



Board Caucus Meeting

Tuesday, May 3, 2021, 10:00am

This meeting was held via conference call

Meeting Minutes

CAUCUS ATTENDEES

Chair David Postman
Member Ollie Garrett
Member Russ Hauge
Dustin Dickson, Executive Assistant

GUESTS

Claris Nnanabu, Director of Human Resources
Kathy Hoffman, Policy and Rules Manager
Audrey Vasek, Policy and Rules Coordinator

EXECUTIVE SESSION

Due to unforeseen technical difficulties, Dustin Dickson, Executive Assistant to the Board, announced on behalf of the Board members and Chair Postman that the Board would begin the Executive Session at 10:03am.

At 10:30am, Dustin announced on behalf of the Board members and Chair Postman that the Executive Session would be extended by five minutes.

At 10:35am, Dustin announced on behalf of the Board members and Chair Postman that the Executive Session would be extended by five minutes. He anticipated the Executive Session would conclude at 10:40am.

At 10:40am, Chair Postman announced the conclusion of the Executive Session.

APPROVAL OF MEETING MINUTES

MOTION: Member Hauge moved to approve the April 27, 2021, Board caucus minutes

SECOND: Member Garrett seconded.

ACTION: Chair Postman approved the motion.

RULEMAKING UPDATE – DELTA-8

Kathy began with a brief history on the subject of Delta-8. She said the LCB became aware of the issue in June of 2020 and have been exploring the subject of compounds other than Delta-9 since then. Kathy said there had been a great deal of research done as well as both internal meetings and external meetings with other agencies and states. She added that licensees had also offered both verifiable and

also less verifiable information. Kathy said the LCB had begun focusing on the definition of tetrahydrocannabinol (THC) and what the term “synthetic” means in this context long before the policy statement was released last week. She noted that this concern is something the LCB has been monitoring for quite some time.

Kathy informed that in January, when the first draft of the policy statement was started, it was focused only on Delta-8. This policy statement was sent to stakeholders for review and feedback in February. She said that during this review period, the agency learned that the issue had expanded past just Delta-8 derived from hemp. Kathy said the policy statement was then revised to include other compounds, and that statutory authority was explored to determine rulemaking possibilities. A final version of the policy statement was shared with agency partners in late March. She noted the statement released last week had not substantively changed from that version.

Kathy underscored that the LCB had not banned anything at this point. She said that the Pharmacy Commission was equally clear that “all compounds of THC are recognized as Schedule I substances, such as Delta-8 and Delta-9.” She reminded that the LCB has regulatory authority over Delta-9.

Kathy said the intent of any policy or interpretive statement is advisory. She added that until the LCB has reached a conclusion through the public rulemaking process whether to adopt rules to create enforceable requirements regarding products that contain Delta-8, this policy statement will remain advisory. The policy statement does not create regulation. Kathy said the LCB would continue to enforce existing rules pertaining to packaging and labeling reviews to ensure there is nothing in excess of 10mg of any type of THC in edible products.

Kathy informed that she would present a CR 101 package for consideration that contemplates rule development that would allow the Board to evaluate additives, solvents, ingredients and compounds used in the production and processing of marijuana products to determine whether such products pose a risk to public health or youth access. She added that it is listed in the policy statement that “compounds other than Delta-9 THC are not subject to mandatory testing, including potency, and the impacts of these chemicals are unknown and could be dangerous.” Once the CR 101 is filed, Kathy anticipates scheduling rule development meetings and will use the “deliberative dialogue” method to conduct these meetings. She said she would also reach out scientific experts to help begin to frame and sort the multiple interests in the issue. Kathy hoped to work toward legislative remedies that would expand the LCB’s ability to respond to circumstances such as this.

David thanked Kathy for the update. He asked for clarification that policy and interpretive statements do not create policy. Kathy confirmed. Russ shared that he had meetings pending on the subject with industry members and intended to get their perspective, anecdotal or not, and would share the feedback with Kathy and the Board.

