

- 1) Introductions of Task Force Chair, Members, Sterling Associates and audience.
  - a) Mr. Kang for Perry Park
  - b) John Guadnola for Phil Wayt
  - c) Anthony Anton for Gene Vosberg
  - d) Gilbert Canizales for Shelley Sieveking
- 2) Last meeting notes, no comments or corrections. **Decision:** Adopted.
- 3) Previous meeting and since (presentation p.2)
- 4) Meeting context and Objective of today's meeting (presentation p.3-4)
- 5) Agenda included in presentation – aggressive schedule to make decisions for inclusion in Task Force report. (presentation p.5)
  - a) John Guadnola: Comfortable with discussion, but not with voting. Since we're in the lawsuit we don't want to say something that would compromise our position. Our position is the state has the right to adopt these regulations regardless of the lawsuit. I am concerned that a vote would be perceived as a position of the LCB. We do not have sufficient information regarding some of the areas on the list – credit, for example. 30 states limit credit, 29 don't allow it.
  - b) Sterling: Anyone can abstain from voting. The Task Force report is not intended to represent the position of the LCB, it will represent the position of the Task Force. And we will note other view points in the report as appropriate. Please note at the beginning that if you have a particular option, stance, wording.
  - c) John G: Will you note abstentions?
  - d) Nate Ford: We will do hand counts, no roll-call unless requested by a task force member. We're looking for consensus. We will note abstains.
  - e) John G: I'm uncomfortable with a legislator or LCB representative going on record about these issues.
  - f) Nate: It's the decision of the individual task force member about whether to go on record or not. We will attempt to reflect diversity of opinion in the report.
  - g) Fred Hellberg: The letter from Perkins Coie, was it solicited?
  - h) John McKay: Perkins is Costco's attorney, we requested their opinion.
  - i) Rick Garza: It is clear that the LCB's position regarding the regulations involved in the lawsuit is that those regulations be retained so I will abstain from voting here today. The other issues on the agenda, I don't think it's important to vote because that will come back to the LCB for consideration and we can address them then.
  - j) Senator Parlette: As a legislator, I will not vote today either.

6) **Tied House Ownership – Discussion**

- a) Sterling: Presentation of draft alternative. The percentages included in the draft alternative have been taken from what other states do. We have not undertaken specific research to back up the particular percentages.
- b) Tim Hightower: I'm in favor of loosening of this restriction. I'm not comfortable with specific percentages because we didn't talk about these. I suggest we talk about a general relaxation of the tied house ownership prohibitions. The 20% restriction would prohibit owning a wine shop. I would suggest taking them out and making the recommendation more general.
- c) Mike Hale: This issue is not part of the lawsuit. I am a manufacturer, distributor and retailer. I have had investors interested in aspects of my business but they couldn't be involved because they owned retail licenses. We could limit the number of relationships (e.g., limit it to 10 relationships, so a supplier could only have an interest in 10 places...that would limit their potential impact on the market.) **MOTION:** I move we loosen the tied house restriction so that supplier, distributor, retailer could own part of up to 10 outlets. (No second.)
- d) Fred: I think this is a classic area where the Legislature has addressed necessary exceptions after debate and discussions. I am not in favor of this approach.
- e) Anthony Anton: One of the drafts (from previous meeting materials) talked about the Oregon Model. It seems to make the most sense without putting numbers on it. I'm not sure where percentages should or shouldn't be.
- f) Tim: **MOTION:** No vote on this approach with percentages, but there is a consensus to loosen tied house ownership provisions and to work with the LCB to arrive at a workable solution. Anthony: **Second.**
- g) Carol Owens: I don't see a compelling need to change this. We have an approach in place for considering exceptions. This is also where we talk about naming rights, and I can't support anything that would loosen those.
- h) Tim: There have been exceptions to Tied House, but most exceptions have been around money's worth, not around ownership.
- i) Carol: In that discussion last time, there was a discussion around naming rights.
- j) Tim: I'm not saying there aren't concerns – wouldn't want to let ownership issues go away altogether.
- k) Katie Jacoy: As long as they are not discriminatory, we would support loosening of these regulations as well. We would recommend we look at the specific percentages.
- l) Mike: Reading that regulation, it does seem that it would be difficult to enforce.
- m) Fred: I would agree with Mike. I don't know what Oregon is doing to enforce. Lorraine: Oregon enforcement staff is limited (they have one person working on this aspect of enforcement.)
- n) Anthony: The motion is to recommend liberalization, not necessarily adopting the Oregon model, but encouraging loosening without specifying percentages.
- o) Tim: I'm just uncomfortable with the percentages.

p) **Final motion: Encourage the liberalization of the tied house ownership restrictions, and work with the LCB to arrive at a workable solution.**

q) **9 Yeas, 3 Nos. Motion adopted.**

**7) Tide House Money's Worth – Discussion**

- a) Sterling: Presentation of alternative.
- b) Steve Lynn: This is directed to retailers. We codified a money's worth exception at a huge level – when distributor stocks and restocks. That is a huge impact – in law – that distributors can do that and the cost is driven into the product. A huge amount of money's worth being provided. The little things (like not being able to sign bottle of wine... The price reflects this service whether or not you take advantage of it. (Small retailers do NOT use that service, even though they are paying for it.) Delivered pricing issue deals with more than just the freight, it's the cost of the staff that reflected by those services. Who should own those FTEs? The distributor or the store owner?
- c) Mike: Some of the exceptions granted have been quite large. I would hope the LCB would examine each and every exception to see if they are appropriate based on their goals. We can't provide a coaster but we can take them fishing in Alaska for a week. Coasters, t-shirts are already given away in the industry because of the lack of enforcement. There are so many ways around the rules. I would like to make a **MOTION** that the LCB reevaluate the list of existing and proposed exceptions to assess against the intent of state policy goals. The exceptions granted are not appropriate, seemingly done in a little bit of a vacuum without much scrutiny. Fred: **Second**, with modifications.
- d) Rep. Conway: I would agree with Steve Lynn and these are issues the legislature has been dealing with.
- e) Katie: I'm concerned with the detail. All the exceptions have been granted by the Legislature, so they have been scrutinized. For example, an exception has been granted that allows a winemaker to come in to a retailer and educate consumers. I'm concerned about the reexamination. Mike's concern about a list of things that everyone can do...table tents, wine list, etc. things that are of de minimus value to the retailer. I'm in favor of a list of things that would be approved. But I would not like to see a reexamination of every tied house exception available now.
- f) Steve L: If you're really looking at money's worth, it's the big ones that really make a difference. Grocery stores and big box stores get service for free. It's huge. Shouldn't that burden be put on the retailer?
- g) Mary: I'm confused on what the motion is. The draft alternative talks about a lot of things. If we add "and the intent of the state policy goals" you'd have a clearer picture. Nate: The motioner and seconder agreed on the language. Fred: My intent was not to exclude the language from the original alternative.
- h) Mike: My experience in the marketplace is the current exceptions unlevel the playing field, not level it. Those who have the wherewithal to go with the exceptions, or break the rules, are advantaged. Nate: Please focus on clarifying the motion and not add debate right now.
- i) Mike: Is it appropriate to talk about enforcement issues? If there are rules, then resources need to be applied.
- j) **Motion to amend motion to address enforcement. (adopted by voice vote.)**

