



Washington State Liquor and Cannabis Board Meeting

Wednesday, December 9, 2020, 10:00am
This Meeting was Convened Via Conference Call

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 am on Wednesday, December 9, 2020. Member Ollie Garrett and Member Russ Hauge were also present.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Garrett moved to approve the October 28, 2020, meeting minutes.

SECOND: Member Hauge seconded.

ACTION: Chair Rushford approved the motion.

3. ALCOHOL RELATED RULEMAKING AND TIMELINES

TIMELINES

Audrey Vasek: Good morning, Chair Rushford and Board members Garrett and Hauge. Thanks for the opportunity to be here today and give an update on the alcohol rulemaking timelines.

First, the project related to implementation of 2020 legislation – Engrossed Second Substitute Senate Bill 5549, which is the distilleries bill. We held a virtual “listen and learn” session to gather public feedback and suggestions for revisions for the conceptual draft rule language on November 17. At the peak there were over 40 people in attendance. The project team is currently reviewing and analyzing the public feedback received during the “listen and learn” session to determine what changes could be made to the conceptual draft rule language. I’m in the process of preparing the CR 102 package and I tentatively plan to present the CR 102 to the Board for approval on or after December 23.

The second rule project is related to implementation of 2020 legislation and involves four bills: House Bill 2412, which is related to brewery keg registration and identification requirements, Engrossed Substitute Senate Bill 5006, which is related to on-premises consumption endorsements for breweries and wineries, Engrossed Substitute Senate Bill 6095, which is related to interstate common carriers, and Substitute

Senate Bill 6392, which is related to local wine industry associations. For these four bills, the CR 102 package and proposed rules were approved at the November 18, 2020 Board meeting and filed with the coder reviser. The formal comment period is currently open and the public hearing is set for January 6, 2021. No comments have been received to date. Those are all the updates I have today. Are there any questions I can answer before moving to the alcohol related action item?

Jane Rushford: Thank you, Audrey. Let's move to the action item.

ACTION ITEM (A)

ACTION ITEM 3A - Board Adoption of CR 103 for 2019 Legislation Implementation and Rules Review for chapter 314-38 WAC (Student Tastings/Permits)

Audrey Vasek, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 3A).

Ms. Vasek: Thank you, Chair Rushford. For action item 3A I'm requesting approval (sic)[adoption] of a CR 103 package and final rules for the student tastings and permits chapter rules review project, which implements 2019 legislation and updates chapter 314-38 WAC.

As background, this rule project was initiated in May 2019 to implement 2019 legislation Engrossed House Bill (HB) 1563. That bill was related to special permits for alcohol tastings by students at least 18 years of age enrolled in certain degree related programs at community or technical colleges, regional universities, or state universities. In addition to implementing that 2019 legislation, this rule project includes a rules review of the permits chapter 314-38 WAC.

For stakeholder engagement, we held a virtual "listen and learn" session on September 3, 2020. Based on the feedback received during that listen and learn session, we made a couple changes to the rule language before the CR 102 and proposed rules were filed on September 30, 2020. A public hearing for this rule proposal was held on November 18. One person testified at the public hearing and one written comment was received. These comments are captured in the concise explanatory statement included in the CR 103 package. Based on these comments we did not make any changes from the proposed rules to the final rules in the CR 103 package today.

The final rule revisions amend, reorganize, clarify and modernize the existing requirements related to permits. The final rules are needed to support current applicants by confirming existing standards through language clarification and modernization of the existing rules with and implement the laws established by the HB 1563. If the CR 103 package is approved (sic)[adopted] today, I will send a concise explanatory statement to everyone who provided comments and file the final rules with the code reviser's office. The effective date of the final rules will be January 9, 2021, which is 31 days after filing. Thank you very much for listening. Are there any questions I can answer about the CR 103 package?

Chair Rushford: Doesn't sound like we have any questions, Audrey. Excellent work.

MOTION: Member Garrett moved to adopt the CR 103 for 2019 Legislation Implementation and Rules Review for chapter 314-38 WAC (Student Tastings/Permits)

SECOND: Member Hauge seconded.

ACTION: Chair Rushford approved the motion.

Chair Rushford: Thank you very much. Let's move now to Casey for the cannabis related rulemaking and timelines.

4. CANNABIS RELATED RULEMAKING AND TIMELINES

TIMELINES

Casey Schaufler: Good morning, Chair Rushford and Board members Garrett and Hauge. Thank you for the opportunity to be here today. I have two very brief project check-ins today.

For the Tier I project, the review of the two Tier I licensee survey results is ongoing. In particular, staff is analyzing whether the feedback or suggestions offered are determined in statute or rule. Work on that is ongoing.

