

No. 45565-0-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

THE CITY OF BURLINGTON,
a Washington Municipal Corporation,

Appellant,

v.

THE WASHINGTON STATE LIQUOR CONTROL BOARD,
a Washington Agency; HAKAM SINGH AND JANE DOE SINGH,
and the marital community composed thereof; and
HK INTERNATIONAL, LLC,
a Washington Limited Liability Company,

Respondents.

BRIEF OF APPELLANT

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A. INTRODUCTION

This case involves the standing of a city, with its broad responsibility and authority for police powers within its boundaries, to address the issue of the location of a liquor licensee after the deregulation of liquor by Initiative 1183 ("I-1183"). The Washington State Liquor Control Board ("WSLCB") acknowledges that the City of Burlington ("City") had standing in the administrative process before the WSLCB to challenge the relocation of a liquor license by the Singhs and HK International, LLC ("license applicants"). Indeed, by statute, the City was entitled to notice of such an application and had a right to demand a public hearing on the application (a hearing the WSLCB arbitrarily denied the City). The trial court here concluded that despite the City's obvious police power interest, its statutory right to notice, and its participation in the administrative process, it lacked standing to seek judicial review under the Administrative Procedures Act, RCW 34.05 ("APA") of the WSLCB's grant of the relocation of the liquor license, as the trial court orally ruled.

The trial court's standing decision is unsustainable, and the WSLCB had no authority under I-1183 or otherwise to relocate the liquor license here.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred in entering its October 25, 2013 order.
2. The trial court erred in entering Findings of Fact number 3.
3. The trial court erred in entering Findings of Fact number 5.
4. The trial court erred in entering Findings of Fact number 6.
5. The trial court erred in entering Findings of Fact number 10.
6. The trial court erred in entering Findings of Fact number 12.
7. The trial court erred in entering Findings of Fact number 13.
8. The trial court erred in entering Conclusions of Law number 2.
9. The trial court erred in entering Conclusions of Law number 3.
10. The trial court erred in entering Conclusions of Law number 4.
11. The trial court erred in entering Conclusions of Law number 5.

(2) Issues Pertaining to Assignment of Error

1. Did the trial court err in concluding that a city lacked standing to seek judicial review under the APA of an adverse decision of the WSLCB on licensure when it is undisputed that the city had standing in the administrative process before the WSLCB and had a statutory right to notice of such a license application and to object, and the city generally had an interest in such a license associated with its police power authority? (Assignment of Error Numbers 1, 10, 11).

2. Did the trial court abuse its discretion in refusing to consider declarations on standing when the WSLCB raised standing for the first time in its response to City's opening brief on the merits, and the trial court specifically requested supplemental materials on standing, where such materials were pertinent and necessary for the standing decision? (Assignment of Error Numbers 1, 7, 9).

3. Did the trial court err in concluding, contrary to its oral decision, that the WSLCB properly permitted a license applicant to relocate its license where the WSLCB refused to conduct a hearing on such relocation, nothing in the Liquor Act or I-1183 authorized relocation, and the WSLCB had no policy or rule in place permitting such relocations? (Assignment of Error Numbers 1, 2-6, 8-9, 11).

C. STATEMENT OF THE CASE

In December 1933, the Twenty-First Amendment to the United States Constitution was ratified and went into effect, ending Prohibition. U.S. CONST. amend. XXI; *Costco Wholesale Corp. v. Maleng*, 522 F.3d 874, 881 (9th Cir. 2008) ("*Maleng*"). The effect of the Twenty-First Amendment was to give the states broad regulatory power over liquor sales within their territories. *Joseph E. Seagram & Sons, Inc. v. Hostetter*, 384 U.S. 35, 42, 86 S. Ct. 1254, 16 L.Ed.2d 336 (1966). In Washington, the Legislature crafted a unique regulatory scheme through passage of the Washington State Liquor Act ("Liquor Act") in 1934.¹ Laws of 1933, Ex.

¹ The Liquor Act is also referred to as the Steele Act. See *Costco Wholesale Corp. v. Hoen*, Finding of Fact No. 2, 2006 U.S. Dist. LEXIS 27141 (W.D. Wash. April 21, 2006), corrected, *Costco Wholesale Corp. v. Hoen*, 2006 U.S. Dist. LEXIS 27966 (W.D. Wash. May 9, 2006), *aff'd in part and rev'd in part sub. nom.*, *Costco Wholesale Corp. v. Maleng*, 514 F.3d 874 (9th Cir. 2008).

Sess., ch. 62; Title 66 RCW; *Hi-Starr, Inc. v. Liquor Control Bd.*, 106 Wn.2d 455, 460, 722 P.2d 808 (1986). Under that Act, the State retained exclusive control over the sale of spirits² through State and contract stores. *Washington Ass'n for Substance Abuse and Violence Prevention v. State*, 174 Wn.2d 642, 648, 278 P.3d 632 (2012), (“*WASAV*”); former RCW 66.16.010 (2005).

When it enacted its statutory scheme for regulation of liquor, the State preempted local government from having any power to license the sale of, impose excise tax upon, or to license the sale or distribution of liquor. RCW 66.08.120. However, the Legislature recognized that liquor sales, and the establishments that sell liquor, can and do foster adverse social effects including crime, drunkenness, and other social problems. Accordingly, the Legislature specifically exempted local government from the broad sweep of preemption and recognized that counties and municipalities have the power to adopt police ordinances and regulations, which do not conflict with WSLCB rules. Local governments were also given responsibility for investigating and prosecuting violations of the Liquor Act pursuant to RCW 66.44.010, including violations relating to minors (RCW 66.44.270) and open container prohibitions. In enacting

² The term “spirits” is defined by state law to mean “any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.” RCW 66.04.010(33).

this statutory scheme, the Legislature recognized the importance of the legitimate police power interests of local governments, including those specifically related to minors. The trial court found: "The City of Burlington is entrusted with ensuring public safety, including the prevention of minors obtaining alcohol, and fighting crime." CP 224 (FF 11).

In addition, the statutory scheme created for licensing establishments that would sell liquor also specifically recognized the important role of local government in representing its citizens on liquor sales and the importance of avoiding the location of liquor sellers near to schools, churches, and public institutions. Accordingly, RCW 66.24.010(8) provides that before the WSLCB issues a new or a renewal of a license it must give notice to the chief executive officer of any city in which the premises to be licensed are located. Such city has a *right* to file written objections with the Board against the applicant or the "premises for which the new or renewal license is asked." In addition, the statute provided the city right to request a hearing on whether a license should be granted for the premises, which the applicant is asking, be licensed. In deciding whether to issue a license, the WSLCB is required by statute "to give substantial weight" to the objections of any city based upon chronic illegal activity, that threatens the public health, safety, or welfare of the

city. RCW 66.24.010(12). The statute also required the WSLCB to give “due consideration” to the location of the business to be licensed with respect to the proximity of churches, schools, and public institutions. RCW 66.24.010(9). Parks are defined as “public institutions” under the statute. *Id.*

Although periodically challenged in the courts and amended from time-to-time by the Legislature, the essential attributes of the Liquor Act – including the state monopoly over the sale of spirits - remained largely unchanged from the date of its passage through the early years of the current decade. *WASAV*, 174 Wn.2d at 659. While grocery stores were licensed by the WSLCB to sell wine, the WSLCB’s control over the sale of spirits remained strict. *Compare, e.g.,* former RCW 66.28.280 (permitting private sale of wine) *with* former RCW 66.16.010 (state control of sale of spirits). More recently, however, efforts to reform the state’s liquor regulation system were initiated through legislation and initiatives to the people. *WASAV*, 174 Wn.2d at 649.