- k) John M: We don't use stocking services because there is so much interplay between issues like shelf space. We're strong enough financially to stock our own shelves. Other retailers may need that. Some of the distributors do wield power in relation to shelf space. So I would echo Steve's comment that that is a huge money's worth issue.
- l) Tim: Original draft alternative is good, it is broad enough to address the concerns. Level playing field isn't part of the state goals as we've discussed them. Practically we have a huge task just looking at new items. Revisiting existing ones the legislature has already approved is a big task. I would support original draft.
- m) Tom: I would rather see the LCB focus on enforcing issues in my city, not whether retailers are getting coasters. I want them focusing on sales to underage, etc.
- n) Katie: The draft alternative v. current motion, what's missing is "work with stakeholders." I would encourage the motioner to think about how the list would be developed.
- o) Rep. Conway: Exceptions have come from the evolving role of the retailer. Their industry is changing so we've been asked to change the law to accommodate those changes. Hard for me to envision a committee sitting down and drafting a comprehensive list because industry is constantly changing. The LCB often brings the exceptions to us. There has been a healthy exchange between the LCB and industry to develop. Assuming that a group can sit down and draft a list is a little ambitious. Process that's been in place has worked.
- p) Carol: Where the community representatives have concerns is where advertising and social marketing collide. As long as this is a reasonable process and the stakeholder process would bring in those perspectives I'm satisfied.
- q) Rick: I think it's been difficult for the LCB. When these issues come directly to the Legislature it is difficult to have a thorough discussion. I can see us move forward with a work group to fully discuss all of these issues. It is difficult for the LCB to come to you with full range of perspectives when it occurs during session. It would make a lot of sense to continue these discussions around tied house money's worth and ownership
- r) Sen. Parlette: I would agree with Rick. It feels like we're piecemealing these issues in the committee at times. There is value to have a task force look at these more broadly. Looks to me that a reevaluation of this issue would be useful, but it can't happen in the legislature.
- s) John G: Seems to me we go back to the draft alternative, add in enforcement.
- t) Steve: I appreciate the concern about reevaluating what's there already. Things change and maybe some of these may need to be reconsidered.
- u) Mike: I'm just concerned about getting in the notion of a reexamination. So I'd be happy to stay with the original draft with added language to address that. Fred: Accepts.
- v) Anthony: Roberts Rules of Order – Mike would have to withdraw his motion. Nate: We want to use the rules to be efficient but not to overly complicate this process.
- w) Carol: With enforcement resources added in.

- x) John McKay: So we approve this, so what does this say. It would be the Task Force saying to the LCB that it continues to work on this issue? Nate: The Task Force doesn't have the authority to dictate, but it would be a consensus of the task force. And the state's policy goals always underlie everything.
- y) **Final Motion: Continue the state's current approach of providing specific exceptions to the prohibition against providing money's worth to retailers, and direct the LCB to work with stakeholders to re-examine current exceptions and develop a comprehensive list of proposed exceptions for legislative consideration. When developing the list of recommended exceptions, the LCB should consider: (1) industry business needs, (2) customer benefits; (3) whether it creates an unwanted inducement for retailers; (4) the potential for increased misuse of alcohol, and 5) enforcement resources.**
- z) **15 Yeas, No Opposed. Motion adopted.**

#### 8) Common Carriers – Discussion

- a) Sterling: Presentation of alternative.
- b) John G: Oregon is missing from the example. They don't allow common carriers. I would be very concerned about something that doesn't require some sort of licensing requirement. We would not like to see this changed, but if it is, we recommend strong licensing requirements be instituted.
- c) Lynn: The one piece I would ask to have this group consider is to allow us to use our fleets and trucks to pick up.
- d) Tim: All the shipments that go to distributors from manufacturers are done through common carriers. If you are shipping to a distributor or retailer, you want to make sure you get paid, so if anything goes missing it becomes immediately apparent. I think the process of trying to license the trucking companies would be a big hindrance.
- e) Steve: **MOTION** to accept the draft alternative as set forward.
- f) Katie: **Second.**
- g) John: My response to Tim's statement that there haven't been problems to date, is we're going through a paradigm shift in relation to the potential number of entities involved (product going from and to). There are 12,000 retailers and several thousand out of state manufactures that could use this authority. We think the current system works best, because it provides control. We could not support a legislative change without a stringent licensing requirement.
- h) Katie: Common carriers are being used currently, when beer or wine is ordered by retailer, or when coming from out of state to a distributor. We're not changing *whether* they can be used. We'd be changing *who can contract for it*. Other states have put in not a licensing requirement, but more of an approval process, so the state knows who's doing it. A licensing approach can limit whether common carries would want to participate.
- i) Fred: My main concern is the inconsistency about when common carriers can and cannot be used. Right now it seems inconsistent and developed willy nilly. I tend to be supportive of the alternative. From an enforcement standpoint, if this were changed according to the alternative, would this create an overwhelming enforcement burden? Or, do you have knowledge of how it's done in other states?

