



Washington State Liquor and Cannabis Board Meeting

Wednesday, October 2, 2019, 10:00 a.m.
Boardroom, LCB Headquarters – 1025 Union Ave SE, Olympia, WA 98504

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 2, 2019. Member Russ Hauge was present, Member Garrett was excused.

Chair Rushford: Good morning, everyone. Thank you for taking time to be with us today. We appreciate your engagement and we the many opinions that our stakeholders and others bring to this process.

I want to acknowledge a change on the agenda. We have two worlds of vapor products: the nicotine vapor products and the cannabis vapor products. Today we will address the nicotine vapor products in the CR 102, not the cannabis vapor products. I want to distinguish this, and going forward we'll be sure to make that clear distinction with Kathy Hoffman, our rulemaking expert for both spheres of vapor products. I hope that doesn't inconvenience any of you. Today we'll address the nicotine vapor products.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Hauge moved to approve the August 21, 2019, meeting minutes.

SECOND: Chair Rushford seconded.

ACTION: Motion passed unanimously.

3. ALCOHOL RELATED RULEMAKING

ACTION ITEM (A)

ACTION ITEM 3A - Board Adoption of CR 103 for Spirits Distributor License Fees Rules

Janette Benham, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3A 1-5).
Ms. Benham:

Ms. Benham: Thank you and good morning, Chair Rushford and Board Member Hauge. I'm here this morning to request the Board approve final rulemaking regarding spirits distributor license fees. This rulemaking was initiated, as you know, as a result of a Court of Appeals decision from 2017. Revisions

were made to WAC 314-02-106, seven sections of chapter of 314-23 WAC to include WAC 314-23-001, 005, 021, 022, 030, 041, and 042 and to WAC 314-28-070. Also, WAC 314-23-025 was repealed since it expired on March 31 of 2013. The revisions add the requirement under RCW 66.24.055 that spirits retail licensees selling for resale pay a ten percent distributor license fee in the first 27 months of licensure and a five percent distributor license fee in month 28 and thereafter when no other distributor license fee has been paid. Revisions also remove the distributor license fee requirement for distilleries and craft distilleries, update reporting and payment requirements, remove outdated language and make additional technical and clarifying changes.

We had a public hearing on September 18 and no one showed up to testify. We did, however, receive two written comments. One was from the Washington Food Industry Association in support for the proposed rules. The other was from council for Blue Spirits Distilling requesting we remove all references to fees, including removal of the 17 percent fee on gross revenue for sales to consumers for off-premise consumption. The changes were not made because after a motion for discretionary review, the court of appeals held in part that the LCB had the authority to impose the 17 percent retail fee. The case is currently under appeal and if a different decision is made, we'll review and revise the rules accordingly.

The concise explanatory statement has been prepared and will be sent to those who commented on the rules revisions and it will also be posted on our webpage. I want to note that these rules have a delayed effective date of January 1 of 2020, which is at the beginning of the quarterly reporting period. If you don't have any questions, I request approval to file the CR 103 and adopt the final rules.

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

MOTION: Member Hauge moved to adopt the CR 103 for Spirits Distributor License Fees Rules

SECOND: Chair Rushford seconded.

ACTION: Motion passed unanimously.

RULEMAKING TIMELINE

Ms. Benham: I would also like to provide a rulemaking update. We have, of course, the spirits distributor fees which will have a delayed effective date of January 1 of 2020.

We are currently revising special occasion license rules. The draft rules were sent out for staff, AAG and stakeholder comment. We received generally positive feedback and are currently reviewing comments. We'll respond to all comments prior to filing the CR 102. I'm anticipating the CR 102 with the proposed revisions will be filed October 30. If we need to bump it out, it won't be much further out.

Wineries and breweries rules; we're still reviewing staff comments, working through and responding to stakeholder comments. We're working through some inconsistencies that we found out about between our rules and the TTB requirements. I know these rules have been in the works, the revisions have been in the works for a long time and we're still working on those. Hopefully, we'll have the CR 102 by the end of the month and we won't have to push that out any further.

We have the barriers rules and revisions to WAC 314-02-025 and 033. Our draft rules, after considerable work with our staff and stakeholders, were sent out for comment with a response deadline of October 9. We've already received great feedback, so between the draft rules that were sent out and what we'll bring

forward with the CR 102, there will be some clarifying changes to make sure that we're not inadvertently disallowing some of what we are considering allowing.