In 2004, Costco filed suit against the WSLCB, challenging various of its regulatory provisions. *Costco Wholesale Corp. v. Hoen*, 407 F. Supp.2d 1234 (W.D. Wash. 2005), *aff’d in part and rev’d in part*, 522 F.3d. 874 (9th Cir. 2008). The WSLCB ultimately prevailed with respect

to all but one of the regulations that Costco sought to invalidate. *See Maleng*, 522 F.3d at 904.

Costco and other liquor reform promoters subsequently supported various attempts to rewrite Washington's liquor regulations through legislation and initiatives to the people. *WASAV*, 174 Wn.2d at 649. In 2010, Costco backed Initiative 1100, a liquor privatization measure. Washington Secretary of State, *Checking out I-1100* (July 8, 2010) (available at <http://blogs.sos.wa.gov/FromOurCorner/index.php/2010/07/checking-out-i-1100/>). In 2010, no fewer than five bills were introduced in the Legislature seeking to privatize the sale of spirits, including HB 2845 (direction to WSLCB to prepare a report regarding privatization of liquor sales); SB 6840 (companion bill to HB 2845); SB 6204 (companion bill to HB 2845); HB 2890 (privatization of liquor sales through "liquor franchise holders"); and SB 6886 (privatizing of liquor sales to include closing of all state liquor stores and distribution facilities). The liquor reform promoters' legislative attempts at reform were ultimately unsuccessful. *WASAV*, 174 Wn.2d at 658.

But on November 8, 2011, Washington voters passed Initiative 1183: the liquor privatization measure.³ AR 1; *WASAV*, 174 Wn.2d at 646. By all accounts, "I-1183 dramatically changed the State's approach

³ I-1183 is provided in Appendix A.

to regulating the distribution and sale of liquor in Washington.” *Id.* at 649. As found by our Supreme Court, I-1183 was designed to address the primary concerns that its supporters felt had impeded prior attempts to reform Washington's liquor laws, including “limiting the number and type of retail outlets that would sell spirits for off-premises consumption.” *Id.*

Under I-1183, a license to sell spirits at retail could only be issued for those retailers whose premises were comprised of “at least ten thousand square feet of fully enclosed retail space within a single structure.” I-1183 § 103(3)(a); RCW 66.24.630(3)(a). At the same time, an exception to the minimum square foot requirement was provided for former state liquor stores, and contract liquor stores.⁴ I-1183 § 103(3)(c); RCW 66.24.630(3)(c). The exception was made necessary by I-1183’s direction to the WSLCB that it close all state liquor stores, and auction off the right to operate the former state stores at the same locations as the stores had previously been operated. AR 1; I-1183 § 102(2)(c); RCW 66.24.620; *WASAV*, 174 Wn.2d at 650.

As the WSLCB stated in its explanatory materials prepared for the auctions, the right to operate a liquor store that did not meet the minimum

⁴ Prior to enactment of I-1183, spirits were sold in the state through liquor stores operated by the state, and through closely regulated “contract liquor stores,” operated by private parties pursuant to an agreement with the State. See *WASAV*, 174 Wn.2d at 648. The case at bar concerns a state liquor store, and contract stores are not addressed herein.

size requirements was “a special right,” and a “special exception” to the law that was “granted on a very limited basis,” and applied only to those stores that occupied, in the words of the WSLCB, their “current footprint.” AR 1. Further, the owner/purchaser of the right would be authorized to “establish a liquor retail business at the original state liquor store location without challenge by the local jurisdiction.” *Id.* The WSLCB’s materials accurately reflected the precise language of I-1183, which directed the WSLCB to sell by auction the right to “operate a liquor store upon the premises” at each “state-owned store location.” I-1183 § 102(4)(c); RCW 66.24.620(4)(c).

The WSLCB went on to opine in its explanatory materials that if a successful bidder was not able to reach agreement with the landlord of the premises, the bidder’s options were to (1) resell their acquired right to another individual; (2) request an alternative location through the WSLCB licensing process; or (3) hold their right for future action. AR 3. The opportunity to request an alternate location is a departure from the initiative’s language.

The state liquor store auctions proceeded on-line. AR 1. The terms and conditions of the store auctions included a disclaimer clause, which provided that bids on the stores were “as is, where is.” AR 6. In addition, the terms and conditions made clear that bidders were competing

for the right to apply for a spirit retail license “associated with the location of the former state liquor store in its current footprint.” AR 7. The terms and conditions went on to state that, “in the event the winning bidder is unable to reach agreement with the landlord, they may request the relocation of the right to another address within one (1) radius mile of the state store location.” *Id.*⁵

The auction of rights to operate retail sales in former state liquor stores, including the one at issue here, concluded on April 20, 2012. AR 1; I-1183 § 102(3)(c).

In the auction for the stores, the license applicants entered a winning bid for former WSLCB Store No. 152. AR 14. Former Store No. 152 was located at 914 South Burlington Boulevard, in Burlington. AR 15. The license applicants immediately notified the WSLCB that it did not plan to open the store at its then-present location. AR 12.⁶

In early May 2012, the license applicants executed and delivered to the WSLCB three documents – an inventory sales agreement, an auction

⁵ There is nothing in the administrative record to indicate where the one mile radius was derived from or the right of the WSLCB to provide for moving the location from the site of the former state store. Moreover, in drafting the terms and conditions; the WSLCB included a term that allowed the auction winner to move the location of a former state store if the auction winner could not arrange to lease the former state store location pursuant to an “adopted interim policy,” which was a “prequel” to formal rulemaking to adopt the relocation in rule form.

⁶ AR 12 is entitled State Store Award Winner Appointment, and is undated. AR 12 is further referenced in AR 15, which is dated May 7, 2012.

rights registration form, and a store relocation request.⁷ The inventory sales agreement memorialized the terms and conditions of the sale of the inventory of former Store No. 152. AR 15-16. Consistent with the applicant's prior notification, *see* AR 12, the Agreement recites the applicant's intent to move the former liquor store to a different location." AR 15. The auction rights registration form was notarized, and identified Hakam Singh as the individual who had bid on former Store No. 152 at the on-line auction. AR 19. Inconsistent with the inventory sales agreement, the registration form recited that upon payment of the bid amount; Mr. Singh would be "awarded the exclusive rights to apply for a spirit retail license at the [same location as the former Store No. 152] within the square footage previously associated with the state liquor store." The third document submitted was the store relocation request. AR 23. The license applicants proposed moving the former Store No. 152 to an existing Mini-Mart. As justification for the requested relocation, the license applicants stated that the "Landlord Refused to Lease." *Id.*

On June 27, 2012, the WSLCB approved the license applicants' request to relocate the former state liquor store to a Mini-Mart it was then

⁷ The sales agreement, AR 12, was executed on May 7, 2012 by both the license applicants and a representative of the WSLCB; it appears to be accompanied by a check of that same date. AR 18. The registration form was executed by the license applicants and notarized on that same day, however there is no indication of when it was received by the WSLCB.

operating in the City. AR 23. Policy No. BIP-04-2012, which purports to provide guidelines as to the relocation of former state liquor stores, went into effect over two months later, on September 1, 2012. CP 133-37.

Former Store No. 152 was located adjacent to, and surrounded by, other retailers and commercial service providers. The site of the former store was not near any schools, parks or playgrounds, or similar areas where children congregate or would ordinarily pass by. CP 160.

By contrast, the Mini-Mart, which was licensed by the WSLCB, is a convenience store that still sells gas. CP 164. It is located just over 500 feet from the property of Burlington-Edison High School. CP 164; AR 39.⁸ It is also located close to numerous multi-family housing developments. CP 164. Significantly, it is immediately adjacent to Harry Ethington Memorial Park where store advertising can be seen. CP 164-65. Because of the multi-family developments, the location of the high school, and the park, minors will regularly come into contact with the new liquor store. CP 163-65.