- j) Mary: Where does the piece come in about when the product can be purchased by the consumer?
  - k) Tim: We're talking about the licensee-to-licensee relationship here. There is a relationship to maintain and concern that everyone get their product and payment. This is not the same as direct consumer purchases.
  - l) John G: The ability to deliver by common carrier compounds concerns about compliance with law and taxation issues unnecessarily. We could not support this without a strong licensing component.
  - m) Tom: I have two friendly amendments – eliminate the parentheses to direct the LCB to consider a licensing requirement. If the current common carrier is required to hold a license to carry product to consumers, we're looking for consistency.
  - n) Steve: I have no issue with removing the parentheses. That's no problem. I'm not sure how to handle the second part. Add something that would reflect the desire for consistency regardless of who is getting the product.
  - o) Katie: Very few wineries have signed up for this (50 according to the LCB at the last meeting). And the reference John (G's) makes to the 12,000 retailers...they can already contract with common carrier. We're not changing that dramatically.
  - p) John G: Changing the circumstances to allow manufacturer to be a rolling warehouse. It opens up the law.
  - q) Katie: We're fine with an approval process.
  - r) Rep. Conway: Do you find the larger manufacturers require the retailers to cover the cost?
  - s) Katie: The current law is the retailer has to contract and pay for the cost of a common carrier.
  - t) Fred: Call for the question.
  - u) **Final Motion: Allow manufacturers and distributors to ship their product to retailers using common carriers and consider establishing a licensing requirement for all common carriers delivering alcoholic beverages regardless of origination.**
  - v) **13 Yeas, 2 Nos. Motion adopted.**
- 9) Central Warehousing – Discussion**
- a) Sterling: Presentation of alternative
  - b) Rep. Conway: I'd like clarification. Does this alternative relate to only the retailer's purchased product? So a retailer could purchase product from winery or brewery, and use their own warehouse for distribution? Sterling: This language wouldn't necessarily require that the warehouse be limited to one retailer. This language would not prohibit joint warehousing, but would require that an individual retailer would serve their own licensees. (To avoid retail-to-retail sales.)
  - c) Lynn Gust: As I read this, I think this language would prohibit the Associated Grocers of the world from being able to use their own central warehouse to distribute. Sterling: The intent would be that the warehouse would store a retailer's product and deliver that retailer's product only to that retailer. (The retailer here is distinguished from the licensee. So, for example, a grocery chain with several licensed

retail outlets could warehouse product and distribute to their retail outlets, but the warehouse would not have to be owned by that retailer.)

- d) Fred: Would the requirement that warehouse be located in Washington raise a commerce clause question?
- e) Katie: I would agree it raises a question because it makes a distinction for out of state entities – it puts a burden on out of state retailers.
- f) John G: I read this as Lynn did, that you had to own the warehouse. If you don't then it raises the whole question about who gets to run the product through the warehouse. I don't see how it works if you don't own it. I have some concern from enforcement point of view regarding diversion. Right now the distributors know what can and cannot go into an alcohol impact area. I don't understand why Associated Grocers don't just get a distributor's license?
- g) Rep. Conway: Question for Katie – what's the harm if an in-state grocer's – Albertson's, for example – main warehouse is in Oregon.
- h) Katie: Is there a specific state policy that is served by burdening interstate commerce. And if you've got a warehouse out of state, versus an in state warehouse, what policy does that serve? And does that justify the burden put on interstate commerce? If you can't come up with a reason, you can't justify the burden. Sterling: And it's in here because it makes it easy for the LCB to come and audit, and control. Katie: All those things would still be in place, and the LCB would still have the ability to control the licensee at the out of state warehouse and at the store level, controlling the movement, etc.
- i) Lynn: Beyond the Albertson's example, Fred Meyer and Safeway also distribute to Washington stores from out of state warehouses. So certainly we have the ability to deal with it, but from practical reasons it doesn't make sense.
- j) Mike: From a small producer's perspective, the ability to distribute to a central warehouse of a retail facility would allow us a much greater ability to participate in self-distribution. From our perspective, if you take out "located in Washington" this draft alternative would allow small producers to distribute to retailers more freely. **MOTION** to remove "located in Washington" and adopt the draft alternative.
- k) John McKay: **Second.**
- l) John G: I'm troubled generally about this, but particularly if it isn't limited to a specific company.
- m) Mike: Clarify that the warehouse is owned by the retailer. (John M. OK'd clarification)
- n) Lynn: What about if it is owned by a cooperative group of retailers? Is that prohibited or allowed? As a representative of the food retailers, I need to make sure the small independents can be represented as well.
- o) John McKay: Would it actually be practical for Associated Grocers to become licensed distributors? Lorraine: Yes they could. One point to emphasize. Under the current regulations, the license is based on the location. By lifting the ban, we're saying it doesn't have to go from the place of origin to where it is sold.
- p) Rick: That's part of the difficulty, if it's going from an out of state entity warehouse to a retailer location in Washington we need to ensure we track the taxation.

- q) John G: There would be major issues for beer, it maybe different for wine. If beer is going from Seattle warehouse, who is responsible for removing out of date beer in Bellingham. Every time you add another step, you add another opportunity for a case of beer to end up in someone's trunk. I don't see the value.
- r) Rep. Conway: I reiterate my concern about how this will uneven the playing field among our grocers across the state. The grocery industry is very diverse, some tied into central warehouses and some not. How would this impact 7-11's? That's a major nexus point for beer and wine sales. I don't know how they're doing that. Enforcement and tax collection is a big issue here.
- s) Tim: When the wine is shipped to the warehouse, that would be the taxable event, right? Wouldn't that make it simpler? Lorraine: Possibly.
- t) Tom: Is the issue about licensed entities a detail that can be worked out in the legislature? Lorraine: Yes. Is it possible to license outside of the state for taxation purposes? Rick: Yes, it is easier to deal with in-state entities. If it is an out of state warehouse, that may be more difficult.
- u) Katie: Taxation – the retail sales tax is taxed at the retail outlet at the time of sale. The excise taxation wouldn't change, would it? Lorraine: No, that wouldn't change, the out of state collection may be more difficult if the warehouse is out of state.
- v) John G: We're talking about shifting costs. Retailers wanting to warehouse so they shift a cost to the state through regulation. I don't know where all the impacts would be. What does this do to the state's ability to control? I don't know. You're adding a burden of complexity, without additional benefit.
- w) Mike: On taxation, when I ship beer to California, I report that to California. Suppliers report all their sales to someone, including the feds. So that system is in place. The taxable event occurs when supplier ships to the warehouse now.
- x) **Final Motion: Allow central warehousing as long as each central warehouse is owned by the retailer, stores and distributes only the retailer's purchased product to its own licensed retail outlet (i.e. no retailer-to-retailer delivery or sales), the warehouse is appropriately licensed, and documentation is required showing the product was purchased legally and distributed legally (to licensed establishments) – to allow for appropriate tracking, an audit trail and minimized diversion.**
- y) **5 Yeas, 8 Nos. Motion fails.**

