

**IOWA ALCOHOLIC BEVERAGES COMMISSION**

**MINUTES**

February 9, 2023 - 1:00 PM  
Iowa Alcoholic Beverages Division  
1918 SE Hulsizer Road  
Ankeny, IA 50021  
Dial In Number: 646.749.3129  
Access Code: 608.182.677

**Commission Members Present**

Gary Nystrom, Chairperson

Jay Wilson, Member

Sara Winkleman, Member

**Commission Member Present (via Telephone)**

Rachel Eubank, Vice Chairperson

John Pauli, Secretary

**Division Staff Present**

Stephen Larson, Administrator

Lolani Lekkas, Bureau Chief Administrative Affairs

Tyler Ackerson, Executive Officer

Stephanie Strauss, Governmental Relations

DeMario Luttrell, Bureau Chief Regulatory Compliance

Leisa Bertram, Chief Financial Officer/Chief Operating Officer

Brenda Emelo, Executive Assistant to the Administrator

Anthony Robben, OCIO

Madelyn Cutler, Rules Coordinator

Sara Jacobson, OCIO

Jessica Ekman, Executive Officer

Sheila Warrick, Administrative Assistant

Pam Koehn-Miller, Secretary

Sara Kirk, Training Specialist

Jonathan Mader, Accountant

**Guests Present**

Kraig Paulsen, Director, Department of Revenue and Interim Director of the Department of Management

John Lundquist, Assistant Attorney General

Kyle Doyle, Iowa Distilling Company

Todd Hamblin, Beverage Distributors of Iowa

Rick Hirschman, Beverage Distributors of Iowa

**Division Staff Present (via telephone)**

Amy Serck, Secretary

Monica Lundstrom, Administrative Assistant

Luke Marshall, Administrative Assistant

Erin Verduyn, Product Management Liaison

Chuck Crabtree, Program Planner

Nicole Scebold, Management Analyst

Jackie Bowlin, Storekeeper

Kortney Kyle, Storekeeper

Lisa Gibson, Program Planner

Nate Beyer, Administrative Assistant

Sarah Cain, Program Planner

**Guests Present (via telephone)**

Herb Sutton, Department of Management

Jermey Thompson, Sazerac

Lillie Brady, Cornerstone

John Cacciatore, DISCUS

David Adelman, Iowa Wholesale Beer Distributors

Eric Goranson, Iowa Restaurant Association

Lynn Walding, Diageo

Jennifer Husmann, Iowa Alliance of Coalitions for Change

Jessica Dunker, Iowa Restaurant Association

Joe Roszman, Campari Group

Kevin Hyberger, Deutsch Family Wine and Spirits

Kris Rankin, Director of Van Buren County SAFE Coalition

Sam Crowder, Southern Glazer's Wine and Spirits

Nick Eldredge, Johnson Brothers Distributing

Winn Atkins, Diageo

6 Unidentified Callers

**CALL TO ORDER**

Chairperson Nystrom called the meeting to order at 1:00 PM. Roll was taken and a quorum was met.

### **APPROVAL OF AGENDA**

MOTION: A motion was made to amend the agenda for today's (February 9, 2023) meeting by moving new business to after approval of the minutes by Chairperson Nystrom and seconded by Commissioner Winkleman. The motion was approved unanimously.

### **APPROVAL OF MINUTES**

MOTION: A motion was made to approve the minutes from the October 19, 2022, meeting by Commissioner Wilson and seconded by Commissioner Winkleman. The motion was approved unanimously.

