

Colorado Liquor Enforcement Division
SB16-197 STATUTORY Working & (Sub-Groups)
Minutes of the Meetings

Meeting of December 13, 2016
9:00a – 12:00p

Department of Agriculture
305 Interlocken Pkwy.
Broomfield, CO

Introductions & Announcements

Director Maroney opened the meeting and noted that this is the SB16-197 Sub Group Meetings and there are no formalities. Anyone can participate and join the discussion.

Bruce Dierking asked that the minutes reflect that all things said in past meetings not be presented as consensus. Note that even though it is in the minutes does not mean that all present were in agreement with each statement. A recording of the meetings are available on the Division's website.

3.2 % Beer Sub-group: (Chairman – Patrick Maroney)

Purpose

Develop an implementation process for grocery & convenience stores to apply for a license to sell malt liquor and fermented malt beverages containing at least one-half percent alcohol by volume starting January 1, 2019.

Analyze the impact that removed the alcohol content limit on fermented malt beverages will have on the alcohol beverage industry as a whole, as well as on current retail licensees.

Points & Discussion

We need to come up with what recommendations we want to submit or the Legislature will make those decisions for us. We will be drafting "Recommendation Templates" in the next few months. We will continue to meet monthly until we get these completed.

The Division provided a grid comparing 3.2% and Malt in an email to everyone. Thank you Jean for your help with that. Any comments? Did everyone get the chance to review?

- It appears that there are greater restrictions on Malt Beverages. Is that due to the ABV? It seems that the same restrictions should apply to convenience stores & grocery stores as well ... same as RLS and LLDS.
- SB16-197 indicates there shall be a new license. Should all go through a Needs & Desires (N&D) and hearings at the local level?
- Require public hearings and N&D or do we leave it up to the locals?
- Convenience stores were led to believe that the conversion process would be automatic and not require further hearings.
- Since SB16-197 requires a new type of license, current licensees should have to apply.
- Currently there is no process or requirement for applying. That is what we are working on.
- Varying opinions of the locals... feedback from CML is that they should not have to reapply if they currently have a license, but moving forward they will. If they already have a license, they should not have to do the N&D again.
- Bruce Believes the law is clear and the intent was to apply for new license.
- It was suggested to leave it to the municipalities if they want N&D and hearings. CML – That is just pushing the issue out to the locals. It needs to be mandated by the state.
- Auto conversion so that there is nothing to dispute.
- Bruce was there.. and we were working toward language on auto conversion for these licensees, but we ran out of time.
- The RLS did not negotiate for auto conversion.

- Adam agrees with CML We need to have an open dialog as to what is best for all the state, and no, we should not push this off to the locals.
- *We need to have standards (state law) but allow the locals some options. PM*
- Those that were at the legislative table didn't agree on what was proposed. How do you expect us to agree here?
- We are not talking about licensees – we are talking about having options for locals (e.g., N&D and hearings).
- *We understand the difference here. Everyone needs to meet with each other outside of these working groups and see what you can agree on. We need to move on to the license... what is it going to look like? Will it follow Article 46 or Article 47? How are we going to regulate it? Is the number of doors going to be an issue? What about the 20% non-alcoholic sales that RLS have. PM*
- The locals do not have any objections to creating a new license, but Article 46 becomes a relic. This is our opportunity to clean up any issues with legislation and Article 47 should apply (distance restrictions on new licenses).
- *Okay.. What can it look like? Square footage? Doors (coolers)? PM*
- Do you take into consideration the size of the store? That way the convenience stores don't become liquor stores. Are there (or will there be) restrictions on the amounts of ABV?
- Look at the grid ... there are a lot of differences in the two types of licenses.
- Will there be categories by size?
- Limit amount of beer?
- *Don't forget 3.2% on/off premises licenses. 20-50 licensees are out there now. PM*
- Kum & Go will not agree to sales and cooler limits.
- *Let's say we call it a Box Store License (BSL)... what would you like to see? I know RLS don't want convenience stores to become RLS'. Who here wants to have limits on cooler doors? PM*
- Any limitations based on premises (will that be a modification of premises?) Wouldn't that be determined by the locals?
- Yes, if you change the premises but the locals do not want to do a modification of premises just for cooler doors.
- *Would you like to limit sales for BSL'? PM*
- In 2019 beer will become beer with no limitations. A conversion is a conversion with no new licenses.. just like anything else that is sold.. it is based on consumer's and it will be store by store.
- *Should we even have a new license? PM*
- How about a beer only license with an ABV limit? Those currently licensed can convert (except for those restricted by distance requirements.)
- *Labeling restrictions? PM*
- Restrictions of size for smaller grocery stores will reduce their ability to compete with the larger chains. What we decide should be best for all.
- Be careful moving forward with this as it potentially increases the administrative burden for locals. [If It](#) will not be good if they do not have the resources.
- *You need to communicate with each other to see what you can agree on. There will be legislative consequences if we don't agree. Remember that a new license type will also affect Wholesalers & Manufacturers. It will require them to carry separate licenses as well. PM*
- Brewers - We still want to make 3.2% to sell out of Colorado.
- *Nothing with regard to that will change. You will still have the same licenses making two separate products. Would like to meet with some of the brewers in Colorado to discuss. PM*

3 Tier Subgroup: (Chairman – Ron Kammerzell)

Purpose

Shall consider other legislative, regulatory, or administrative changes necessary to promote the three-tiered distribution system in Colorado.

