restaurants so they can get lower prices - she said they simply want an equal chance to get the same pricing. They have been supplementing the lower prices that the restaurants are getting. If restaurants can negotiate for their pricing then please allow them as well. She said that when they bought the stores they assumed that they would be able to do wholesale and they trusted the pricing structure - she would have never bought her store if she had known. She also asked that the restaurants support the liquor stores.

Jasmel Sangha - Citizen

Mr. Sangha provided a photo (CITIZEN HANDOUT 7) that illustrated a discriminatory pricing structure. He stated that the industry cannot police itself and asked for help from the Board especially surrounding the pricing structure. He added that they paid a premium to get into the business and they are being put out of business by two primary entities. They have been subsidizing other channels for too long and they need relief.

George Naphler - Citizen

Mr. Naphler said everyone is focused on the end user and the discussion should be focused on the bottle. The discrimination begins when a customer buys a bottle. It should not matter who the customer represents or where the product will end up when the bottle leaves the store.

Terry Nguyen - Owner of Federal Way Liquor & Wine

Mr. Nguyen provided a statement (CITIZEN HANDOUT 8) and said the term bona fide factor is overused and people are unsure what the term means. He said there is discrimination even within the channels.

Chair Foster thanked everyone for their testimony and closed the public hearing.

## **5. WEEKLY MARIJUANA LICENSING UPDATE**

Alan Rathbun, Licensing & Regulations Director, provided the weekly I-502 update with the following highlights:

Licenses Issued

- 18 licenses have been issued (16 producer/processor and 2 producer)
- 2 licenses are pending final processing by CS (all producer)
- 4 licenses are pending payment (3 producer/processor and 1 producer)
- Plant Canopy (licensed 135,998)(including licenses pending payment 160, 178)

### Final Inspections

- 43 applications have been referred to Enforcement for final inspections
  - 25 are complete
  - 3 need follow up inspection
  - 6 are scheduled for inspection
  - 8 are waiting for applicant to finish build
  - 0 are awaiting scheduling
- 6 more applications will be referred to enforcement for final inspection tomorrow

### Retail Lottery

- 2166 applications when we began pre-screening
- 744 are being withdrawn due to not submitting all required documentation
- 252 have been deemed ineligible for the lottery due to 1000' buffer, CHRI, or both
- 1170 applications made it through the prescreen process
  - 76 jurisdictions require a lottery
  - 46 jurisdictions do not need a lottery
  - 48 applications are ready to be assigned to investigators

## **7. NEW BUSINESS/OLD BUSINESS**

No new or old business was reported.

Chair Foster invited citizens to address the Board regarding any issue(s) related to LCB business.

### George Naphler - Citizen

Mr. Naphler informed the Board that he had recently attended a 90 minute seminar offered by BioTrack for the Traceability System. He stated that the program was very thorough, comprehensive and complicated and he was overwhelmed by the amount of information the traceability system requires. He expressed his concern that the complexity of the system may hold up the licensing process. He suggested that it might expedite the process for the applicants if the LCB offered a 101 class of some kind to inform the applicants about the complicated BioTrack system and its expectations.

Member Kurose appreciated his feedback and asked him to share his experience with others.

Member Marr also appreciated Mr. Napler's input but noted that LCB staff has limited resources and are stretched very thin. He added that they are always available for questions but the process needs to move forward and it is important for the applicants to be self-sufficient on some levels to be successful.

### Mr. Martin - Citizen of Ocean Shores

Mr. Martin stated that he attended a zoning hearing on marijuana in Ocean Shores last year and asked if the pre-screening has already identified any 1000' foot rule concerns.

The Board said yes.

**ADJOURN**

Chair Foster adjourned the meeting at 12:00 pm.

Minutes approved this 30<sup>th</sup> day of April, 2014



Sharon Foster  
Board Chair



Ruthann Kurose  
Board Member



Chris Marr  
Board Member

**LCB Mission**

Promote public safety by consistent and fair administration of liquor and cannabis laws through education, voluntary compliance, responsible sales and preventing the misuse of alcohol, cannabis and tobacco.

Complete meeting packets will be available online following each meeting: <http://www.liq.wa.gov/board/board-information>