



## Washington State Liquor Cannabis Board Meeting

Wednesday, May 16, 2018, 10:00 a.m.  
LCB Headquarters - Boardroom  
3000 Pacific Avenue SE, Olympia WA 98501

### Meeting Minutes

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#### 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, May 16, 2018. Member Ollie Garrett joined by phone; Member Russ Hauge was excused.

#### 2. APPROVAL OF MEETING MINUTES

The motion to approve the May 2, 2018, meeting minutes was postponed

#### 3. PUBLIC HEARINGS (A-B)

Chair Rushford: I want to thank the staff again for their contributions and commitment to the work that we have on an ongoing basis on both the alcohol and on the cannabis sides of our businesses.

##### **PUBLIC HEARING 3A – Marijuana Retail License Forfeiture Rules**

Janette Benham, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3A 1-4).

Ms. Benham: Board members, thank you. I am standing in for Joanna Eide today to provide a briefing on this rulemaking before today's public hearing as she is at the regulator's roundtable in Denver.

As you know, the Legislature directed the WSLCB to create a cannabis retail license forfeiture process in rule when it passed changes to RCW 69.50.325 in ESSB 5131 during the 2017 legislative session. The public hearing today is on the supplemental CR-102 for the proposed rules to implement the retail license forfeiture process as required by law. There were comments received expressing concerns with the proposed rules as filed in the original CR-102, which we are confident we have addressed in the adjustments included to the rules in this supplemental CR-102.

The proposed rules in this supplemental CR-102 include the following process for cannabis retail license forfeitures:

##### **Licenses that will be subject to forfeiture:**

- A retail license will be subject to forfeiture on November 1, 2018 if:
  - o The licensee has been issued a license since November 1, 2017 or earlier, and
  - o The licensee has NOT, for a minimum of 12 consecutive weeks:
    - Been open to the public for a minimum of 5 hours per day, 3 days per week,
    - Posted business hours outside the premise in public view, AND
    - Reported any sales for a minimum of 12 consecutive weeks.
- A retail license will be subject to forfeiture at a time after November 1, 2018, based on the license issuance date if the license was issued after November 1, 2017, and the licensee fails to meet the above criteria.

**Licenses that will NOT be subject to forfeiture:\***

- A license in a ban or moratoria,
- A license that cannot open due to zoning, business licensing or permitting issues, land use ordinance, or other regulation that prevents it from opening (but must provide proof under (2)(c)),  
OR
- Another condition under the discretion of the board that allows an exemption to be applied if the licensee has had circumstances occur that are out of their control, such as a natural disaster. Such exemptions will be made by the board on a case-by-case basis (documentation may be required and is probably advisable).

\*If the condition, such as a local permit being issued or a ban or moratoria being lifted, that prevents the licensee from becoming fully operational and open to the public goes away and takes away the exemption from the forfeiture process in the rule, then the 12 month period and fully operational and open requirements will run from the date that condition is no longer present.

A retailer subject to forfeiture has the right to request an administrative hearing to contest the forfeiture under the Administrative Procedure Act, chapter 34.05 RCW.

Chair Rushford opened the public hearing and invited the first citizen to the podium to provide testimony. No one came forward for comment. Chair Rushford closed the public hearing.

**PUBLIC HEARING 3B –Spirits Mini Bottles**

Janette Benham, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3B 1-2).

Ms. Benham: The proposed rules add language to WAC 314-02-107 to address the placement and storage of mini spirit bottles in stores frequented by minors.

The rules require that bottled spirits 50 milliliters or less, sold individually or as a package, offered to customers for off-premises consumption be secured so that a licensee or employee must unlock or otherwise access the spirits for a customer to purchase.

The rules exempt former state or contract stores, or other spirit retail stores with more than fifty percent of their sales in alcohol from this requirement, as those are stores not generally frequented by minors.

Chair Rushford opened the public hearing and invited the first citizen to the podium to provide testimony. No one came forward for comment and Chair Rushford closed the public hearing.