### **NEW BUSINESS**

On January 28, 2023, Commissioners Nystrom and Eubank sent an email to Senators Dawson, Salmon and Bisignano informing them that at the next Commission meeting they would be asking the Commission to support SSB1032 - the cocktails-to-go legislation. On the same date, an email was also sent to Representatives Nordman, Scholten and Lundgren conveying the same message concerning HSB29. Both pieces of legislation are in partnership with the Department of Transportation (DOT). Stephanie Strauss, Governmental Affairs, began giving an update on both pieces of legislation by noting that they were both introduced on January 12, 2023; however, HSB29 has since been put on pause. The Senate Subcommittee of Dawson, Salmon and Bisignano met on January 19, 2023, and recommended passage of the bill. The Senators then held another Subcommittee meeting on January 31, 2023, to allow Senator Bisignano to ask questions. Senator Dawson is waiting on information from DOT and for the National Highway and Traffic Safety Administration's (NHSTA) ruling on the bill. The bill is amending current

Iowa law to put it in compliance with federal regulation and avoid losing \$14 million in federal funding. Administrator Larson added that he had spoken to DOT Director Marler and they both support the bill in its current form. Chairperson Nystrom then asked if it was the will of the Commission to pass a motion in support of the legislation as outlined in HSB29 and SSB1032. Commissioner Wilson made the motion stating: I move that the Alcoholic Beverages Commission supports the passage of HSB29 and SSB1032 in their present form and upon approval of this motion today, the Commission directs the Administrator to inform the members of the House and Senate subcommittees of our action today. The motion was seconded by Commissioner Winkleman and passed unanimously by the Commission. Chairperson Nystrom then directed Administrator Larson to inform the House and Senate Subcommittees of the Commission's action on the motion.

### **PUBLIC COMMENT**

John Cacciatore, DISCUS, stated that they, along with the Restaurant Association, helped design and support the legislation that was passed in 2020 and amendments to the legislation in 2021 to allow cocktails-to-go in Iowa. DISCUS and the Restaurant Association worked on the rulemaking to go with the 2020 and 2021 legislation and only learned in late December 2022 that there was an issue with 2021 rules. Mr. Cacciatore expressed disappointment in the lack of communication prior to the new legislation being introduced.

Jessica Dunker, Iowa Restaurant Association, stated that they were tasked by Senator Dawson to do research into other solutions that would bring Iowa into compliance with federal regulations for cocktails-to-go. Ms. Dunker's understanding after conversations with NHTSA, is that the straw holes and sippy holes need to be removed to be in compliance. The Restaurant

Association is uncomfortable with the legislation as written because it lessens the sealing requirements and makes every cocktail-to-go an open container.

Jennifer Husmann, Iowa Alliance of Coalitions for Change, asked if the legislation passes in its current state, can there be some type of warning given to people that buy these drinks that discloses that it is considered an open container and it needs to go in your trunk. Ms. Husmann also stated that perhaps spill proof containers may be needed for these drinks if they are to be placed into trunks.

Chairperson Nystrom noted that this is not the Alcoholic Beverages Division (ABD) bill and the work on it was not done by ABD. It was given to ABD because it affects ABD's business and organizations that deal with ABD.

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

Chairperson Nystrom introduced the Director of Revenue and Interim Director of Management Kraig Paulsen. Director Paulsen discussed the alignment bill and how it proposes to move ABD from the Department of Commerce to the Department of Revenue (IDR). Mr. Paulsen's expectation is that everything will remain the same at ABD if the bill passes with its proposed effective date of July 1, 2023. Mr. Paulsen sees the first few months of integration as a chance to learn how ABD and IDR can work together. Currently ABD and IDR are working together on GovConnect to make it easier for Iowans to do business in Iowa. Mr. Paulsen sees future opportunities for ABD and IDR to work together on taxes and compliance.

Administrator Larson opened his report by having Sara Jacobson of the Office of the Chief Information Officer (OCIO), provide information on the upcoming changes to the ABD website. Ms. Jacobson began by noting that in June 2022 the Governor's Office and OCIO launched an initiative to connect Iowans to state government and services in ways that are more

accessible, understandable and meaningful. All state agencies are directed to present a uniform look and make it easier to navigate through agency websites. ABD is scheduled to change to the new platform in September 2023.