On May 14, 2012, the WSLCB notified the City that license applicants had applied for a liquor license at a new location, 157 South Burlington Boulevard in Burlington, WA. AR 36. The cover letter from the WSLCB Director of Licensing & Regulation Alan Rathbun stated that

⁸ If it were just a few feet closer, the WSLCB would statutorily have to deny the license. RCW 66.24.010(9)(a).

the license applicants' location is a former state liquor store. In providing the notification, the Director informed the City as follows:

The Board may not deny a Spirits Retailer license to an otherwise qualified holder of a former state liquor store operating rights sold at auction. Therefore, this notice is being provided to you as an informational courtesy only.

Included with the cover letter was a notice form. AR 36.⁹ The form stated that it was provided "as required by RCW 66.24.010(8). RCW 66.24.010(9) requires the WSLCB to identify and give notice to schools, churches, and other "public institutions" of the license application because that statutory section requires the WSLCB to give "due consideration" to the "location of the business ... with respect to the proximity" to those institutions.

RCW 66.24.010(9)(a) defines "public institutions" as "institutions of higher education, parks, community centers, libraries, and transit centers." Yet the WSLCB form, Application Processing Report/License Review, fails to conform to the statute and defines a public institution as a "public college or university." AR 33. No notice was provided to the City under this section although a park is adjacent to the proposed location and WSLCB officials were familiar with the site. AR 36, 41.

⁹ The cover letter is attached as Appendix C. The WSLCB had the statutory responsibility to prepare a proper agency record. It failed to include its own communication with the Mayor of Burlington.

The City responded by letter stating its objections to the relocation of the licensee on June 1, 2012. AR 36–39. In its letter, the City pointed out that the location proposed by the licensee for the former Store No. 152 by license applicant was at a different physical location than the store had been at when operated by the WSLCB. AR 37. The City further observed that the clear language of I-1183 did not allow a former State liquor store to be moved unless the liquor store met the 10,000 square foot minimum established by I-1183; and that the initiative itself as well as the Voter’s Pamphlet that explained the consequences of the adoption of the initiative were unambiguous, that former state liquor stores would not be allowed to be relocated to convenience store/gas stations as proposed by the license applicant. AR 37–39. City also informed the WSLCB:

Moreover, we also observe that the proposed location is the site of numerous activities requiring law enforcement involvement. The Burlington Police Department has logged many calls to the proposed license location, reflecting the high level of crime that occurs at the licensee’s location.

Finally, we believe a liquor store is incompatible with the land use in the area, and particularly incompatible with the Burlington High School, which is situated just beyond 500 feet from the entrance to the proposed location. High-school aged children frequent this area on their way to or from school, and many purchase soft drinks, candy, ice cream, and other products typically available at a convenience store. Adding liquor to the products sold at this location will necessarily bring children into frequent

close contact with those individuals who commit the crimes that plague the Skagit Big Mini-Mart.

AR 39.

The City requested that the WSLCB to hold a hearing pursuant to Title 34 before granting the license. An applicant, Mr. Singh, was informed of the City's objection on June 5, 2013, and asked to respond by June 19, 2013. The letter stated if the applicant was not heard from, the WSLCB could close the application. AR 21. No timely response was forthcoming. Yet the WSLCB continued to process the application. On July 12, 2012, Singh finally asked that the application be sent to the Licensing Director. He also asked for a hearing which the WSLCB never held. AR 40. The WSLCB refused to conduct such a hearing and provided no basis for its refusal. AR 28. On June 27, 2012, the WSLCB authorized the license applicants to relocate their license to the location of the Mini-Mart. AR 23. That very day the WSLCB solicited comments from its enforcement officer, Roxanne Johnson, and asked Johnson if she had any comments regarding the same South Burlington Boulevard location when she was asked to respond, Johnson was told there was urgency in doing so because; "I'm hoping to get this application moved to management as soon as possible." AR 41. Johnson responded that day stating one of the Investigative Aides she worked with goes to a nearby

high school, and stated to Johnson that he knew “kids who buy alcohol from [HK Internationals’ existing mini-mart] all the time.” *Id.* Johnson went on to state that she had surveilled the store, and had observed “a stream of kids from the high school go into the store.” *Id.* “As a liquor officer and parent, I am concerned a spirits license for this premises is an invitation to add to the serious problem of youth access to alcohol.” *Id.*

On August 31, 2012, the Licensing Director of the WSLCB issued a Statement of Intent to Approve Liquor License Over the Objection from the City of Burlington. AR 28–31. The City was granted no right to appeal to the WSLCB. AR 31.

The Statement specifically recognized that the City challenged the authority of the WSLCB to transfer a liquor license from the location of a former state store, but made these findings:

3.3 The City did not demonstrate any conduct that constitutes chronic illegal activity as defined by RCW 66.24.010(12) at this times.

3.4 The challenge of the board’s interpretation of I-1183 is not grounds for license denial.

AR 30, 49-50.

The WSLCB did not consider the differences between the location of the former state store and the new Mini-Mart location adjacent to a high school, a park, and multi-family housing projects. The final order of the WSLCB was issued without hearing on September 11, 2012. AR 49-53.

Nowhere in the administrative record is there a challenge to the standing of the City to present objections to the license, or any finding that the City lacked standing. *Id.* The City timely appealed the WSLCB's decision to the Thurston County Superior Court. CP 5-13. The case was assigned to the Honorable Christine Schaller.

When the matter was before the trial court, the WSLCB never moved pursuant to CR 12 to dismiss the City's case on the basis of standing or jurisdiction. After the City filed its opening brief, for the first time, the WSLCB challenged whether the City had standing for judicial review pursuant to RCW 34.05.530. CP 124-28. The WSLCB later *conceded* the City had standing in the administrative process. RP 5. The trial court found the City had standing in the administrative process. RP 23.

After the standing issue was raised by the WSLCB and the City replied, the trial court at its hearing on July 19, 2013, invited the parties to "supplemental the record" to address the issue of standing which the City understood to mean that it could submit briefing and evidence on this issue as allowed by case law. RP 16-19; RP (7/19/13):40. The City did so and submitted three declarations from Mayor Steve Sexton, Police Lieutenant Tom Moser (noting Burlington police have responded to the Mini-Mart on 202 occasions since January 2009, as distinct from the former state store

location of 22 occasions) and Planning Director Margaret Fleek. CP 156-58, 163-64, 167-69. The WSLCB moved to strike the declarations, claiming the appeal had to be limited to the administrative record and that the City should have moved to supplement the record if it desired to provide new evidence for the court's consideration. CP 188-91.¹⁰

On August 23, 2013, the trial court heard additional argument and issued its oral opinion, ruling that the WSLCB lacked the legal authority to allow a former state run liquor store to relocate (a finding entirely missing from the findings and conclusions entered by the trial court on October 25, 2013).¹¹ It also ruled the City lacked standing to pursue its judicial appeal. In granting the WSLCB's motion to strike the City's declarations, the trial court ruled that the City had supplied to the declarations "too late" when it made it submitted the declarations after the court invited the parties to supplement this record on standing. The court indicated it really only wanted briefing, even though the court apologized

¹⁰ The WSLCB's argument on supplementation of the record is odd as that is precisely what the City did.

¹¹ The trial court stated in its oral ruling: "Nothing in the initiative allows relocation." RP 30-32. It went on to reject the WSLCB's argument that the initiative/statutory language was ambiguous: "The term 'freely alienable' does not create ambiguity. It simply means that the winning bidder can sell the right to another person." RP 30. It also rejected the argument that the State never owned the store, finding "it owned the business." RP 31. "The plain meaning of this initiative is clear, and the phrase does not create ambiguity." RP 31-32.