RULEMAKING PETITION REVIEW AND CONSIDERATION – ALCOHOL DELIVERY TECHNOLOGY

Audrey informed the petition was received on March 8, 2021 from Brent Allen Hill of Bellycheer.co. She said the petition proposes to amend rules related to consumer orders and internet sales and delivery in six rules sections, including WAC 314-03-020, 314-03-030, 314-03-035, 314-03-040, 314-22-060 and 314-28-100.

Mr. Hill proposes to amend those six rules to allow for technology enabled verification of age, intoxication and signature prior to delivery of alcohol. Audrey said the request would potentially allow of unattended delivery of packages containing alcohol on the doorstep of a residence or business. Under the current rules, the delivery person is required to complete verification of age, intoxication and signature at the time delivery. This means that unattended delivery of packages containing alcohol is not permitted.

Audrey said that rulemaking that would allow for unattended delivery and enable the use of unspecified technology to check for intoxication, age and signature collection prior to the delivery of alcohol raises several policy concerns. One of the concerns the petition raises is youth access, a major public health and safety concern. Additionally, there has been an increase in alcohol deliveries due to the COVID-19 pandemic. Although Mr. Hill asserts that a technology-enabled verification system could prevent youth from accessing alcohol through home deliveries, there is no evidence that shows it would be any more effective than the current policy at doing so. The technology described by Mr. Hill is not yet available for a demonstration, so it unclear whether it can actually deliver the results described in the petition. In this case, rulemaking in anticipation of the development of an untested new technology would be premature and could lead to unintended consequences such as inadvertently increasing youth access to alcohol or creating additional public health and safety risks.

There are also policy concerns about allowing the use of unspecified technology to check for intoxication and age. The technology described by Mr. Hill for identification verification through facial recognition technology and voice scanning for signs of intoxication would rely on artificial intelligence and machine learning platforms. It is uncertain whether facial recognition and voice scanning technology that relies on artificial intelligence can be applied fairly and without bias in this context. For example, if an AI or machine learning database is composed largely of voice recordings or photos of persons of one ethnicity, race, or gender, the database could generate results that are biased against persons who do not sound or look like the images or recordings that the AI database relies on, possibly generating false-positives on intoxication checks or false-negatives on facial recognition.

Additionally, the petition raises several statutory and regulatory concerns. The legislature provided clear alcohol delivery requirements in the statutes that apply to direct sale of wine by wineries (RCW 66.20.375) and direct sale of spirits by distilleries (RCW 66.20.410). These statutes include requirements for verification of age, intoxication and signature at the time of delivery. Although there are no specific delivery requirements for other license types, amending the rules as proposed in the petition would be inconsistent with the statutory requirements for distilleries and wineries. For example, WAC 314-28-100 (which applies to distilleries) largely mirrors the language in RCW 66.20.410, and the language that Mr. Hill seeks to add or remove from rule would make the rule inconsistent with the statute.

Engrossed Second Substitute House Bill (E2SHB) 1480 (relating to extending certain privileges granted to liquor licensees to mitigate the impact of the coronavirus pandemic) also contains language requiring age verification and signature collection at the time of alcohol delivery. This bill went into effect on April 14, 2021. In other words, rulemaking to allow unattended delivery of alcohol would be inconsistent with the current alcohol delivery laws that apply to distilleries and wineries as well as the language in E2SHB 1480.

In conclusion, considering the potential impact on public health and safety and the current statutory alcohol delivery standards, agency staff believe it would be premature to engage in alcohol delivery rulemaking as requested by Mr. Hill at this time. For these reasons, it is recommended to deny this rule petition.

Russ appreciated the work Audrey did to prepare the Board for this consideration. David said that while the LCB Board and staff embraces technological advances and innovation, in this case it isn't timely and agreed with the recommendation that the Board should deny the petition.

MOTION: Member Hauge moved to accept the recommendation to deny the petition.

SECOND: Member Garrett seconded.

ACTION: Chair Postman approved the motion denying the petition.

David thanked Kathy, Audrey and staff for the work that went in to developing the presentations and adjourned the meeting.

Meeting adjourned at 10:57am.

Minutes approved this 11th day of May, 2021.



David Postman
Board Chair

Not Present

Ollie Garrett
Board Member



Russ Hauge
Board Member

Minutes Prepared by: Dustin Dickson, Executive Assistant to the Board