Bureau Chief of Administrative Affairs, Lolani Lekkas, started her remarks by discussing the implementation of SF2374. The system changes needed to completely implement the bill began in November 2022, which included making changes to license types in the eLAPS and GovConnect systems. ABD staff are contacting licensees impacted by the new legislation. The legislation allowed licensees impacted to operate under their current license type until their 2023 renewal.

In the last 12 months there have been 487 new Class “C” license applications. 161 Class “C” licenses were canceled last year and it is believed that several of those were due to new ownership rather than the business closing. There were 158 new Class “E” applications with 58 cancellations. There are currently 4,414 Class “C” licensees and 1,982 Class “E” licensees in the state.

Madelyn Cutler, Rules Coordinator, continued the Administrative Affairs update by explaining Executive Order 10-the Red Tape Review. On January 10, 2023, Governor Reynolds signed this order calling for a review of all rules and placed a moratorium on new rules being created. The goal of this review is to eliminate outdated, redundant and overly cumbersome rules. All rules chapters will be repealed and analyzed to determine if there is an easier and more economical way of accomplishing the same goal. The tentative deadline for ABD Chapter 185 is December 31, 2024. ABD will learn the official deadline on March 1, 2023. The exception to the moratorium is if new rules need to be created to adhere to statutory changes i.e. SF2374. ABD will have until the end of June 2023 to file new rules associated with SF2374. The new

trade practice rules are being allowed to move forward since they were already in the process of being created.

Executive Officer Tyler Ackerson gave the trade practice rules update. The rules were filed and published on November 16, 2022. Written public comment ran through December 6, 2022, when a public hearing was held for comments. Based on comments received, ABD agreed to make changes to some of the rulemaking. The Iowa Wholesale Beer Distributors Association (IWDBA) is seeking legislation that would allow current business practices of moving other industry member's products while restocking with consent of the retailer and manufacturers offering sales goal incentives to wholesalers to remain part of the ABD rules. These practices are allowed in Iowa; however, they would need to change to bring Iowa into compliance with Federal Alcohol and Tobacco Tax and Trade Bureau (TTB) rules. ABD agreed to give the IWDBA until March 3 to show progress with the legislation before moving forward with the proposed rules as written.

Ms. Lekkas further talked about the Governor's Red Tape Review and its application to the Administrative Affairs section (Chapter 10) of Chapter 185. Representatives from all state agencies are meeting to try to make the rules and procedures that interact with Chapter 17A consistent throughout all state agencies. Administrator Larson advised the Commission that any action taken by the agency can be appealed under Chapter 17A and ABD rules. The agency refers to these appeals as contested cases and under Iowa Code, Administrative Actions. It is the goal of Chapter 17A and ABD to come to a resolution outside of legal action.

Ms. Strauss provided an update on additional legislation. HF158, the IWDBA trade practice bill has been passed by the House, which has made it funnel proof, and is currently waiting in the Senate for action. The first bill concerning wine licenses; HSB127, would create



a new on premises license for native wineries only, allowing them to sell native wine and beer for on premises consumption. The bill, as introduced, failed to address the sale of beer and ABD has been asked to help with an amendment. The second, SF176, would allow native wineries to get a third on premises license as long as they have three manufacturing locations. It does not address beer or native distilled spirits. There are also two bills concerning beer. SF191, in its current form, allows breweries to enter into an alternating proprietorship for the purpose of making beer as long as it has been approved by TTB. ABD is aware of an amendment to this bill that is being drafted concerning brew pubs. The other is HF205 and companion bill SF123 which will take the barrel tax collected from brewpubs and give it to the Iowa Economic Development Authority (IEDA) to be used by the Beer and Wine Promotion Board. The goal of HSB23 and companion bill SSB1087 are to provide a funding stream derived from the sale of native spirits to add native distillers to the Beer and Wine Promotion Board. HF83, direct shipping of liquor, passed out of subcommittee, however, it needs amending. ABD is watching SF167, the youth employment bill, because it would allow 16 and 17 year olds to sell and serve alcoholic beverages for on premises consumption. Commissioner Wilson asked how that bill coincided with HF14. Ms. Strauss replied that HF14 only amended Chapter 123.

