



## Washington State Liquor and Cannabis Board Meeting

Wednesday, May 12, 2021, 10:00am

This Meeting was Convened Via Conference Call

### Meeting Minutes

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#### 1. CALL TO ORDER

Chair David Postman called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 am on Wednesday, May 12, 2021. Member Ollie Garrett and Member Russ Hauge were also present.

#### 2. APPROVAL OF MEETING MINUTES

MOTION: Member Hauge moved to approve the April 28, 2021, Board meeting minutes.

SECOND: Member Garrett seconded.

ACTION: Chair Postman approved the motion.

#### 3. ALCOHOL RELATED RULEMAKING AND TIMELINES

##### TIMELINES

Presenter – Audrey Vasek, Policy and Rules Coordinator

Ms. Vasek gave a brief review of pending alcohol related rulemaking, including:

- Distillery Reporting and Payment (314-28 WAC)
  - CR 102 approved on April 14, 2021
  - Public hearing scheduled for May 26
  - Public comment period is open, one comment received so far
  - Project team will meet after the hearing to review additional comments received
  - CR 103 tentatively scheduled for June 9, 2021
- Summary Suspension and Stay Provisions to Enforce Governor's Proclamations
  - CR 101 approved on April 14
  - Two comments received so far
  - Project team is developing conceptual draft rules
  - "Listen and learn" in possibly late June or early July

- CR 102 tentatively planned for August or September

Ms. Vasek: Are there any questions I can answer?

Chair Postman: I don't have any questions, thank you. Board members?

Member Garrett: I have no questions.

Member Hauge: No questions from me, thank you.

## **ACTION ITEMS (A-B)**

### **ACTION ITEM 3A – Board Approval of CR 101 for 2021 Legislation Implementation – E2SHB 1480 (COVID-19 Alcohol Allowances)**

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

Ms. Vasek: This bill extends certain privileges granted to liquor licensees to mitigate the impact of the COVID-19 pandemic and took effect on April 14, 2021. Rules are needed to implement the bill which allows specifically listed privileges or allowances for certain liquor licensees to continue until June 30, 2023. The CR 101 memo describes the privileges that are temporarily authorized by the bill, I'll briefly mention a couple examples:

- Spirits beer and wine restaurants being able serve cocktails to go,
- Licensees that were previously allowed to sell growlers for on-premises consumption may sell them for off-premises consumption through take-out, curbside service or delivery,
- More privileges are described in the CR 101 memo

## Timeline

May 12, 2021	Board is asked to approve filing pre-proposal statement of inquiry (CR 101). CR 101 filed with the Office of the Code Reviser. WSLCB webpage updated and notice circulated by GovDelivery distribution list. Initial comment period begins.
June 02, 2021	Notice published in the Washington State Register under WSR 21-11.
July 02, 2021	Initial comment period ends.
September 1, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. WSLCB webpage updated and notice circulated by the rules distribution list. Formal comment period begins.
September 15, 2021	Notice published in the Washington State Register under WSR 21-18.

October 13, 2021	Public hearing held and formal comment period ends.
October 27, 2021	Board is asked to adopt rules, if no substantive changes are made (CR 103). Concise explanatory statement provided to individuals offering written or oral comment at the public hearing or during the formal comment period under RCW 34.05.325. CR 103 and adopted rules filed with the Office of the Code Reviser. WSLCB webpage updated and notice is circulated by the rules distribution list.
November 27, 2021	The rules are effective 31 days after filing unless otherwise specified. See RCW 34.05.380(2).

Ms. Vasek: Are there any questions I can answer?

Chair Postman: Not from me. I feel we've been very well briefed on this.

Member Garrett: Not from me.

Member Hauge: No, thank you.

MOTION: Member Garrett moved to approve the filing of the CR 101 for 2021 Legislation Implementation – E2SHB 1480 (COVID-19 Alcohol Allowances)

SECOND: Member Hauge seconded.

ACTION: Chair Postman approved the motion.

#### **ACTION ITEM 4B – Board Adoption of CR 103 for 2020 Legislation Implementation – E2SSB 5549 (Distilleries)**

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

Ms. Vasek: Today I'm also requesting adoption of final rules and approval of a CR 103 for implementation of 2020 legislation – Engrossed Second Substitute Senate Bill 5549. For background, this is the bill that modified privileges and/or requirements for distillery and craft distillery licensees and established a new off-site tasting room license available beginning January 1, 2021.

