



Washington State Liquor Cannabis Board Meeting

Wednesday, October 3, 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, October 3, 2018. Member Ollie Garrett and Member Russ Hauge were also present.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Hauge moved to approve the August 22, 2018, meeting minutes.

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

MOTION: Member Garrett moved to approve the September 5, 2018, meeting minutes.

SECOND: Member Hauge seconded.

ACTION: Motion passed unanimously.

3. STAFF PRESENTATION

**Presenter – Nicola Reid, Compliance and Policy Manager, and
Presenter – Susan Harrell, Program Specialist-Label Approval, Licensing**

Ms. Reid and Ms. Harrell provided a presentation (PRESENTATION 1) on marijuana infused candy, packaging and labeling

Chair Rushford: Will you send out the webinar link to the stakeholders involved?

Ms. Reid: Yes, we can assure that happens.

Chair Rushford: Thank you. Are there any other questions?

Member Hauge: I want to thank you for your thorough, quick and prompt response to concerns that have been raised about this issue. I compliment you on the work.

Ms. Reid: Thank you.

Ms. Harrell: Thank you.

Chair Rushford: Thank you very much for today and the work that led up to today's presentation.

4. PUBLIC HEARINGS (A-D)

PUBLIC HEARING 4A - Supplemental CR 102 for Curbside Service

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

Ms. Benham: These rules were created to allow grocery stores to provide curbside service to customers ordering alcohol online as a part of a grocery order. The proposed rule language includes a few technical and clarifying changes in addition to requirements for curbside service.

I want to go over a few of the requirements and I have a few side-notes also. The requirements that are proposed in rule for curbside service include:

- A minimum of \$25 of items coded as grocery items not including alcohol
- Orders must be delivered by the employee to the vehicle, in a designated pick-up area owned or controlled by the licensee
- The employee delivering the order must be at least 18 years of age and be trained on verifying ID, recognizing signs of intoxication and preventing youth access
 - If ID cannot be verified or if the driver is showing signs of intoxication the alcohol will not be sold and will be removed from the order

I wanted to note for those in attendance that after receiving initial comments, the Board has decided to remove and/or revise the following two requirements, and as always will be considering additional comments received in writing and during today's hearing:

- The person who made the order online must be the same person accepting delivery
- Aside from a clear parent/guardian/child relationship all occupants of the vehicle must be at least 21 years of age and provide proof of ID

We'll also be considering the comments received today and additional comments in writing.

When the proposed rules are revised, a second supplemental CR 102 and revised rule language will be brought before the Board for approval.

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

Carrie Bonnington - Instacart

As you may recall I actually testified before you approximately one year ago on the delivery rules that the Board was implementing at the time. I'm grateful for the opportunity to present our position again.

I wanted to begin by thanking the Board for proposing curbside delivery rules. Companies like Instacart which are third-party providers, non-licensed entities that provide technology that connects the consumer with a retailer. They act as the go-between. They are really important for today's consumers in providing a convenience and access, not just to alcohol beverages but also to food as well, groceries, etc.

Instacart had an opportunity to look at the curbside delivery rules. This is becoming a model that is rolling out in many states and in many jurisdictions. We've looked at the various requirements in other states and other jurisdictions. We wanted to bring a couple of things to your attention for your consideration for some additional proposed revisions to the proposed curbside rules. I did just have the opportunity to learn for the first time today that there is going to be a removal of the requirement that the recipient be the same person as the purchaser and also the requirement of a clear parent/guardian/child relationship. Those were two issues that Instacart had concerns with, so we really appreciate the fact that the Board has looked at those and has elected to remove or revise those.

There are a couple of other comments that I did want to make with respect to the proposed rules. The first is that as they are currently drafted they apply only to grocery stores, they do not apply to beer and wine specialty shops or spirit retail licensees. This is a departure from the general delivery rules. For consistency purposes and to expand these offerings, Instacart would request that the rule not be limited merely to grocery stores but instead be expanded to other retail licensees consistent with delivery rules.

We also request, for similar reasons, that the minimum grocery purchase requirement be eliminated so that the consumers do have the opportunity to make a purchase of alcohol beverages without adding food to the order.

These two requests not only bring the curbside delivery rules in alignment with the delivery rules, they also provide added convenience to the consumer. For example, one spouse might pick up of a bottle of wine to consume with dinner while the other spouse is at home cooking dinner. Allowing this expansion, or relaxation, of the rules will allow consumers to purchase and pick-up only an alcohol beverage and not have to have a minimum food purchase with it.

The last point I want to make very briefly is the use of the phrase "employee of the licensee". This is an issue that was addressed by the Board last year. We were able to resolve the issue rather than having changes to the language of the rule to include "an agent" which would allow the Instacart independent contractors to perform that task, we were able to work with the Board on an interpretational basis to allow that to happen. We would request that we be allowed to do that again. I'm happy to answer any questions you might have, otherwise thank you for your time.

