



Washington State Liquor Control Board

Washington State Liquor Control Board Meeting

Wednesday, July 9, 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, July 9, 2014. Member Chris Marr was also present and Member Ruthann Kurose participated by phone.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Kurose moved to approve the June 25, 2014, meeting minutes.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

3. PUBLIC HEARINGS (A-B)

PUBLIC HEARING 3A - Public Hearing on Responsible Vendor Program (RVP)

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3A 1-2). She provided a brief background noting that the RVP was established in Initiative 1183. It is a free, self-monitoring, and voluntary program that rewards retailers that take positive steps to ensure alcohol is sold responsibly. We currently offer the RVP only to spirits retailers. More than 65% of the spirits retailers have joined the program. Retailers participating in the program produced the highest compliance rates at 94.5%. During fiscal year 2013, off-premises beer and wine retailers produced the lowest compliance rates at 79%.

The components of the RVP include the following actions by the licensee:

- Establish and enforce an in-house alcohol policy
- Post signs to deter illegal purchases by patrons
- Train employees on responsible liquor sales such as acceptable forms of ID, how to check ID, and consequences of selling alcohol illegally. Employee training is required annually.
- Maintain employee training records for inspection
- Post the RVP member certificate at the main entry of the premises

There are more than 5,000 off-premises beer and wine retailers. Making the RVP available to this large number of retailers is a positive step to ensure alcohol is sold responsibly.

Proposed Changes

Amended Section: WAC 314-02-108 - Responsible vendor program. Added language to clarify this section is for spirits retail licensees.

New Section: WAC 314-02-1081 - What is the responsible vendor program for beer and wine retail licensees selling beer and wine for off-premises consumption? Created a new section specifically for off-premises beer and wine retail licensees. The section includes the following information for off-premises beer and wine licensees:

- How to become a responsible vendor
- What a licensee must do to qualify for the responsible vendor program
- Employee training standards
- How a licensee maintains the responsible vendor certification
- The sanctions when a licensee violates liquor laws or regulations

Chair Foster opened the public hearing and invited the first citizen to the podium to provide comments. No citizens came forward and Chair Foster closed the public hearing.

PUBLIC HEARING 3B - Public Hearing on Fair Trade Practices

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3B 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 but wishes to place its current view of pricing issues 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. A public hearing on the proposed rules was held on April 23, 2014, and stakeholders provided testimony and written comments on the proposed rule language during the public hearing. On May 14, 2014, the Board gave their approval for the Rules Coordinator to draft revised proposed rules for fair trade practices to bring back to the Board at a later date.

Proposed Changes

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

New Section: WAC 314-23-065 - What are "unfair trade practices"? Defines "unfair trade practices".

New Section: WAC 314-23-070 - What is "local market"? Defines "local market". For purposes of volume discounts, sales to on-premises retailers and off-premises retailers constitute separate markets.

New Section: WAC 314-23-075 - What are "family plans" and are they allowed? Explains "family plans" and that they are not allowed under federal or state law.

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". Distributors may provide different volume pricing to on-premises retailers and off-premises retailers. This practice is referred to as "channeling" and is a recognized practice under TTB in Industry Circular Number 76-15.

New Section: WAC 314-23-085 - What type of discounts are not allowed? Explains the following practices are not allowed under "volume discounts":

- Discounts for purchases over time. Combining volumes of spirits and wine purchased beyond the day of purchase period to qualify for a volume discount is considered an extension of credit under 27 CFR 6.65 because state law does not allow the extension of credit; and
- Discounts on a combined order that is delivered to multiple licensed sites (central warehousing rules were written to allow separate licensed entities to lease warehouse space and request a discount on goods delivered to a single warehouse location).

Chair Foster opened the public hearing and invited the first citizen to the podium to provide comments.

John Guadnola - Executive Director of Association of Washington Spirits & Wine Distributors

Mr. Guadnola commented on the New Section: 314-23-075 - What are "family plans" and are they allowed? He noted that the description of "family plans" and the use of the term is overly broad and should be rewritten but special deals should be preserved. He said he planned to speak with Ms. McCall about eliminating that term. He has also sent suggested language to her.

David Cho - Director of Washington State Liquor Association

Mr. Cho spoke of his experiences in the spirits business noting that restaurants do not buy from local liquor stores because they receive volume discounts from distributors and are able to negotiate on a national level. He noted that the distributors will not offer the smaller independents the same discounts. He added that every interpretation of the law seems to work against the independents and they will not survive - they feel discriminated against.

Member Marr noted that the LCB cannot dictate business practices.