The CR 101 for this rule project was originally filed in August, 2020, and we held a virtual "listen and learn" session in November, 2020, to gather public feedback and suggestions. Following the "listen and learn" session, the original CR 102 and proposed rules for this project were filed in December, 2020, and the first public hearing was held on February 3, 2021. At the hearing, one person provided oral testimony, and two written comments were received. After the first hearing we decided to make substantive changes to the original rule proposal in order to incorporate feedback from the public comments, as well as make the proposed rules compatible with changes to the distillery reporting and payment rules necessary as a

result of the Court of Appeals decision in *Blue Spirits*. The supplemental CR 102 was filed on March 17, 2021 and the public hearing was held at the last Board meeting on April 28, 2021. No one testified at the public hearing, and we did not receive any written comments during the comment period. The public comments we received on the original rule proposal and our responses are contained in the concise explanatory statement (CES).

If the CR 103 is approved today, I will file the rules with the Office of the Code Reviser and send the CES to all those who provided comments. The effective date of the rules would be 31 days after filing, or June 12, 2021.

That concludes my presentation on the CR 103, if there are any questions I am happy to answer them.

Chair Postman: I have a process question, if I may. You said there was one comment in person and two written comments. And then did you say the changes made to reflect those did constitute substantive changes to the original proposal?

Ms. Vasek: Correct, and that's why we went to the supplemental CR 102 in March and opened a new public comment period and new hearing.

Chair Postman: I think that is a great example of why people should come forward and speak, even if there are a small number of people it can make a difference and end up with a better product.

Any other questions or comments for Ms. Vasek?

Member Hauge: Not from me, thanks.

Member Garrett: None from me either.

MOTION: Member Hauge moved to Adopt the CR 103 for 2020 Legislation Implementation – E2SSB 5549 (Distilleries)

SECOND: Member Garrett seconded.

ACTION: Chair Postman approved the motion.

#### **4. CANNABIS RELATED RULEMAKING AND TIMELINES**

##### **TIMELINES**

Presenter – Kathy Hoffman, Policy and Rules Manager

Ms. Hoffman gave a brief review of pending cannabis related rulemaking, including:

- Cannabis Quality Control Rules
  - Will compose the timeline once fully staffed
  - Convenience contract seeking an economist to assist with Regulatory Fairness Act analysis has been finalized, bidding process should commence in the coming weeks

- Criminal History Background Check Redesign
  - “Listen and learn” session scheduled for tomorrow, May 13
    - Registration has been low, hoping others will join the day of the session
  - Proposal should be ready in mid to late-June
  - Finalization tentative for early to mid-August
- Permanent Rules Referencing the State Board of Health (SBOH) Vitamin E Acetate Prohibition
  - No comments received to date on the CR 101
  - Formal comment ends on May 21
  - CR 102 should be ready for consideration on May 26
- Tier I Expansion
  - CR 101 approved at the last Board meeting
  - One comment received in support of the proposal

Ms. Hoffman asked if there were any questions. There were none.

## **ACTION ITEM (A)**

### **ACTION ITEM 5A – Board Approval of CR 101 Regarding THC Compounds Other Than Delta-9**

Kathy Hoffman, Policy and Rules Manager, began the briefing with materials (HANDOUT 4A).

Ms. Hoffman: This morning I'd like to request your approval to file the CR 101 to begin the rule development process concerning the evaluation of THC compounds other than Delta-9.

As you know, our agency has been aware of products entering the regulated market with labeling noting the presence of cannabinoids other than Delta-9 tetrahydrocannabinol (THC) and other CBD (cannabidiol) additives. We've also learned that CBD isolate from hemp and other sources is being genetically or chemically altered to result in potentially intoxicating psychoactive compounds not derived from marijuana as defined in statute, or synthetic equivalents of substances contained in the cannabis plant.

We've learned that these compounds and compounds other than Delta-9 THC have appeared in our regulated system. There are no mandatory testing standards for these compounds. No potency or concentration limits have been established in statute or regulation concerning these compounds in our state, and the impact of these different chemicals on health are unknown and could be harmful.

We filed a policy statement with the Code Reviser on April 28, 2021, and shared it with our stakeholders and many others on that same day. We've been clear that that statement serves as the current agency position on this issue. We've also been clear that the policy statement was designed to serve as a foundation to serve the conversation around the rules that the CR 101 package before you contemplates.

