



Washington State Liquor Cannabis Board Meeting

Wednesday, March 7, 2018, 10:00 a.m.
LCB Headquarters - Boardroom
3000 Pacific Avenue SE, Olympia WA 98501

Meeting Minutes

1. CALL TO ORDER

Chair Jane Rushford called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 a.m. on Wednesday, March 7, 2018. Member Ollie Garrett and Member Russ Hauge were also present. Chair Rushford welcomed everyone.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Hauge moved to approve the February 21, 2018, meeting minutes.

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

3. PUBLIC HEARINGS (A-C)

PUBLIC HEARING 3A – PRIVATE LABEL SPIRITS

Karen McCall, Senior Policy and Rules Coordinator, began the briefing with materials (HANDOUT 3A 1-2). She stated that she had received a few written comments through email.

Chair Rushford asked if the Board had any questions before the hearing began. There were none.

Carolyn Logue – Washington Food Industry Association

Ms. Logue stated that she was speaking on behalf of Jan Gee the CEO of the Washington Food Industry Association.

Ms. Logue: We believe the policy being developed is very balanced, especially for our independent grocers and the smaller grocers and for the bigger grocers as well. As much as we can be involved in helping to move this forward, we are here. Thank you.

Scott Hazelgrove – Washington Beer and Wine Distributors Association

Mr. Hazelgrove thanked the Board for the opportunity to provide comments on the private label proposed rule.

Mr. Hazelgrove: Beer distributors generally oppose private label products. We believe that they act in the market as a particular product that excludes other competitive independent products. We approach this issue with the recognition that however, we do have what appear to be private label products in the market and we appreciate the Board's efforts to try and clarify what the law on how those products could potentially come to market.

We believe there are effectively four key components in ensuring that any private label as described by the proposed rule actually complies with the existing statute. First of all we believe the product has to be available to everybody and we believe that the rule does address this issue. Secondly we believe that private label product, one that is a brand controlled by the retailer, has to actually be a separate legal entity from the retailer. We believe that is also supported by statute and a reference is specifically included in the comments we provided. We think that is important that it be underscored in this area because we have had confusion about what the rules and requirements are. Third we think it is critical to ensure that private label products are not the subject of undue influence over the retailer or for the producer.

Especially important I think are contracts representing requirement for continuing commitments to purchase a particular product or preferential pricing contained in these products. In either of those cases those activities would specifically fall outside the bounds of what is acceptable behavior and undue influence. We think it is important for the Board to highlight in this rule that especially in those particular instances private label products must adhere to the idea that there cannot be continuing commitments for purchasing, and we also have to have clear prices that are identified and available to all.

The final one I think is maybe the most important area because it is really the core to ensuring that the law is followed as we start to develop this rule. We believe that the contracts between producers and retailers for private products must be available for public inspection and review. Certainly comments from retailers have stressed this idea that they somehow have a belief that these products are secret and that the dealings are confidential or should be confidential. The standard in the market is that prices of products, spirits especially, are published regularly by distributors and also by suppliers. The idea that the product has to be available to all on equal terms is important and can only be incorporated if indeed we have a clear understanding of what the contract is for the product.

In addition, we have heard repeated from the Board and enforcement staff the challenges with limited enforcement and being able to pursue particular enforcement cases, or do the investigation for enforcement cases. Inevitably this means that much of enforcement action you will undertake has to be driven by complaints. However, for an entity to be able to bring a complaint, they would have to have an understanding of what the arrangement is between the retailer and the particular supplier of private label spirits. The only way that an entity would have that information or be able to understand what that relationship is would be to actually view the contract.

Fundamentally, we believe that there is no ability to check against undue influence, no ability to ensure compliance with the law, and certainly no practical enforcement of the law, unless these contracts are publically available, prices are posted for all, and that all retail licensees receive equal treatment even when dealing with private label spirits. I appreciate the time, thank you.

Chair Rushford asked if anyone else had comments to make. There were none, and she closed the public hearing.

PUBLIC HEARING 3B – ACCEPTABLE FORMS OF IDENTIFICATION

Karen McCall, Senior Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3B 1-2).

Ms. McCall: This rule adds the NEXUS card and Passport cards to our list of acceptable forms of identification. It was brought to us by a consumer in the public.

Chair Rushford opened the public hearing. No one came forward for comment, and she closed the public hearing.

PUBLIC HEARING 3C – SELF-DISPENSING BEER AND WINE MACHINES

Karen McCall, Senior Policy and Rules Coordinator, began the briefing with materials (HANDOUT 3C 1).

