

Joint Select Committee on Beer and Wine Regulation
Liquor Control Board Recommendations



Washington State Liquor Control Board

October 31, 2008

Senator Holmquist
Senator Kohl-Welles

Representative Condotta
Representative Conway

Dear Beer & Wine Regulation Joint Select Committee Co-Chairs,

As you know, the Washington State Liquor Control Board (WSLCB) has spent the last several years reviewing our state's 3-Tier system. In 2004, a lawsuit was filed challenging our state's beer and wine pricing regulations. In 2006, the WSLCB participated in the 3-Tier Task Force comprehensive review of the state's beer and wine regulations. Subsequently, in 2007, the Board created a workgroup to examine the state's current tied house laws specific to financial interest/ownership and money's worth. Recommendations contained in this document represent our position based on what we've learned through our participation in these regulatory reviews.

GENERAL RECOMMENDATION

The Board recognizes the need to simplify and modernize current beer and wine regulations. It has become clear that we lack the resources to properly evaluate and monitor not only the effects of current laws and regulations but also to understand how potential changes could affect our state. The Board recommends that resources be provided to assist the state in determining and interpreting impacts. This is consistent with the recommendation of the 3-Tier Task Force.

Research and Analysis Needs

- The Board recommends funding for research and evaluation expertise in order to collect and analyze impacts from any regulatory changes. The need for research expertise was identified through the 2006 Three Tier Task Force recommendation that "the legislature is encouraged to provide funding to the LCB to develop research and analysis capability, and work collaboratively with stakeholders and other agencies and organizations to collect independent data, and to use/analyze existing data."

Agency Screening Tool and Key Impact Measures

- The evaluation tool that the Board is currently developing will greatly assist our efforts to establish alcohol policies and practices that support the Board's public safety mission.
- Any proposed changes would be evaluated against the Board's key priorities to provide the highest level of public safety with an emphasis on safe communities and reducing underage drinking. Key factors to use in the evaluation process include:
 - Advertising and marketing activities
 - Enforcement & Licensing
 - Education & Training
 - Pricing practices
 - Access and availability
 - Agency resources

BOARD RECOMMENDATIONS – BY REGULATORY TOPIC

Post and Hold – Current regulation RCW 66.28.180 requires beer and wine suppliers and distributors to electronically file prices with the WSLCB, showing the prices at which beer and wine will be sold to distributors. Prices are made public after they become effective and must be held for at least 30 days. In 2008, the *Costco v. Hoen* 9th Circuit Court of Appeals struck down the requirement that prices be posted and held for 30 days. Effective April 2008, the electronic price filing system was modified to remove the requirement for prices to be held and prevented prices from being made public.

WSLCB Recommendation: The Board recommends the statute be amended to reflect the 9th Circuit Court decision.

Minimum Mark – Up – RCW 66.28.180 requires beer and wine manufacturers to mark up the price of their product to a distributor by at least 10 percent above the cost of production. Distributors are in turn required to mark up the price of their product to retailers by at least 10 percent above the cost of acquisition. The Board has the authority to review the percentage of the mark up and to change the mark up by agency rule however the mark up today remains at 10 percent as set in statute.

WSLCB Recommendation: The Board acknowledges that while the mandatory mark-up of 10 percent is an arbitrary number, removing the mark up would likely result in lower alcohol prices. The Board recommends the 10 percent mark up remain in effect since industry members have stated they generally mark up alcohol beyond the minimum cap of 10 percent.

Retailer-to-Retailer Product Transfers – Retail licensees may not sell or deliver beer and wine to other retail licensees even when there is common ownership of the retail licensee. RCW 66.28.070 and WAC 314-13-010 specifies except in limited circumstances, it is “unlawful for any retail beer or wine licensee to purchase beer or wine, except from a duly licensed distributor, domestic winery, domestic brewer, certificate of approval holder with a direct shipment endorsement, or the [liquor control] board.”

WSLCB Recommendation: The Board supports amending the current law to allow limited licensee-to-licensee transfer of product among licensees under common ownership.