The Administrator continued the legislative update by discussing realignment bills SSB1123 and HSB126. The subcommittee of Senators Schultz, Bisignano, Boulton, Boussetot and Webster met on February 8, 2023, with Director Paulsen and Administrator Larson to address any questions the subcommittee may have. The subcommittee did not have any questions for Administrator Larson at that time. Administrator Larson has appointed Mr. Ackerson and Jessica Ekman, Executive Officer, to follow the bill, provide context and assist the Bureau Chiefs as ABD moves forward. Mr. Ackerson and Ms. Ekman did a comprehensive

review of the bill and their findings are now part of the notes and questions that the Administrator sent to Governor Reynolds' office. Questions include the differences between a Commission and a Council and any unintended consequences from that change, as well as how rulemaking will be handled. Items of note are the things that are not changing: how Commission Members are appointed and how ABD conducts business regarding licensing and tobacco.

Jonathan Mader, Accountant, began the Financial Management Update portion of the Administrator's Report by reviewing January sales year over year. FY23 had a 17.72% increase in liquor sales over FY22. Since the increase in the split case fee on July 1, 2022, the difference between FY23 and FY22 has hovered around 43%. For the first time since the change, it was above 50% at 60.93%. In terms of total revenue, January 2023 was ahead of January 2022 by \$5 million. There were 683 more deliveries in January 2023 than January 2022, averaging 30 more per day. In terms of liquor sales, FY23 is just shy of \$11 million ahead of FY22. January greatly increased the FY23 metrics of deliveries, orders, cases, bottles and picks from where they were the previous six months. Gallons for January FY23 were up 65,316 gallons over January FY22. However, total gallons for FY23 is still behind FY22 by 19,680 gallons. On a cash basis, January FY23 was \$4 million ahead of January FY22. So far on a fiscal year comparison, in FY23 ABD has deposited \$11 million more than in FY22 during the same period.

In looking at the overall FY23 financial update, so far ABD has transferred \$1 million to IEDA which is a change from FY22 due to an increase in the amount to be transferred each year. Substance Abuse funding is based on ABD's cash flow and grows each year. ABD is currently \$2.5 million ahead of pace to be able to revert \$150 million this year. At the October 19, 2022, Commission meeting there was a request from Chairperson Nystrom to learn where monies that are reverted for substance abuse are going. When revenue is collected, it is deposited into the

Beer and Liquor Control Fund at the Office of the Treasurer. After that point it is spread out into six other areas. If Gaming Revenue should ever fall short of their obligations, funds would be transferred from the Beer and Liquor Control Fund to cover the shortfall before any other amounts would be transferred. Monthly obligations to local authorities, ABD's bottle redemption service Crinc, IEDA and Iowa Department of Public Health are the next funds to be reverted. The remaining funds are reverted to the General Fund for the State with 7% set aside into a revenue account for Substance Abuse Programs.

Chief Financial Officer/Chief Operations Officer Leisa Bertram began the Operations Update by giving an overview of the warehouse racking project. At this time the project is on schedule to meet the March 25, 2023, completion date. As sections that include the pushback racking are completed, training on how to load and unload these pallets is occurring. Lighting and security cameras are also being updated. The project will give 600 new pick slots, as well as extra storage.

The bailment fee increase that was noted at the October 19, 2022, Commission meeting has been temporarily put on hold after reviewing the rules, conducting studies, and analyzing ABD's statutory authority. By June 30, 2023, there will be new bailment agreements in place. The new agreements will be more comprehensive, signed by a supplier authority and ABD and be in effect until terminated. The agreements will vary based on the supplier and their needs. The Administrative Rules Review Committee has presented legislation, HSB81 and SSB1101, that would require any fee from a state agency to have statutory authority in rule. This legislation has passed both subcommittees and it is expected to continue to move forward.