Ms. McCall: We are having this hearing today because it was scheduled on the CR 102 for the self-dispensing beer and wine machines. This was actually a rulemaking that came to the Board from a licensee. We received some additional comments recently on this particular rulemaking. In the current proposed rules it states that the beer taps would need to be on the tables. It was pointed out to us that “we are not requiring the wine taps to be on the tables, so why are we doing that for the beer taps?” In reality it was done because the interim policy that we have on beer taps talks about table tops. But, it made sense that we would make that change and not require the beer taps to be on the table tops.

We are having the public hearing, but I am going to return afterward and ask the Board to file a supplemental CR 102 for this in a moment.

Chair Rushford opened the public hearing and invited the first citizen to the podium to provide testimony.

Chris Marr - Consultant

One of my clients is Down Time Taps, they will speak in a moment. I'm delighted to be talking about hops instead of pot today. We'd like to thank the Board for agreeing to incorporate some suggested changes from several perspective licensees regarding the new tap wall technology that you'll hear about in just a minute.

Down Time and iPourIt which is their vendor are going to use this opportunity to provide just a little bit of background about the technology and its safeguards. From a licensee's standpoint it improves efficiency and reduces cost, but I think it also reduces the risk of overconsumption which is something the Board is concerned about.

I want to focus on one other area that hasn't been changed. At this point we aren't looking for change but putting on the record so as the Board revisits this going forward they can give it some thought. In Section 1e of the proposed rules would limit the amount of beer purchased by one customer at a time to 24 ounces. Just a reminder, to my understanding, no other on-premises alcohol license is subject to this type of purchase quantity limitation with the exception of Sports Entertainment Facility licenses. In the case of

SEFs, WAC 314-02-058 Section 1 states “two alcoholic beverages is the maximum is allowed to be sold and served to an individual patron during one transaction”, but there is no specific volume limit. And as you are aware in some sports facilities these can be up to 20 ounce servings. We’re not opposed to a purchase limit, per se, and it exists right now at 24 ounces, but in the future ask that you consider possibly raising that to 32 ounces simply because 16 ounces is a fairly standard craft brew pour. From our experience it reflects better customer purchase patterns over a typical visit. I provided some data in my written comments that relate to the Cleveland Clinic alcohol consumption calculator, it shows that 32 or 24 doesn’t really create any risk issues as far as ABV for the average person. I’ll leave that there and suggest that as this technology emerges I’m sure you’ll be revisiting and fine tuning this.

Lastly I want to thank the Board for moving so quickly, and Karen for responding so quickly as well to keep this on track. As you’ll hear from Chay Tan, the license applicant, his plan is to open up in late May and it looks like we’ll be able to make in just about in alignment with that timeframe. Again, thank you for your time, we appreciate your assistance.

Darren Nicholson - iPourIt

Mr. Nicholson thanked the Board for the opportunity to speak on behalf of iPourIt

Mr. Nicholson: iPourIt is a self-serve beer and wine technology. We’ve been in business since 2012. Essentially what we are doing at this point is developing this market in the US, currently there are 44 states that allow self-serve. What we offer is self-serve taps in taprooms, fast-casual, hospitality, urban living and corporate locations. Those are the markets that we currently focus on. There are 226 locations for self-serve nationwide, we currently have about 60% of them. We are developing this market aggressively.

I want to give you a brief history of beer walls. These started as tables in the past. We started working with an operator in Pacific Beach, CA, he was the first beer wall. He installed 52 taps and was very successful. He recognized that it was a lower cost of ownership, a positive return on investment, easier to monitor, and it gave the guests an incredible experience. Since that period of time, there has been close to 180 beer walls built since 2014.

What is unique about iPourIt is the ability to capture data. On every driver’s license throughout the country is the 2-D strip. When we check in any one of the patrons into our system, this is read, and it collects their date of birth, gender, and zip code. We aggregate that data into our platform, and what our data shows is the average age user is 32 years old, he/she goes to the beer wall 5.5 times per visit, and pours 4.7 ounces. All of the data points total 65 million ounces and 6.5 million users of our system. It is interesting that the average user will pour 28 ounces on their visit, spending \$14.08 on alcohol. A lot of these tap rooms are, what we like to say, “not get hammered” types of location. People are there to taste and have an experience that they develop themselves by pouring their own product.

What’s interesting about iPourIt is that it is a fully programmable system. We’ve done it this way because we understand that every jurisdiction in the United States is different. We want to make sure that there are controls and abilities to provide safety to the operation. Our system is programmed with 32 ounces going out the door, other jurisdictions have other requirements up to 40 or 60 ounces. It all depends on the jurisdiction.

