

# **IOWA ALCOHOLIC BEVERAGES COMMISSION**

## **MINUTES**

***Iowa Alcoholic Beverages Division***

***June 23, 2020 - 1:00 p.m.***

***Dial In Number: 1.517.317.3117***

***Access Code Number: 166-643-381***

### **Commission Members Present**

John Pauli: Chair  
Christine Riesenbeck-Spratt: Vice (via phone)  
Jay Wilson: Secretary  
Gary Nystrom: Member  
Rachel Eubank: Member (via phone)

### **Division Staff Present**

Stephen Larson: Administrator  
Joshua Happe: Bureau Chief, Regulatory Compliance  
Herb Sutton: Bureau Chief, Business Operations  
Brenda Emelo: Executive Assistant  
Lauren Connelly: Administrative Assistant  
Leisa Bertram: Comptroller  
Stephanie Strauss: Executive Officer  
Martin Moen: IT Manager

### **Division Staff via phone**

Tyler Ackerson  
Alexis Miner  
Nathan Beyer  
Nicole Scebold  
Pam Koehn-Miller  
Chuck Crabtree  
Denise Roberg  
Erin Verduyn  
Jake Holmes  
Jason Hohn  
Jeremy Bassett  
Jessica Ekman  
Jodi Christensen  
Lolani Lekkas  
Madelyn Cutler  
Sara Jacobson  
Scherael Thurston-Shell  
Dominique McNab  
Brandon Trapp  
Nick Gregory  
Paul Swesey

### **Guests Present via phone**

Marty Wadle: Ruan  
Alex Besch: Iowa Wholesale Beer Distributors Association  
Jessica Dunker: Iowa Restaurant Association  
Jeremy Thompson: Sazerac

Lynn Walding: Diageo  
Scott Petersen: Ruan  
Kyle Doyle: Iowa Distilling Company  
David Adelman: Cornerstone  
Sara Allen: Cornerstone  
Kate O'Hare-Hayes: Cornerstone  
Matthew McKinney: Brown Winick  
Terry Doherty: E & J Gallo Winery  
Brad Epperly: Nyemaster  
Eric Goranson: Goranson Consulting  
Joseph Roszman: Campari  
Scott Oeltjenbruns: Johnson Brothers  
Tara Meier: Ruan  
Stuart Oxer: Red Boot Distillery  
Tom Cope: Lobby Iowa  
Kevin Hyberger: Deutsch Family  
John Cacciatore: Policy Works  
John Lundquist: Assistant Attorney General  
Doug Struyke: Carney Law Firm  
Nicole Eilers: Iowa Winegrowers  
Andy Deloney: Johnson Brothers

#### **CALL TO ORDER**

Chairperson Pauli called the meeting to order at 12:58 p.m. and roll was taken. There was a quorum.

#### **APPROVAL OF AGENDA**

MOTION: A motion was made by Commissioner Wilson and seconded by Commissioner Riesenbeck-Spratt to approve the agenda for the June 23, 2020 Commission meeting.

Motion approved.

#### **APPROVAL OF MINUTES**

MOTION: A motion was made by Commissioner Nystrom and seconded by Commissioner Wilson to approve the minutes for the May 14, 2020 Commission meeting.

Motion approved.

#### **ADMINISTRATOR'S REPORT**

Administrator Larson stated there are currently 8-10 staff onsite per day. The warehouse is fully engaged and operational. Administrator Larson stated the division is reviewing a systematic staggered approach to transition employees back to campus. The Division's blended approach to bring staff back on campus will start after July 6, 2020 as we evolve toward the fall and winter to ensure we protect the safety of all employees.

Administrator Larson recognized Mr. Sutton for the Business Operations Report.

Mr. Sutton reported that there have been no reported cases of COVID-19 among ABD, Ruan or Iowa Lottery staff. ABD and custodial staff continue to disinfect the building and workstations. Mr. Sutton reiterated that most staff have been working remotely and will continue to do so. ABD staff were able to transition quickly, effectively and efficiently.

At the May 14, 2020 Commission meeting Mr. Sutton stated ABD shared numerous charts and data in preparation for new systems that will be coming online in August or September. Mr. Sutton will communicate more information as system upgrades are completed.

Mr. Sutton recognized Ms. Bertram for the Financial Report.

Ms. Bertram presented the sales update stating cash sales for beer were up 4.5%. Reports also showed beer sales were up year over year. April sales were deposited in May. There was a 19% increase in May, and total revenue was up 6.6% year over year. Ms. Bertram also stated split case fees for May are up from previous months with the addition of new Casey's stores. There is volatility

with what bars are selling. On the accrual side, liquor sales are up by 6.5%, the split case fees are up approximately 4% resulting in a substantial increase in May of 19%. The bottle deposit surcharge remains high attributing to smaller size bottles being sold. Less gallons were sold in 2020 for more revenue. Ms. Bertram noted that CRINC showed a decrease in redemption due to the pandemic, and is slowly trending upward.