Debbie Herron - WalMart

As the prior speaker indicated, I would also concur agreement with the removal of 2(c), the ID match, and 2(e), the -400 rules and language around curbside for the same reasons that have already been identified.

Turning attention to 2(a) on the minimum \$25 of coded grocery items. I wanted to make you aware of some challenges that are internal, things that you don't see as a customer when you use WalMart.com's grocery app for example. There is no universal definition of "grocery". For some retailers it could include

make up, toiletries, other health and beauty items, paper products or household goods. I wanted to call to your attention that perhaps using the word “grocery” in that section may not be the same universal application as how we speak in conversation. Usually when I say “I’m going to go pick up my groceries”, that means fruits, vegetables and food items. But, from a technical standpoint, when we’re looking at how we build an app so that customers can use their digital or mobile device to place their grocery order it plays out in different scenarios where that would be a very intensive process from a technology standpoint to make sure we are compliant with that rule. For some retailers it could even mean not being able to offer that curbside service which would really be a tough time for being able to serve the convenience that curbside offers. Understanding that the Board and enforcement may have particular concerns about alcohol-only orders, we might offer a suggestion to say that orders can’t be exclusively alcohol. That may differ from other speakers, but I wanted to come to the table with an opportunity of language that might work, that might be something from a technology standpoint we would be able to comply with a little bit easier. Or, even have training modules so that if our staff that are serving the curbside customer gets an alcohol-only order they would be trained as they are in all the other things they are trained on, to deny that purchase. That might be an opportunity if we have to go through another draft that we can work together on exact language.

The other piece that I wanted to point out, just to make the Board aware, because we are in that timeframe that goes from back to school to holiday, this window between September 1 and December 31 is particularly an intensive time in the retail world. We ask that whatever rules are adopted give some compliance grace periods for retailers to make the changes necessary, either with training or technology, when we’re not in that really intensive time when our focus is on the customer and making sure they can shop in our stores. We applaud you and appreciate Janette’s work on going through each of these drafts and really taking the time to get it right so that retailers and customers can be served in the best way possible. I’m happy to answer any questions or be a part of a stakeholder meeting if you’d like us to.

Chair Rushford: Thank you very much. The Board discussed about the grocery, but we haven’t landed on a decision yet. We appreciate your comments regarding that. Thank you.

Ms. Herron: Thank you. With some more time I might even think of some other options. Thank you so much.

Chair Rushford: Thank you.

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

PUBLIC HEARING 4B - 2018 Liquor Legislation Implementation

Janette Benham, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4B 1-2).

Ms. Benham: The next public hearing is regarding 2018 liquor legislation. This is to implement House Bill 2517 which passed during this year’s legislative session. The rules were straightforward and the defined ancillary activities as “activities an alcohol manufacturer participates in, and they include all activities, licenses and privileges that involve the public such as serving samples, operating a tasting room, conducting retail sales, serving alcohol under a restaurant license or serving alcohol with a special occasion license”.

The rules state that any violations involving ancillary activities will follow the already established schedules of penalties and will not affect the underlying manufacturing license. The rules also state that violations involving the manufacturing license will follow the already established schedules of penalties, but will extend to all retail activities, associated facilities, privileges, endorsements and permits as applicable.

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

Annie McGrath – Washington Brewers Guild

We are a nonprofit trade association dedicated to representing the interests of small and independent Washington State craft breweries. Washington is now home to over 400 breweries and the vast majority of those are small or independent.

I want to thank Ms. Benham and staff for all the work that has gone into these rules. We think that it is a really nice clean approach and it is consistent with the legislative intent behind the legislation. We do have one late request, and I regret that we didn't catch it earlier because Janette and others have been really great in reaching out to us and including us in this process.

While the rules are very clear that manufacturing abilities will not be impacted as a result of a penalty incurred by ancillary activities it is not specifically clear that distribution will also not be impacted. We do ask that a specific reference to distribution be included in the rules as we move forward. I'm happy to work with Ms. Benham and staff on that, thank you.

Josh McDonald – Washington Wine Institute

We are the trade association for the Washington State wine industry and we have now crossed the 1,000 winery threshold and we're proud of that. But, we have a lot of challenges ahead of us as we continue to grow so aggressively.

I'm here again to support what you heard from Annie. We worked together as coauthors with the draft, and I suppose with the Liquor Board, on the legislation itself and to get it through passage and to signage of the law. We're really grateful for all the work on the rules. We want to also apologize for catching this so late, but we look forward to working with Janette on making sure that we are also protecting that wholesale tier as was the spirit of the legislation as it was passed, separating it from ancillary activities.

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

PUBLIC HEARING 4C – Supplemental CR 102 for 2017 Cannabis Legislation Implementation

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

Ms. McCall: I'm back.

Chair Rushford: I was just about to say that, thank you Karen.

Ms. McCall: I would like to say that I cannot take any credit for all the work that was done on this rulemaking for 2017 legislation implementation. I do have to give all thanks to Joanna, I'm sorry she's not here to be able to take credit for it.

