



Washington State Liquor Cannabis Board Meeting

Wednesday, September 5, 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, September 5, 2018. Member Ollie Garrett and Member Russ Hauge were also present.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Garrett moved to approve the July 25, 2018, meeting minutes.

SECOND: Chair Rushford seconded.

ACTION: Motion passed unanimously.

MOTION: Member Hauge moved to approve the August 8, 2018, meeting minutes.

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

3. PUBLIC HEARINGS (A)

PUBLIC HEARING 3A – Spirits Mini Bottles

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

Ms. Benham: The proposed rule adds language to WAC 314-02-107 to address the placement and storage of mini spirits bottles in stores frequented by minors. The rule requires that bottled spirits, 50ml or less, sold individually or as a package be secured so that a licensee or employee must unlock or otherwise access the spirits for the customer to purchase. The rule does not require a spirits retail licensee with over 50% of sales in alcohol to secure mini spirits bottles.

So far we have received three written comments. One comment suggests the rule be revised to require that all stores secure mini spirits bottles regardless of the store's percentage of alcohol sales. One comment requests the Board not adopt the rule because they believe it is overly broad and there is no

demonstrable need to lock or otherwise secure mini spirits bottles. The other comment opposes the rule, but if adopted requests the language be revised to allow for large multi-packs such as a large cardboard or shrink wrapped packaging model that deters theft, and that the language be revised to require that all stores secure mini spirits bottles regardless of the store's percentage of alcohol sales.

Member Hauge: I'd like to make a comment about the history about this. We were approached by a legislator that had some concerns about this issue, particularly in smaller stores or vacation spots, where the bottles were stocked by the checkout counter and made a very attractive target for shoplifting, particularly by younger people. The legislator actually said she was going to consider legislation, we suggested that she let us deal with it as we could be a little more efficient and targeted. I appreciate the work that you've done, Janette, in bringing this to fruition here, I think we've done our jobs. Thank you.

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

Jan Gee – Washington Food Industry Association

You have heard from us on several occasions on this proposed WAC, and we continue to oppose this WAC as written. We support the concept of what you are trying to do in terms of securing mini bottles from theft. We don't believe that theft is only by minors. We believe that the initiative deregulated liquor and they did not differentiate between retailers as competitors except in size. This rule does discriminate. I'm sad about that because I know with the Chair I've had conversations that we would like to see the Board rule over the liquor issues with a more even hand. Because the former state stores and contract stores have converted to survive into convenience stores. We view them as competitors, we view the specialty stores as competitors. We do not believe that the sale of food products is allowed in the initiative in terms of regulating us differently. We want to do the right things, we believe that making sure that those mini bottles are secured are the right things to do, but we believe this discriminates between competitors and once again targets our grocery industry. So, we continue to oppose it. I think it is interesting that a legislator is interested in making a difference in this area. The initiative is clear about competitors and placement. That's probably the right place for this particular issue to land, is within the hands of the legislators. I appreciate the motive, I appreciate the goal, but I don't appreciate what we believe to be discriminatory against our industry. Thank you very much for your time and considering our remarks.

Holli Chisa – Northwest Grocery Association

We are here today opposing the rule in its entirety. We have provided our comments to staff. I was a little disappointed after providing the comments to come back and see that there have been substantively no changes to the rule. We are going to present our recommendations again to the Board.

The first is that we don't believe the Board has the authority to address this issue. 66.24.630, 3a, states very clearly that the Board cannot require retailers to have a higher security standard or restrict access to product beyond what was required when you all were in the business of selling this product. At no point did you restrict the sale of these bottles in state run stores, nor in your former contract and state run stores, but you are requiring that standard of us. We do not believe that you have that authority to do that. If the legislature chooses to take this issue up, that is their decision, and they do have the authority to change state law. You cannot go around state law and create a higher standard.

The second is that this rule completely ignores other safety measures that our stores have taken to restrict access this product on the shelf to prevent shoplifting. I have a retailer that, during the holiday season, they package 10 or 12 of these bottles as a kind of sampler or holiday pack. It's a sheet of cardboard between 10 and 12 inches square. It is not something you can put in a backpack. It is not

something that you can put in your pocket. It is not something you can put in your purse. It is not a shoplifted item, but that would be prohibited under this. That large 12 by 12 square would still have to be restricted and have customer access only through store support. That makes no sense to us. No one has approached us and said "hey, can we sit down with your security staff", as we've done in previous years when we've had some issues with these products, and sat down with our security teams and said "okay, what methods do you use and how can we work with you, to understand what works well and what doesn't". To your point, sir, the comment around that it is really around the small operations, this won't affect that if you exempt out anyone that has over 50% in alcohol sales, because the offenders you see out there in the marketplace are not my members. They are the large liquor retailers that have it right at the check stand for an impulse buy. We don't do that, and I've asked my members across the board and they don't do that. They either have it back in a secured area, there is staffing around them, or they do that large packaging method which is a fantastic deterrent for preventing a high school kid, or even an adult, from stealing that product.