The court concluded: "Based upon that, if I were to get to a final ruling, I would find that Board acted outside its statutory authority. I would find they erroneously interpreted and applied the law." RP 32.

“insomuch as the Court may have caused any confusion” as to whether additional declarations would be allowed. It found in its oral ruling that if the City had supplied the same declaration on reply they would have been considered. RP 21. The trial court’s final order was entered on October 25, 2013. CP 221-24. This timely appeal followed.

D. SUMMARY OF ARGUMENT

The City has standing to seek judicial review under the APA with regard to the WSLCB’s decision to allow the transfer of a liquor license to an inappropriate site in Burlington near a school and a park. The Liquor Act contemplates City standing given the notice requirement as to such a decision to the City and the City’s right to demand a hearing on such a license. The City has standing under RCW 34.05.530.

The trial court abused its discretion in refusing to consider declarations on standing when it specifically invited the parties to submit additional materials on standing.

The WSLCB had no authority under statute, rule, or policy to permit the transfer of liquor license and should have held a hearing on the license application. The location of the liquor licensee, close to a school and park was inappropriate.

E. ARGUMENT

(1) Principles Applicable to an APA Judicial Review Proceeding

The APA governs judicial review of administrative action taken by the WSLCB. Under the APA, there are three categories of judicial review: (1) rules review, RCW 34.05.570(2); (2) review of adjudicative orders, RCW 34.05.070(3); and (3) review of other agency action, RCW 34.05.570(4). The latter two types of review are at issue here.

The City bears the burden of demonstrating that the WSLCB erred. RCW 34.05.570(1)(a); *In re Martin*, 154 Wn. App. 252, 260, 223 P.3d 1221, *review denied*, 169 Wn.2d 1002 (2009).

In reviewing administrative action, the Court sits in the same position as the superior court, applying the standards of the APA directly to the record before the agency. *City of Redmond v. Cent. Puget Sd. Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998).

In the portion of the appeal under RCW 34.05.570(3),¹² the WSLCB's adjudicative decision to grant a relocated liquor license at a new site (the Mini-Mart) different from the location of the state store that had the license auctioned off, the City is entitled to relief because: (b) the order is outside the statutory authority or jurisdiction of the WSLCB; (c)

¹² A contested licensure application constitutes an adjudicative proceeding. RCW 34.05.422(1)(b). The agency's decision on such a licensure decision is judicially reviewed under RCW 34.05.570(3). *See* Appendix D.

the WSLCB engaged in an unlawful procedure or decision-making process, or failed to follow a prescribed procedure; (d) the WSLCB has misinterpreted or misapplied the law;¹³ (e) the WSLCB's order is not supported by substantial evidence;¹⁴ and (i) the order is arbitrary or capricious.¹⁵

The portion of the appeal arising under RCW 34.05.570(4)(c), "other agency action," the City is entitled to relief because by denying its

¹³ With respect to these legal decisions, this Court decides questions of law *de novo*, without deference to agency views. *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 233, 110 P.3d 1132 (2005). In some instances, where an administrative agency makes a legal decision, its determination is afforded weight by the courts. But this is not one of those times. Standing is a threshold legal issue for the courts. Moreover, where the issue is one of statutory interpretation, this Court need give any deference whatsoever to the WSLCB's decision unless the ruling is that of the agency charged with the statute's interpretation, the statute is ambiguous, and the statute falls within the agency's expertise. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 716, 153 P.3d 846, *cert. denied*, 552 U.S. 1040 (2007). If the agency's interpretation is wrong, a court need not defer to the agency in any event. *Id.* at 716-17.

This Court need give no deference to the WSLCB here. First, the statute at issue is unambiguous. *Waste Mgmt. v. Util. & Transp. Comm'n*, 123 Wn.2d 621, 629, 869 P.2d 1034 (1994). *Nothing* in the statute authorizes the transfer of the license contemplated by the WSLCB here. Further, the WSLCB did not participate in the drafting or enactment of I-1183, and has no practical experience interpreting that initiative. *See Dep't of Ecology v. Lundgren*, 94 Wn. App. 236, 241 n.6, 971 P.2d 948, *review denied*, 138 Wn.2d 1005 (1999) (if agency expertise would not aid interpretation; no deference to agency given).

¹⁴ An agency's finding is not supported by substantial evidence if the finding is not supported by a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the finding. *City of Redmond*, 136 Wn.2d at 46.

¹⁵ In determining whether an agency's decision was arbitrary and capricious, a court determines if agency action was "willful and unreasoning, taken without regard to the attending facts and circumstances. *City of Redmond*, 136 Wn.2d at 46-47. An agency's action may be arbitrary or capricious where it proceeded without statutory authority, as the WSLCB did here. *Jow Sin Quan v. Wash. State Liquor Control Bd.*, 69 Wn.2d 373, 378, 418 P.2d 424 (1966).

request for a hearing and then asserting on appeal it lacked standing, the WSLCB's actions are: (i) unconstitutional; and (ii) arbitrary and capricious.

(2) The City Had Standing to Seek Judicial Review Here¹⁶

While orally ruling that the City was right on the merits and the WSLCB had acted illegally, the trial court denied the City any right to appeal the WSLCB's illegal order on the basis of standing. Denial of a right to appeal granted by statute is obviously prejudicial. The quantum of interest required for standing to pursue judicial review of administrative action is quite small, particularly when there are important interests to be vindicated. As Professor Davis has put it: "The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." Kenneth Culp Davis, *Standing: Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 613 (1968).

First and foremost, *the City* was a party in the administrative process.¹⁷ It is undisputed that RCW 66.24.010(8) confers upon the City a

¹⁶ Standing is a threshold issue reviewed *de novo*. *In re Estate of Becker*, 177 Wn.2d 242, 246, 298 P.3d 720 (2013).

¹⁷ The WSLCB accepted the City's standing because it ruled on the merits without contesting the City's standing and did not argue to the trial court that the City lacked standing in the administrative process. RP 5. It cannot now raise that issue.

statutory *right* to request a hearing that the WSLCB refused to hold. Even without a hearing, by filing an objection, the City became a *party* in the underlying administrative proceeding. There was no challenge, or any basis to challenge, the City's standing in the administrative proceeding because the APA provides the City standing in the administrative process as a matter of law.¹⁸

Moreover, it is undisputed that as a city, a municipal corporation, the City is a general government with police powers to protect the health, welfare, peace, and safety of its residents. *See* RCW 35A.11.020. *See also*, Wash. Const. art. XI § 11. It is undisputed that liquor and the sale of liquor can create conditions detrimental to the health, welfare, peace and safety of the public. Because of the unique role of local government in dealing with the social cost of alcohol, the WSLCB was *statutorily required* to give notice to the City of the application for a liquor license; moreover, the City had a *right* to object to the license, and did so pursuant to the WSLCB form which only related to RCW 66.24.010(8).

When the WSLCB took action adverse to the City's interest, the City then timely appealed to Thurston County Superior Court. Initially, the WSLCB brought no motions of any kind relative the City's standing.

¹⁸ RCW 34.05.010(1) defines an "adjudicative proceeding" as a proceeding before an agency in which "an opportunity for a hearing" is provided by statute and "is contested by a person having *standing* to contest under the law." (emphasis added).

For the first time the WSLCB challenged the City's standing to seek judicial review in its responsive hearing brief. CP 110, 124-28.