Ms. Bertram stated that the proclamation was extended through June 25, 2020 for deferred beer and wine tax collection. Email notifications were sent to licensees regarding the extension. Additional communications will be sent out to tax filers as soon as tax collection is permitted along with a payment schedule. Total filed is approximately \$4.6 million dollars compared with \$4.5 million last year. There is approximately \$4.6 million deferred taxes waiting to be collected.

Commissioner Pauli asked when deferred tax collections would be up to date. Ms. Bertram stated all deferred taxes for FY20 should be collected in July 2020 and noted that this date is subject to change depending on future proclamations.

Administrator Larson stated that ABD has hired an analyst who will be reviewing the beer and wine tax reporting systems in addition to working with other entities to align strategies as ABD partners with the Department of Revenue. The analyst will be responsible to ensure that whatever tax is paid, is appropriate to what is reported and not overpaid or underpaid. Additional areas of focus include the economic impact to the native beer and wine industry as there are issues with other licensees not reporting on gallonage tax because they may not be educated to understand the obligation. One of the functions of ABD is to ensure taxes due to the state are collected. Products sold at retail align with sales tax. There is an economic impact on taxes paid to the state because nothing was sold at retail where the obligation becomes due and payable. The analyst will work with industry to create a foundational case study so that ABD is able to collect the correct amount of tax. Additional reporting will also include real time statistics from CRINC in regard to consumer redemption. The goal is to identify trends in addition to patterns during COVID-19.

Mr. Sutton stated ABD is looking to implement a price floor. There was discussion to implement and Ms. Scebold will present the timeline that helped ABD arrive at the decision and how the decision was made including the formula that was used.

Mr. Sutton recognized Ms. Scebold to present the price floor timeline.

Ms. Scebold gave background information on how the price floor decision was made and presented the time timeline.

In December 2019 six staff were tasked to make recommendations for a price floor. On January 16, 2020 the price recommendation was presented and approved. The new price floor was communicated to the suppliers on February 19, 2020 at the supplier meeting. We received no comments or questions from the suppliers at that meeting so it seemed to be well received by the suppliers at that time. The effective date for the new price floor was supposed to be May 1, 2020. Due to COVID-19 the effective date was pushed back to July 1, 2020. On June 5, 2020 a communication was sent out to suppliers that listed items affected by the price floor and prices were adjusted accordingly. There were a total of 182 products that were affected among 16 suppliers. Out of 2306 listed, 148 were affected, which is 6.4% of the products listed. On June 5, 2020 ABD received positive feedback on the price floor from a native distiller who had an affected product saying they were excited about the price floor being consistent among categories and sizes. On June 11, 2020 ABD had a conference call with Luxco and Southern Glazers Wine and Spirits. Luxco is an affected supplier of the new price floor. Luxco has 255 skus with special order products. 30 of those skus were affected.

ABD had a meeting with Sazerac to discuss the price floor on June 12, 2020. Sazerac has 653 skus. 68 were affected which is 10% of their portfolio. Also, on June 12, 2020 letters were sent to the same affected suppliers stating that the new price floor implementation would be delayed at that time. Overall feedback received from the meeting with the suppliers was poor timing due to COVID-19. It seemed most suppliers were not concerned about having a new price floor, but the methodology on how ABD got to the new price floor.

Mr. Sutton added that ABD received many positive comments as well as the question on what methodology ABD used to determine the price floor.

Mr. Sutton stated ABD would be establishing a work group, which would include one or two commissioners, a couple of suppliers and a representative from the Restaurant Association. The goal is to come to a consensus regarding how to move forward with the price floor and the best way to do it. ABD did not receive feedback stating there should not be a price floor. The team will come together to create a strategy to implement the price floor with a new timeline set for January 1, 2021.

Administrator Larson emphasized that ABD has to balance the needs of public health and public safety. Administrator Larson stated that things have changed over the last 20 years as there are a lot of opportunities for retailers.

The decision to look at the price floor is not meant to drive profits up, the decision is to look for a logical way for a certain alcoholic liquor to come into Iowa at a reasonable price. Administrator Larson stated future conversations in regard to a reasonable price floor will include Luxco and Sazerac. ABD wants to ensure transparency.

Commissioner Nystrom asked if all 40 of the increases were because of supplier increases. Mr. Sutton responded that the price floor involves premium brands as well as value brands.