Mr. Ackerson gave an overview of the current status of GovConnect. The goal of this is to be a one stop shop for Iowa businesses. During the first rollout of this project in November

2021, ABD offered Class “C” and Class “E” licenses the chance to apply through the GovConnect site. The second rollout in November 2022 saw Special Class “C” and new Class “B” licenses added to the list. ABD also added a status tracker to be able to track the status of a license application. ABD will not be participating in the third rollout.

DeMario Luttrell, Bureau Chief of Regulatory Affairs, began his remarks by noting that the 2023 goals and mission of the Regulatory Compliance unit are the same as those of 2022. Mr. Luttrell noted that the bureau will continue to engage with local authorities about enforcement of Chapter 123 and work with them in a manner that is consistent and fair to ABD’s licensees. In 2022, ABD gave 34 educational presentations to law enforcement agencies and partnered on 13 compliance initiatives. There are six law enforcement academies in Iowa. ABD has been invited to give presentations at five. ABD sent a survey out to 1,000 Iowa law enforcement agencies and the results indicated a desire for training and partnerships in alcohol compliance initiatives from ABD.

ABD has over over 50 active investigations. Half of those are tax validation audits. Most of the Regulatory Compliance bureau’s investigations are reactive, having been initiated by complaints ABD receives through industry members, law enforcement and the general public. 28 complaints were received in January 2023 compared to the average of 20. Underage sales continue to be the top complaint to ABD. Education programs have helped make law enforcement agencies aware of their duty to forward those citations, as well as after hours service citations to ABD for administrative action. This helps develop a history of compliance for licensees.

Assistant Attorney General John Lundquist spoke on the recent Court of Appeals decision concerning conditional use permits by local authorities. The decision was regarding the

civil rights case brought by a bar owner against the City of Des Moines for revoking the conditional use permit for the bar. The case concerning the revocation for violation of conditions set forth in the conditional use permit had already been decided by the courts in favor of the City of Des Moines. The bar's case centered on the idea that the City's ordinance was preempted by Chapter 123, which states that you can not require an additional permit or license as part of the licensing regime. The District Court affirmed the City's use of reasonable zoning restrictions and that their use by the City did not violate, nor were they preempted by Chapter 123. The Appeals Court found that Chapter 123 does allow local authorities to impose reasonable zoning restrictions. This case shows that local authorities do have a tool available to help regulate density and population of liquor licensees.

Commissioner Winkleman asked that information from other control states concerning bailment be given to the board. Ms. Bertram responded there are several different ways that bailment is handled. Several states are at \$1.00 and there is one that is \$2.75. There are states that have it written into their statutory code to be able to collect bailment. In Iowa, we use the 50% mark up cost to cover the operation of the warehouse and bailment is used for storage costs such as heat and electricity. There are also variances of when bailment is collected by states. This information will be compiled in response to Commissioner Winkleman's request and presented to the board.

#### **OLD BUSINESS**

None

#### **NEXT MEETING DATE**

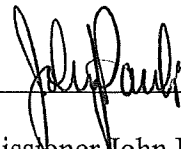
The next Commission meeting will be April 26, 2023. The meeting will be at the Alcoholic Beverage Division at 1:00 PM. There may be a virtual meeting on Thursday, March 2,

2023 at 10:00 AM to adopt trade practice rules dependent on the progress of HF158.  
Information will be posted on ABD's website.

**ADJOURNMENT**

MOTION: A motion was made by Commissioner Wilson to adjourn the meeting and seconded by Commissioner Winkleman. The motion was approved unanimously.

The meeting adjourned at 3:17 PM.



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Commissioner John Pauli, Secretary