



Washington State Liquor Control Board

Washington State Liquor Control Board Meeting

Wednesday, November 6, 2013, 10:00 a.m.

Headquarters Building

3000 Pacific Avenue SE, Olympia WA 98501

Meeting Minutes

CALL TO ORDER

Chair Sharon Foster called the regular meeting of the Washington State Liquor Control Board to order at 10:00 a.m. on Wednesday, November 6, 2013. Member Ruthann Kurose and Member Chris Marr were also present.

APPROVAL OF MEETING MINUTES

MOTION: Member Kurose moved to approve the October 30, 2013, meeting minutes as presented.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 1

Board Approval to File CR 102 for Fair Trade Practices

Karen McCall, Agency Rules Coordinator, provided a packet of materials (Handouts 1 a, 1b & 1c). Ms. McCall invited Patrick Woods, LCB Education & Outreach Manager, to come forward and present a brief background on the issue.

Mr. Woods noted the (4) primary issues of concern that were previously addressed in a September 11, 2013, memo to the Board including:

- 1) Volume discounts based on percentage of back bar
- 2) Different discount pricing for on-premises licensees (channeling)
- 3) Discounts limited to day of purchase or extended time periods
- 4) Discounts limited to one delivery site or multiple delivery sites

Mr. Woods also noted that the timeline will ensure that stakeholders will have ample time to go to the Legislature for clarification if they choose to.

Ms. McCall came back to the podium to present a brief overview noting that Michael Cho, Washington Liquor Store Association, petitioned the Board for rulemaking to clarify RCW 66.28.170. The Board currently has Advisory No. 2012-02 on the website that clarifies this statute. The Advisory needs to be placed into rule in a new section in Chapter 314-23 WAC. The Board held a work session on Fair Trade Practices on September 11, 2013, to hear comment from stakeholders on these issues. Additional rule language needs to be created to fully clarify the statute.

Proposed Changes

New Section: WAC 314-23-060 - What are "volume discounts"? Defines "volume discounts"

New Section: WAC 314-23-065 - What are "Bona fide business practices"? Define "bona fide business practices"

New Section: WAC 314-23-70 - What is "marketplace"? Defines "marketplace"

New Section: WAC 314-23-075 - What constitutes "undue influence"? Defines "undue influence"

New Section: WAC 314-23-080 - Are licensed distributors or other license suppliers of spirits and wine allowed to provide volume discounts to on-premises or off-premises retail licensees? Explains what is allowed to under "volume discounts"

New Section: WAC 314-23-085 - What type of discounts are not allowed? Explains what is not allowed under "volume discounts"

Timeline

November 6, 2013 Board is asked to approve filing the proposed rules (CR-102)

November 20, 2013 Code Reviser publishes notice - LCB sends notice to rules distribution list

April 23, 2014 Public hearing held

April 23, 2014	End of written comment period
April 30, 2014	Board is asked to adopt rules
April 30, 2014	Agency sends notice to those who commented both at the public hearing and in writing.
April 30, 2014	Agency files adopted rules with the Code Reviser (CR 103)
May 31, 2014	Rules are effective (31 days after filing)

Ms. McCall requested approval from the Board to file the proposed permanent new rules (CR 102) in Chapter 314-23 WAC to clarify RCW 66.28.170 Discrimination in price to purchaser for resale prohibited - Price differentials.

MOTION: Member Kurose moved to approve filing the CR 102 for Fair Trade Practices.

SECOND: Member Marr seconded.

DISCUSSION: Member Marr stated that, regarding volume discounts, staff has made the appropriate interpretation. Regarding discounts for delivery to multiple delivery sites he feels we have accommodated the ability for large operators to capture price differentials. He added that he believes the rules allow for pricing differentials that serve two different businesses serving two sets of customers with different business models and he would support a rule making process that would codify that. Member Marr thanked staff for their hard work and stated it is time to move forward with the process and allow the Legislature to act.

ACTION: Motion passed unanimously.