I also have two rules packages for 2019 legislation. One is regarding Soju, recapping sake and manufacturers packaging and bottling. We had a staff work session on September 20 and we got through the majority of the rules revision. We have a couple of additional items to work out and we should have those fairly soon -- end of October, maybe into November for these. The other 2019 legislation rules package is a full chapter review of Chapter 314-38 for permits. This is regarding student tasting. We also had a staff work session on September 23 and we're going to be scheduling more work sessions to ensure that we address all of the revisions that are being reviewed. Do you have any questions?

Chair Rushford: No questions today, Janette, thank you, and thanks to everyone who's contributing to this process because it's moving along very well and we appreciate it.

4. CANNABIS RELATED RULEMAKING

ACTION ITEM (A)

ACTION ITEM 4A - Board Approval of CR 102 for Nicotine Vapor Products Rules

Kathy Hoffman, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4A 1-4).

Ms. Hoffman: Good morning Chair Rushford and Board Member Hauge. The first item I have for you today is to request approval to file a CR 102 regarding Chapter 314-35, vapor products. These proposed rules apply only to vapor products as defined in RCW 70.345.010(19). That is any noncombustible product that may contain nicotine and employs a heating element, power source, electronic circuit, or other electronic chemical or mechanical means regardless of shape or size that can be used to produce vapor or aerosol from solution or other substance. I want to make it clear that these rules do not apply to any product that meets the definition of marijuana as described and provided in RCW 69.50.010. I just want to make sure that we're clear on what these rules apply to moving forward.

These rules implement the requirements of ESSHB 1873 which has to do with vapor product taxation. It also has to do with Chapter 1074 [sic] (EHB 1074), that's the tobacco 21 legislation which raises the age to purchase tobacco products to 21. This would include vapor products in that legislation. What the overall rule package would do is, again, increase the age of sale for vapor products. They increase the record-keeping requirements. They clarify vapor product licensee requirements, including qualification, application denials, insurance requirements, license suspension and revocation. They establish transportation requirements. They establish the ability for the LCB to seize both cannabinoid vapor products and vapor products and establish forfeiture guidelines. They also establish a penalty structure that aligns with the current structure reform that we're putting forward with the marijuana penalties.

Before I ask for your approval, I just want to add one thing to the CR 102 form. Under the small business economic impact statement, there's a sentence that I need to add that refers to the 3,869 total licensees with physical addresses in the state that helps to clarify how we came to the figure that we did on the small business economic impact statement. Any questions before I ask for your approval?

Chair Rushford: No, thank you very much, Kathy.

Ms. Hoffman then requested approval to file the CR 102 regarding Chapter 314-35 WAC

MOTION: Member Hauge moved to approve the CR 102 for Nicotine Vapor Products Rules

SECOND: Chair Rushford seconded.

ACTION: Motion passed unanimously.

RULEMAKING TIMELINE

Ms. Hoffman: With respect to rules updates, I'll start with our penalty rule revision project. As you're aware, we released conceptual draft rules in late August. We had our first "listen and learn" session on September 29. We reviewed five sections of rules. It was a record for us, the listen and learn session was scheduled for four hours and lasted a half an hour or maybe 35 minutes. We received two excellent comments and we were done. The next session is currently penciled in for October 31. We'll send messaging about that either later this week or earlier next week. That is when we'll get into the meat of the penalty grids. Based on this timeline, we're still on schedule to file the CR 102 by the middle of November and have rules effective either on or close to the first of next year.

Voluntary compliance program. We're still trying to schedule our project kick-off team on that particular project. I think a lot of my efforts have been concentrated in the vapor space for the last several weeks so some of my projects have had to move back a little bit and voluntary compliance fell into that bucket.

Then true party of interest (TPI) work which is implementing ESHB 1794. A workgroup consisting of industry partners and internal agency people will meet again on October 22. We do have a working definition of "control" at this point but we're also looking at defining things like "employee". There are other issues emerging as we work through these rules, so this may have to move at a different pace than the penalty rules, unfortunately. I think it's a really good idea to get the penalty rules in place as soon as possible and TPI can follow shortly thereafter. So again, readjusting timeline to accommodate our resource allocation and at this point, I'm aiming for late November, early December for filing a CR 102 in that space.