## 10) Delivered Pricing

- a) Sterling: Presentation of Alternatives
- b) Steve Lynn: The issue at hand is the price is a blended price reflecting three items...the price of the commodity, a variety of services, and cost of delivery. That is a problem for everybody – the granularity of the number. I think everyone wants to pay the same price for the product, but no one wants to pay for services they don't use. Shipping is shipping and makes sense, but service is different. The price of the product should just be the price of the product. Whatever alternative we come up with, the language should reflect that we're paying the same price for the product. Multiple service levels would be difficult, but shifting that cost from merchandising would be huge (I estimate 50% of the cost of product is currently related to service.) I would encourage breaking it out in some way.

- c) Fred: Just from the limited examples of what other states are doing it appears Washington is on the most restrictive end. Allowing the surcharge, would that create complications in regulation? I don't understand the pros and cons. Sterling: In those states that have surcharges, generally the surcharges need to be uniform.
- d) John G: The fuel surcharge wouldn't be a problem. The varying level of service would be difficult. Costco pays a delivered price like everyone else. So Steve is paying for stocking services he doesn't use, but he doesn't pay the extra costs associated with delivering to a small retailer. Getting rid of delivered pricing would create a huge advantage for some retailers.
- e) Katie: CA doesn't have it for wine and no segment of the retailers have gone away. Variable service levels may be more complicated.
- f) John G: There is a huge difference between beer and wine in this area. The two products are very different.
- g) John M: The requirement is that it be the same. Any distributor can say, we have one price available to all customers. This would just allow an option, allow distributor to make this available – it does not require distributors to make it available.
- h) John G: How many distributors can afford to say we will not sell to Costco because we don't want to offer a discount?
- i) John M: It's very realistic. We deal with many approaches in the marketplace. We have lots of wineries that insist that distributors do NOT sell to Costco. The marketplace does work in that situation.
- j) Tom: My concern is subsidizing alcohol prices. Alternative one...distant buyers are subsidized by close buyers. (Omak v. Seattle). **MOTION:** I move we adopt alternative #2 which levels the playing field, removes some of the subsidy.
- k) Mary: **Second.**
- l) John G: Your concern about subsidizing prices is a concern that prices may be lower? The places where the prices are sold most (Seattle) the prices are somewhat higher than they would be otherwise. To the extent prices get skewed, people will buy where prices are lower. No one can say what the overall impacts are. Prices are higher in Washington and consumption is lower.
- m) Tim: If people are talking about negotiating prices, are quantity discounts included or excluded here? Sterling: The intent of this item is to focus on the difference in prices related to shipping and service levels. Not dealing with volume discounts in this particular recommendation.
- n) John G: Is it also the intent that the LCB would set the different service levels? Sterling: That is a level of detail not dealt with here.
- o) John M: Alternative 2 creates some issues. Those farther from the distributor will be most impacted. Issues related to tiering it, independent of the marketplace.
- p) Anthony Anton: Consumption data provided to the task force doesn't seem to correlate to prices or regulation. License states don't seem to have higher consumption than control states, Washington appears to be somewhere in the middle of the pack. In fact, our wine consumption is on the higher end, even with our regulation and higher prices.

- q) John McKay: The Costco experts in the lawsuit said....
- r) Rick: There are so many factors around consumption some that deal with regulations and others outside of regulation.
- s) Anthony: Have we set objectives for what we want to see? For example, have we said we want our consumption rate to be X, and we're making changes to this regulation, so we can come back in 5 years and determine if our approach was successful?
- t) Steve: When a price is submitted and posted, it includes the cost of service, product and delivery and we cannot tell what the actual cost of the product is. Someone will pay for those other pieces, but then we can focus on who SHOULD be responsible for paying those things. Right now we just simply don't know. I'm not in favor of either alternative. Everyone should pay the same price for the product.
- u) Tim: Can the LCB give us a sense of what the impacts of this might be? Lorraine: It makes it a little more complex in terms of auditing, if we have to split those prices out.
- v) John G: I don't think I can agree that our regulations are related to that we're 12<sup>th</sup> in the nation in wine consumption. We can't draw that conclusion, without our regulation maybe we'd be first.
- w) John McKay: Taxation is an element the state has the ability to control in order to control price. The concept that using distributors to control price, there are better ways. The mechanism of the pricing and forcing through this tier isn't necessary and the state can still achieve its objectives through other means.
- x) Tim: Another question: We're talking about prices to retailers? Lorraine: the price from manufacturer to distributor does allow a freight differential. That is not permitted in sales to retailers.
- y) Steve: The piece I keep focusing on is a money's worth issue related to who pays for services. Wherever it gets addressed.
- z) Mary: Increasing taxes to control prices is right, but taxes are a "four letter word" here.
- aa) Katie: Steve, if we eliminate the delivered pricing requirement, why doesn't that get to where you want to get to?
- bb) Steve: The delivered price is comprised of all three components – the price of the product, the price of the delivery and the price of the services.
- cc) Anthony: We're going from lots of regulation to less. My preference would be Alt. 1.
- dd) Final Motion: Maintain delivered pricing requirement, but with different levels of service and allow for surcharges for fuel or excessive distances.**
- ee) 2 Yeas, 10 Nos. Motion failed.**
- ff) Anthony: **MOTION.** I move Alternative #1. Katie: **Second**
- gg) Final Motion: Eliminate delivered pricing requirement and allow for negotiated delivery prices.**
- hh) 7 Yeas, 7 Nos. Motion does not go forward.**