This is a very comprehensive rulemaking, so I ask your patience. I'll do a very high-level review of the changes that we made. I know that you've read through these so I won't waste a lot of time so that you'll have time to give testimony.

The whole purpose of this legislation was to implement legislation from 2017. There were three bills that passed in 2017: ESSB 5131, SB 5130 and HB 1250.

The first change we're going to see are in WAC 314-55-010 with definitions. We made some technical changes to the definition of elementary school and secondary school. There were clarifying changes to the definition of financier, to make it clear and consistent with the terms used in WAC 314-55-035. We added a lot of definitions that we were lacking as in: end product, harvest, immature plants, intermediate product, lozenge, marijuana mix, marijuana mix package and marijuana mix infused.

The next changes are in 314-55-015, general information about marijuana licenses. We added language that stated we would not issue a marijuana license within the exterior boundaries of a reservation or a federally recognized Indian Tribe without the expressed consent of that Tribe, as required in the changes in 69.50.331.

We also added licensees to the list of people that must be 21 to work in a licensed establishment, and we added language that requires "minor restricted" signs to be consistent with the requirements of 314-55-086.

Prohibited practices in 314-55-018. We made some technical changes to add exceptions for free products or treats or services that are allowed in the sample rules. We also added language reiterating prohibition of contingency sales consistent with 314-55-017. The volume discount language that we had originally proposed in this rule was removed based on comments that we received from the industry.

Marijuana license qualifications and application process, which is in 314-55-020: There were some technical changes throughout, we removed the language relating to prioritization of retail applications since the window is no longer open. We also clarified and made technical adjustments to language for inspections of locations. We changed operating plan requirements to move the requirements to a more flexible operating plan, the one that we had was pretty hard to work with. We needed to do that because we now have transportation and research licenses. We also added language on license change request which will make these applications a lot easier than what they have been in the past.

This seems to be a big one, 314-55-035, persons or entities that must qualify for a marijuana license. This is all about the true party of interest. We clarified changes to the definitions for true parties of interest and financiers to clearly differentiate the two. The new language details that employees of producers or processors that received commission based compensation are not considered true parties of interest, so long as certain conditions are met. We also clarified that a consultant that receives a flat or hourly rate compensation under a written contractual agreement is not a true party of interest so long as the consultant does not receive any percentage of profits or interest, or control of the business. We clarified that all funds must be approved by the Board prior to transfer, consistent with our rules and current practice. We added references to changes in ownership requirements to ensure clarity of requirements and avoid confusion. We also added a section on management of daily business operations will not generally be considered as constituting a true party of interest, there have to be certain things that would be met in order for that to happen. We added parts that detail the process for disclosing and requirements for licensing agreements and consulting contracts to the Board. The agreements or contracts under this

subsection cannot create an expectation of exclusivity or dictate the circumstances under which the marijuana business should be operated.

We did add some changes to the research license rule 314-55-073. It actually increases the project plan from four pages to eight, not including references or citations, so it gives the applicant a greater explanation of their project. We are also allowing the scientific reviewer to request additional information if necessary to complete the review.

Then, we made a few changes to the marijuana producer license. We had to make adjustments to reflect the statutory change that allows licensed producers to sell immature plants or clones and seeds to members of a registered cooperative, qualified patients or designated providers.

We made adjustments to reflect the changes to allow licensed producers to sell to licensed marijuana researchers.

We changed the fee for the marijuana producer to \$1,300 which was effective July 1, 2018, which was part of a law change.

We removed language where you had to get your plants in within the first 15 days. We no longer can do that because the businesses that have been up and running for a long time now can get their plants from a producer.

We made technical changes to reflect that overall canopy cannot exceed the amount licensed by the Board. At one time, we had an amount in there in square feet, we don't have that anymore. It just says it cannot be more than what is allowed by the Board.

Marijuana processor license, 314-55-077, we changed the fees to \$1,300 based on the law changes. We also made technical changes detailing that the window for applying for a processor license is closed. The Board may reopen the producer license application window at subsequent times when deemed necessary. There were adjustments to phase out the addition of a processor license for an existing producer license that has not also been issued a processor license. These provisions have served their purpose and are no longer needed. There were adjustments to rule to reflect the new requirements for processors that make marijuana infused edible products to obtain a marijuana edible endorsement from the Department of Agriculture and that was effective April 1, 2018.

We added language allowing processing service arrangements between licensed processors to process intermediate products for a fee rather than purchasing the marijuana and selling it back at the cost of extraction services. That was a big one that we had a lot of comments on.

314-55-079, marijuana retailer license, we made changes to incorporate the allowance for sale or donation of lockable drug boxes due to changes in the law. We increased the maximum retail license interest from three to five due to changes in law. There were some technical changes made throughout the rule, changing the organization of how the rule was listed. We changed the fees for marijuana retailer to affect the changes in law. We removed the 72-hour notification requirement prior to disposal of marijuana products consistent with the removal for waste requirements proposed in the rulemaking.

