

Joint Select Committee on Beer and Wine Regulation
Industry Coalition Recommendations

Updated 12/12/2008

December 12, 2008

Dear Members of the Joint Select Task Force on Beer and Wine Regulation:

On behalf of the undersigned organizations, we are submitting the attached language for your consideration. The language specifically deals with the issue areas where the Coalition has consensus – Electronic Fund Transfers, Retail to Retail Licensee Transfers, and Money’s Worth Provisions. There is also agreement in the area of Financial Interest and Ownership, but we are deferring submission of language pending further discussions with the Liquor Control Board.

In addition to the language submitted, we also recommend:

- Repeal of the **Post and Hold** requirements to address the findings in *Costco v. Hoen*.
- Repeal of the **10% Minimum Mark Up** (RCW 66.28.101/RCW 66.28.180 (2) (d)). Laws generally prohibiting below cost sales should be retained.

Please feel free to contact any of us listed below if you have questions or need clarification. We look forward to continued work with all of you on these issues.

Sincerely,

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EFT LANGUAGE DRAFT – LIKELY UNDER 66.28.010

NOTE: The language on EFTs does not yet have complete agreement from all members of the Industry Coalition. The Washington Beer & Wine Wholesalers remain concerned about the five day time period and are continuing discussions. Should we not get to complete agreement on the five day time period, we are prepared to offer alternatives.

Nothing in this chapter prohibits the use of checks, credit/debit cards, prepaid accounts, electronic funds transfers, and other similar methods as approved by the Board, as cash payments for purposes of this title. Electronic fund transfers must be: (i) voluntary, (ii) done pursuant to prior written agreement of the parties that includes a provision that the purchase be initiated by an irrevocable invoice or sale order before the time of delivery, (iii) initiated by the retailer, manufacturer, importer or distributor no later than the first business day following delivery, (iv) completed no later than 5 business days following delivery, and (v) otherwise in compliance with rules promulgated by the board.

MOVEMENT OF PRODUCT FROM SITE TO SITE - LIKELY UNDER 66.28.180

Wine may be transferred from one retail licensee to another retail licensee so long as both licensees under common ownership. A licensed site may transfer up to a total of 20 cases of wine per calendar year.

MONEY'S WORTH

This section does not prohibit a manufacturer, importer, or distributor from providing to retail licensees branded promotional items of nominal value, including, but not limited to: trays, lighters, blotters, post cards, pencils, coasters, menu cards, meal checks, napkins, clocks, shirts, caps, visors, mugs, glasses, bottle or can openers, corkscrews, matches, and printed recipes. Branded promotional items shall be used exclusively by the retail licensee or its employees in a manner consistent with its license. Branded promotional items must bear advertising matter, which is imprinted on the branded promotional item. Branded promotional items may be provided only to retail licensees and their employees and may not be provided by or through retail licensees or their employees to retail customers.

Upon application by a licensee, the Board shall approve additional branded promotional items unless it identifies substantial reasons for concluding an item does not meet the requirements of this section or is of a value significantly greater than the value of items already qualified as branded promotional items under this section.

OWNERSHIP LANGUAGE WITH PRESUMPTION OF VALIDITY

The language needed for this section involves changes in authority for the State Liquor Control Board. The LCB has indicated to us that it is also interested in changes in the area of ownership and financial interest, and plans to draft language implementing those changes. Consequently, we believe the most productive and effective process will be to work *with* the

LCB in drafting language on this subject. Our hope is to produce a single bill that will work for the LCB and industry while also protecting the public.

Joint Select Committee on Beer and Wine Regulation
Industry Coalition Recommendations

11/14/2008

October 31, 2008

Dear Members of the Joint Select Committee on Beer and Wine:

At the beginning of your committee process, the undersigned organizations indicated that we were working together as industry representatives to come to agreement on potential changes to Washington's beer and wine laws. Specifically, we were examining those restrictions that may no longer be necessary in today's business environment yet where change would not negatively impact public health and safety.

In our original letter we outlined several issue areas under discussion – all of which have been discussed in committee. This letter indicates the specific areas where we have reached conceptual agreement and conclusion and also indicates issues where we will not be putting forth language agreed to by our coalition. Where we do have agreement, we are drafting language that will be submitted.

PRICING ISSUES

- **Minimum Mark Up** (RCW 66.28.101/RCW 66.28.180 (2) (d)) – the industry coalition has agreed to support striking the minimum mark up language while retaining language that prohibits selling product below costs.
- **Ban on Credit Terms** (RCW 66.28.010/WAC 314.13.015/WAC 314.20.090/WAC 314.12.140) – the industry coalition supports modifying the statute governing electronic fund transfers. The revisions would preserve the current process whereby EFT transactions are initiated by the distributor at or within one day after delivery and would provide that the transaction must be completed within five days from the point of delivery rather than on the same day to accommodate individual store internal processes. Such an EFT would require up front agreement between the retailer and distributor.
- **Post and Hold** (RCW 66.28.180) – the industry coalition supports amending the current statute to eliminate the price posting requirement, so as to reflect the court decision in *Costco v. Hoen*.

OWNERSHIP ISSUES

- **Allowing a business to have a financial interest in multiple tiers of the three tiered system (RCW 66.28.010)** -- the industry coalition supports allowing ownership in multiple tiers and changing the statute to specifically allow this to occur. However, we recognize that it is important to preserve a viable three-tier distribution system. The language currently under discussion by our group would delegate to the Liquor Control Board the authority to disallow specific ownership interests and would create the statutory guidance under which ownership in multiple tiers would not be allowed. We also are

crafting language that would develop a mechanism for taking an ownership case for review before the Liquor Control Board as a voluntary measure that the Board can then review based on statutory guidelines.

MONEY'S WORTH

Items of Value (RCW 66.28.010/WAC 314.12.140) – The industry coalition will propose statutory language that generally prohibits provision of items of value but allows a manufacturer, importer or distributor to provide certain branded promotional items, such as shirts, caps, visors, mugs, corkscrews and other similar specifically designated items to a retailer. The language will also provide authority to LCB to allow items to be included that are not specifically designated but which are similar to those items listed. The statute would specifically prohibit the giving of such items to consumers.

ISSUES STILL BEING DISCUSSED:

SHIPPING

- **Moving Product from Store to Store** (RCW 66.24.185(4)) – the industry coalition has conceptual agreement in this arena but is still working out some details before we can say the agreement is complete and draft language is ready.

ISSUES THAT WILL NOT BE PUT FORWARD BY THE INDUSTRY COALITION:

After much discussion, the following issues DO NOT have agreement among the coalition members and therefore will not be coming forward as a coalition proposal. However, some coalition members may still put forth language in these areas for legislative discussion.

- Removing the ban on quantity discounts
- Changes to central warehousing statutes
- On line retail sales

Once again, for the areas where we do have agreement, we are working on drafting more specific language and hope to have that soon.

Sincerely,

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