Points & Discussion

I am open for comments. This legislation is broadly written and this is a golden opportunity to improve the 3-Tier system. Starting with the question "Where does the manufacturer process end?" RK

- Not until the product is ready to sell to the consumer.
- If it is unlabeled.

- Wine Industry's perspective is that when the division tried (several directors' ago) to impose a bulk wine excise tax. It is not considered the 1st sale. The 1st sale does not take place until the sale to the customer.
- At the point Federal and State excise taxes are paid.
 - Legally corked and label affixed.
 - When the goods leave the bonded (for Feds) licensed (for state) space.
 - Would be helpful for the state to adopt Fed's "bond space."
 - Remember the Fed's bond space can be mobile. The Division would be willing to look at it.
- Goods packaged for whole sale is when it is taxable. When tax paid – manufacturer process is done. Tax is final action.
- Would you like this to be put in to the rules? We will need to define: "end of the manufacturer process." Issue – reason define consumer ready. Cannot sell as bulk product. Bulk product is different than consumer ready. Bulks under Fed's bond space.
 - Labeled
 - Sealed Container
 - Tax Paid Bottling House?
 - Excise (state) paid.
 - Ready to enter commerce (consumer ready).
- What if label needs to be changed e.g., bottled for American sale.. but going to Mexico. We define where it "Enters Commerce as a consumer ready product" rather than try and define where the manufacturer process ends.
- *Possible to do as rule making. PM*
- *We allow unmanufactured products that we don't allow once it is consumer ready e.g., sale from one manufacturer to another to continue the manufacturing process. PM*

Points & Discussion: When does retail sale take place for on-line sales? RK

- What about at home sales where you have a wine rep. who comes in and conducts a wine tasting. Then the consumer goes on line to make the purchase. Is that legal?
- *No, home sales are not allowed. PM*
- What about RLS and Wineries that sale on line?
- *Is the sale when they place the order or when you receive delivery of product? It may not be just one location. It could include the point when money exchanges hands and/or the location where the product is exchanged. PM*

Points & Discussion: The Erosion of the 3-Tier system. Where are we seeing this? RK

- *NCSLA (National Conference of State Liquor Administrators) have brought it up at recent conferences. It is a hot topic. Texas ABC is in a lawsuit battle by an entity that also has shares in the manufacturer process. There are multiple lawsuits out there in different states. PM*
- 3-Tier system laws in these lawsuits are being upheld in the courts.
- What about out of state store shipping products to Colorado consumers?
- *That is not allowed. We contact the out of state retailer and tell them that this is illegal. If they do not stop, we try and enlist the help of their state's Liquor Authority. PM*
- Wholesalers would like to see Common Carriers be required to provide manifests of their shipments and report alcohol shipments. Perhaps look at this during the 2017 LRWG.
- Farm distilleries are not allowed to operate salesrooms in Jeffco as they are defined as industrial "non-agricultural".
- Wine Industry would be willing to facilitate looking at other states models for this. Tabled to February's meeting.

Tastings & Growlers Subgroup: (Chairman – Lewis Koski)

Purpose

Examine and make recommendations regarding laws governing tastings conducted on retail premises licensed under Article 47 of this Title and the ability of retail liquor stores licensed under Section 12-47-407 to sell growlers containing malt liquors.

Points & Discussion | Tastings

Quick overview from last meeting – I believe we had consensus on the following:

- *Sundays? Yes*

- *Increase number allowed per year to 150? Yes (Note: Locals to decide what days.)*
- *Hours allowed for tasting from 11:00am to 9:00pm? Yes.*
 - *Duration up from five (5) hours to (8) eight.*
- *RLS employees have to do the pouring?*
 - *Who is culpable if the wholesaler serves underage?*
 - *Both the wholesaler and the retailer. PM*
 - *Require wholesalers and retailers to be Seller|Server Trained?*
 - *If not the RLS employee, manager or owner pouring, Seller Server employee should have oversight of pouring.*
 - *What if you have a large tasting with 3 wines. Would it be illegal for a supplier to pour?*
 - *It would be difficult to ensure an out of state supplier has been trained with regard to Colorado laws.*
 - *Does it have to be in rule? Can't it be best practice?*
 - *Should have businesses make one of their own policies that everyone is trained.*
 - *Seller|Server training is a choice. Why make it mandatory?*
 - *Currently it is for employees who pour at a RLS and LLDS. PM*
 - *Seller|Server trained employees are not required in salesrooms. Under 12-47-301 (10) requires the employee of RLS and LLDS to be trained but not the RLS to be a responsible vendor. PM*
- *What about discards? Good with locking it up? Would there be time frames to use it other than the product going bad? LK*
- *Only issue I would have would be to ensure the open product was not accessible by employees and only out of locked container during tasting times. PM*

Take Aways for Next Month: I will get this all put in writing so we can agree on the language. If retailer purchase's product, it must be locked up, RLS cannot permit samples to leave. Perhaps signage at door or an employee to monitor.

Points & Discussion | Growlers

We have last month's motion from CLBA to not allow growlers in anywhere but where they are currently allowed. There was no comment from the attendees so the recommendation will be not to allow growlers in RLS.

Before we leave today.. everyone please be sure to sign in. We had some late comers and want to ensure all will be included in the record. We have next year's schedule out. We have limited the sub groups to three (3) hours and an extra hour for those months the Statutory Working Group will be meeting. Did the limited time work well for everyone?

Also we will be getting a Recommendation template out to everyone to make their recommendations. Jeanne – if you will go ahead and put your recommendation on this when we get it out. Also note that we can give the legislature several recommendations with varying options to consider.

Meeting adjourned: 11:52am