#### 4. GENERAL PUBLIC COMMENT

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

Anne Sultan – A Bud and Leaf, Inc.

Thank you for the opportunity to address the Board. Let me preface my remarks this morning by repeating comments I have publicly made. I sincerely appreciate the work of the Board and understand the difficulty of your task as we are still in somewhat uncharted waters.

The reason for my appearance this morning, and my comments are in writing (CITIZEN HANDOUT 1), given the comments made at the CAC meeting last week I respectfully request that the Board immediately establish a five to seven person working group to help the Board accomplish one of its stated objectives. I.e. active participation in this emerging cannabis industry by non-whites and females as licensed cannabis producers, processors, and retailers statewide.

Time is of the essence. Immediately implementable viable strategies must be designed to ensure the continued participation of all licensees operating small enterprises. Particularly those licensees struggling with the additional unique disadvantages imposed by race and or gender. These strategies must include clearly identified goals, detailed timelines, and measurable benchmarks. Failure to acknowledge we are at a critical juncture and refusal to take this essential step now will inevitably result in far fewer non-white and female licensees within the next few years.

The requested working group would be charged with the responsibility of

- Collecting baseline demographic data about licensees to determine the nature and extent of non-white and female participation in this industry;
- Obtaining candid and unfiltered reports about the challenges non-white and female licensees have encountered from July 2014 to present, including those specific adversities experienced as a result of Board rules, regulations and policies;
- Issuing a written report on findings in data driven recommendations

Because my comments are in writing I won't read all of them, but I want you know that I am offering my services, that of Dr. Julius Debro who will speak behind me, and that of Mr. Tony Ives who will speak behind him. You have standing in this room today some of the most highly respected individuals in our profession to come and help you. I have not only a bachelor's degree from Washington State University, I'm a Cougar, I hold a master's degree, I hold a law degree, I hold a PhD which is the highest degree any university in the world is authorized to confer and for fun I hold a pilot's license. I am well respected around this nation. My credentials pale in comparison to your next speaker, Dr. Julius Debro, who was one my college professors as I pursued by doctorate degree at the University of Maryland, College Park. We are here to help you, let us help you save our businesses. Thank you.

Julius Debro – JBA Producer/Processor

This tells you how old I am, when she gets up and tells you I was her professor back at the University of Maryland some time ago. I'm here to echo what she has said in terms of the kinds of problems we have had. I also retired as a Colonel from the U.S. Army after 30 years. In addition I have a PhD from the University of California and all other kinds of things.

I am a criminologist, as she is, and we've worked in and out of the prisons for many years. My intent in going in to the field primarily was to try and give jobs to ex-offenders, to provide funding for ex-offenders with the business. I was really wrong in thinking I could make money in this operation. So far I have spent of my own money -- \$320,000, my retirement money. We started nearly three and a half years ago and we have not in one month made a profit. Our expenses are running around \$8,000 each month. This is impossible because of the large crops, we are a Tier 1, and because of the large crops we just can't make any money at all. I don't know how much longer I can stay in the business.

As Anne said, we are willing to help, we are willing to do anything we possibly can. The problems have been that the licensing process took forever, and the whole thing with traceability as you know has been a bear. We spend now, with every sample we send out, and extra hour and a half. We spend half the day in traceability trying to get samples out of the shop. We are extremely discouraged with where we are with the business now, but I plan to stay as long as I possibly can, as long as my retirement comes in from the military. I have no more retirement from the University of Washington, it's all gone. I will stay as long as I can. We are willing to help, we'll do anything we can to make this business a better business. Thank you so very much.

Tony Ives – Northwest Pearl

To follow up very briefly with the last to speakers, we appreciate your help. We received information from Joanna and Dustin a few days ago that was very interesting. Specifically with regards to last week's meeting.