The WSLCB's argument is that while the City has standing in the administrative process to challenge WSLCB's actions because the legislative conferred such standing on cities like Burlington, it has not standing to seek APA judicial review. Such an argument runs contrary to core values in our legal system that abhors rights without remedies and bars on access to the courts.¹⁹

Under RCW 34.05.530,²⁰ standing to obtain judicial review of agency action is conferred upon those persons and entities that are "aggrieved or adversely affected" by the agency action. A person is aggrieved or adversely affected when (1) the agency action has prejudiced or is likely to prejudice that person; (2) that person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and (3) a judgment in favor of that person would substantially eliminate or redress the prejudice to that person

¹⁹ At common law, the principle was *ubi jus ibi remedium* (where there is a right there is a remedy). See *Ashby v. White*, 2 Ld.Raym. 938, 92 Eng. Rep. 126 (1703) ("It is a vain thing to imagine a right without a remedy; for want of right and word of remedy are reciprocal."). See also, *Gruen v. State Tax Commission*, 35 Wn.2d 1, 55, 211 P.2d 651 (1949) quoting *Fletcher v. Peck*, 10 U.S. 87, 3 L. Ed. 162 (1810) ("A right without a remedy is as if it were not"). In *Kreidler v. Eikenberry*, 111 Wn.2d 828, 766 P.2d 438 (1989), our Supreme Court allowed access to the appellate courts on an issue even in the face of a specific legislative directive prohibiting appeals.

²⁰ The statute is reproduced in Appendix D.

caused or likely to be caused by the agency action. RCW 34.05.530; *Allan v. University of Washington*, 140 Wn.2d 323, 326, 997 P.2d 360 (2000).²¹ The first and third prongs of this test are generally called 'injury-in-fact' requirements, while the second prong is called the 'zone of interest' prong." *Id.* at 793-94.²²

Although it is the second prong of the statutory test, "zone of interest" is the most significant element to be considered here. This prong requires this court to consider whether the Legislature (or here, the people) intended the City's interest to be considered by the agency when it took the action that is the subject of judicial review. *St. Joseph Hosp.*, 125 Wn.2d 739-40. *See also, Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153, 90, S. Ct. 25, L. Ed. 2d 184 (1970) (plaintiff must be "arguably within the zone of interests to be protected or regulated"). Although this prong limits those that are able to obtain judicial review of an agency decision, "the test is not meant to be

²¹ This three-part test is derived from federal case law. *St. Joseph Hosp. & Health Care Ctr. v. Dep't of Health*, 125 Wn.2d 733, 739, 887 P.2d 891 (1995). The Legislature has directed that "courts should interpret provisions of this chapter consistently with decisions of other courts interpreting similar provisions of . . . the federal government . . ." *Seattle Bldg. & Constr. Trades Council v. Apprenticeship & Training Council*, 129 Wn.2d 787, 794, 920 P.2d 581 (1996) ("*Trades Council*"), citing RCW 34.05.001.

²² The City's interest (and standing) is in the stark contrast to the lack of standing on the part of the petitioners in *Patterson v. Segale*, 171 Wn. App. 251, 289 P.3d 657 (2012) where certain landowners in a land dispute with a neighbor sought to raise a general concern about the future potential of a city's shoreline master program. The neighbors were not injured in fact where they settled their actual dispute with the neighbors prior to seeking judicial review.

especially demanding." *Trades Council*, 129 Wn.2d at 797.

Clearly, the City is within the zone of interest to be protected. Section 103(3)(b) of I-1183 provides that the issuance of a liquor license is subject to RCW 66.24.010, which requires the WSLCB to seek comment from cities and towns before issuing a license. RCW 66.24.010(8). The City's interests were explicitly required by I-1183 and RCW 66.24.010 to be taken into account by the WSLCB. As noted above, the entire Washington statutory scheme relating to the regulation of liquor recognizes the interests of local government who must deal with the social costs, which arise from alcohol sales. The police power of local government was not preempted by the Liquor Act (RCW 66.08.120); local government given responsibility for investigating and prosecuting violations of the Liquor Act, including those relating to minors (RCW 66.44.270); and local government objections, including those relating to premises locations must be considered (RCW 66.24.010(8)); as well as the requirement to consider the location in the context of parks owned and operated by local government. (RCW 66.24.010(9)). In light of its statutory "right" to file objections, there is no doubt the City is within the zone of interests to be considered.

The Board for the first time on appeal asserted standing by quibbling with the sufficiency of the evidence contained in the one letter

the City was allowed to send to the WSLCB with its objections (as it successfully moved to exclude additional evidence) of the prejudice or likely prejudice to the City and its residents of a liquor store at a new location where spirits were never sold before, right by the high school, adjacent to a park where drinkers can congregate, next to multifamily housing.

As party to the administrative proceeding, the City was entitled to standing to obtain judicial review of an adverse administrative order without being required to meet all of the normal redressability and immediacy requirements of the “injury-in-fact” requirements of RCW 34.05.530. Because of its unique role as a general purpose local government with police powers, conferring standing on the City rather than requiring it meet more exacting standings appropriate for private litigants effectuates the Liquor Act, RCW Title 66. As recounted above, the Act specifically recognizes and provides standing for local government to contest liquor licenses, including the location of the premises selling liquor. That alone should suffice for standing. To so rule would effectuate the purpose and the construction the Legislature established in adopting the Act. RCW 66.08.010 states:

This entire title shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all

its provisions shall be liberally construed for the accomplishment of that purpose.

The special role local government plays in regard to protecting the “welfare, health, morals, and safety of the people,” coupled with its specific rights and duties under the Act, has been recognized by the courts; a city speaks for all of its citizens and not just an interested few. In *Sukin v. Wash. State Liquor Control Board*, 42 Wn. App. 649, 710 P.2d 814, 816 (1985), *review denied*, 105 Wn.2d 1017 (1986), Division III affirmed a decision of the WSCLB to allow the City of Spokane to submit its objections to the renewal of the Sukins’ liquor license which was submitted after the twenty day period provided for such submissions in RCW 66.24.010(8) holding that to preclude the WSLCB from considering Spokane’s untimely objection to license renewal “would frustrate the purpose of the liquor control act as expressed in RCW 66.08.010.” *Id.* The same is true here in regard to the City’s timely objection which raised the illegality of the WSLCB’s action to relocate a liquor store, the location’s proximity to the high school, the “high level of crime that occurs at the licensee’s business,” and its incompatibility with the land use in the area including an adjacent park.

In addition, our courts have long recognized the associational standing of a variety of groups to obtain judicial review of administrative

decision, including unions and associations. *National Elec. Contractors Ass'n v. Employment Sec. Dep't*, 109 Wn. App. 213, 221-22, 34 P.3d 860 (2001); *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 342-43, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1997). As a general purpose government, the City's objections reflect not only its objections as a city, but the concerns, injury, and potential injury to its citizens. Plainly, the Mini-Mart's neighbors, City residents, have standing. Thus, Burlington has a "concrete interest" sufficient to confer standing under Washington law. *Allan*, 140 Wn.2d at 364; *Trades Council*, 129 Wn.2d at 795 (union petitioners met injury-in-fact requirement where future economic impact was present).

Moreover, Washington law specifically holds that a failure of an agency to comply with procedural requirements alone establishes sufficient injury to confer standing. *Allan, supra* at 330; *Trades Council, supra* at 794. In *Trades Council*, like here, the agency failed to provide for a hearing. Our Supreme Court held that a hearing was required under the APA, specifically RCW 34.05.010(9)(a) and RCW 34.05.422(1)(b), even though approval of apprenticeship programs was not required by law since compliance with RCW 49.04 (which provided for program certification) was voluntary. Ordinarily, those same sections would require a hearing here.