Member Hauge asked if the programming was done by the owner of the facility on-site or handled through iPourIt. Mr. Nicholson confirmed that it was done by his company. Member Hauge gave an

example of an owner calling to notify that they needed to change the ounce allowance and asked if iPourIt could update the programming remotely. Mr. Nicholson said that was correct. Member Hauge asked if the data could be shared with the LCB. Mr. Nicholson said they could.

Mr. Nicholson: I just want to thank the Board for giving this technology the opportunity to present what it is and how we do it and the protections that are provided for non-overconsumption. Thank you.

Chay Tan – Downtime Taps

Mr. Tan stated that he was speaking on behalf of Tomas Aminnie, and the partners of Downtime Taps.

Mr. Tan: First of all, thank you for the opportunity to speak. Thank you for incorporating our comments into the new CR 102, so my testimony will change a little bit in light of these changes. We really appreciate the efforts of the entire LCB staff from our local Enforcement Officer when we first started doing research on this technology to the administrative staff, licensing investigator, and now to you who are willing to work with us. We really appreciate everyone.

Tomas and I have put a lot of thought and research into our taproom and this iPourIt system that was introduced to us. During our research process we came to find that taproom customers wanted an opportunity to purchase beer in smaller portions and be able to taste and experience, and not “get hammered”. That is not the type of establishment we are looking to open.

We understand that with our license the opportunity to operate this style of taproom with a self-dispensing system comes with a lot of responsibility. I currently own and operate six restaurants that have beer and wine restaurant licenses, and I’m proud to say I don’t have any infractions, and I plan to keep that record with this new tap room. We’ll make sure that all of our MAST trained employees are responsibly monitoring it. I’m going to encourage our local Enforcement Officers to work with us.

We know that if we are the first, we’ll be one of the first establishments to utilize this technology. We want to provide a safe product for our customers and we want to do it right.

Lastly, I wanted to touch again on the timeline. I’d ask that you do whatever you can to move this along so we can open. We’ve been at a standstill because of the uncertainties of the interim policy. We haven’t been able to promote and advertise the business the way a new business should be, so we ask that you move along the timeline as quickly as possible. Thank you.

Chair Rushford asked if anyone else had comments to make. There were none, and she closed the public hearing.

4. ACTION ITEMS (A-D)

ACTION ITEM 4A - Board Approval of Supplemental CR 102 for Self-Dispensing Beer and Wine Machines

Karen McCall, Senior Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4A 1-3).

Ms. McCall: As I mentioned before the public hearing on the self-dispensing beer and wine machines, I am back to ask the Board to approve the filing of a supplemental CR 102 for the self-serve beer and wine machines which removes the language that the beer taps would be required to be placed on table tops. I do want to make one comment on the serving size. One of the comments I received was that they wanted the pour to be “up to 10 or 12 ounces”. It can be up to 12 ounces but not more than 12 ounces. So, if they want to do six two ounce pours that is fine, it just can't be more than 12. In relation to the request that the Board move this CR 102 along as quickly as possible, that is why we are here today otherwise we would have had to wait two weeks. Based on the timing of the comments I received I was able to get these changes to the Code Reviser in time for today's meeting.

Timeline

March 7, 2018	Board is asked to approve filing the revised proposed rules (Supplemental CR 102 filing)
March 21, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
April 18, 2018	Public Hearing held
April 18, 2018	End of written comment period
May 2, 2018	Board is asked to adopt rules
May 2, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
May 2, 2018	Agency files adopted rules with the Code Reviser (CR 103)
June 2, 2018	Rules are effective (31 days after filing)

Ms. McCall then requested approval from the Board to file proposed rules.

MOTION: Member Hauge moved to approve the filing of CR 102 for Self-Dispensing Beer and Wine Machines

Member Hauge: Thank you, Karen and your staff, for getting this moving so quickly. We heard about it yesterday and you turned it around right away. We appreciate it.

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 4B - Board Adoption of Interim Policy for Curbside Service

Karen McCall, Senior Policy and Rules Coordinator, began the briefing with materials (HANDOUT 4B 1).

Ms. McCall: I want to ask the Board to approve an interim policy for curbside service. The Board approved filing a CR 101 at the last Board meeting and we found that it would be to our benefit to have an interim policy for curbside service. This policy states that to accommodate online grocery ordering and pick-up until the rules are adopted we are going to use this policy. The conditions would be that store

employees must verify the ID at pick-up and if the ID cannot be verified or if the driver appears intoxicated, all alcohol will be removed from the order and the customer would not be charged for any removed products.