*The Board meeting was briefly at ease as Chair Rushford excused herself.*

Mr. Ives: It's more than the big picture of information that we received from you, it just seemed incomplete. There's a pool of retailers and a pool of producer/processors here in Washington state and I believe that the reason Washington state established this in the first place was, the type of structure that we established, was for more families and smaller companies to come into the business and not be monopolized or controlled by the larger companies. It seems like it is the opposite right now. That's why we are trying to get data and an accurate representation of the market from the beginning to where we are right now to go forward.

The comments, as they pertain to the rule changes, I wanted to bring up now.

Fees. We spoke about this last week. The rule changes are quite extensive, they always are, and we always try to talk to our retailers and producer/processors that are a part of SAGE, to let them know because none of us really has the time to read them. One of them is the CBD, I believe it is \$84 for studying. The question is that why isn't that applied across the board. It is only applied to our industry even though vape shops and glass shops can sell CBD and they don't have to pay the fee. Every year we seem to be charged more fees and it is a concern for us because once a fee is instigated you can't go back. Case in point last year, the fee that was increased for traceability. That worked well. We still paid it, but traceability had the opposite effect pushing folks like us out of business. It only seemed like a small

amount, but even \$100 makes a big difference for us. This rule change has another fee increase, the permanent \$1,300 license increase for producers and \$1,000 for processors. I want to call attention to it because every time there is a fee increase it becomes permanent, it's not temporary as it was said at the roundtable that we had six months ago. It's important to become aware of it because nobody is and it sneaks into the rules and we don't have time to read them. It's my job to help our clients and friends understand them.

Labeling and CBD. I was in a shop just the other day and asked if they had CBD. They said yes, and I asked where they get it from. They weren't sure. I asked if anything was labeled. They said one was but the other two weren't. There needs to be consistency about safety, because it's an important consideration for our consumers, the Board, and for the state. It is an important thing to understand. If we are going down this road, remember we just approved the law to import CBD, but we need to know where it is coming from and it needs to be tested, and everyone needs to be on a fair playing field. Thank you Dustin, Jane, and Ollie.

#### Chris Marr - Consultant

On behalf of my clients, I did petition the Board last month to allow private label cannabis products consistent with the rules that were adopted recently on spirits. It is an important issue, as I mentioned, for many producer processors who see focusing on production without the added costs of distribution or marketing as a way to survive in a difficult marketplace which is plagued with overproduction. Yesterday I was informed that my petition, which was supported by CORE, WACA, and others, was denied by the Board. I want to thank you for considering that request, but I feel compared to clarify what I feel were flaws in the staff report that you based your decision on. As we know, I-502 used the regulatory underpinnings of the liquor industry as the basis for a legalized marijuana industry. This included restrictions on moneys-worth or tied house relationships. Over 85 years those restrictions have been loosened on the alcohol side, reflecting the evolution of the industry in a way the presented more effective methods of regulating cross-tier relationships.

Beer and wine have had private labeling restrictions removed by the legislature in recent years, and there have been efforts to do so in the legislature for spirits. For instance, last year with SB 5953 which was endorsed by the LCB. When it failed to pass, the LCB passed rules to allow private label spirits without exclusivity. My request was simply to acknowledge that the ban on cannabis private labeling was based on the same tied house restrictions on the spirits side and the same reasons for allowing the practice to exist should prevail. To quote your issue paper, "the LCB has prohibited private label cannabis products as the practice constitutes a moneys-worth violation of tied house restrictions in WAC". Yet I quote from a letter from Rick Garza a year before to the legislature in support of 5953, "It is our opinion the practice of private label spirits is not a violation of the tied house rules as the entities entering the agreement must remain separate as always". Nowhere in the issue paper is a single argument as to why private labeling constitutes a violation in cannabis but not in spirits, even though the identical statutory and regulatory rubric applies. The closest I've found is a reference to the fact that alcohol laws existed for 85 years but the regulated cannabis industry is only five years old, which I really don't think represents a credible argument as to why one regulatory approach shouldn't apply to the other.