However, RCW 66.24.010(8)(d) provides that where, as here, a city has requested a hearing, the WSLCB has discretion to hold such a hearing “subject to the provisions” of the APA. Here the WSLCB refused to hold such a hearing, then for the first time on appeal, asserted the City lacked standing.²³ The APA, to which the WSLCB was subject, prohibits the WSLCB for raising the standing issue for the first time on appeal. RCW 34.05.554 provides: “Issues not raised before the agency may not be raised on appeal” except for certain exceptions not applicable here.

But even if the WSLCB was allowed to raise the issue of standing for judicial review, its denial of the City’s request for a hearing is reviewable under the APA. RCW 34.05.070(4) allows review of “other agency action.” Licensing is the action taken. RCW 34.05.010(9)(b) defines licensing as follows: “Licensing” *includes the agency process* respecting the issuance, denial, revocation, suspension, or modification of a license.” (emphasis added).

RCW 34.05.570(4) provides “relief for persons aggrieved” by the performance of an agency action *“including the exercise of discretion.”* (emphasis added). Relief is available if the agency acted in an “unconstitutional” or “arbitrary or capricious” fashion. RCW 34.05.570(4)(i) and (iii). Both are present here.

²³ The WSLCB’s actions deprived the City of an opportunity to make a record on the merits.

There is no doubt the City is “substantially prejudiced” if it denied the ability to have judicial review of the WSLCB’s action to grant a liquor license to a location to which the City has strong objections, particularly since below it was found the WSLCB violated the statute by allowing a change of location from the site of the state store auctioned off. If a hearing had been allowed, the City would have had the opportunity to present evidence, examine, and cross examine witness, which would have created a sufficient record to demonstrate actual or potential “injury-in-fact” for standing purposes. Instead, the WSCLB merely approved the tentative decision of its director for licensing.²⁴

Procedural due process requires notice and an opportunity to be heard prior to final agency action. *City of Redmond v. Arroyo-Murill*, 149 Wn.2d 607, 612, 70 P.3d 947 (2003). An agency’s tentative determination does not constitute final agency action. *Pub. Util. Dist. No. 1 v. Dep’t of Ecology*, 146 Wn.2d 778, 793-94, 51 P.3d 744 (2002). To establish a procedural due process violation, the party must establish that the party has been deprived of notice and an opportunity to be heard prior to a final, not a tentative, determination. *Motley Motley, Inc. v. Dep’t of Ecology*, 127 Wn. App. 62, 81, 110 P.3d 812 (2005), *review denied*, 156 Wn.2d 1004 (2006), *quoting State v. Storhoff*, 133 Wn.2d 523, 528, 946 P.2d 783

²⁴ The trial court noted: “The final order was granted in somewhat of a summary fashion, with not a lot of explanation as to the Board’s rationality.” RP 28.

(1997). Here, the City was provided no opportunity for a hearing before the WSCLB took final action. Then the WSCLB played “Gotcha” to assert the City had not made a sufficient enough showing of prejudice in the one letter it was allowed so that it could not obtain judicial review.²⁵ The denial of a requested hearing coupled with the prejudice to the City from having its ability to obtain judicial review of agency action is a denial of procedural due process. Thus, under *Trades Council*, the City has sufficient standing to obtain judicial review.

The WSCLB also violated the City’s procedural rights by acting arbitrarily or capriciously in denying the City’s request for a hearing. It is clear the WSCLB was intent on allowing liquor stores to be moved, even though it lacked authority to allow such action. It is also obvious the WSCLB had no intent to listen to any objections the City might make, including a challenge to its legal authority to do what it had already decided to do. The cover letter with notice of the application sent to the City stated “The Board may not deny a Spirits Retailer license ...Therefore, this notice is being provided to you as an informational courtesy only.” The intent to proceed forward in granting the license is

²⁵ It is noteworthy that in *Ellensburg Cement Products, Inc. v. Kittitas County*, ___ Wn.2d ___, ___ P.3d ___, 2014 WL 465643 (2014), our Supreme Court in footnote 2 of the opinion made clear that if a municipality offered a party no appeal on a land use decision, superior court review on a closed administrative record must afford that party an opportunity to make the necessary record either before the administrative body or in court.

further reflected by the WSCLB's unexplained finding that acting illegally is somehow irrelevant, as evidenced by this statement: "3.4. The challenge of the board's interpretation of I-1183 is not grounds for license denial." In short, the WSCLB proceeded in a "willful and unreasoning action, without consideration and in disregard of the facts. That constitutes arbitrary or capricious action and a denial of the City's procedural rights, sufficient to grant it standing under both *Allan* and *Trades Council*."

The WSCLB further violated the City's procedural rights by failing to provide notice in regard to the adjacent park (a "public institution"), or to provide "due consideration" to the location of the premises in relation to public institutions which includes both the park and the school as mandated by RCW 66.24.010(9)(a). Nothing in the WSCLB's decision indicates it performed the analysis required under Subsection (9). Its form does not even allow for a proper analysis. AR 33. Further, the WSCLB decision reflects that it even *misapprehended* its duty under Subsection (9). The decision indicates that the City had not demonstrated "chronic illegal activity" "yet." But its own enforcement officer reported that minors buy alcohol at the Mini-Mart "all the time." AR 41.

RCW 66.24.010(12) provides that if there is “chronic illegal activity” the WSCLB must give the objection of local government “substantial weight.” But that statutory imposition of greater deference to local governmental concerns if there is chronic illegal activity associated with a site does not mean that is the only condition requiring the WSCLB to consider concerns of local government. Subsections (8) and (9) of RCW 66.24.010 specifically require the WSCLB to provide notice so that public concerns can be considered regardless of whether chronic illegal activity has “yet” to be demonstrated. Subsection (2) also empowers the WSCLB to inquire into “all matters” relating to licensure. In light of the fact that the WSCLB’s decision reflects no consideration of anything other than “chronic illegal activity,” it is obvious there was a failure to provide “due consideration” to the City’s objections and the other statutory factors to be considered. As such, the WSCLB violated the City’s procedural rights allowing the City standing for judicial review under *Allan and Trades Council*.

In its objection, the City not only took the position that the WSCLB had no legal basis to move the site of the liquor store pursuant to I-1183, it also informed the WSCLB that the proposed location “is the site of numerous activities requiring law enforcement involvement, and that the Burlington Police Department had “logged many calls” to the

proposed license location. AR 39. It also noted that a liquor store “is incompatible with land use in the area” particularly incompatible with Burlington High School which is situated just beyond 500 feet from the entrance to the proposed location, and that high-school aged children frequent this area going to and from school, and that adding liquor “will necessarily bring children into frequent close contact with those individuals who commit the crimes that plague the Skagit Big Mini-Mart.” AR 39.

The City’s concerns were also echoed by Liquor Control Officer who investigated the proposed location. Officer Johnson stated that she had seen “a stream of kids from the high school go into the store,” and that “[a]s a liquor officer and a parent I am concerned a spirits license for this premises is an invitation to add to the serious problem of youth access to alcohol.” RP 41. The City will be compelled by the WSLCB’s decision to dedicate additional law enforcement resources to ensure that a convenience store selling liquor in close proximity to the City’s high school does not result in youth obtaining liquor through theft or deception. The dedication of additional resources constitutes actual or likely prejudice. Denial of the license would substantially eliminate or redress any prejudice resulting from the WSCLB’s action. Thus, both prongs (subsections (1) and (3)) of the injury-in-fact test of RCW 34.05.530 are

met and it was error to find the City did not have standing to obtain judicial review.

(3) The Trial Court Abused Its Discretion in Excluding Additional Evidence on Standing

The trial court erred in excluding additional evidence on standing. This was error, prejudicial to the City.