## Tentative Timeline

May 12, 2021	CR 101 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list. Informal comment period begins.
June 2, 2021	Notice published in the Washington State Register under WSR #21-11
July 2, 2021	End of informal comment period.
August 18, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list. Formal comment period begins.
September 1, 2021	Notice published in the Washington State Register.
September 29, 2021	Public hearing held and formal comment period ends.
No earlier than October 13, 2021	Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement provided to individuals offering written and oral comment at the public hearing, and during the formal comment period, consistent with RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list.
November 13, 2021	Rules are effective 31 days after filing (unless otherwise specified).

Ms. Hoffman: I want to add that this is a tentative timeline and that we intend to anticipate extensive stakeholder engagement on this project, starting with a “deliberative dialogue” session that we’ve scheduled for the morning of June 3, 2021. We anticipate messaging will go out on this either later today or early tomorrow. Do you have any questions for me?

Chair Postman: None from me, but I want to take a moment -- Member Hauge has been the Board lead on this issue. Anything you’d like to add before we consider the CR 101?

Member Hauge: Thank you, Chair Postman, yes. We’re at the very early days of understanding both the process that has created this new substance, this synthetic substance, that is coming into our market. We have very little understanding of the developing impact this is going to have on the market and our consumers, given that we don’t have a lot of protections built in, so this is the first step.

Kathy, I’d like to ask formally -- we’ve discussed in passing, emergency rules, and we have at this time decided not to seek emergency rules on this issue. But, the emergency rulemaking process has not been ruled out, which is my understanding. Is that correct?

Ms. Hoffman: That is correct, Member Hauge.

Member Hauge: Thank you. With that, I’d like to move approval, we’ve got to get this process started.

MOTION: Member Hauge moved to approve filing of the CR 101 regarding THC Compounds Other Than Delta-9

SECOND: Member Garrett seconded.

ACTION: Chair Postman approved the motion.

## 5. GENERAL PUBLIC COMMENT

Chair Postman reminded that everyone registered to speak should state their name and affiliation for the record. He added that everyone has four minutes to speak with a 30-second warning.

Vicki Christophersen – Washington CannaBusiness Association

Good morning. My name is Vicki Christophersen and I am here today testifying as the Executive Director of the Washington CannaBusiness Association (WACA).

WACA formed in 2014 as a direct result of the need for collaborative, professional and data- based advocacy, and the formation of a safe, quality-controlled, and well-regulated marketplace. We were not flowing into an empty vacuum when it came to cannabis policy here. Then, and still today, we were working against negative perceptions, bad information, and fear-based ideas of the people who work in the cannabis industry, make money from cannabis, and who seek to establish a legal sector.

As an agency, you are still grappling with these issues. We are on the cusp of 10 years since the passage of Initiative 502, and it is disturbing that the attitude toward the pioneers in the cannabis industry has not evolved farther than it has. This affects the people currently in the industry, the people who have been kept out of the industry, and the innovation occurring in cannabis and hemp despite barriers created by those unwilling to treat cannabis and hemp like anything but illicit drugs. If Washington isn't careful, we will fall behind on several fronts – from equity to innovation to investment.

I want to restate to anyone who questions this – WACA and its members stand for a safe, equitable and fully regulated industry that keeps Washington at the forefront of this nascent sector.

I'm here today because we are disappointed on many fronts in our interactions with the LCB. I'm deeply disappointed to be here presenting these frustrations. If this state persists in imposing overly restrictive, expensive, and confusing practices upon what is a growing, global industry, Washington risks the healthy cannabis industry, and the contributions of the sector across the state.

So multiple are our frustrations I could not possibly cover them in four minutes, but I will list a few:

- Continued pursuance of license cancellation by this Board - for violations that would be a mere fine under the current penalty grid, putting hundreds of family wage jobs at risk because persistent views that those that those who took the risk to build these businesses are criminals.
- Recently issuing a confusing and frankly inaccurate policy statement regarding Delta-8 THC that reads like an enforcement bulletin, once again creating chaos, confusion, and financial harm to

businesses across this state. And then, issuing a clarification statement that is still confusing. Wouldn't it be better to work with industry partners before issuing a statement?