ACTION ITEM 2

Board Approval of Interim Policy BIP-06-2013 - Return of Washington Wine

Karen McCall, Agency Rules Coordinator, provided the Board with the proposed Interim Policy (Handout 2) which included a *purpose and a policy statement* noting that currently WAC 314-24-070 authorizes Washington Wine that has been exported out of state to only be returned to the winery of origin. Wineries that have business models that include out of state central warehousing for the West Coast and their Washington distributors find this requirement to be onerous and have asked for modifications to the rule. The Board upon reviewing the requirements finds the following:

- Altering the requirement that Washington Wine that is being returned to the state first be returned to the winery of origin would not pose a public safety hazard
- The current requirement does not add value to the regulatory process and is currently being complied with through a process that is often referred to as “bumping the dock”
- While the current process does provide a physical audit trail, this chain of regulatory responsibility can currently be accomplished through alternative electronic invoicing, which will assist in streamlining and removing costs and waste from the process

Policy Statement

Wine produced and bottled by a Washington domestic winery that has been reported as an export may be returned to Washington State. The following conditions apply:

- The wine is produced and bottled in Washington by a licensed winery
- The returned wine must not be altered, except for sparkling wine
- The export shall be from the licensed winery and returned to the same entity, a licensed wine distributor or bonded wine warehouse.
- A domestic winery, a licensed wine distributor, or bonded wine warehouse receiving previously exported Washington wine must comply with tax collection and tracking requirements initiated by the liquor control board
- A domestic winery, a licensed wine distributor, or bonded wine warehouse directly receiving previously exported Washington wine must keep on file for audit purposes clear source records (shipping documents, etc.) with reporting documents. Records need to indicate what wine was returned to the state that was previously reported as an export (including number of cases and gallons)

Member Kurose stated that this process will streamline a cumbersome process that has no regulatory purpose.

MOTION: Member Kurose moved to approve Interim Policy BIP-06-2013 - Return of Washington Wine.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3

Board Approval to File CR 101 for Return of Washington Wine

Karen McCall, Agency Rules Coordinator, began the overview by providing documents (Handouts 3a & 3b) including an issue paper noting that this rulemaking was a result of a petition for rulemaking submitted by Susan Johnson on behalf of Columbia Winery. The current rule requires a Washington winery bringing their bottled wine back into Washington State to bring the wine to the winery only. Washington wineries that export bottled wine out of the state of Washington wine would like to have the option of bringing the bottled wine back into Washington directly to a wine distributor or bonded wine warehouse.

- The requirement that Washington Wine that is being returned to the state first be returned to the winery of origin does not pose a public safety hazard
- The current requirement does not add value to the regulatory process and is currently being complied with through a process that is often referred to as “bumping the dock”
- While the current process does provide a physical audit trail, this chain of regulatory responsibility can currently be accomplished through alternative electronic invoicing, which will assist in streamlining and removing costs and waste from the process

Timeline

November 6, 2013	Board is asked to approve filing pre-proposal statement of inquiry (CR 101)
November 20, 2013	Code Reviser publishes notice - LCB sends notice to rules distribution list
December 27, 2013	End of written comment period
January 8, 2014	Board is asked to approve filing the proposed rules (CR 102 filing)
February 5, 2014	Code Reviser publishes notice - LCB sends notice to rules distribution list
February 26, 2014	Public hearing held
February 26, 2014	End of written comment period
March 5, 2014	Board is asked to adopt rules
March 5, 2014	Agency sends notice to those who commented both at the public hearing and in writing.
March 5, 2014	Agency files adopted rules with the Code Reviser (CR 103)
April 5, 2014	Rules are effective (31 days after filing)

Ms. McCall requested approval from the Board to file the first stage of rule making (CR 101) to revise WAC 314-24-070 regarding the Return of Washington Wine.

MOTION: Member Kurose moved to approve filing the CR 101 - Return of Washington Wine.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 4

Board Approval to File CR 101 for the 1000 Foot Buffer Measurement

Karen McCall, Agency Rules Coordinator, began the briefing by providing documents (Handouts 4a & 4b) including an issue paper noting that the Board has learned how the 1000 foot buffer is measured under the rules adopted by the Board on October 16, 2013, differs from the way the federal government measures the 1000 foot buffer. The Board needs to change the way the Board will measure the 1000 foot buffer to be consistent with the federal government.