After the WSLCB for the first time challenged the City's standing on appeal and the trial court asked the parties to supplement the record on the standing issue, the City offered three declarations. Mayor Sexton testified any increase in the workload for law enforcement impacts the City's ability to maintain public safety and has an impact on the City's budget. CP 154. Lieutenant Tom Moser testified, since January 2009, the City's police responded to the address of the Mini-Mart on 202 occasions as compared to 22 occasions to the site of the former state liquor store (one of which only involved traffic enforcement). CP 157. Planning Director Fleek testified as to the adjoining park, youth often pass by and purchase items at the store, they will come into contact with liquor advertising, and the site changes the character of the nearby residential neighborhood. CP 159-61. The trial court's reversal of its own decision to ask the parties to supplement the record on standing was an abuse of discretion.

Although judicial review of administrative proceedings is generally limited to the agency record, Washington law recognizes the ability of courts to allow additional evidence to be considered on review, particularly when there has been unlawfulness of procedure or the decision making process discussed above. RCW 34.05.562(1). Washington law also provides that additional evidence is admissible if it is needed to decide disputed issues of material fact not required to be determined on the agency record. *Wash. Independent Tel. Ass'n v. Wash. Util. & Transp. Comm'n*, 110 Wn. App. 498, 518, 41 P.3d 1212 (2002), *affirmed* 149 Wn.2d 17, 65 P.3d 319 (2003).²⁶

For example, this Court allowed additional evidence, and trial of the issues by the superior court on sworn testimony when the only evidence in the record was one letter, *Children's Hosp. & Med. Ctr. v. Dep't of Health*, 95 Wn. App. 858, 863, 975 P.2d 581 (1999), *review denied*, 139 Wn.2d 1021 (2000). Additional evidence was also allowed when, like here, no administrative hearing occurred. *Trades Council*, *supra* at 798-99. Thus, it was perfectly appropriate for additional evidence to be considered by the trial court and was an abuse of discretion to exclude it, particularly when the effect was to deny judicial review to a

²⁶ In such circumstances, where the trial court does take additional evidence pursuant to RCW 34.05.562 and RCW 34.05.570(4)(b), the appellate court will look to the trial court record. *Trades Council*, 129 Wn.2d at 799.

general government of illegal agency action.²⁷ This is particularly true when the WSCLB also never availed itself of any motion practice, which would have allowed the City to present evidence on the standing issue. Neither the WSCLB nor the license applicants brought a motion to dismiss pursuant to CR 12(b),²⁸ although the WSCLB claimed a lack of standing denied the court jurisdiction. Similarly, the WSCLB did not move for summary judgment.

Federal precedent allows the introduction of evidence on standing on judicial review, if standing is challenged. In *Northwest Env'tl Defense Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1527-28 (9th Cir. 1997). In circumstances paralleling this case, the petitioners submitted affidavits to establish standing before the court to challenge BPA's duty to consider the petitioners' economic and environmental interests, which petitioners claimed BPA was required to consider and BPA ignored. BPA, like here, moved to strike the affidavits as being outside the agency record. In

²⁷ The trial court correctly noted that the WSCLB never raised the standing issue until after the City filed its opening brief. RP 22. It then stated that if the City would have supplied the declarations on reply, they would have been considered, instead of having them supplied after the court asked for the record to be supplemented. RP 23. The court, in excluding the evidence, admitted it may have created confusion because all it apparently wanted was additional briefing. RP 21. In any event, obtaining the evidence on reply or later was of no prejudice to the WSCLB or the license applicants since they had the opportunity to address the contents of those declarations in argument.

²⁸ The Tenth Circuit has held that a court has wide discretion to allow affidavits or other documents and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1). *Holt v. U.S.*, 46 F.3d 1000, 1003 (10th Cir. 1995).

rejecting BPA' a motion, the court ruled it could consider the affidavits for the purpose of addressing standing. "[B]ecause standing was not an issue in earlier proceedings, we hold that petitioners in this case were entitled to establish standing anytime during the briefing phase." *Id.* at 1528. *See also, Beck v. U.S. Dep't of Interior*, 982 F.2d 1332, 1340 (9th Cir. 1992) (court accepts appellant-intervenors' supplemental declarations alleging particularized injury because intervenors were not required to establish standing until they appealed).

In a recent decision on the submission of declaration with a motion for reconsideration, an analogous situation to that present here, this Court found no abuse of discretion where a court considered such declarations. *Martini v. Post*, ___ Wn. App. ___, 313 P.3d 473 (2013).

In sum, the trial court erred in finding the City lacked standing to challenge the WSLCB's erroneous decision to allow the liquor license at issue here.

(4) The WSLCB Had No Authority to Allow a Former State Liquor Store to Be Relocated to a Mini-Mart

The WSLCB had *no authority* to allow the purchaser of a State retail license at auction under I-1183, such as the license applicant, to relocate the license to a different location. By allowing the license applicants to relocate former store No. 152 to a Mini-Mart whose premises

are less than ten thousand square feet and therefore does not comply with RCW 66.24.630(3)(a), the WSLCB misinterpreted and misapplied I-1183.

This a simple issue of statutory interpretation.²⁹ Section 102 of I-1183, codified at RCW 66.24.620, provides in pertinent part that,

(c) The board must sell by auction open to the public the right *at each state-owned store location* of a spirits retail licensee to operate a liquor store *upon the premises*. Such right must be freely alienable and subject to all state and local zoning and land use requirements applicable to the property. Acquisition of the operating rights must be a precondition to, but does not establish eligibility for, a spirits retail license *at the location of a state store* and does not confer any privilege conferred by a spirits retail license. Holding the rights does not require the holder of the right to operate a liquor-licensed business or apply for a liquor license.

(emphasis supplied).

²⁹ Initiatives are to be interpreted according to the general rules of statutory construction. *Hi-Starr, Inc. v. Liquor Control Bd.*, 106 Wn.2d 455, 460, 722 P.2d 808 (1986). Statutory language is to be given its usual and ordinary meaning, regardless of the policy behind the enactment. *Department of Rev. v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973). Where statutory language is plain and unambiguous, the statute's meaning must be derived from the wording of the statute itself. *Bellevue Fire Fighters Local 1604 v. Bellevue*, 100 Wn.2d 748, 751, 675 P.2d 592 (1984), *cert. denied*, 471 U.S. 1015 (1985). Stated otherwise, it is improper to use statutory construction tools to construe an unambiguous statute, regardless of contrary interpretation by an administrative agency. *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392, 396, 103 P.3d 1226 (2005). Likewise, it is improper to add language to an unambiguous statute even if one believes the Legislature - or here, the people - intended something else but did not adequately express it. *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006) (*citing State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001)).

A statute is ambiguous only if it is "susceptible to two or more reasonable interpretations," but "a statute is not ambiguous merely because different interpretations are conceivable." *Agrilink*, 153 Wn.2d at 396.

The language of I-1183 is clear and unequivocal: “The board must sell by auction open to the public the right *at each state-owned store location* of a spirits retail licensee to operate a liquor store *upon the premises.*” Section 102 of I-1183; RCW 66.24.620 (emphasis supplied). It is unreasonable to construe the foregoing as anything other than direction to the WSLCB to sell the right to operate former State liquor stores at the same premises at which the former liquor store were then being operated. Consistent with I-1183 and RCW 66.24.620, that is the right that the license applicant purchased at auction.

I-1183 goes on to provide that, “[a]cquisition of the operating rights must be a precondition to, but does not establish eligibility for, a spirits retail license *at the location of a state store.*” *Id.* (emphasis supplied). As this clause makes clear, it is of no moment if the license applicant, or any purchaser, is unable to immediately exercise the rights acquired, and I-1183 cannot be properly read to allow such an expansion of the right acquired at auction. To do so would be to supplement I-1183, and confer upon the license applicant an additional right that they did not acquire at auction. While it may have been preferable for I-1183 to have allowed the purchaser of a former State liquor store to move the store a certain distance from the store’s location at the time of sale, that is not the law that Washington voters enacted. Moreover, no other provision of the

Liquor Act has been cited by the WSLCB as authorizing the relocation of a license.