Second, we continue to review public comment for quality control. That review is expected to take a sufficient amount of time for thorough analysis based on the amount of feedback that we received and coordination with other board (sic)[agency] staff. Those are my two timelines for today. If there are questions, please let me know. Otherwise, I'm ready to move on to our action item.

Chair Rushford: It doesn't sound like there are any questions, Casey, thank you.

ACTION ITEM (A)

ACTION ITEM 4A - Board Approval of CR 102 for THC Vapor Products – Implementing HB 2826

Casey Schaufler, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4A 1-8).

Mr. Schaufler: The CR 102 package I am submitting for approval today is for the implementation of HB 2826 regarding marijuana vapor products.

This bill was passed by the legislature in response to an outbreak of lung injuries associated with individuals who consume THC or nicotine vapor products designated as E-cigarette or vaping product use associated lung injury referred to in short as EVALI. This rule package consistent with HB 2826 proposes the following: new definition in WAC 314-55-010(4) for characterizing flavor, new definition in WAC 314-55-010(40) for terpenes, as well as sub definitions for botanical terpene, synthetic terpenes, and terpenoids, new section in WAC 314-55-550, marijuana vapor products outlining the Board's processes for regulating cannabis vapor products, and new section WAC 314-55-1055, ingredient disclosure. Please note this section is currently active under the Board's adoption of emergency rule and is authorized under statute as provided by HB 2826. This emergency rule has been continuously in effect since October 2019.

The CR 102 memo reflects an extensive timeline of emergency rules adopted by both the Washington State Board of Health and this Board in response to EVALI. This rule package follows two well attended

“listen and learn” sessions held on September 1 and September 29. These two sessions reviewed this conceptual draft language where the definition and new section of rule as well as the format and content of the ingredient disclosure form. The disclosure form itself is still being revised outside of the rulemaking process with effort focused on simplifying the form for licensees and Board and Department of Health staff who will receive those forms.

I'd also like to highlight that the State Board of Health adopted on November 5 a permanent prohibition on the sale of vapor products containing vitamin E acetate with that rule taking effect on November 15 as WAC 246-80-021.

The scope of work for the CR 102 is solely to implement HB 2826. The proposed rules consistent with HB 2826 requires processors and producers to disclose all compounds used to produce or added to marijuana vapor products. This disclosure is estimated to incur administrative costs for licensees but is not expected to exceed any of the thresholds for more than minor costs as defined under the Regulatory Fairness Act. The proposed rules do not change, modify, add cost, or otherwise alter the license application process. Please let me know if you have any questions. Thank you.

MOTION: Member Garrett moved to approve the CR 102 for THC Vapor Products – Implementing HB 2826

SECOND: Member Hauge seconded.

ACTION: Chair Rushford approved the motion

Chair Rushford: So moved. Thank you, Casey and thank you, Board. We'll move now to the public hearing.

PUBLIC HEARING (B)

PUBLIC HEARING 5C – Marijuana Certificate of Compliance

Casey Schaufler, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 4B).

Mr. Schaufler: Thank you again. This is a hearing for rules to implement Senate Substitute Bill 6206. This legislation effective as of June 11, 2020 was designed to prevent a competitor from opening a business that would disqualify another marijuana entities license application. These proposed rules allow the Board to issue a certificate of compliance to an applicant if proposed business premises meet the minimum distance requirement as of the date of application that was received by the Board. No formal comments have been received to date for this rulemaking, since the filing of the CR 102. Please let me know if there any questions. Thank you.

Member Garrett: This is Ollie. I have no questions.

Member Hauge: This is Russ. I have no questions. Thank you.

Chair Rushford: We'll begin the public hearing. Thank you, Casey. Jim MacRae, welcome.

Jim MacRae – Straightline Analytics

Thank you for getting around to this, eventually. I think back to probably the best well known incident that's relevant to this. An established retailer in Seattle had a competitor that was going to be moving in very, very close to them. And it ended up that that established retailer owned a piece of property right in the area and set up a small arcade, they called it, a play place for children to go into, which then nullified the application for the subsequent retail competitor right down the street. That was pretty well known at the time and really, I think, shook up a lot of licensees in the industry or applicants in the industry because it introduced, as the legislature ultimately recognized in this bill, a really unreasonable risk for people that were trying to start retail licenses in that all of the investment could be put into securing the property, securing all the stuff that goes along with that. And then someone could open up an arcade or school or something right beside them and nullify that license as long as that happened before completion of the licensure process. So I commend the Board for eventually getting around to doing this.