Mr. Holmes discussed the proposed formula and the process of how the formula was calculated. He also referenced that more than a dozen states have a price floor in place and use similar formulas. Mr. Holmes gave examples of the actual increases that would take place on particular products. He then referenced studies and statistics from the CDC, National Institute on Alcohol Abuse and Alcoholism, National Center for Health Statistics, National Institute of Health, American Journal of Public Health, University of Sheffield School of Health, and Brookings Institution that outlined benefits of a price floor. Including referencing a study published from the National Institute of Health that found a 10% increase in the average minimum price contributed to a 32% reduction in alcohol related deaths.

Commissioner Pauli asked how many 750 ml products would be affected by the price floor. Ms. Scebold responded that 38 of the 182, 750 ml were affected. Commissioner Pauli asked how many total skus there are at 750 ml. Ms. Scebold stated there are 1287.

Commissioner Pauli asked if all other products would stay at current pricing that are not affected. Mr. Holmes stated that is correct.

Commissioner Pauli stated that ABD needed to be cognizant of balancing economics and the social wellbeing of communities.

Commissioner Wilson asked that all retailers have sufficient notice to plan for price increases. Commissioner Pauli asked Commissioner Wilson if there is a specific amount of time that retailers should receive notice of intent. Commissioner Wilson stated no, just as long as it is understood that the price floor will be set prior to the effective date.

Administrator Larson stated the ABD team did a wonderful job on validating the need for a price floor. Sazerac and Luxco will be invited to be a part of the process to identify the potholes. Administrator Larson stated there should be a price floor and it will be effective around January 1, 2021. Administrator Larson reiterated that ABD will be working with the Restaurant Association, Luxco, Sazerac and ABD Commissioners.

Administrator Larson recognized Ms. Strauss for the Legislative Update.

Ms. Strauss stated the Legislature suspended their session on March 3, 2020 and did not come back into session until June 3, 2020 due to COVID-19. Ms. Strauss stated all sessions were live streamed and that Commissioner Eubank had been reappointed. The legislature passed a one year plan for budgeting. Four alcohol bills were passed, one was a tobacco related bill. The federal age to purchase tobacco was raised to 21 in December 2019. Iowa's bill was passed in the last week of session and will be effective as soon as Governor Reynolds signs the bill.

Ms. Strauss stated House File 684 has been in process for approximately 4 years. The bill gives people under the age of 21 the ability to report medical emergencies involving alcohol, and is meant to save lives.

Ms. Strauss stated House File 2540 division three states Class C licensees and native distillers are allowed to sell mixed drinks for carry out in sealed containers. This section of the bill is also allowing the Division to adopt emergency rules.

Ms. Strauss stated Governor Reynolds announced she will be signing an order to create an Economic Recovery Advisory Board. The board is to coordinate activities in order to help the state recover from the pandemic.

Ms. Strauss stated Governor Reynolds announced there will be another proclamation in the near future.

Ms. Strauss remarked that ABD plans to seek approval to prefile two department bills in 2021. The first bill would secure Peace Officer status for the division's investigators and compliance officers. The second bill, which has already gained filing approval, would identify funding needed to add native distillers to the Beer and Wine Promotion Board.

Administrator Larson asked Mr. Happe to explain ABD's role in governing rules in regard to the proclamations.

Mr. Happe stated COVID-19 has highlighted an issue that ABD and the Regulatory Compliance unit is relied on by not only local police to assist them in Chapter 123, but also by local authorities. Mr. Happe stated entities are reaching out to ABD with licensing perspectives in enforcing proclamations. There is a specific Peace Officer status needed in order to enforce the proclamations. The

feedback ABD is getting from local communities is that ABD needs to be able collaborate with local Peace Officers and enforce regulations.

Commissioner Pauli asked if Peace Officers would be able to issue citations. Mr. Happe stated that he does not believe that is an area ABD will move towards and stated the focus would be more limited. The local police will continue to provide enforcement in their local areas. Peace Officer focus would be upholding proclamations. An additional area that Peace Officers could provide assistance would be the underage sales of tobacco and alcohol.

Administrator Larson stated ABD will be working with local law enforcement to develop a partnership. ABD will work with Peace Officers to identify any potholes.

Administrator Larson invited Mr. Ackerson to present the Rules Update.

Mr. Ackerson gave a brief rules update starting with House File 2540. There are two divisions of the bill that present rule making opportunities. The first is a requirement for ABD to do rulemaking for the filling, sealing, and sale of wine growlers. Licensees cannot engage in selling wine growlers until ABD makes rules. ABD plans to begin working on these right away so the rules can become effective as soon as possible.

The second division addresses mixed drinks and cocktails to go. There is language in the bill requiring that in addition to the need for a lid, there has to be a tamper-evident seal. ABD intends to collaborate with the Department of Transportation and Department of Public Safety to create guidelines for sealed containers.