Timeline

November 6, 2013	Board asked to approve filing pre-proposal statement of inquiry (CR 101)
November 20, 2013	Code Reviser publishes notice - LCB sends notice to rules distribution list
December 27, 2013	End of written comment period
January 8, 2014	Board is asked to approve filing the proposed rules (CR 102 filing)
February 5, 2014	Code Reviser publishes notice - LCB sends notice to rules distribution list
February 26, 2014	Public hearing held
February 26, 2014	End of written comment period
March 5, 2014	Board is asked to adopt rules
March 5, 2014	Agency sends notice to those who commented both at the public hearing and in writing.
March 5, 2014	Agency files adopted rules with the Code Reviser (CR 103)
April 5, 2014	Rules are effective (31 days after filing)

Ms. McCall requested approval from the Board to file the first stage of rule making (CR 101) to revise WAC 314-55-050 regarding how the 1000 foot buffer is measured for marijuana licenses.

Member Marr asked if the language aligns with the federal document and Ms. McCall said yes.

MOTION: Member Kurose moved to approve filing the CR 101 for the 1000 Foot Buffer Measurement.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 5

Board Approval for Emergency Rule for the 1000 Foot Buffer Measurement

Karen McCall, Agency Rules Coordinator, also requested approval to file an emergency rule (Handouts 5a & 5b) with the Code Reviser's Office today with an effective date of November 20, 2013. The emergency rules will expire on March 19, 2013.

Member Kurose noted that it is

MOTION: Member Kurose moved to approve filing the Emergency Rule for the 1000 Foot Buffer Measurement.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 6

Board Approval to File CR 102 for Spirits Sampling at Spirits Retail Premises

Karen McCall, Agency Rules Coordinator, began the briefing by providing documents (Handouts 6a, 6b & 6c).

Proposed Changes

WAC 314-02-102 - What are the requirements for a grocery store licensee to conduct beer and wine tastings? Removed language that required a licensee to have more than 50% of their retail sales in grocery products, or the licensee is a membership organization. Changed the size of the premises requirement from 9,000 square feet to 10,000 square feet.

WAC 314-02-106 - What is a spirits retailer license? Added the requirements for a spirits retailer licensee to obtain a spirits sampling endorsement to conduct spirits sampling.

Timeline

- November 6, 2013 Board is asked to approve filing the proposed rules (CR 102 filing) - LCB sends notice to rules distribution list
- November 20, 2013 Code Reviser publishes notice
- December 11, 2013 Public hearing held
- December 11, 2013 End of written comment period
- December 18, 2013 Board is asked to adopt rules
- December 18, 2013 Agency sends notice to those who commented both at the public hearing and in writing
- December 18, 2013 Agency files adopted rules with the Code Reviser (CR 103)
- January 18, 2014 Rules are effective (31 days after filing)

Ms. McCall requested approval from the Board to file the proposed rules (CR 102) for Spirits Sampling by Spirits Retail Licensees and revise rules for the B/W Tasting Endorsement for Grocery Store Licensees.

MOTION: Member Marr moved to approve filing the CR 102 for Spirits Sampling at Spirits Retail Premises.

SECOND: Member Kurose seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 7

Board Approval to Rescind the Following Board Interim Policies:

- a. BIP-02-2009
- b. BIP-05-2009
- c. BIP-03-2011
- d. BIP-04-2011
- e. BIP-05-2011
- f. BIP-02-2012
- g. BIP-03-2012
- h. BIP-05-2012
- i. BIP-06-2012

Karen McCall, Agency Rules Coordinator, outlined the (9) interim policies as follows:

a. Rescind LCB BIP-02-2009 Liquor Supplier Social Responsibility Survey - Pilot

The purpose of this interim policy was to document that the agency would pilot the Supplier Social Responsibility Survey to better understand and recognize the commendable social responsibility initiatives already underway by the suppliers, and to consider supplier social responsibility efforts as one component in business decisions. The pilot ended June 30, 2010.

b. Rescind LCB BIP-05-2009 Delegation of Authority on filing Pre-Proposal Statement of Inquiry (CR 101)

The purpose of this interim policy was to delegate authority from the Board to the Agency Rules Coordinator on pre-proposal statements of inquiry (CR 101) to expedite the rulemaking process. The Board rescinded this authority in 2010.