314-55-083, we made adjustments to the rule title to ensure understanding that traceability system requirements are included in the rule. We removed the 24-hour quarantine requirement prior to transfer of product. We removed the 72-hour notification and waiting period prior to destroying waste. We changed

the 16 digit identification number to the unique identifier generated by the state traceability system due to the transition to a new traceability system. We removed the 15 day window for startup inventory that was in there about when they would first get their license and how they would have to put that in.

Record keeping requirements in 314-55-087, we adjusted it to require records to be kept for five years consistent with the Department of Revenue.

Marijuana servings and transaction limits, 314-55-095, we made changes to clarify the servings and transaction limits for products including marijuana infused products otherwise taken into the body and topicals. These changes were a direct result of the many questions received on servings and transaction requirements from the industry. We also added personal possession limits and transaction limits that are detailed in RCW 69.50.360 and 69.50.4013.

I think this is going to be a big one, I haven't seen a lot of comments on it, there don't seem to be a lot but it is a big change I think. 314-55-096, vendor educational and internal quality control samples. We tried to clarify the changes to ensure sampling rules are clear and understandable, due to a lot of our licensees expressing that they were confused with our requirements. Clarification that vendor samples may only be given to, and used by, licensees or employees of licensees who have product ordering authority. This change was proposed to avoid potential compensation through marijuana products and to ensure that vendor samples function as they should and only be used to negotiate a sale for a product that the licensee does not already carry. We allowed allowances specifically for products that are otherwise taken into the body consistent with definitions in servings and transaction limitations, as well as treating such products similar to marijuana edible products. We added that vendor samples may only be given to, and used by, licensees or employees of licensees that have product ordering authority or employees that provide input on product to licensees or employees of licensees who have purchasing authority, to inform purchasing decisions as detailed in a written business policy. We made changes throughout this rule, changing budtender to employee, and also added an addition explaining processors may not exceed 16 ounce samples of marijuana topicals and may sample one unit per batch.

Marijuana waste disposal, 314-55-097, we removed the 72-hour notification required prior to disposal of waste.

There was, at one time, plans to make changes to quality assurance testing. That has been removed because we are doing a rulemaking just on quality assurance testing.

Those are the highlights of what we have here. I'd be happy to answer any questions if you have them. I do want to say that this is a very large body of work that Joanna worked on for a very long time with the industry and staff. She deserves a lot of credit for that.

Chair Rushford: We appreciate your intercepting where she left off. Thank you.

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

Orion Inskip – Gleam Law

We represent many of the cannabis businesses throughout the state. Our primary concern, and I've put in a few written comments on this already as I'm sure you are aware, is with the changes to 035 and the true party of interest.

The bottom line issue with it is that it was brought over from the liquor regulations and through the evolution of that rule it's gotten less and less clear as to what a true party of interest is. What we would like to see is that entire section scrapped and rewritten to actually address the issue we are trying to address, which is to prevent hidden ownership. The hidden ownership issue is a big issue and that's definitely one that I think we all would like to avoid and are trying to avoid, but with the way the industry works within the state, with the way the banking regulations are and some of the banks rules, not necessarily regulations but their own internal rules, many of the cannabis businesses have to do what we would say "creative business structures". Because of that, those creative business structures may look like a true party of interest under these rules. Those that are enforced against by the well-meaning education and enforcement officers end up spending many hours in negotiations and litigation to try and clean those things up. I think the last count that I had was 68 true party of interest violations that have come through the violations system in the state. When I went through and reviewed all those, very few of them looked like real hidden ownership issues, most of them looked like paperwork problems where we have these businesses trying to comply with the rules but also trying to run their business and be a profitable business. That is a challenge for them when you can do things like open a normal bank account.

The bottom line request we would have is that we actually define what control of a business is, because right now it's not clear what control of a business is. If we look at the section, under the previous rule, there are three different broad categories: true parties of interest, financiers, and then those that exercise control over the business. My understanding of the rules is that there is no actual violation for exercising control over the business, and therefore that gives the agency the ability to do a background check on someone that they believe is exercising control over the business to ensure that they aren't actually a hidden owner. I think that is fair, I think that is a legitimate concern because you could have someone that on paper is an employee but actually is the hidden owner because they wouldn't have qualified under the rules any other way. So I think that is fair, but we still need a very clear definition of control. I think the new rule should include elements, just like any other actual crime would include. Where we would be giving violations for this, we would like to see very clearly defined elements so that we know what is and what is not, and those elements should be for a true party of interest that they are receiving some sort of monetary benefit, that they are also exercising control, and finally that they would not actually under the rules to be a true party of interest. In that case, then yes, that would be a violation. I'm open to questions, I know I've submitted multiple written comments so if you have questions what I've submitted as well.

Chris Marr – Consultant

I submitted more in depth written comments, so I'll just speak to a couple points. I want to focus, as the previous speaker, on one critical area of concern and that is section 314-55-035. I spoke on this section during the hearing on the previous draft and I acknowledge there were a number of changes but I will tell you that most of those changes, from my perspective, make it worse from a licensee perspective.