## 11) 2SSB 6823 Impact Measures

- a) Sterling: Presentation of Alternative
- b) Carol: This state is rich with social indicator data. We need to link those data when we're looking at impact measures. Sterling: The focus here is on the specific impacts related to changes in the law from 2SSB 6823.
- c) Tim: I don't think this alternative says that. If we're evaluating whether passage of this causes problems, there needs to be a causal link. I think we need to make it a more general statement. We need to focus on whether they are using the license, not just whether they have been granted a license.
- d) John G: Seems to me there should be some tracking of the number of in-state wineries/breweries. Has it had an impact on in-state activity?
- e) Tim: This is the one issue the WA Wine Institute weighed in on because it's so important to the health of the in-state industry. This does not address the impact of NOT having this bill. The alternative to this bill is that the self-distribution authority for in-state wineries would have gone away.
- f) Sterling: This also focuses on information the LCB may have but is not currently tracking. Lorraine: The LCB does NOT currently track beer and wine prices.
- g) Tom: Cost of enforcement needs to be tracked, so the legislature could fold that cost into the cost of the license.
- h) Rep. Conway: I'd like to know how other states are dealing with this issue.
- i) John McKay: I don't know how you get any good data yet, given the usage has been just a trickle. Getting good data will be very difficult. Tim's point is good, the alternative is that in-state self-distribution would go away and we could lose a lot of smaller wineries. It's very important that we look at it, and what it's going to cost, but the question is whether you'll get any useful data is unclear.
- j) Rick: John, you're right. With the few number that have signed up, it will be difficult to get much information. From the LCB's perspective, I'm not sure what we'll be able to give you.
- k) Tim: **MOTION.** I move to amend the alternative to delete the words "at a minimum" and "such as." Then, add "suggestions include" and delete "beer and wine retail prices. Keep the basic idea but don't tie it down so much.
- l) Steve: **SECOND.**
- m) John G: Is the retail price available in any meaningful way? (Lynn: No)
- n) Fred: I think the price information would be useful. What is the cost?
- o) Rick: There would be information available from Nielsen, for retailers participating in this self distribution.
- p) Lynn: This is such a small piece of the pie, trying to track those prices would amount to nothing more than busy work.
- q) Steve: Premium wines wouldn't even go through a vintage. We'd focus on jug wine and beer.
- r) Sen. Parlette: What's the value of knowing that information?

- s) John G: There is less value in this context, versus impact measures more generally. At the very least it would be helpful to have a baseline. Nobody has this data yet.
- t) Carol: Given the earlier discussion about whether we know that price influences use. Maybe say “explore ways to obtain retail price information.”
- u) John G: I would like to see the “beer and wine retail prices” put back in.
- v) Fred: No other states are collecting it.
- w) Steve: Exclude for this piece, which deals exclusively with the impacts of this bill and included it under general impacts.
- x) John M: We have a pricing history in Washington related to products sold in state liquor stores. Can we use that? Sterling: But there’s no change related to prices there.
- y) Katie: I concur with your concern about connecting prices to the self-distribution. But it wouldn’t make sense to look at the state liquor store prices. There’s no before and after.
- z) Carol: It would be great to have longitudinal data that wouldn’t require every retailer to report, but could still contribute.
- aa) John M: Costco is concerned that we be able to bring better prices to the consumer. Our goal is to take a \$30 bottle of wine and figure out how to sell it for \$27-\$28. We think that’s a good thing. And we brought the suit to remove regulations that serve primarily to keep prices high. That may be something the Task Force should consider talking about. We don’t believe that always keeping prices high is a great idea.
- bb) John G: We struggle with how you make those distinctions between “fine wine” and “that other wine.”
- cc) Anthony: Cost of living has an impact on prices. I’m not sure the value of it. I would struggle that we would get a number and try to make a correlation.
- dd) Rep. Conway: Why not include types of products? Our state is pretty unique in allowing out-of-state manufacturers to self-distribute. So, as a leader, in this area it is important to track the impacts.
- ee) Katie: Call for the question.
- ff) **Final Motion: The LCB should identify and select key impact measures that can be monitored and analyzed by the Fall of 2007, to provide the Legislature with data about the impacts related to the implementation of 2SSB 6823.**

**The LCB is encouraged to work with stakeholders and legislative staff to identify the most pertinent impact measures. Key impact measures should be tied to the state’s policy goals and should address the impact to industry, consumers, the state and society. And, to the extent possible, consideration should be given to selecting measures for which baseline data is already available. Basic data should be collected and reported; suggestions include:**

- **the number endorsements granted to of out-of-state manufacturers and in-state retailers to use the expanded authority;**
- **the volume of product sold through out-of-state self-distribution;**
- **the size and type of retailers using the authority; and**

- **tax revenue collections.**

**gg) 11 Yeas, 0 Nos. Motion Adopted.**

## **12) General LCB Policy Impact Measures**

- a) Fred: Throughout the discussions of the task force, one of the main problems has been the lack of data. I think this is definitely important.
- b) Carol: There is a lot of social and health indicator data available throughout the state. I would encourage that this should say something about working collaboratively with other state agencies using both independent (newly developed) and relevant existing analysis. **MOTION.** Adopt the alternative amended to include working collaboratively with other state agencies using independent data, and relevant existing analysis.
- c) John G: Should add an “and” – the LCB is encouraged to work with stakeholders.
- d) John McKay: **Second**
- e) Katie: I’m concerned about setting out a purpose before we give the LCB 1 or more FTEs to go forth and gather data. We don’t know what the system will look like as a result of the Costco lawsuit. I’m just not sure the timing is right.
- f) Nate: The intent to collect information is not merely related to the suit, but it’s because of an on-going lack of information available to the LCB and legislature to make data-driven decisions. It’s for the more general issue of having good yardsticks.
- g) Sterling: Added language about evaluating policy/regulation impacts. Does this reflect your thoughts accurately, Carol? Carol: Concur.
- h) Fred: Important to set the systems in place to develop this capacity now to have it in place when changes are occurring.
- i) Mary: Would suggest adding “evaluating the impacts of current AND PROPOSED policy/regulations.”
- j) Tim: That puts a huge burden on this one FTE to evaluate all of this. Goes well beyond gathering baseline data.
- k) Mary: What I’m looking at is to have that available...it would be the purpose of collecting all of this....not that you have to evaluate everything right then, but that the information would be available for that.
- l) Carol: Maybe say “provide resources” not necessarily “FTE and funding.”
- m) Rep. Conway: NCSL not collecting data either. Just shows you how this state is on the cutting edge of the discussion. I’m surprised we haven’t been doing it. I think it’s a great idea and we need to be doing it. This should be rolled in to the licensing fee.
- n) Rick: How it would be funded is still in question. I don’t know that we even need to specify the number of FTEs, it just becomes very clear that there needs to be more analysis and data collection being done related to these regulations. We need to see if there is a link between the regulations and alcohol consumption. It’s not clear there IS a link. We don’t know.
- o) Rep. Conway: We need depoliticized, neutral data.