Quality assurance testing rules. I have a meeting scheduled for next week to refine the final ruleset on that. We are considering the ways that we can support the Governor's Executive Order 19 03 that was just entered last week, and see if there's any way that we can weave in pieces about disclosure that were important to that executive order. That also points back to packaging and labeling rules, so we have a clear stream of what is required throughout the ruleset. The CR 102 presentation on that set will be ready in the middle of November.

Packaging and labeling rules which are implementing ESSB 5298. We have a day-long "listen and learn" session scheduled for October 11. Our messaging went out on that on September 26. I received one comment. We've added language into the draft conceptual rules requiring a listing of additives to concentrates. I'll read it to you: "It would require a complete list of any other chemicals, compounds, additives, thickening agents, terpenes or other substances used to produce or added to the concentrate or extract at any point of production. The copy of the complete list of chemicals, compounds, additives, thickening agents, terpenes, or other substances must be kept and maintained at the facility in which the marijuana concentrates are processed". That's what we're proposing at this time and we had that in the draft conceptual rule before the Executive Order came out so we feel like we're in alignment with our direction. This is very aggressive, but to assure that we have a hearing on this particular ruleset with enough time to move forward with the CR 103 for the final rules by the end of the year I will need to present the CR 102 on October 30.

The vape rules I just presented to you on those today and so will be filing the CR 102 as soon as we conclude here. Can I answer any questions?

Chair Rushford: No, thank you very much, Kathy.

5. GENERAL PUBLIC COMMENT

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

Aaron Barfield – Emerald Source

Mr. Barfield: My name is Aaron Barfield. I founded the almost 500-member organization Black Excellence in Cannabis. I'm here with a few of our members to give input on the lack of social equity in Washington's cannabis industry.

As an individual, my involvement with the LCB has been a nightmare that has gone on for almost five years now. I started in the industry as a very private medical cannabis patient and provider. As more and more patients requested my services as a provider, I expanded my collective to meet their needs. Even though I knew I was following the law and providing a valuable service, I was afraid to open up a licensed dispensary to operate from. I changed the name of my collective four times to avoid scrutiny of law enforcement and government regulators which came with publicity. For a black man in the cannabis industry at that time, publicity was nearly a death sentence. Instead, I stayed in the background operating from the medical cannabis farmer's markets around Seattle and Tacoma. This was a hardship for our patients but unfortunately, it's what we had to do to survive.

When the I-502 recreational law passed, I had already seen how the police and other regulating agencies were publicly persecuting black dispensary owners. I was afraid to apply for a license on my own and expose myself to the LCB's scrutiny for fear of discrimination and targeting. I teamed up with a white woman, Miles Alexander, and secured a location in my hometown of Renton so we could apply for a license that we could partner in. I knew that there was a better chance of success without me on the application.

After the LCB lottery selection, I was added to the application and began communicating directly with the LCB. My requests for guidance were often ignored and I was consistently given incorrect, misleading, or delayed information. Eventually, to meet the LCB's financial requirements, Miles and I were forced to bring in another partner, James Buchanan, as an investor.

Almost immediately after opening the store, Miles announced to a vendor that she was continuing to grow cannabis. The LCB had repeatedly informed us that the retail license holders were not allowed to grow cannabis and that if they were found to be doing so, their license would be revoked. I discussed the situation with our other partner James Buchanan, who took it upon himself to report the incident to the LCB. They informed us that we needed to remove Miles as an offending member to keep her from jeopardizing our license. We voted Miles out of the company to save our license as the LCB directed and she immediately sued us. That lawsuit drug on for over two years while I was operating Emerald Haze.

During that time, I applied for two other retail licenses, one in Seattle and one in Renton. After a lot of red tape, my applications were eventually given priority one status. While I was working to expand the only majority black-owned cannabis store in Washington, I believe Emerald Haze was targeted by LCB officers for enforcement as shown by the only LCB shutdown of the long-open convenience store located next to

us. After securing commercial locations for the licenses, the LCB then downgraded the status of our applications from priority one and I was left with a mess.

Miles Alexander ended up winning her lawsuit with the assistance of the LCB, despite admitting under oath to continuing to illegally distribute cannabis after we were licensed. She was given full control of Emerald Haze and I believe she continues to jeopardize our license without consequence.