Focusing on a couple areas, Subsection 2, a common practice among processors is a commission based pay for sales staff. This was a subject of an ALJ case, which the LBC lost. A judge ruled that a contracted third party sales person was not a true party of interest. The new language permits an "employee to be commission based" but excludes contracted third parties. That was the subject of the Sourface case. This would nullify the ALJ ruling with no real rationale, which I believe would most hurt smaller licensees who don't have the wherewithal to have their own in-house sales force.

Subsection 3, these changes impair the access to capital by imposing a vague definition of allowable interest. Lenders demand a significant risk premium to finance this sector, I think we all know that. The

lack of a clear definition is a deterrent to lenders. The requirement, in addition, that all financiers have U.S. residency is also an issue as it applies to public companies with non-resident shareholders with small interests.

I really don't understand why the Board is imposing rules which put further hardships on licensees. Many of whom are struggling to obtain capital just to stay in business right now.

Subsection 4, this section is confusing and poorly written. The section title is actually "persons who exercise control of business". Which it defines in (i) as "any person or legal entity", skip ahead, "that exercise control of the business". Vague construction and circular reference really permeate the section, I would ask that you look at it closely. There is no clear definition of what constitutes control over business operations, which only invites confusion and inconsistent application.

I've had conversations with licensing and they tell me that the policy is to require all consulting contracts, I repeat, all consulting contracts be submitted for approval. From a statutory standpoint, actually, you are only supposed to review, which covers contracts which don't represent operational control.

The last area has to do with licensing agreements. As you know, I mentioned in my previous testimony that that wasn't even mentioned in the last draft, even though you were directed by statute to engage in rulemaking. But, the language is totally inconsistent with practice in this or other industries. There are prohibitions against exclusivity and royalty or revenue based compensation. Exclusivity is key to intellectual property licensing. In fact, if you fail to protect your license it is subject to forfeiture. As for compensation, the proposed rules restrict IP licensees to fix their hourly agreements, which is illogical. The value of the license is related to the size of additional revenue stream.

I am going to ask that the Board withdraw this section of change to the rules, strike these changes, and undertake a more thoughtful and thorough process. I can say as someone that has weighed in before, and you'll hear from WACA and CORE, we were not consulted, based on our feedback or the proposed changes before they were inserted in this draft change. Thank you.

Tammi Hill – Washington Cannabusiness Association

Like the two people that spoke before me, we are here to ask that the Board hold back the amendment to section 314-55-035 as we described in our written comment to the Board. WACA wholeheartedly supports efforts to clarify the true party of interest standard. We think it is important, even critical, to protect against undisclosed ownership and attempts to subvert the rule. However, we don't believe the current proposal is the way to do that. The current proposal increases confusion and prohibits common business practices. As the two people before me indicated, licenses and intellectual property are particularly inconsistent as currently applied to how this rule treats them. Another area where that is true is limitations on financing, and where licensees can look for financing.

We're also concerned about the implication that sales commissions equal control of the business. We would definitely like to reiterate the need to define control in a non-circular way. I think the elements listed before are a good start, but absolutely this is something that needs to be well defined. We do not believe that this section at this time does that.

We believe, essentially, that this section requires additional attention and consideration. WACA is happy to participate as a stakeholder, but we don't believe that our concerns were met thus far in the drafting. Thank you for your consideration.

Chris Masse – Miller Nash

I'm not speaking today on behalf on any specific client, but I think I have a broad enough practice that we've seen a lot of trends and a lot of experiences both on the licensing side an on the enforcement side that I hope we have something to offer.

I'm going to sound a little bit like a broken record, I also focused my concerns on 035, I did submit written comments both last go around and this time on a couple of more specific things. I wanted to tackle that section generally, and I agree with the previous speakers asking you to hold it back out of the package and spend some more focus on it.

The reason I care about this section is basically all planning and structural issues and basically every reason a client calls me in the first place lives in that section. It has business structure, financing, leasing, commissions, consulting, management, financiers, true parties of interest, control, the entire way a business is formed lives in that section and if some of the changes are made, frankly even some of the changes that aren't there yet but have practically been used in the industry on the enforcement side, that section, if you violate most of the things in there is license cancellation on a first offense. When all of that is planning related, i.e. many things that these companies did two, three, going on four years ago to get structured in a way that I think was not to get around hidden ownership, not to flout any of these rules but in many ways is standard business practice.

When entities come ask me for advice, yes I tell them to open up separate LLCs and different entities just to protect themselves from risk, to protect themselves from tax risk, to prevent their bank accounts from being shut down, none of that is done to try and subvert any of these rules. I feel like the changes being made are an attempt to clarify, and give the industry a better road map of what is okay and what is not okay, but in doing so it has actually made it much more confusing.