The last comment I have is that you are once again creating a bifurcated system. I have asked this Board on a fairly regular basis to look at the sale of the bottle of alcohol, whether it is being sold by an independent store, a large big-box retailer, or a former state run or contract store, we have to be concerned about how that bottle of Bacardi is sold – as the bottle of Bacardi, not by who is selling it. All of us have a responsibility to sell that bottle responsibly. Regardless of whether you are small or big it is the same bottle of alcohol. We just spent a session standardizing our licenses within the retail license category so that all of us know the rules. All of us are treated the same by your agents. All of us know the standards. Now again, we are flipping that around and creating a bifurcated system. Again, after we worked with your fantastic staff to align our licensing structures. So we ask, if you are going to do this, it has to apply to everybody the same. If you are going to do this, sit down and talk with our security staff, we'd be happy to share the methods that we use in our stores to prevent access to these products that work extremely well without having to have staff access for all of it. Thank you.

Member Hauge: Janette, regarding the issue of packaging the bottles in some sort of supplemental packaging so that their size takes them away from the target of opportunity that we are concerned about, did we talk about that at all when we were developing the rule?

Ms. Benham: We talked about packaging and put this language in the rule "the display of bottled spirits 50ml or less in size applies whether a bottle is displayed or sold individually or in a package with other bottled spirits 50ml or less in size". So, we did talk about general packaging, but nothing to the extent or detail that Holly just mentioned.

Member Hauge: Okay, we still have an opportunity to fine tune. Thank you.

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

4. GENERAL PUBLIC COMMENT

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

Dan Purkey – Artizen Cannabis

Thank you honorable Board members for the opportunity to present an issue to you that concerns virtually all users of cannabis. My name is Dan Purkey and I'm the General Manager for Artizen Cannabis, one of the top producer/processors in the state.

I'm here today to renew a request I made about four months ago for the LCB to issue a consumer alert that THC percentages on the package labels don't mean anything. The average consumer has been duped into making erroneous assumptions about how they buy cannabis and the contents of any given package by misleading, although officially published information. The industry is looking to the LCB for the leadership necessary to correct this problem.

Beyond misinforming the public, though, the overriding big picture issue is public health and safety. It seems apparent on its face to me that warning consumers of the problem is the very first priority. CR-101 has begun the process to improve testing standards, but that is highly complex and really independent from what I'm talking about. It'll take months, if not years, for CR-101 to come to fruition, and even at that, may not solve the problem I'm presenting. Meanwhile, the public is at risk without proper information.

From the LCB's website, and behind you, the mission for the LCB is to "Promote public safety and trust". The first goal listed is "Ensure the highest level of public safety." For the LCB to stay in alignment with its own stated principles and goals, I'm offering a solution that is right at hand and can be implemented quickly.

Cannabis THC percentages can vary widely on any given plant. A bud from the top of a given single plant is likely to have much more THC than a bud taken from the same plant, but perhaps lower on the plant where light is restricted and growth not as robust. Given that a lot contains multiple plants and is 5 pounds in total weight, testing a four gram sample from that lot, or about one-tenth of one percent of the 5 pound lot, really can't be representative of anything. The proposed rule to increase the lot size to 15 pounds, will only magnify the problem. The tested and published THC percentage number is essentially a crapshoot relative to what's actually in a given package.

While not a perfect analogy, assume I knew that my blood alcohol level percentage would be below .08 if I drank two drinks that contained alcohol labeled as 100 proof. I could have those drinks and still safely drive, at least for discussion purposes. But if the alcohol was actually 180 proof, I'd not only be unsafe on the road but subject to arrest and fines. Can you imagine the public outcry if alcohol percentage was incorrectly labeled on a routine basis and the LCB knew about the situation and did nothing about it? The LCB faces such a scenario today with cannabis. Proper, accurate labeling is critical to public health and safety. Consumers are generally unaware of the problem and have put their faith and trust in government-approved labeling. Society didn't put up with mislabeled information on consumable products and responded by forming the Food and Drug Administration. Why should we put up with mislabeling cannabis?

Accordingly, Artizen is asking that the LCB direct its staff to dedicate the necessary resources to develop and issue a consumer alert to be posted prominently in all retail stores that warns consumers of the problem. This public health and safety issue can't wait for the conclusion of the CR-101 process. The industry itself is highly competitive and doesn't have the necessary cooperation among individual businesses to uniformly spread the message on its own. We need the leadership of the LCB to educate the public. The warning needs to be issued with all due speed before the public's health is jeopardized more than it already is.

Please, the public needs your help and leadership. I'd be happy to work with the LCB to come up with the right wording for such a consumer alert. I'll present a draft of the language when I send these comments in written form to you.

Thanks for your time to hear this critical issue and I'll take any questions you may have.

Member Hauge: Are you aware of any experiments or studies that have been done where product has been purchased and tested to compare what it actually is in terms of THC percentage versus what is on the label?

Mr. Purkey: I am not.

Member Hauge: Has anybody done that?