c. Rescind LCB BIP-03-2011 Beer and Wine Tasting at Farmer's Markets

The purpose of this interim policy was to implement SHB 1172 from the 2011 legislative session, creating a pilot for beer and wine tasting at Farmer's Markets. The pilot ended on November 1, 2012.

d. Rescind LCB BIP-04-2011 VIP Airport Lounge Liquor License

The purpose of this interim policy was to implement SSB 5156 from the 2011 legislative session. Permanent rules were adopted by the Board on November 9, 2011.

e. Rescind LCB BIP-05-2011 Spirits sampling in State and Contract Liquor Stores

The purpose of this interim policy was to create a spirits sampling pilot in state and contract liquor stores. With the passing of I-1183 there are no longer state and contract liquor stores.

f. Rescind LCB BIP-02-2012 Central Warehousing

The purpose of this interim policy was to memorialize the direction the board was taking in implementation of central warehousing in I-1183. Permanent rules were adopted by the Board to implement this interim policy on June 6, 2012.

g. Rescind LCB BIP-03-2012 Records of Licensee Spirits Purchases

The purpose of this interim policy was to allow spirits licensee's purchase records released under a public records request. This interim policy is no longer needed due to the privatization of spirits.

h. Rescind LCB BIP-05-2012 Beer/Wine Tastings at Beer/Wine Specialty Shops

The purpose of this interim policy was to amend WAC 314-02-105 to allow beer/wine tastings if a licensee's annual gross retail sales of alcohol exceeds fifty percent of all annual gross sales for the entire business. Permanent rules were adopted by the Board to implement this interim policy on March 20, 2013.

i. Rescind LCB BIP-06-2012 Reporting Requirements for Spirits Retail Licensees, Spirits Distributor Licensees, Distiller Licensees, and Craft Distilleries

The purpose of this interim policy was to allow the Board to suspend or revoke the license of any licensee holding the licenses mentioned above for failure to pay the additional license fees created in RCW 66.24.630, RCW 66.24.055, and RCW 66.24.630. Permanent rules were adopted by the Board to implement this interim policy on March 20, 2013.

MOTION: Member Kurose moved to approve rescinding the (9) Interim Policies:

- | | |
|----------------|----------------|
| j. BIP-02-2009 | o. BIP-02-2012 |
| k. BIP-05-2009 | p. BIP-03-2012 |
| l. BIP-03-2011 | q. BIP-05-2012 |
| m. BIP-04-2011 | r. BIP-06-2012 |
| n. BIP-05-2011 | |

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

NEW BUSINESS

Public Comments Were Offered

Bruce Beckett (Washington Restaurant Association)

Mr. Beckett first provided the Board with a 2013 Restaurant Demographics document (Handout 8). He expressed his disappointment with the Board's decision to approve the filing of the CR-102 Fair Trade Practices. He noted the statewide impacts this would have and that he expects an immediate financial impact to the marketplace and its evolution. He offered to work with the LCB to help avert a collision. He is unsure if a Legislative approach is the right approach.

Susan Johnson (Stoel Rives Law Firm)

Ms. Johnson thanked the Board on behalf of Columbia Winery and the Washington Wine Institute on the development of the Interim Policy on Return of Wine to Washington. She said it has been a positive experience working with Patrick Woods and Karen McCall while developing this solution. She also thanked Member Marr and the staff who have recently worked on the theater interim policies and expressed appreciation for all of the community outreach to stakeholders.

Cindy Zender (Total Wine & More)

Ms. Zender thanked the staff for the work on the Spirits Sampling Rules and looks forward to attending a sampling session soon.

OLD BUSINESS

No old business reported.

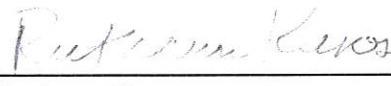
ADJOURN

Chair Foster adjourned the meeting at 10:40.

Minutes approved this 20TH day of NOVEMBER, 2013



Sharon Foster
Board Chair



Ruthann Kurose
Board Member



Chris Marr
Board Member

LCB Mission

Promote public safety by consistent and fair administration of liquor and cannabis laws through education, voluntary compliance, responsible sales and preventing the misuse of alcohol, cannabis and tobacco.

Complete meeting packets will be available online following each meeting: <http://www.liq.wa.gov/board/board-information>