There's also some practical issues with some of the pieces that are in there. I know I probably sound like a broken record on this one too because I've testified on them in the past, but they build in significant periods of time into business planning. For example, the financing ones. If all the financing agreements, all of the IP, all of the management, all of the consulting, all of your leases, every single document that you ever enter is subject to review, and not just review and notice to the Board but also approval and consent, I think it really puts these license holders in a very tenuous position. Especially on the financier. I've preached that extensively. I think there are some real issues in there related to the reasonableness of the interest rate, everything being approved, I mean, I have some pending agreements with the licensing staff right now that I have had approved in the past, no problem, with some feedback and changes from your staff, we've gotten to an answer and gotten a loan agreement approved. I'm using those same loan agreements now, a year later, and they are being repeatedly rejected by staff for loan covenants, the security that is being taken, the revolver, things that, no lender would ever lend into this industry without. I think it's time for us to step back, have a workgroup, look at this section, have the Board understand why people are organizing a certain way and the reasons behind it, and then see if we can put a little more clarity around some of these rules.

Myron Katsapas – Viva Cannabis

I would like to echo what all the speakers before me spoke about. I actually want to touch on the new toll processing law that is coming into effect. We are a 502 processor that specializes in outdoor sun-grown flower. I have a lot of interactions with producers, and producers are being left out of this war where producers can't get services for a fee.

I think it is really important that they can do so because if you look at any industry up until now, the way that success is being found is through specialization. Farmers just want to be able to farm. In Stemilt, a guy grows apples and takes them to Stemilt, Stemilt packs the apples and sells them for the farmer. If the farmer does well, the farmer will take the apples again to Stemilt the next year. I think that allowing farmers to procure services is key to their success.

I toured the state this year, and I saw desolate farms. Some guys that just didn't make it, trying to do drying and curing. Their farms are in isolated areas because they need to be away from suburban areas. You know in Chelan County there is a moratorium so no, you can't put it next to your house with a bunch of power. You have to go find a remote location. Then you have to store your cannabis in the remote location where it's just going to be a perfect target for a robbery.

Why can't that farmer go out and pay for services? He works six months of the year, he works hard in the field. He takes his cannabis off to a processor or a warehouse that stores the cannabis in a safe and secure location. He can sell his cannabis from there, he remains part owner of the cannabis. I've heard a lot of stories of farmers going and doing deals with processors, processors that don't have the ability to get the money to pay cash crop. You have six weeks to bring all of your harvest in, and that's your inventory for an entire year. So, the processor doesn't have the money to do it, so the farmers end up doing these deals with the processors, but guess what? They lose ownership of their cannabis because of the law. They can't retain their ownership, then the processor goes out of business or doesn't do their numbers right, so the farmer doesn't get any money and is left stranded. I met farmers out there that now have second mortgages on their homes to procure another crop. If they could forego part of this toll law, it would be very easy for them to retain ownership of that weed and manage that relationship. For example, that process is not paying me for the weed that I've transferred, please give me my crop back so I can go to the next processor and sell to them. That is my main purpose for being here today.

Second to that, I want to thank the LCB for everything they have done thus far. I think that we've done a great job as an industry leading the world and leading the nation in cannabis legalization. You look at Canada, it's legal in Canada now. Los Angeles is on the way. I think that it is time for us to take a step back and look at where we are. We're not in the same place we were four years ago where it wasn't legal anywhere else. We want to stop product being deferred and we want to create more of a free market environment. Rick Garza said at the last roundtable event, "I don't think we need to look at regulation to provide solutions to all these farmers. I think more of a free market environment is where we want to go".

Steve Sarich – Cannabis Action Coalition

I wasn't planning on testifying on this but under 5052, the registry was supposed to be a voluntary registry. Voluntary establishes that whether I volunteer or not I don't suffer. Now you are getting ready to pass a rule supposedly for medical patients, since we're the only ones that can grow, that allows for clones and seeds to be sold. But only to qualifying patients. 150,000 or more of us patients that have legitimate medical authorizations don't qualify. I want you to be alerted to that you are not helping patients and you are not living up to the spirit of 5052 because I won't be able to go in and buy seeds or clones from these stores because I refuse to give up my second amendment rights. I refuse to give up my fifth amendment rights. I shouldn't have to do that in order to get seeds through the only source that is legal in the state of Washington. Thank you.

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

PUBLIC HEARING 4D - 2018 Cannabis Legislation Implementation

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

Ms. McCall: This is to implement E2SHB 2334. This requires the Liquor and Cannabis Board to develop testing requirements for CBD additives generated outside of the regulated marijuana industry if a marijuana licensee wishes to use those additives in creating marijuana derived products.

What we have is a new section in 314-55, it is Subsection 109 – “Cannabinoid Additives, Requirements, Restrictions and Quality Assurance Testing”. I’ve had a few comments that I’ve received since I’ve been back this last month, I’m also going through comments that Joanna received. What this does is establishes sample deduction and quality assurance testing requirements for CBD product obtained from a source outside of our licensed system, the following fields of testing:

- Potency to confirm the product is less than 0.3% THC and contains CBD;
- Pesticide screening, consistent with pesticide action levels provided in WAC 314-55-108, due to concerns about pesticides being present in these largely unregulated products;
- Heavy metal screening, due to concerns about pesticides being present in these largely unregulated products;
- Residual solvent screening given that finished CBD oils/extracts have been extracted using various solvents;
- Microbiological screening consistent with similar requirements for marijuana and marijuana products; and
- Mycotoxin screening consistent with similar requirements for marijuana and marijuana products.