Julia Gorton - Government Affairs Manager for Washington Restaurant Association

Ms. Gorton first provided a packet of materials (CITIZEN HANDOUT 1). She stated that she represents 8,000 on-premise licensees. She thanked the Board for their recent decision to allow on-premise licensees to be treated different than off-premise licensees as there is a distinct difference between the two. She stated that the revised proposed rules still contradict the language of RCW 66.28.170 which allows the price differentials based on bona fide business factors and makes clear that volume discounts are just one form of price differential meeting that standard. She asked that the Board not adopt the rules as they exist and allow the legalities to be sorted out in court.

Michael Cho - Washington Liquor Store Association and Store Owner

Mr. Cho began by providing a packet of stakeholder comments (CITIZEN HANDOUT 2). He noted that Washington State has its own law mandated by Initiative 1183 which conflicts with federal law. The initiative spells out that one of the primary purposes of the initiative was to update the current law to provide volume discounts on the wholesale price of wine and permits to retail stores and restaurants. He suggested we be more creative to resolve this issue much like other states have done. He also commented on channel pricing noting it provides two separate differential base prices between on-premise and off-premise retailers. It imposes discriminatory pricing on off-premises retailers regardless of their volume or orders. It is not the same as a different volume pricing between two channels. It is not

justified by any legal defense that is allowed under Washington laws. He noted that this is a new paradigm and the law needs to be changed. HE asked that the Board reconsider the current version of the draft rules related to channel pricing and volume discounts. The Board has a moral obligation to seek a solution and he suggested they initiate a discussion with legislators for new laws with measures designed to help small business retailers.

Jean Leonard - Washington Wine Institute

Ms. Leonard first congratulated the LCB on the successful opening day of the I-502 retail stores. She then acknowledged that the Board carefully considered the rules and she appreciated their hard work. She stated that they still need access to their retail partners as they are able to promote, display and educate customers about Washington wines. The retail market is very different than the wholesale market. She added that the term "volume" may be confusing in regards to where it is placed in the channeling definition and she said she would work with Ms. McCall.

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

4. MARIJUANA LICENSING UPDATE

Becky Smith, Marijuana Licensing & Regulations Manager, provided the weekly updates for the marijuana licensing process including the following highlights

Marijuana Licensing Update for July 9, 2014

Producer/Processor Applications:

- 93 Producer/Processor licenses have been issued (Increase of 14 from last week)
 - 71 Producer/Processor
 - 18 Producer
 - 4 Processor
- 21 licenses are pending payment
- Plant Canopy - Licensed 716,893 square feet
- 166 applications have been referred to Enforcement for final inspection
 - 119 are complete
 - 4 needs follow up inspection
 - 18 are scheduled for inspection
 - 16 are waiting for applicant to finish build
 - 8 are awaiting scheduling

Retail Applications:

- 25 Retail licenses have been issued
- 43 retail applications have been referred to Enforcement for final inspection
 - 9 are scheduled for inspection
 - 9 are awaiting scheduling

Deputy Director, Randy Simmons, also came forward to noted that the (3) marijuana retail stores that opened yesterday generated approximately \$250,000 in revenue and \$61,600 in excise tax dollars on the first day.

The Board thanked the LCB staff for their hard work and noted that this process was implemented properly and it has balanced access with public safety and diversion.

5. 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.

Christina Samione, CEO, Wicked Delights

Ms. Samione stated that she and her partner, Betsy, are producers of marijuana edibles (brownies) and she expressed concern about the packaging and testing rules. She stated that there are currently only two testing facilities and they are 7 to 10 days out. She stated that this would hold up production as well as putting her perishable products in jeopardy. They would have to shut down production while their product is in quarantine awaiting the test results. She also expressed concern about the \$60 to \$80 testing fees which would equate to about 2 million dollars a year for one shift (they plan for three shifts in the near future). She offered to work with the LCB to find a solution to streamline the testing of perishable products.

Frances - Premium Wine & Liquor

Ms. Frances discussed the Board's knowledge of channel pricing for liquor stores prior the auction of the liquor stores after the passing of Initiative 1183. She stated that the purchasers of the state liquor stores feel misled and misinformed about how the stores would perform financially as well as a variety of issues they did not expect to encounter such as the lack of wholesale pricing. She also believes there was a glitch in the bidding process but there was no way out for the participants engaged in the bidding process.

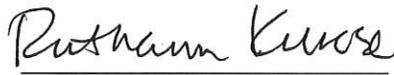
ADJOURN

Chair Foster adjourned the meeting at 12:00.

Minutes approved this 16th day of July, 2014



Sharon Foster
Board Chair



Ruthann Kurose
Board Member



Chris Marr
Board Member

Minutes Prepared by: Maureen Malahovsky, Confidential Secretary to the Board

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 are available online: <http://www.liq.wa.gov/board/board-information>