In order to pursue our chosen profession, black entrepreneurs who are part of the Washington cannabis community before recreational passed were forced to risk taking on unsuitable partners to overcome the excessive barriers to entry put in place by the LCB. Meanwhile, white-owned cannabis operations have been licensed and empowered to generate millions of dollars at the expense of the black community for going on five years. The absence of black-owned cannabis businesses in Washington has become so shamefully embarrassing that the state is now finally being pressured into doing something about the problem.

I recently asked the LCB communications officer why the LCB wasn't seeking input for its social equity program from the people who had been damaged the most by the LCB's policy. He said they didn't know how to find us. On behalf of the Black Excellence in Cannabis Organization, we're here to offer our input and that is that the LCB should immediately begin righting the wrongs done to black pioneers from Washington's cannabis community and any true social equity program will include funding for education and training programs and the creation of a review board for monitoring LCB enforcement activities.

The current situation could have been avoided if the LCB had fulfilled its responsibility to implement a fair and equitable system, which represented all members of our community. Instead we're left with an LCB agency that's own officers publicly describe as a toxic environment and blacks are being exiled from an industry which we helped to build. The LCB owes a debt to the black community in Washington and it appears you were trying to file bankruptcy by pawning off the problem on other agencies like the Department of Commerce and local jurisdictions. Well, that debt is not discharged and your application is denied.

Chair Rushford: I'm giving you an additional minute. But you have just 30 more seconds.

Mr. Barfield: I'm done. There's another member from our organization who would like to speak as well.

Chair Rushford: Thank you for your comments. We're taking several steps that I think are relevant to the comments you've made. I'm going to ask someone here to provide some clarification after the meeting, thank you. And, would you please sign the document so we have it for the record. Thank you.

We try to limit the comments to four minutes. If I stop you, it's because time has expired.

Brionne Carbray – Game Collective

Brionne Carbray: My name is Brionne Carbray and I was one of the original -- in fact, I was the first African American to open up a medical marijuana collective. Because I did get attention by the media, because I was the first African American, I was targeted by the federal government, in particular Jenny Durkan because she was the head of the federal government at that time as leading prosecuting attorney.

I had all the licenses. I actually drove up here to get my licenses from the Secretary of State office. So I followed all the rules, did everything that we were supposed to. But since I was African American, I was targeted and put out of business. They threatened to kill me, literally. They threatened to put me in prison for five years for having the same business that they were allowing, what was it at that time, about 150

other medical marijuana collectives going on at that time. And so basically what my thing is that I wanted to come up here and let you guys see the damage that was done to the African American community. Because, basically what they did was, they did the crow syndrome where you take one out and you hang them in the tree so that every time any other one thinks about doing it, they understand this is what's going to happen to them. And that's what they did and used me for. And so what we're doing is we're doing a documentary and we're going to apply for our licenses, and then if we don't get them then we're just going to bring a lawsuit because we need this to be rectified because it was damage to the African American community by them doing that.

I've heard countless stories of people just not wanting to open up because they were afraid. Literally, that they'll take me to prison and I can't even go to the courthouse without passing a medical marijuana collective to blocks from the courthouse. Those guys are all white and so, we have a legitimate complaint. We do have a legitimate complaint and I'm not anti-white, my wife is white so it's nothing like that, but we were done wrong in this industry. I can't even tell you how many of us have been to prison for marijuana and it's shameful that Washington State just hasn't opened up the industry to us like that.

And so, again, I think I'm owed something. I think that I literally think I'm owed something for what I went through because we were planning on doing the 502 and all that kind of stuff. State came down and asked what our plans were. After we told them our plans, because we were a black organization, African American organization, and they didn't like it and so they turned the feds on us and that was Washington State. The state of Washington turned the feds on me to get us out of the industry because they didn't like our game plan. They didn't like our business plan that we had, which was to make sure that each one of our people that was within our organization applied for these licenses, and it was going to enable us to have a seat at the table and they didn't want us to have that seat at the table so they took it. So I'm here to let you guys know that we are here to fight for our seat back at the table and that if you guys aren't willing to give us our seat then we're just going to have to take it. And so we're here to give fair warning for that. If there's something you can do to prohibit it then we can sit down and talk with you but if there's -- if you want to act like there's nothing you can do about then we're going to have to take the very next step, which is, you know, lawful.

Chair Rushford: Thank you for your comments.

Mr. Carbray: Okay, thank you.