- p) Carol: I think we should leave this broad. I would be fine with Rick’s suggestion about simply referring to “provide resources” and take out reference to funding and FTEs.
- q) Tom: I think it’s important to include the reference to FTEs. Otherwise it’s an unfunded mandate for the LCB. I would be very concerned about putting forward a nice statement that the LCB should collect data. If we want it done, we need to specify that resources be provided.
- r) Fred: The LCB will determine the appropriate way to request resources. It could be through additional FTEs or through contracting authority.
- s) Tim: I was going to second Carol’s amendment to the motion.
- t) John G: **MOTION TO AMEND by removing parenthetical. And change language to “funding” (remove language regarding FTEs.)**
- u) **Tim: Second.**
- v) **Final Motion: 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.**
- w) **10 Yeas, 2 Nos, 1 Abstained (for this vote only – this does not reflect those who have chosen to abstain from voting on all issues). Motion adopted.**

### 13) Price post and hold – Discussion

- a) John G: In Oregon can go lower, but can’t go higher with prices until have held for 14 days.
- b) John M: The court found post and hold illegal, and we don’t believe the proposed alternative is legal.
- c) Mike: Experience has been that current practice doesn’t prohibit changing prices. Posting and monitoring resources could be spent a lot better. I would like to eliminate the Post and Hold, and divert resources to other higher uses.
- d) John G: Some kind of hold is important for price stability. Price posting seems to be an enforcement tool.
- e) Lynn: My belief is that the current requirement is there to create an equal opportunity; but the federal rules already take care of that.
- f) John G: Federal rules only apply to interstate commerce, not local to local. And only if there is an adverse impact on competition. Do not believe the Federal Act accomplishes what the state is trying to accomplish.
- g) Fred: How many regulatory staff does the LCB devote to enforcing post and hold regulations? Lorraine Lee: We view the electronic price posting an efficiency tool – electronic system to post. Five enforcement officers respond to complaints that may come from competitors – they use the system to investigate complaints. Three customer service staff to answer questions on the process of posting.
- h) John: As a retailer, we don’t have to post prices. Example of Alaska for tobacco pricing – they make complaints against each other and it works. All the checks and balances aren’t really necessary to control pricing regulations – it seems to work well for the marketplace to direct prices and to call each other on violations. I don’t believe post and hold brings stability to pricing.

- i) Mary: But how do we know it doesn't prevent more instability?
- j) John M: How long prices are offered doesn't necessarily contribute to stability. And stability of prices don't necessarily contribute to prevention of misuse.
- k) John G: Economic incentive of the price hold is to not chase the sale. John M: But as a retailer, I can change my price every day – that's where the consumer purchases it. John G: But at least the retailer is working off of a fixed price.
- l) John M: **Motion** to adopt the first bullet of the alternative, and with modifications (add elimination of price hold and remove "electronic.") **Seconded.**
- m) John G: If you're concerned about any of the other pricing regulations, eliminating the hold makes it hard to control the others.
- n) Mary: If the hold is eliminated, why would anyone have to maintain price lists? John M: Because there are other pricing restrictions that the state would need to monitor.
- o) Mary: But that would require more of a burden on the state to monitor prices, volume discounts, etc.. Eliminating post and hold would create a vacuum.
- p) John M: To the degree there is a complaint or suspicion of violation, the LCB could request the record. Elimination of Post and Hold may free up resources for other more important things.
- q) Mary: Who would file a complaint?
- r) Mike: I don't believe post and hold accomplishes anything related to the policy goals – doesn't create a vacuum. It doesn't accomplish even the orderly market. We still need to discuss the other pricing issues.
- s) Nate: Concept is to put pressure on anyone with lower prices, to have to keep the price lower for a longer period of time – which discourages lower price.
- t) John M: Don't think that's necessarily true.
- u) Katie: California does not have post and hold for wine. There have not been price wars. There is no evidence of price wars without post and hold. No mention of price wars as a problem in the law suit arguments.
- v) Nate: There were arguments for it at the time the regulations were developed.
- w) Mary: Is the question the post and hold itself, or the lack of resources to enforce?
- x) Rick: The electronic post and hold is the most efficient way for the LCB to enforce price regulations.
- y) Tim: There are wines and beers out there now that are cheap. Post and hold does not prohibit cheap product. Example of problems: recently missed a deadline and now can't offer it for another month and a half. Also related to price fluctuations – smaller wineries aren't interested; will set prices and leave them. Bigger wineries may fluctuate some, but most don't want to change daily – there are costs involved in changing prices frequently.
- z) John G: We should separate post from hold.
- aa) Steve: First, I want all three options presented. Second, the hold is more important to help stabilize.

bb) Katie: Everyone in the market is trying to make a profit. Businesses will price where the market will bear, not so low we are not making money.

cc) John G: Beer and wine should be separate.

**dd) Final Motion (#1): Eliminate price posting and holding and require manufacturers and distributors to maintain a current and historical price list (for predetermined length of time) at their establishments, available for LCB audit as requested.**

**ee) 6 Yeas, 7 Nos. Motion failed.**

**ff) Motion # 2 to accept draft alternative as written in presentation. No 2<sup>nd</sup>. Dies.**

**gg) Motion 3: Eliminate price posting. 2<sup>nd</sup>.**

**hh) 6 Yeas, 5 Nos. Motion adopted.**

#### **14) Minimum Mandatory Mark-up – Discussion**

a) Mike: **Motion** to adopt alternative. 2<sup>nd</sup>.

b) Mike: **withdraws motion**. (Note don't want to eliminate current pricing related regulations such as those related to close-outs, and prohibitions against selling below costs.)

c) Tim: **Motion**: Eliminate mandatory mark-up requirement. Katie: **Second**.