My awareness of this issue first came up in about 2015 at a CCSE meeting, Coalition for Cannabis Standards and Ethics, where an LCB enforcement officer addressed the group. It was a very good presentation. It was informative as could be. Someone asked that officer a question relating specifically to the arcade issue. The response from the officer really stunned me at the time and it sort of shook me to the core. And I just want to relate that to you now because it was so many years ago. The officer at the time just basically kind of smirked and said, "There was a brilliant move on the part of the licensee from a competitive perspective to do what they did to maintain their competitive position". And it was kind of put into the place of it reinforced to me that the enforcement agents live by the rules and presumably live to a degree by the law. So, I'm glad that after all these years that has being changed. I just want to reinforce I think it's a very good idea to put that certificate into place. It makes life much more predictable for applicants for very precious retail slots. So thank you very much for doing that. I support this rulemaking. Thank you.

Chair Rushford: Thank you very much, Jim. Dustin, did we have anyone else indicate an interest in testifying?

Dustin Dickson: No, Chair, nobody else has registered for the public hearing today.

Chair Rushford: That concludes our public hearing. Thanks again.

5. GENERAL PUBLIC COMMENT

Chair Rushford: We'll move to general public comments. Again Jim, welcome.

Jim MacRae – Straightline Analytics

Well, first of all, Chair Rushford, I heard the news about your impending retirement from the Board. I wish you all the best going forward beyond that time.

What I want to talk about briefly relates to the vapor products rulemaking that you've just kicked off at the CR 102 level. And this is of course an extension of the series of emergency rules that were put in place. I just want to point something out. In reading the packet for that, there's a historical timeline in it that indicates a number of dates, the first of which was September 27, 2019, Governor Inslee's Proclamation

19-03. It kicked off an official concern over the vaping injury cases and what was going on there. And then subsequent moves, you know, an emergency rule just a little more than two weeks after on October 16 that the LCB put into place, which was subsequently extended a number of times following that.

Just for the record. I think it's important that the awareness of the Board at the "vappy thing" be properly captured in these documents and I want to just remind you of a meeting that you attended, Chair Rushford, I know you were there and Sara was there as well. It was August 20 of 2019, and it was a prevention summit that was held at the University of Washington Bothell campus, the day before your special Board meeting that you held up there. Towards the end of that meeting, there was a very lively discussion amongst a number of people in the prevention community about the emerging vaping injuries. And at that time, you know, it seemed pretty clear that this seemed to be the first time that the Board members, or anybody from the LCB that was at the meeting at least, was aware of the issue. But it was clear that the city of Seattle and a few other people in the room, had already begun doing things to address this issue. Nobody knew exactly what's going on but somebody certainly knew that public safety and health was being impacted by this.

So, just as you go forward in this, it would be nice if you recognized, from an awareness perspective, that the Board's awareness of the issue did predate the Governor's September 27, 2019 Proclamation 19-03.

I also want to make one more thing on a laudatory move to compliment you. I did notice that later today, you are having an Executive Management Team meeting that is open to the public. The agenda looks very broad and it covers an awful lot of important things that I think are important that the community be updated on. So, thank you for having that. I am a little disappointed that there has been no Cannabis Advisory Committee (sic)[Council] meeting that happened during the year 2020. There was one scheduled but it was cancelled.

Mr. Dickson: Jim, you have 30 seconds.

Mr. MacRae: Thank you. After the Alcohol Advisory Committee meeting that you had recently, it became clear that there is some means by which the LCB can implement legislative input after the September deadline. You might want to consider reaching out to the Cannabis Advisory Committee (sic)[Council] members and asking if they have any input that might impact your legislative framework going forward for this upcoming session. Thank you very much.

Chair Rushford: Thank you for your comments, Jim, and I appreciate your well wishes. In addition to the comment, there is a CAC meeting, a Cannabis Advisory Council meeting coming up in January. Dustin or Ollie, what is the date for that?

Mr. Dickson: Chair, I don't think we've put it officially on the calendar yet. That will happen by the end of this week, we're looking at Wednesday, January 6.

Chair Rushford: Thank you. Yes, I know that's a work in progress and there have been so many moving parts this year with important subjects, not the least of which are the policy considerations during COVID, outreach in September, Social Equity Task Force and many other concerns. Certainly the "listen and learn" and other opportunities to come together on other proposals or moving forward with already developed proposals. Lots of activity and thank you again for your comments.

Dustin, did we have anyone else indicate interest in speaking today?

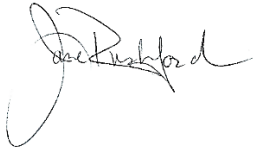
Mr. Dickson: No, Chair. Nobody else has registered for general public comment today.

Chair Rushford: Thank you. Therefore, we have completed the orders of the day and are adjourned. Thank you.

ADJOURN

Chair Rushford adjourned the meeting at 10:24am.

Minutes approved this 6th day of January, 2021



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