Mr. Purkey: My guess is that somebody has, there is no one that I know of. This is a common knowledge industry issue that is based on plant growth how a plant grows. Something that is closer to the light is going to be more robust in THC than something down lower on the interior of the plant.

Member Hauge: Then, concentrates would not be subject to the same variation.

Mr. Purkey: Concentrates would not be subject because it is a liquid and is truly unified, whereas plant material can't be mixed up enough in order to provide that. I know that things have been done in the past, recently I don't know about anyone that has gone out and actually purchased one gram of a particular strain with a given percentage and took a look at that. Although, that certainly seems to be something to do.

Member Hauge: Particularly, if we are going to take action and pass rules, it would be nice to have some hard data.

Mr. Purkey: Absolutely.

Member Hauge: Thank you.

Chair Rushford: Thank you very much, Dan.

Jim MacRae – Straightline Analytics

To address Board member Hauge's question of Mr. Purkey on data, I'll remind you that the LCB has been involved with the Department of Agriculture for a couple of years now doing tests. Those were not all pesticide tests, there were a number of potency tests done there so in theory you would have a significant amount of data that indicates potency recording as done by the agriculture labs compared to what's on the label of the product.

Member Hauge: You say "in theory", I have not seen that data.

Mr. MacRae: Perhaps you should ask staff, just a recommendation. I have seen those data, and they are not easy to play with, but presumably the organization has them in a form that is useable. It's hundreds of tests at this point. Off the top of my head, I know for a fact that there is at least dozens of instances where potency was included. In addition, although I don't think it's been widely published, I know Molecular Testing which is one of the certified labs has published or circulated amongst the labs some work that showed intraplant [sic] variability of potency.

I agree with much of what Mr. Purkey said, I was a little surprised that you are almost advocating for more testing. It's cool when a producer is going to advocate for something that will increase the cost of production per gram. That I think underscores the importance of the issue that he was trying to bring forward. I didn't know that he was going to be talking about this, but I just want to reinforce that he is absolutely correct. The labels as they sit right now have numbers that say potency. We're all used to, and if you've done alcohol for a number of years, how many drinks can one have and still function. I think society kind of knows, there's even in the old days when liability wasn't such a big issue, there were directives given for how much per body weight or how many drinks per hour, that type of thing. With cannabis, people are trying to dial that in now. If they continually are seeing, just for the sake of argument, 30% THC and they are smoking that for months, this is the level at which I feel competent to do things and in reality that stuff was at 20%. Then one day they go out and get something that says 20% and figure they can do one and a half times as much. It starts becoming a problem with respect to unintended intoxication.

I want to commend the LCB once again for having the meetings with the LCB, DOH and the medical group of patients and providers, I think those are very productive. We've had three of them now and hopefully we'll be having the fourth one in the near future. I hope you are getting good feedback from that group and acting on it.

I'm sorry that I was not able to be here yesterday when you discussed your legislative agenda. The lab accreditation moving to the Department of Ecology that was proposed was probably a good thing because they know labs. What I want to reinforce to you is that should not in any way, shape or form, diminish your responsibility for enforcing the behavior of the labs. Again, something that Mr. Purkey eluded to, it's not so much to competency of the labs to be able to report 20% when it's 20%, it's the forces in the market that have resulted in it being desirable to get 30% when you've got 20%. It sells more and it moves quicker. There is an incentive for labs to effectively cheat. I was hopeful when I saw the Department of Agriculture's effort going forward that part of that might be done in such a way that you could at least capture the bad outliers, even if its producers, processors and labs that are contributing to this bad situation and do something about it. Please, in your moves toward ecology, do not lose the importance of enforcing the behavior of the labs and the industry about this really massive fraud that is being done upon consumers right now.

I also want to commend you on the diversity stuff and putting resources behind it. I think that's really going to be a neat piece of work. Thank you.

Don Skakie - Citizen

I'm here today as a follow up to the meetings with DOH, LCB and the medical patients group. Recently I've had conversations that related, although there are certain products that have been no longer authorized to be used on cannabis products, there are still products on the shelves. I will also point to your mission, "to promote public safety", because the question that I was asked in return was "which products are they and where are they on the shelves?"

Now, I do not possess a traceability system, but it would seem to me that the Board having that system should be able to identify those products and where they are. Again, I want to bring to your attention that this is an eminent public health crisis. Not only for patients but for anyone else that would be consuming these products through burning. When you smoke and when you burn these products it alters their chemical composition and creates a whole different set of circumstances beyond what is normally found, say for instance, when said products are used on food that is not being burned. Again, I would ask that


the Board consider this an emergency and take action to remove from the shelves the products that are available today that have these banned substances on them. Thank you.

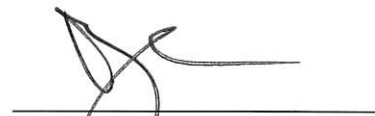
ADJOURN

Chair Rushford adjourned the meeting at 10:25 a.m.

Minutes approved this 3 day of OCTOBER, 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