If a cannabidiol (CBD) product obtained from a source not licensed under this chapter fails quality assurance testing, it may not be used as an additive in marijuana products and must be destroyed consistent with the requirements in WAC 314-55-097.

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

Eric Johansen – Washington State Department of Agriculture

My comments are restricted to a specific section of the proposed rules, WAC 314-55-109 Subsection 4(b)(ii) – Pesticide Screening.

I have submitted comments electronically, but I will also bring a hard copy because I think it is important that you understand the issue here. The issue is that the rules that are adopted by reference, in otherwise the pesticide action levels, and the list of unapproved pesticides to test for, so that the Department of Health (DOH) requirements and LCB requirements. Neither of those are currently adequate to protect human health. If the goal of this rule is to protect the health of cannabis users, including patients, from imported cannabinoids, you need to be aware that the rules as they exist today do not protect human health. Adopting the same rules by reference, or the list to test for by reference, really isn’t helping.

I would offer just one side comment which may seem a little strange, but bear with me for a moment. That deals with overproduction. My understanding is that one of the areas that the Liquor and Cannabis Board is very concerned about is overproduction. Maybe I’m misinformed, but if you had rules that were adequate to protect human health that might kick out some of the product that should not be in the

system, whether it is for an adult user or for a medical patient. That might help you to address the overproduction issue. Thank you.

Member Hauge: Is this the position of the Department of Agriculture (WSDA), or is this your position?

Mr. Johansen: I am submitting comments as an employee of the WSDA. I developed the list of allowed pesticides. I developed the recommendations for the DOH. So, yes, I'm doing this in my official capacity as an employee of the WSDA.

Member Hauge: Thank you.

Mr. Johansen: Again, this is not meant to, I understand this is a difficult issue and I certainly would be willing to work with LCB, DOH, anyone to get this resolved. Just adopting something that really isn't adequate doesn't fix the problem. Thank you.

Chair Rushford. Thank you.

Steve Sarich – Cannabis Action Coalition

One of your requirements for this is going to be heavy metal testing. As we both now know, we may or may not even have a single lab in the state of Washington that will be certified to do heavy metal testing. Does that mean that all CBD is coming off the shelves at the 502 stores? Because that would appear to be what the effect of this rule is. Which means again that patients lose.

The other thing I need to point out is that most of the CBD products that are in the recreational stores right now, if you do your own checking on this, your own individual investigation of this, you'll find that they are all CBD isolate products. In other words, we all know that cannabinoids work together, it's called the entourage effect. Using isolates, or distillates, instead of a full plant extract, will do nothing for a patient. So, nothing in the way of CBD products that are currently in the stores, unless there is something out there that is a full plant extract which we have absolutely no way of knowing since your traceability system doesn't work, there are no CBD products out there in the stores for patients. Requiring heavy metal testing on this, when an isolate by definition is 99 point something percent pure to begin with, the chances of heavy metals involved in that are fairly slim. If you don't have labs that do heavy metal testing, please don't require heavy metal testing. Thank you.

Orion Inskip – Gleam Law

Part of the problem with the CBD importation is that the current industrial hemp pilot program within the state of Washington legislatively prohibits the processing of any part of the plant that would contain CBD. You can only process the seeds for human consumption. I know that you don't have the power to change that legislation but that is critical, I think, to being able to import and control the CBD that is being added into the product, to be able to source it locally.

I think there is a potential issue with the processing of imported hemp. If someone is going to import hemp from a state that allows the growing of hemp, Colorado or Oregon, and bring it into Washington, it's not clear if they can process that raw material here under our current rules, and then add that to the marijuana infused products. I know it is a legislative issue, but that has to be taken care of before I think we can really talk about bringing in CBD from outside of the regulated market.

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

5. GENERAL PUBLIC COMMENT

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

Arthur Burgess - Crypticon

I'm here to talk about non-profits and their ability to fundraise utilizing the special occasion permits. The way it stands now, works for 95% of the applications probably, but the problems we are running into are specific to conventions. What's going on right now is that it appears that you're only issuing one special occasion permit for a single address. The issue we are having is that we have a number of legitimate non-profits trying to fundraise at a convention where there are thousands of people at, fan-based conventions where there a quite a few people at, and it appears that the license is issued on a first come first serve basis, so if you have eight non-profits trying to fundraise at this event they aren't able to. We've called, and had an enforcement officer come out to explain at a convention committee recently, he did a great job by the way, but the issues we are having are not enforcement they are on the licensing side. So, we're kind of stalled and trying to find a way to move forward so that we can get the licenses we need to fundraise. The enforcement officer suggested that we come here to ask you to help find a way to proceed forward because right now it isn't working in this particular environment.