Mr. Ackerson stated ABD is filing a rule making for Chapter 9 in order to update code references. Mr. Ackerson stated his intent to bring the rule making to the Commission on August 19, 2020, for adoption. Mr. Ackerson also noted that he is now the dedicated person for rule making at ABD, and ABD's intent is to get caught up on all rule making.

Commissioner Nystrom asked if there has to be some type of tamper proof lid for the mixed drinks to go and how people are being educated. Mr. Ackerson responded that ABD posted an educational article on the website, and ABD has been educating licensees as much as possible since mixed drinks and cocktails were first allowed to be sold to-go through proclamation. Mr. Ackerson announced that ABD is planning to consult with the Department of Public Safety and the Department of Transportation on what the seal and lid will look like and anticipates an education program will come out after rules are put in place.

Commissioner Wilson stated that customers can currently purchase a bottle of wine at a Class C establishment and take the unfinished bottle to go in a bag. Commissioner Wilson suggested that if bars and restaurants are going to allow cocktails to go they should be in a similar designated container.

Ms. Strauss added the details would be sorted out during the rulemaking process. Ms. Strauss stated the bag needs to be something easily identifiable by law enforcement.

Commissioner Pauli recommended having the Restaurant Association be involved in these types of decisions.

Commissioner Nystrom recommended a process whereby patrons can only purchase cocktails to go if they purchase food to go.

Administrator Larson stated ABD would be reaching out to the Restaurant Association as well as the Department of Transportation and Public Safety to develop a rules partnership. Commissioner Nystrom asked for clarification on bars being able to sell full containers to go. Ms. Strauss responded bars will continue to be able to sell full bottles of wine and liquor after the proclamation expires.

Administrator Larson stated ABD will begin contacting the broker community in July 2020 to start exploring Chapter 16 in regard to Trade Practices.

Administrator Larson announced that Martin Moen and Leisa Bertram will be working with the Department of Finance in reference to a major platform. This platform would be a one stop shop for applying for multiple licenses. Under Director Paulsen's leadership, ABD has been invited to be a part of the pilot program. The platform will streamline the process for businesses to get a license instead of having to go to multiple websites. Another benefit would be tax audits and accessibility of all tax related information.

Commissioner Pauli opened the floor to public comments or questions.

Commissioner Pauli asked if there were any comments from the public.

## **PUBLIC COMMENT**

Jessica Dunker, Iowa Restaurant Association: I would like to take a minute to express public thanks to the Iowa Alcoholic Beverage Division from the restaurant and bar industry in the state of Iowa during these incredibly difficult times. We are projecting losses of about \$750 million dollars due to the COVID closures. We are expecting to lose a 1000 locations by March 1, 2020 and the state agencies including the Alcoholic Beverage Division really moved quickly to try to put the little bandaid on the gaping wound in our industry with the quick actions they took. I'd like to give a special shout out to Lolani who sat in and helped us on what they allowed to do and not to do. I'd also like to offer assurance to the Commission that the industry has acted incredibly responsibly with all of the special privileges that were given to us including the cocktails to go and we have not seen a lot of issues with it. We are very grateful that the organization stepped out and wrote a memo helping explain how that could continue. We look forward to participating in the price floor conversation at a time when our industry just simply could not take one more hit. We greatly appreciated the holding off of that announcement and thank you for that and we look forward to collaborating and committee work going forward.

The minutes reflect no additional public comments were made.

**OLD BUSINESS**

None

**NEW BUSINESS**

A motion was made by Commissioner Pauli to elect Commissioner Spratt as Chair, Commissioner Wilson as Vice Chair, and Commissioner Nystrom as Secretary.

A motion was made by Commissioner Wilson and seconded by Commissioner Nystrom. Roll call vote was taken.

Commissioner Pauli - aye

Commissioner Spratt - aye

Commissioner Wilson - aye

Commissioner Nystrom - aye

Commissioner Eubank - aye

Motion approved.

**NEXT MEETING DATES**

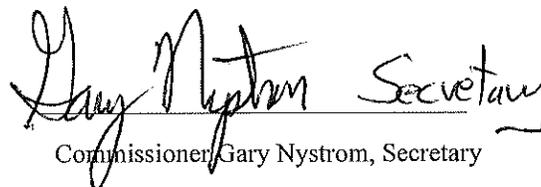
Tuesday, August 4, 2020 at 1:00 p.m. Information will be provided late July on ABD's website to indicate if this will be a tele meeting.

**ADJOURNMENT**

MOTION: A motion was made by Commissioner Wilson and seconded by Commissioner Nystrom to adjourn the meeting.

Motion approved.

The meeting adjourned at 2:51 p.m.

 Secretary  
Commissioner Gary Nystrom, Secretary