**d) Final Motion: Eliminate mandatory mark-up requirement.**

**e) 7 Yeas, 5 Nos. Motion adopted.**

#### **15) Credit – Discussion**

a) Anthony: Question for staff – passed a bill to allow credit card purchases? Can retailer use credit card? Sterling: Yes.

b) Steve: **Motion** to amend draft alternative to 30 days. John M: **Second**.

c) John G: Devil is in the detail. It's not clear how a distributor can offer credit and still deal with other pricing regulations (e.g., uniform pricing and level playing field.) Concerned about the level playing field. Concern about retailers overextending themselves. Allowing credit provides opportunities to abuse the system.

d) Katie: Level playing field? Wholesalers can buy on credit. Why can't retailers?

e) John G: Wholesalers get credit from time it leaves docks to the point it gets to warehouse and payment is due then – even though warehouse holds it for a while. Who is paying for warehousing costs? Part of the cost is offset by allowing credit. That's not an apples to apples comparison.

f) Anthony: Retailers can use credit cards today. So why does allowing credit from distributors present any more risk? I don't agree it does.

g) Lynn: There's no requirement that any distributor **MUST** extend credit; they have an option to decline a client if it is not a good credit risk. There is always a risk that a retailer may overextend on any product – not just beer and wine.

- h) Tim: There's no law that wholesalers have to pay as soon as hits the dock. May be a contract issue, but not in law or regulations.
- i) John M: LCB gets credit when they purchase – it is paid for when it leaves the distribution center.
- j) Steve: Retailers “warehouse” product for consumers the same as a wholesaler.
- k) John G: I'm not worried about a retailer getting overextended on potato chips, but do worry about overextension with beer or wine. We're not comfortable seeing these kind of changes.
- l) Steve: Retailers can buy with a credit card – it's just about who is financing it – not related to over-extension.
- m) John G: Extending credit could also create an issue of using credit to coerce retailer.
- n) Katie: There are penalties that would discourage bad credit behavior.
- o) Mike: I'm not arguing for the motion, because as a manufacturer, I don't like dealing in credit. I would like distributors to have to pay cash. How does the LCB know now if a retailer is paying at the time of delivery? How do they enforce now? It would be the same way if credit is allowed?

**16) Final Motion: Allow the option for manufacturers and distributors to offer credit to retailers, with specific terms – 30 days, and reporting requirements and penalties for default (temporary license suspension and/or cash penalty), such as the Texas model.**

- a) 9 Yeas, 3 Nos. Motion adopted.

**17) Uniform Pricing – Discussion**

- a) John M: Talk about level playing field; the market allows for many methods of competition beyond just price. Others use level of service, selection, etc.. however, Costco adds value through price. Believe we should be able to negotiate price and offer any savings to consumers. Doesn't have to be inconsistent with state policy goals. Should be regulated other ways than through pricing.
- b) Steve: This is similar to “delivered pricing” – lots of costs (product, delivery and service) rolled into one “price.”
- c) Tom: John McKay, were you talking about volume discounts in your discussion? Or uniform prices?
- d) Carol: Could not support a market-driven pricing.
- e) Mike: **Motion:** require uniform pricing of the product, but negotiate delivery and service pricing. John M: **Second.**
- f) John G: Could still manipulate prices with that motion – doesn't allow for uniform pricing.
- g) **Final Motion: Require uniform pricing on product but allow negotiated delivery and service costs.**
- h) **6 Yeas, 7 Nos. Motion fails.**

**18) Volume Discounts – Discussion**

- a) Lynn: **Motion:** to accept proposed alternative. Katie: **Second.**
- b) John G: The details bother me more than the concept – especially lumping beer and wine together. Available to all customers? What is the unit? This is too broad. It raises a problem with distributors'

contractual obligation to take back beer that is expired – retailer could buy too much and then expect the distributor to take it back.

- c) Lynn: John G raised good question. But we are not here to get to the details. It muddies the waters with things that are not a big issue. The first word in the alternative is “allow” – it doesn’t require volume discounts.
- d) Carol: I had a conversation with a small retailer that would be concerned that volume discounts would put smaller retailers at a disadvantage.
- e) John M: It’s no different for other products that are sold in volume. Small stores’ value is convenience.
- f) Carol: I understand, but with uniform pricing the consumer can get a similar price wherever they go.
- g) John G: Part of the concept behind the system is to discourage someone from pushing alcohol in quantity. Would the state want to pass other regulations that would discourage a retailer in pushing too much alcohol on a consumer? Such as eliminating Happy Hours, etc.? If allow volume discounts, would likely need other restrictions.
- h) Steve: Smaller retailers will be affected by non-uniform pricing. Issue is how one talks about uniform pricing. I don’t have an issue with competing on price. It’s the other things that get in the way. My prices are higher because we don’t get services that others get for free – and we have to pay for it. Volume discounts would mean different margins for small and large retailers. Small retailers cannot play in large volumes. Also, if all of a wineries’ wine goes to a large retailer on volume, small retailer may not have a chance to carry it. The things that are out of our control that we pay for is more of an issue.
- i) Mary: We keep coming back to the same thing with pricing issues – I appreciate trying to get the best deal for a consumer – but lower prices do create problems on the prevention side. We need to look at the impact on misuse – not just about what is best for consumers.
- j) Mike: Agree with Mary. But volume discounts exist under current regulations through work-arounds – they are called “special packages.” Volume discounts do exist to the extend manufacturers are willing to sell it – package it differently, and post a different price, etc. Why not get rid of the regulations that serve no purpose? Obviously as a manufacturer, I’d rather sell in volume to several retailers rather than small quantities to many retailers.
- k) Tom: I support the motion. The current system makes it worse for public safety in some ways. It must be cheaper to deliver more units, than less. That means small retailers are being subsidized. This motion takes out that subsidy – which means smaller, impulse sales are probably more expensive which is usually where the problems occur with public safety issues.
- l) Tim: I believe that even a smaller manufacturer would not necessarily put all of their sales into one store – that would make the manufacturer very vulnerable. I prefer to establish many relationships with many retailers – if one quits buying it’s a small portion of sales.
- m) John M: Costco has a policy that won’t buy more than a certain percentage of any manufacturer’s product because we don’t want to be the sole outlet of any given product.
- n) Steve: Don’t like the combination of costs in product price, services, and delivery.

