

# Joint Select Committee on Beer and Wine Regulation

## Liquor Control Board

Updated 12/12/2008

(to include table showing whether legislative or agency action would be required)

	<b>Coalition</b>	<b>Costco</b>	<b>Specialty Wine</b>	<b>Family Wineries of WA</b>	<b>Prevention Community</b>	<b>Liquor Control Board</b>
<b>PRICING</b>						
Post and Hold	Eliminate price posting requirement to reflect Costco v Hoen decision			Eliminate post and hold. Part of broader proposals.	Retain price posting.	Amend statute to reflect Costco decision <b>RCW</b>
Minimum Mark-up	Eliminate minimum mark-up; retain prohibition on sales below cost	Eliminate mandatory 10% mark-up for producers and distributors.		Eliminate minimum mark-up. Part of broader proposals (see GENERAL).	Retain minimum mark-up.	Retain minimum mark-up. <b>RCW – to eliminate or reduce below 10%</b>
Quantity Discounts	No recommendation.	Eliminate prohibition of quantity discounts.		Eliminate ban on quantity discounts. Part of broader proposals (see GENERAL).	Retain ban on quantity discounts.	Retain ban on quantity discounts. <b>RCW – to eliminate the ban</b>

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<b>TIED HOUSE</b>						
Financial Interest / Ownership	Allow ownership in multiple tiers. Delegate to the LCB the authority to disallow specific ownership interests and create statutory guidance for when ownership would not be allowed. Provide a mechanism for LCB review. <b>RCW</b>			In general, revise to prohibit exclusion of a competitor's product by: 1) holding a retail license or a financial interest in a retailer; or 2) ownership of property on which a retail business is conducted. Part of beer/wine broader proposal (see GENERAL).		Allow full and partial interest or ownership. <b>RCW</b>

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<b>TIED HOUSE (continued)</b>						
General				In general, revise to prohibit exclusion of a competitor's product by advancing moneys' worth. Part of beer/wine broader proposal (see GENERAL).		Retain current regulations that generally prohibit money's worth activities with specific narrow exceptions. <b>RCW</b>
Advertising	Generally prohibit provision of items of value, but allow a manufacturer, importer, or distributor to provide certain branded promotional items to a retailer. Give LCB authority to determine what items may be considered branded promotional items, in addition to specifically designated ones. <b>RCW</b>				Strictly regulate money's worth items that appeal to children and youth, are given to children and youth, and/or dominate areas where children and youth are present. Limit giveaways and advertisements to environments where only persons of legal age are present. (See rulemaking recommendations.) <b>WAC</b>	No recommendation.

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<b>TIED HOUSE (continued)</b>						
Credit – general		Relax the prohibition against extension of credit by distributors to allow (but not require) distributors to extend credit terms of up to thirty days.		Provide that nothing shall prevent the extension of ordinary commercial credit. Part of broader beer/wine proposal (see GENERAL).		<a href="#">RCW</a>
Credit – electronic fund transfers	Preserve the current process whereby EFT transactions are initiated by the distributor at or within one day after delivery, but provide that the transaction must be completed within five days from the point of delivery.			Provide that nothing shall prevent the extension of ordinary commercial credit. Part of broader beer/wine proposal (see GENERAL).		Allow retailers to process EFT transactions for alcohol as they would process other EFT transactions, provided that payment is made promptly (within 5 business days). <a href="#">WAC</a>

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<b>THREE TIER ISSUES</b>						
Retailer to retailer product transfers	Conceptual agreement, but still working out details.			Allow sales to other licensees and transfers. Part of broader beer/wine proposal (see GENERAL).		Allow limited licensee-to-licenssee transfer of product among licensees under common ownership. <b>WAC</b>
Central Warehousing	No recommendation.	Eliminate prohibition against warehousing by retailers.		Eliminate prohibition on warehousing. Part of broader beer/wine proposal (see GENERAL).		Allow retail entities who own a warehouse in Washington to store their product at that central warehouse. <b>RCW</b>
<b>OTHER ISSUES</b>						
Sales (including on-line) by out-of-state retailers	No recommendation.	Bring uniformity to internet shipments by allowing out-of-state retailers the same privilege as in-state retailers.	Create permit system for out-of-state retailer shipping.		Strictly control shipping of alcohol products directly to consumers with a special licensing requirement and detailed procedures.	Create a license or permit to allow an out-of-state beer or wine retailer to sell on-line to consumers. <b>RCW</b>

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<b>OTHER ISSUES</b>						
College Campuses					Amend RCW 66.28.160 to strike (2) - (4) and insert "Advertising may not be directed or appeal primarily to minors by placing advertising in any school, college or university magazine, newspaper, program, television program, radio program or other media or sponsoring any school, college or university."	<a href="#">RCW</a>

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<b>OTHER ISSUES</b>						
Sponsorship at civic events					Prohibit members of the alcoholic beverage industry from sponsoring civic events, and erecting alcohol beverage sponsorship signs at civic events.	<b>RCW WAC</b>
Product placement and access					Require retail licensees to separate alcohol from other products. Limit access to alcohol to persons of legal age.	<b>WAC</b>

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

11/14/2008



## Washington State Liquor Control Board

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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* 9<sup>th</sup> 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 9<sup>th</sup> 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.

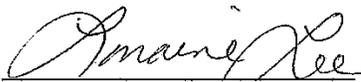
**WSLCB Recommendation:** The Board does not recommend changing current regulations that prohibit quantity discounts.

**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