I would like to highlight two other inconsistencies. The issue paper pointed out the HB 2473, which would have allowed cannabis white labeling, didn't pass last year and therefore deserve no further consideration. But, 5953 also did not pass last year, so what did the LCB do. It moved immediately to allow it in rule. Which, again, inconsistency.

The other area of inconsistency is on the enforcement side. It has been the LCB's position that spirits private labeling has never been legal. Yet, we know that Costco has been selling exclusive private label products for the last five years in defiance of the LCB. To my knowledge they have never been issued and AVN, or a cease and desist, or an order to remove product from their shelves. And, by the way, the do not meet the non-exclusivity provisions of your new rulemaking. It will be interesting to see what action this agency takes. On the other hand cannabis stores have been ordered to pull private label products from their shelves, and at least one AVN is being adjudicated. I think it is an inconsistency that a court would recognize.

So, I think at this point I would encourage the Board to continue to study this issue, or at least provide the public a better rationale for these inconstant approaches.

Mike McDonald -- Endicott Enterprises LLC

I'm here to talk about signage today. We've gone round and round with having our signs change after we initially got them approved when we opened our store in March, 2017. We had it signed off by the LCB, then in August they changed the rules and regulations regarding signage.

We had a cannabis leaf on our logo, and we've had that leaf removed. The issue we are running into now has to do with the size of our sign. Our logo is 1585 square inches which is under the 1600 square inch requirement. The issue that we are running into is the lightbox on the building that we rent exceeds 1600 square inches. As you can see, this diagram gives the sizing of what our lightbox is versus what our logo is. We are not exceeding the 1600 square inches on our logo. Both of those signs are attached to our building.

The other issue we are running into regarding signage has to deal with a rotating sign that is on a separate plot of land. As I read over the laws, it talks about having two signs attached to your building, and those signs are attached to the building and on the same plot of land. The other one is a rotating sign that is on a separate plot of land, I can't stress that enough. We have removed the cannabis leaf from that as well and we even printed the warning on there. I understand that there will be some new rules and regulations to define the size of billboards, but this is a sign that was built in 1970 and I don't believe signs like this would be able to be built in the city of Tacoma with their rules and regulations as they are today.

I am under the impression that I am required to change this sign, and I'm at a loss of what to do with it. I could just hollow it out and leave an ugly eyesore for the city but I think that would do a disservice to the city, to my landlord, and to our business.

I would like to submit these into evidence here (CITIZEN HANDOUT 2) so that you can review it. This is an ongoing conversation that I have with my LCB agent and it hasn't been made very clear to me. One of the solutions that I presented that I have been told "no" about has to do with reducing the size of my sign. I would like to put a metal frame around the exterior of our box signs so that we don't have to spend \$10,000-15,000 to remove the box signs and put new ones up that meet the 1,600 square inches. I love the idea of just putting a metal frame on the exterior to frame in our logo which is under the 1,600 square inches.

I'd like to thank you for the opportunity to speak to you today and to take this into consideration as we have had numerous law changes regarding signage. The part that is the most frustrating to me is we initially got these approved before we installed them and paid for them. I have modified it to remove the

cannabis leaf, and now we are being told to basically take them down. I feel that when we take those down we will be lessening our ability to be seen by customers which will affect our sales which at the end of the day will affect the tax revenue that is collected by the state of Washington.


Chair Rushford: I want to comment that we appreciate the effort and the enrichment that all of you bring. As stakeholders you have helped us, and we hope you know we can't do this work without you. We listen, and we take time to evaluate further what you provide us to consider. I want to underscore how important that has been and will continue to be as we refine all of the businesses we are in and all of the licensee issues. Thank you.

**ADJOURN**

Chair Rushford adjourned the meeting at 10:29 a.m.

Minutes approved this 13 day of JUNE, 2018

  
Jane Rushford  
Board Chair

  
Ollie Garrett  
Board Member

*Not Present*  
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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.

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