Chair Rushford: I'm going to ask that a few of our licensing staff connect with you, Arthur, so if there are any points of clarification you'll receive them from Kyle or Nicola or Jeanne. Thank you.

Mr. Burgess: Thank you for your time.

Anne Sultan – A Bud & Leaf, Inc.

I am a licensee for the next couple of months or so, we are in the process of selling our business. I wanted to appear to let you know that I still am committed, although I am moving deeper into retirement and selling my retail business. I want you to know that I remain committed to assisting you with the survey that I think you are going to be doing under the leadership and direction of Ms. Garrett.

I did find another survey, if I may approach and share this with you (CITIZEN HANDOUT 1). There is a professor at the University of Colorado who is doing a survey. He includes some information that I think is going to be important for the survey that you might do. I encourage you to continue your effort to get your own survey out.

I'm now going to take off my licensee hat and talk to you as a PhD holder in the field of criminology and criminal justice as a researcher. You don't want somebody from out of state writing your history. This fellow sent out this survey quite some time ago. Whoever writes the academic report based on data is the one who writes the history. I think that the LCB will want to write its own history and the way you are going to do that is by collecting your data and getting your information out before other people start trying to characterize what is going on in this state based upon the research that they have completed. I encourage you to continue your work in that regard. I stand willing to assist you on a volunteer basis in that regard. I have been fortunate to be a part of this enterprise. I thank you for the work that you've done. I understand the challenges you face. I wish you the very best as you go forward.

I am going to write a chapter in my next book, my fourth academic book, I'm going to write a chapter about my experience here in that book, kind of an ethnographic study similar to *Street Corner Society* that sociologists are familiar with, but I get to write it from the perspective of a participant observer. My fourth book is scheduled for publication in 2019. When that book is released I will certainly share that chapter with you. If I can, I certainly will send you a prepublication of the draft so if you see something in there about how I describe the Board or anything you can give me feedback because I want to be certain that as I write my history, being a part of this in my latest criminal justice book, that everything in there is accurate. To me that is critically important.

I want to bid you adieu, and thank you again so much. Your staff has been wonderful in working with me as my husband and I are transitioning into retirement. They have been super, thank you so much for your courtesies over the last five years.

Chair Rushford: Thank you very much.

Steve Sarich – Cannabis Action Coalition

Here's where you are right now. The last lab that was licensed for heavy metals has now quit. I guess you are trying to talk them into staying on until the first of the year. That won't help. As I pointed out, the medical patient workgroup that I've been doing with you, it won't help because the last lab that quit, quit because they were only doing 10-15 tests each month. There is nothing to test. I understand that you are trying to talk these people into continuing through the end of the year doing heavy metal testing, but they quit because there is nothing to test. So, that's not going to help.

Just to give you, and facts are important. Here's a fact. 99.8% of all the marijuana that was tested, going into the regulated market, was only tested for recreational. Only 0.2% of all the marijuana that was tested was for medical. 0.2% and we're supposed to be at least 50% of the market. We obviously aren't being represented. There is no medicine in the stores. You can't tell us when there is going to be medicine in the stores because, like you said, you can't force them to make medicine and put it on the shelves.

Right now you are in violation of 5052 because it said you must, it didn't say kinda shoulda, it says you must. When you convinced them to close down 1,100 medical dispensaries, you guaranteed them, Rick Garza got up there and guaranteed them that there would be medicine on the shelves. It is now confirmed that there is no medicine on the shelves, nor do you have a plan to put medicine on the shelves. You can put forth no plan to do that. Certainly nothing in this rulemaking is going to do that. In Nevada, two years ago, when they ran out of recreational marijuana...

Meeting was interrupted by the President's Emergency Broadcast test

Mr. Sarich: In Nevada two years ago, they ran out of recreational marijuana, big deal. The Governor down there declared a state of emergency because they were out of recreational marijuana. I want you to notify the Governor that you are incapable at this point of complying with SB 5052, that there is no medicine on the shelves, that you don't know when there is going to be medicine on the shelves, you have no plan for there to be medicine on the shelves and a state of emergency needs to be declared. If there was no Viagra on the shelves tomorrow they'd be calling a special session of the legislature.

Meeting was interrupted by the President's Emergency Broadcast test

We have nothing in store for patients except bad news. We are asking you to please inform the Governor that you cannot comply with the rule of making sure the patients have medicine in the state of Washington. Thank you.

ADJOURN

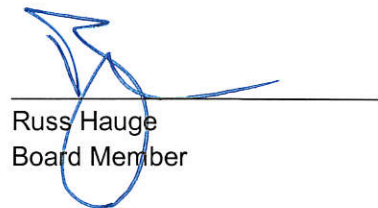
Chair Rushford: Thank you all for being here and for your many contributions. We stand adjourned.

Chair Rushford adjourned the meeting at 11:19 a.m.

Minutes approved this 21 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, cannabis, tobacco, and vapor 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