- Despite years of work by stakeholders and the LCB to create clear transparent packaging and labeling guidelines, we find ourselves back in a subjective, expensive, and unpredictable packaging and labeling process.
- Enforcement actions against licensees for things as trivial as a handle on a glass jar. What could possibly be the public interest in this?
- Still, after four years, no solution on traceability. And, I'll remind those that don't know this – WACA supported the increase in licensing fees for the purpose of a better system. At this point, shame on us for doing so.
- Continued delay in reasonable testing rules so that the industry can show the safety of our products.

Like you, part of our job as a trade association is to share good information with stakeholders. Our preference would be for the LCB to be a partner in that goal. Instead, these persistent challenges create ongoing and unnecessary...

Dustin Dickson: Vicki, you have 30 seconds.

Ms. Christophersen: ...thank you... turmoil and insecurity among license holders who are in a perpetual state of high alert to remain in compliance with the law.

We look forward to work ahead and truly appreciate the complexity of these issues. We will be a partner in approaching these issues with diligence, professionalism and respect. We truly need the same from you. Thank you.

Chair Postman: I want to respond, in brief at least, to Ms. Christophersen. I was not aware of what her subject would be so this is off the top of my head. One, I would say that you and I spoke briefly after I took this position, I think you were my first external meeting. This was not the message I heard then, this depth and breadth of your disappointment and frustration. Given that you said that you couldn't even have gotten this all out in the four minutes allowed here, I would invite you to come and talk to me again if this is to the point where you are.

I've only been on since mid-March, but the attitude I hear from agency staff is not what you described. I think there's been amazing evolution of Enforcement and the cultural change that, I agree with you, needs to happen and is still in progress. It's not just LCB that is going through that, it's everybody I think, not just in Washington State, but soon across the country. And, it's not without its bumps. I think we have to recognize that in this scheme of this new market we are still in the very early days, and so we all need to learn as we go forward.

I have not sensed anything from Enforcement, Licensing, Board staff or Board members in our conversations either in these meetings or when we are looking at adjudications or anything else that reflects a point of view that we are dealing with a criminal element. We do take violations seriously. Those violations, have again, there's been an evolution of the penalty structure and there's been a major shift in the entire enforcement approach, which I hear a lot of good things from licensees about and their appreciation that happened.



And so, again, I think we are happy to engage with questions about policy and practices of the Board, but this just does not describe the agency that I've been getting to know. We did have conversations with many people in the industry and continue to do so about Delta-8. That doesn't mean we'll always agree but it's certainly not an instance of that conversation not happening. When you and I spoke about this, and others have said the same, you all are learning about this too as quickly as we are. Now, maybe you are a little quicker because that's what industry does, you are one step ahead, but we are trying. What people thought Delta-8 meant three months ago is not necessarily what people are saying today. And again, that's not just Washington State, that's around the United States and Congress where they are struggling with some of these things.

I invite you to find some time to come and talk in more detail with me or other Board members. I know you've talked with agency leadership as well, and you should continue to do that. We are very open to hearing any input, I was going to say constructive, but it doesn't have to be. I would prefer it to be, but if you have complaints and judgements, share them. Let us know.

Most importantly I would encourage those conversations, but also just take a moment to encourage everybody to engage in these processes. As I said earlier, there is a rule up for consideration and only three people submit comments. We're still making substantive changes to a proposal so we're all ears. Particularly with the rulemaking, those are living, breathing documents that we are looking to make as close to perfect as we can, and we have some really important ones coming up. I'll echo Kathy Hoffman's invitation to the "deliberative dialogues" and "listen and learns", particularly on the question of background checks. I hope people come out and share their thoughts because I can assure anybody listening today that comments are taken seriously. It's not just for show. We take every comment we hear and check ourselves against it and try to improve the rulemaking.

With that, I will pause and see if either of my fellow Board members have anything to add before we adjourn today.

Member Garrett: I think you covered everything well. Vicki, I invite you, like David said, to reach out. I'm a little surprised to hear the frustration from you, so I would love to meet with you to hear what brought on such frustration.

Member Hauge: Thank you Chair Postman, thank you Member Garrett. Of course I'm always available for face to face meetings as well.

Chair Postman: Great. Thank you both. Thank you everybody, and the policy staff for their presentations today, and to Vicki for coming forward to share her thoughts as well. Thank you all, today's meeting is now adjourned.

## **ADJOURN**

Chair Postman adjourned the meeting at 10:27am.

Minutes approved this 26<sup>th</sup> day of May, 2021



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David Postman  
Board Chair



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Ollie Garrett  
Board Member



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Russ Hauge  
Board Member

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

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