I have received a few comments already on this rulemaking. One of them was from one of the providers of the third party online programs that we allowed in our rules for licensees to use for online ordering and pick-up and delivery. They wanted us to put specifically into our rules an allowance for a grocery store to hire a third party to do the shopping for the online orders and then deliver to the car and check the ID. That isn't necessary because it is already allowed in the rules, so we will not be repeating it.

Ms. McCall then requested approval from the Board to file proposed rules.

MOTION: Member Garrett moved to approve the filing of Interim Policy for Curbside Service

SECOND: Member Hauge seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 4C - Board Approval of CR 101 for Spirits Distributor License Fees

Karen McCall, Senior Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4C 1-2).

Ms. McCall: On August 8, 2017, the Court of Appeals of Washington Division II issued an order regarding the Washington Restaurant Association et al vs. the Board. That particular decision stated that "distributor fees could not be collected from licensed distillers or certificate of approval holders who sell directly to a retailer. Rulemaking will ensure the rules are compliant with the order and any applicable RCWs."

Timeline

March 7, 2018	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
March 21, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
April 21, 2018	End of written comment period
May 2, 2018	Board is asked to approve filing the proposed rules (CR 102 filing)
May 16, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
June 13, 2018	Public Hearing held
June 13, 2018	End of written comment period
June 27, 2018	Board is asked to adopt rules
June 27, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
June 27, 2018	Agency files adopted rules with the Code Reviser (CR 103)

July 31, 2018	Rules are effective (31 days after filing)
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Ms. McCall then requested approval from the Board to file proposed rules.

MOTION: Member Hauge moved to approve the filing of CR 101 for Spirits Distributor License Fees

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 4D - Board Adoption of Interim Policy for Temporary Suspension of 24-Hour “Quarantine” for Marijuana Licensees Prior to Transferring Product

Joanna Eide, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 4D 1).

Ms. Eide: I want to point out at the outset that both interim policies were accidentally numbered “BIP-02-2018”, I’ll be changing this one to “BIP-03-2018”.

Today I have an interim policy for the temporary suspension of the 24-hour quarantine period for marijuana licensees prior to transferring product. This interim policy would temporarily lift the requirement that marijuana licensees observe the 24-hour quarantine period prior to transfers of products to other licensees, which is currently a rule requirement. This change has been something that the Board has been considering for some time and is intending to bring forward in proposed rules. The intent is to remove additional pressures in the rule requirements for the industry in this period of transition while implement the new traceability system. This is being considered to address flow of commerce concerns raised by the industry. We will be proposing rule changes to consider removal of this requirement and potentially the 72-hour quarantine period for waste as well.

For the record, the policy statement is very brief here, but I want to make it clear that it is only to lift the 24-hour waiting period. All other requirements for transportation, manifests, traceability, inputting, etc. will remain in place while this interim policy is in effect.

Timeline

This policy will remain in place until the Board chooses to rescind the policy or until permanent rules take effect.

Ms. Eide then requested approval from the Board to file proposed rules.

MOTION: Member Garrett moved to approve the filing of Interim Policy for Temporary Suspension of 24-Hour “Quarantine” for Marijuana Licensees Prior to Transferring Product

SECOND: Member Hauge seconded.

ACTION: Motion passed unanimously.

5. GENERAL PUBLIC COMMENT

Chair Rushford invited citizens to address the Board regarding any issues related to LCB business.

Steve Sarich – Cannabis Action Coalition

Ten days ago you decided to close down the one and only place left in the state of Washington to serve patients. The hubris is despicable. We just wanted to show up here today and let you know that calling us organized crime doesn't make us organized crime. You are the organized criminals. You are the ones who are money laundering. This is the year, we just want to let you know, that we are going to fight back. You're not going to be able to lie to the legislature again and tell them you have product out there on the shelves for patients. Because you know you don't, we know you don't. We'll be going to the courts this year, and we're attacking the LCB. We will take you down this year.

Carolyn Logue – Washington Food Industry Association

Jan Gee couldn't be here, she wanted to make sure there was a lot of emphasis to the Board as you are going through the rulemaking on the spirits license distributors from the independent grocers. We're always very concerned about the application of those spirits license fees in the distribution chain because we don't always get to rely on the same type of distribution system that a larger retailer does. So, we just want to make sure that as you are going through that, keep a light of fairness in play in those discussions. We can be very involved in the process. Thank you.