Ban on Credit Sales (with respect to electronic fund transfers) – The Tied House laws as defined in RCW 66.28.010 prohibit a manufacturer, importer, distributor, or authorized representative from advancing money or moneys worth to a licensee. The law also prohibits the licensee from receiving money or money’s worth. Retailers are required to pay cash for beer and wine prior to, or at the time of, delivery. Checks and credit/debit cards are considered cash under specified conditions. In addition, electronic funds transfer (EFT) is considered cash payment as long as:

- The EFT agreement is voluntary.
- Before any EFT transaction, the retailer must enter a written agreement with the manufacturer, distributor, or importer specifying the terms and conditions for using EFT payment.
- A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.
- Both parties must bear their respective banking costs or other costs associated with EFT service.
- Both parties must maintain records of transactions and have the records readily available for review by the Board.
- The EFT must be initiated by the manufacturer, distributor, or importer no later than the first business day following delivery (per WAC 314-13-015).

WSLCB Recommendation: The Board recognizes the current regulations require retailers to process their EFT transactions within a day. The Board supports allowing retailers to process EFT transactions for alcohol as they would process other EFT transactions provided payment is made promptly (within five business days).

Money's Worth (advertising) - The Tied House laws as defined in RCW 66.28.010 prohibits a manufacturer, importer, distributor, or authorized representative from advancing money or moneys worth to a licensee. The law also prohibits the licensee from receiving money or money's worth. Advertising support is considered "money's worth" so exceptions have been created to allow certain advertising activities

WSLCB Recommendation: The Board has no recommendation.

Money's Worth (tied house) - The Tied House laws as defined in RCW 66.28.010 prohibits a manufacturer, importer, distributor, or authorized representative from advancing money or moneys worth to a licensee. The law also prohibits the licensee from receiving money or money's worth. Several exceptions have been created over the years to allow certain activities such as services/labor, samples, and instruction.

WSLCB Recommendation: The Board recommends retaining current regulations that generally prohibit money's worth activities with specific narrow exceptions. The Board is concerned that opening up the broad prohibition could have a negative impact to public safety.

Financial Interest/Ownership - Tied House laws (RCW 66.28.010) prohibit a manufacturer, importer, distributor, or authorized representative from having financial interest/ownership (directly or indirectly) a retail licensee. Several exceptions have been created over the years. The most significant is the allowance of a winery to hold a restaurant license (for spirits, beer, and wine) and a brewery may hold up to two licenses for a restaurant and/or tavern.

WSLCB Recommendation: The Board recommends changing current regulations to allow full and partial interest or ownership.

Quantity Discounts - RCW 66.28.180 prohibits manufacturers and distributors from offering quantity discounts.

WSLCB Recommendation: The Board does not recommend changing current regulations that prohibit quantity discounts.

Central Warehousing – Retailers are prohibited from storing or taking delivery of beer and wine at a central warehouse per RCW 66.28.180(2)(h)(ii). Beer and wine may only be delivered to the retail store where it will be sold to the consumer or directly to the retailer at the distributor’s licensed premises.

WSLCB Recommendation: The Board recommends revising current regulations to allow retail entities who own a warehouse in Washington to store their product at that central warehouse.

Sales by Out-of-State Retailers (includes on-line sales) – Our three-tier alcohol distribution system requires that consumers typically purchase beer and wine from an in-state retail licensee. Out-of-state wineries, like our in-state wineries may sell and ship wine directly to Washington consumers. A Washington consumer may purchase wine through an on-line retailer and have it delivered only if the on-line retailer is licensed in Washington state by virtue of physical presence in the state. On-line alcohol sales is becoming an issue at the national level and other states are trying to determine how to address this issue.

WSLCB Recommendation: The Board recommends creating a license, or permit, to allow an out-of-state beer or wine retailer to sell on-line to consumers. The permit or license will allow the WSLCB to collect appropriate taxes and make provisions to verify identification to prevent underage sales. The license or permit will also bring out-of-state retailers under the Board’s administrative jurisdiction which allows the Board to enforce any violations against an out-of-state retailer.


Lorraine Lee, Chairman 10/31/08
Date


Ruthann Kurose, Board Member 10/31/08
Date


Roger Hoen, Board Member 10/31/08
Date