Chair Rushford: And as I mentioned earlier, we have several steps --

Mr. Carbray: Is it a Band-Aid or is it a cure?

Chair Rushford: WE have steps --

Mr. Carbray: -- because we don't want to hear a Band-Aid.

Chair Rushford: Thank you for your comments.

Mr. Carbray: Okay, thank you.

Chair Rushford: Are there any other comments today? Don, did you sign in?

Mr. Skakie: Not yet, Jane but I will.

Don Skakie – Homegrow Washington

Don Skakie: Good morning, Chair Rushford and Member Hauge. I didn't sign in today because I really wasn't planning on speaking but after Kathy's presentation, I did want to throw in a little bit.

The testing requirements and labeling requirements have been contentious throughout the 502 history. Given what seems to be a deeper look into what all of these ingredients are, the natural plant cannabis has so many different varieties, so many different profiles of its natural contents, that I'd like to follow up with Kathy afterwards. But in the details of this, are we talking about added labeling regarding just added terpenes and other substances to the cannabis products or a greater depth of exposure in testing and labeling of the naturally occurring products? I'm talking about purity of the plant as opposed to, let's call it value added for a lack of a better term, ingredients that might be intermixed with any of the substances that currently go onto the shelves for consumers.

I know that some of the naturally occurring elements are quite small and at times, virtually undetectable so we don't want to overburden the producers, processors, and retailers with having too fine of a point on what is naturally occurring. As a consumer, I really do have an interest in knowing not only what we call "value added ingredients" might be but also their purity and their source. As you should be well aware by now, terpenes are not only naturally occurring in cannabis itself but in other plants and substances that can be added.

I'd like the rulemaking process to take care of that and take that into consideration. And, as a consumer, that's what's going to be important to me. Thank you for your time today. I will sign in.

Chair Rushford: Thank you. That completes the -- please. Thank you. If you would state your name for the record and sign in.

Tim Goodman – Game Collective

Tim Goodman: My name is Tim Goodman. I'd just like to say I've been involved in the cannabis industry. I've been a high-level manager or general manager at a couple stores. It hasn't been stated but let's just get kind of a concept of the numbers. So let's say there's 350 marijuana stores in the state. I don't know the number but we do know that out of 350, maybe 15 maybe of them to ten are black-owned, maybe. And the rest are white. Now, if that's not an injustice, especially when we led the way for being locked up for it when it was illegal, now that we legalized it were left behind even when a lot of us have the resources to own our own stores or to even grow.

In the industry as a general manager, I was promised stores and expansion. But because of this, as we can all see in the industry, I wasn't allowed to advance. I had people that were going over me, managers that were put over me that were white - I have a BA degree, I have a degree - that had no GED. And I'm supposed to succumb to them.

I'm asking that everyone here, whether you're white, black or whatever, you take a deep look at it and take a deep look at yourself and take a deep look at your culture, take a deep look at your people because at the end of the day, if something was to happen or go down and this world was at jeopardy, it wouldn't matter whether you were white or black or how much money you have. You'd be fighting with the person for livelihood because of your children and everything else. In our culture, we want our children to have things. We want to pass down things to our children. We don't want to be left out. We got locked up for it, led the way for being locked up for it. These are facts. Percentages speak for themselves.

Now, at least let us sit at the table or even lead the way for having stores for an injustice that has been done for a long time. That's it. My name's Tim Goodman. You can Google me under "Tim Goodman basketball" if you want to know more. Thank you very much.

Chair Rushford: Thank you, Tim. And just to restate that social equity is one of the Board's priorities and we expect to take a number of steps in the 2020 legislative process. We greatly appreciate the comments made here today and invite you into our rulemaking process. We also want to know how to reach you when these opportunities are available.

Any other comments today from anyone here? Hearing none. We have completed the orders of the day and are now adjourned.

ADJOURN

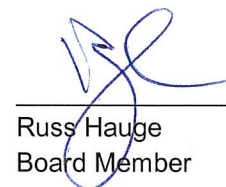
Chair Rushford adjourned the meeting at 10:34 am.

Minutes approved this 30 day of OCTOBER, 2019


Jane Rushford
Board Chair

Not Present

Ollie Garrett
Board Member


Russ Hauge
Board Member

Minutes prepared by: Cindy Doughty, Administrative Assistant to the Board

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

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