- o) John G: Some of my customers like the notion of volume discounts, some don't. I will abstain from the vote. We seem to think the only problem drinkers are the ones that buy it from a convenience store. That's not necessarily true. Drunk driving and domestic violence can occur from abuse of fine wine too.
- p) **Final Motion: Allow volume discounts, with the same volume pricing available to all customers. That is, if there are price breaks at 10, 100 and 500 units, those price breaks are offered to all customers.**
- q) **7 Yeas, 4 Nos. Motion adopted.**

19) Policy Goal Preamble (see presentation p. 27)

- a) Tim: Presented draft language. There are certain regulations and laws that have gray areas, and when get clarification it seems to be based on strict enforcement. The LCB has a 2-edged mandate: to control alcohol and sell alcohol.
- b) Fred: Add ....so long as “the LCB and the legislature”
- c) John G: **Motion** to adopt the language. **Seconded.**
- d) Mary: Don't like the use of the word “least restrictive” and would like to propose Tom Carr's previous proposed wording

*The Task Force believes that an appropriate regulatory system for beer and wine distribution and sales should be based upon the three policy goals set forth below. In enacting any laws affecting such a regulatory system the Task Force recommends that the legislature also assess the economic impact of any changes or failure to change, including but not limited to the need to promote growth of Washington state industries, without losing sight of any potential public safety impact of any such change or failure to change.*

- e) Tom: The revised wording is closer now to what I had proposed before...My main concern was that a preamble can sometimes override what follows, and that was the concern with earlier versions. But the revisions are better.
- f) Rick: **Motion** to amend to take out “and allow for promotion and economic development of these vital and important businesses..” **Seconded.**
- g) Fred: I like Rick's amendment – LCB is not a promoter.
- h) Mike: The LCB is in the business of selling spirits because they want to control it.
- i) Rep. Conway: The purpose of the preamble was to ensure the broader impacts were considered, not to address a preamble to the LCB statutes.
- j) Vote on amendment: 15 Yeas, 0 Nos. Amendment adopted.
- k) **Final Motion: The task force believes that an appropriate alcohol regulatory system for beer and wine sales and distribution should be based upon the three policy goals set forth below. In creating and interpreting such a regulatory system, the Legislature and the LCB should consider the economic development of wineries and breweries and related industries, so long as the LCB and the Legislature also consider any adverse impact of any proposals on public health safety or welfare.**

- l) 17 Yeas, 0 No. Motion adopted.
- m) Mike: All along have been concerned about the current state of the liquor laws in general. Would like to see one outcome from the Task Force is creative suggestions about overarching direction for policies. Have some ideas, don't know if there is time....
- n) Rep. Conway: The Task Force report could reflect the comment of individual members.
- o) Mary: There is a statewide task force to reduce underage drinking Mike. Perhaps you would like to be involved? The enforcement of some of the regulations will be more difficult without price posting. Resources and additional effort should be considered.
- p) Carol: My understanding is the LCB will have a chance to respond.
- q) Rep. Conway: You are essentially looking for a fiscal note. I am not sure if the LCB can get something out before the report is out.
- r) Rick: I believe the LCB will address the report but not before it's issued.
- s) Anthony: Appreciate the data that has been made available around consumption and abuse. We would like to get together with others who might be interested, to set benchmarks and have more dialogue around these issue.
- t) Carol: Would be happy to arrange some presentations around some benchmarks related to prevention. There is information out there. We would encourage this group to use those resources.
- u) Anthony: Even if informally, we would like to track these kinds of issues and the impacts.
- v) Steve: Remember the comments several meetings ago, around additional taxation around high alcohol products. Perhaps that could be considered in the future.
- w) Tom: One of our priorities was increasing enforcement resources for the LCB. We didn't address that today.
- x) Fred: I agree with Tom, but would like more information about where the LCB is now with respect to enforcement resources. Has it changed? Has it been increased with population and licensing? Rick: It is still static. Fred: Isn't that a legislative problem?
- y) Rep. Conway: The Legislature gets recommendations from the LCB, and usually agrees.
- z) Nate: My experience as past Chairman of the LCB, was that the LCB tried not to expand state FTEs. May not be the best thing to do.
- aa) Rep. Conway: Problem is that we have come through some difficult budget years, and FTEs have been an issue. Maybe a better environment now.
- bb) Tom: **Motion:** The LCB should be supported with adequate enforcement resources and that those resources grow in consideration of population increases and liquor license increases. **Seconded.**
- cc) Anthony: What has been the outcome of not enough enforcement resources? Have there been increases in violations, etc.?

- dd) Tim: If price posting actually goes away, will it free up LCB resources? Nate: Not necessarily – will likely be applied elsewhere.
- ee) Mike: My experience is that industry folks do not turn each other in – for money’s worth, etc. Widely ignored in the industry because there is little enforcement.
- ff) Mike: Amend motion: that increased liquor taxes be utilized to fund LCB enforcement expansion. No 2<sup>nd</sup>. Amendment dies.
- gg) Mary: We need to look at prevention, too, if increasing taxes. Takes more research to figure it out.
- hh) Tom: The enforcement has to be done. In Seattle, the Seattle Police Department does it themselves – basic safety issues. And when they doing liquor enforcement, they are not doing other things. One of biggest gaps in Seattle is lack of liquor enforcement resources. 2400 liquor licenses, and about 4 enforcement officers in Seattle – they can’t do it all. The lack of resources hurts everyone if there is not enough enforcement.
- ii) Katie: Agree the LCB needs to be supported by adequate enforcement resources.
- jj) Mary: In some areas we are using prevention dollars for law enforcement to do on-site checks.
- kk) Lynn: Call for a vote.
- ll) Steve: The group should also reinforce what the LCB mandate is. Amend the motion to add: the LCB mandate be maintained. No 2<sup>nd</sup>.
- mm) Final Motion: The Task Force recommends that the LCB be supported by adequate enforcement resources and that those resources grow in consideration of population increases and increases in liquor licenses.**
- nn) 15 Yeas, 0 Nos. Motion adopted.**
- oo) Wrap up (see presentation 28). Next meeting will be FRIDAY, November 17, to be held on the second floor of the LCB. Meeting will begin at 9:00 and end at 3:00.