Don Skakie - Citizen

I'd like to ask the Board to clarify the intent and purpose of the traceability system. The reason for my question is that recently I've read that it is not in fact a traceability system, but a reporting system. I think it is important in the public eye to have a very clear line drawn around the system. Thank you.

Peggy Button - Citizen

I want to talk about the accessibility for patients and what's on the shelves for them. Since July of 2016, we had a market over here called Paula G's. I knew two patients that went there from Longview. One is dead, the other has gotten lung cancer and now has brain cancer. They've gone to the 502, they had to stop using the medicine they were getting at the farmer's market. Number one, they couldn't afford what they needed, so they had to go back on pharmaceuticals. One is dead, one is dying. There is no medicine in the 502. You can say there is but there is not. There are pesticides and there are nutrients that are in the plants that are not tolerable to patients. We are very sensitive and we have needs, but the state hasn't helped us, ever. We've done it for ourselves. Now you're tying our hands even more than they were tied before. I don't want to see any more of my friends die because they have to go on pharmaceuticals. We're trying to get them off of those so they can live longer and have better lives. I've got a better life because I use cannabis. I want to keep my lifestyle. I want other people to be able to enjoy theirs, to be alive and breathing without pain, and we need cannabis. So, I know your hands are tied. I've gone to 502s to try and get this very important medicine on the shelves, nobody wants to hear me because there is no profit in it. We're not there for profit, we are there for our lives, please help us save them. Thank you.

Jenny Fregon - Citizen

I suffer from migraines every single day, and gastroparesis. When my gastroparesis started I was 174 pounds, I went down to 95 pounds and I'm 5'10". It was because of THC pills and CBD pill that helped me gain my weight back to 118 pounds where I am now. Now that the patient cannabis exchange has been shut down, I no longer have access to those pills and have lost 10 pounds. The Botox that I take can shut down my eyes when I have migraines so I'm no longer allowed to take it. The next step with gastroparesis medically is that it shuts down your lungs and heart. It's called myasthenia gravis. It is not a pretty sight. After that they try to put a heart pump into your stomach to keep you alive. Without our vendors and without medication we cannot live. It's almost like you are asking us to die. I can't take Peridone, there are no medications I can take. Between the neurological disorder and my heart disorder I also have fibromyalgia and other neurological problems that stem from all of this. They all started with my migraines and my heart. All I'm asking is why we can't get our vendors back, the ones that helped us and had the medication we needed. No, we can't find them at the rec centers. The ones that are available there are half the milligrams that we possibly need and are twice to three times the amount of money. The vendors that we had at the place you guys raided had what we needed. Not only me, but my friend whose mom is sitting in hospice in her house, dying. She was taking them and it was actually making her better, and she was feeling better. Now, we aren't getting them for her either. All I'm trying to do is save our lives. I have two sons that I'm trying to raise and love, and two nephews, and I can't continue. I was put on disability in 2013 for my migraines. I used to work for Clover Park Technological Collage as a registration clerk, full time, until I started falling and seizing. I'm asking for you to give us our market back, to give us back our vendors, give us back our medication so we don't die. I have no medications, I have nothing to take, and there is nothing to cure my gastroparesis. I will waste away and die. I get six ounces to eat at a time, that's it.

Danielle Rosellison – Cannabis Alliance


Thank you for looking into the 24 hour quarantine emergency rule. Our industry is in chaos, since February 1st. It is incredibly brutal, and the people that are working so incredibly hard like the mom and pop businesses, minority owned businesses, and women owned businesses are the ones that are suffering the most. Being able to deliver product to stores and being able to remove that 24 hour quarantine is going to help us. Thank you for taking these steps.

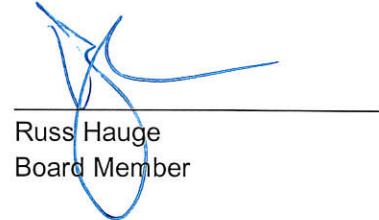
ADJOURN

Chair Rushford adjourned the meeting at 10:39 a.m.

Minutes approved this 4 day of MARIL, 2018


Jane Rushford
Board Chair


Ollie Garrett
Board Member


Russ Hauge
Board Member

Minutes prepared by: Dustin Dickson, Executive Assistant to the Board

LCB Mission - Promote public safety and trust through fair administration and enforcement of liquor, tobacco and marijuana laws.

Complete meeting packets are available online: http://lcb.wa.gov/boardmeetings/board_meetings
For questions about agendas or meeting materials you may email dustin.dickson@lcb.wa.gov or call 360.664.1717