Even if it were feasible to find some ambiguity in Section 102(c) of I-1183/RCW 66.24.620 (and it is not, given the clear language of the initiative), it would not change the outcome. In construing an initiative adopted by the vote of the people, it is the collective intent of the people that is to be ascertained. *Wash. State Dep't of Revenue v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973). To determine the voter's intent, it is necessary to consider the language of the initiative "as the average informed lay voter would read it." *Estate of Turner v. Department of Rev.*, 106 Wn.2d 649, 654, 724 P.2d 1013 (1986) (quoting *In re Estate of Hitchman*, 100 Wn.2d 464, 467, 670 P.2d 655 (1983)). In doing so, it is improper to read into an initiative "technical and debatable legal distinction[s]" not apparent to the average informed lay voter. *In re Estate of Hitchman*, 100 Wn.2d at 469. Material in the official voters' pamphlet may be considered. *Bayha v. PUD 1*, 2 Wn.2d 85, 98, 97 P.2d 614 (1939) ("arguments made in pamphlets for and against an initiative measure might be considered by the court in determining the purpose and intent of the act").

In this case, the Voter's Pamphlet is clear. It explained that I-1183 directed the WSLCB to liquidate the State's liquor store assets, "to sell at

auction the right to operate a private liquor store *at the location of any existing state liquor store.*³⁰ *Voter's Pamphlet* at 2 (emphasis supplied). The Pamphlet goes on to explain that I-1183 would allow “a retail spirits license for a store *at the location of a former state liquor store* or contract liquor store, even if the store is smaller than 10,000 square feet. *Id.* at 3 (emphasis supplied). And while the argument against the initiative suggested that a loophole in I-1183 would allow Mini-Marts to sell liquor,³¹ *id.* at 7, the argument in favor initially stated that I-1183 “prevents liquor sales at gas stations and convenience stores,” *id.*, and in rebuttal again stated that, “1183 specifically prevents liquor sales at gas stations and convenience stores.” *Id.* at 8.

Here again, the conclusion is clear. Any reasonable voter reading the Voter's Pamphlet would conclude that I-1183 meant what it said, that existing State liquor stores would be sold to private parties, who would then operate the former State stores at the same location. Those liquor

³⁰ The 2011 state general election voter's pamphlet is available on the <https://weiapplets.sos.wa.gov/MyVote/OnlineVotersGuide/Measures?electionId=42&countyCode=xx&ismyVote=False#ososTop> Washington Secretary of State's web site, at: <https://weiapplets.sos.wa.gov/MyVote/OnlineVotersGuide/Measures?electionId=42&countyCode=xx&ismyVote=False#ososTop> (last viewed 3-2-13). A copy of the pamphlet is attached hereto as Appendix B. References to the pamphlet page numbers are to the page numbers of Appendix B.

³¹ Presumably the “mini-mart loophole” argument made against I-1183 in the Voter's Pamphlet refers to RCW 66.24.630(3)(c), which allows the WSLCB to issue a spirits retail license when there is no retail spirits license holder in the trade area. This exception is immaterial in the present case.

stores would not be relocated to a neighborhood Mini-Mart or convenience store, as the WSLCB permitted. While it may be necessary for the Legislature to revisit this matter in the future, it is not the role of the WSLCB to do so.

The WSCLB may attempt to argue that even though the initiative language clearly stated that what was being auctioned was the right to “operate a liquor store upon the premises,” it was entitled to disregard this clear language because it did not own the properties on which the then-existing state liquor stores were located, and apparently could not assign its leases.³² The WSCLB certainly owned the liquor store business, including its inventory, and that could be sold along with the right to operate the business, rights which are freely alienable. The WSCLB should not be allowed to conflate those valuable rights with the right to lease a former state liquor store’s premises.

In sum, then, the WSLCB has misinterpreted or misapplied I-1183, resulting in an order, RP 49–50, that is outside the statutory authority of the WSLCB. As such, the order is arbitrary and capricious.

The WSLCB may also attempt to claim it had authority administratively or by policy to allow the transfer of licenses. Not so. It

³² The lease for former Store No. 152, which is the subject of this litigation, is not part of the record, so it is impossible to determine if it could be assigned. Likewise, what efforts the license applicant actually put into obtaining a lease at the same premises is also not in the record.

has long been the rule in Washington that an agency may by the adoption of a regulation cannot modify or amend a statute. *Washington Printing and Binding Co. v. State*, 192 Wash. 448, 455, 73 P.2d 1326 (1937); *Fisher Flour Mills Co. v. State*, 35 Wn.2d 482, 492-93, 213 P.2d 938 (1950). The WSLCB itself was informed of this principle in 1966 AGO No. 103. The WSLCB was constrained to act within the limits the power given to it by the Legislature or the people, and that did not include the power to authorize relocation of the license here.

More critically, *the WSLCB did not even have a regulation in place authorizing its conduct*. The APA requires that, an agency must go through rule-making procedures before applying a “rule.” *Simpson Tacoma Kraft Co. v. Dep't of Ecology*, 119 Wn.2d 640, 647, 835 P.2d 1030 (1992). A "rule" is defined as,

. . . any agency order, directive, or regulation of general applicability “. . . (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession;”.

In *Hillis v. Department of Ecology*, 131 Wn.2d 373, 932 P.2d 139 (1997), the Supreme Court applied the above principles to an internal agency procedure for processing water right permits. Ecology had

established policies and procedures to determine how to process a backlog of permit applications in light of staffing shortages. Because permit applicants had a right to have a permit application processed, and the APA defined the term “rule” to include any agency directive “that establishes ... any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law ...,” RCW 34.05.010(15), the Court held that procedures had to be adopted through the rule-making process. 131 Wn.2d at 399. The Court explained that “when Ecology sets out priorities and establishes prerequisites to those decisions, the agency should engage in rule making so the public has some input into those decisions.” *Id.* Such is the situation in the case at bar.

Here, the WSLCB has established a “one mile radius rule,” made applicable to the purchaser of a former state liquor store who wishes to relocate the store. *See* AR 3, 8, 24. This rule establishes or alters the qualifications adopted by the voters through I-1183 as to eligibility for a spirit retail license (a privilege conferred by law), as well as establishes or alters the qualifications for the issuance of a spirit retail license. This rule was never adopted as a rule under the APA. It was never promulgated as an agency policy (presuming that it could have the force of law when it contradicted I-1183) *before* the WSLCB allowed the transfer.

As reflected in the Voter's Pamphlet, the issue of liquor store proliferation through the ability of convenience stores and Mini-Marts was of significant concern. AR 38. Eviscerating an important term of I-1183, as the WSLCB did here, demands the ability of the public to comment on the proposed rule before implementation. Rules are invalid unless adopted in compliance with the APA. *Hillis*, 131 Wn.2d at 398. The one mile "rule," and the decision of the WSLCB to allow the license applicant here to relocate a former state liquor store to a new location, were *invalid*. By implementing such a rule at odds with the explicit language that was enacted by voters, the WSLCB acted without statutory authority. Moreover, the WSLCB engaged in an unlawful procedure by adopting a generally applicable rule outside of statutory rule making procedures. Finally, to the extent the WSLCB accepted the license applicant's explanation of its desire to relocate the former state liquor store without verifying the accuracy of the explanation – and the record contains no suggestion that the WSLCB'S investigators did anything to verify the accuracy of the investigation – the WSLCB'S decision is not supported by substantial evidence, and is arbitrary and capricious.

F. CONCLUSION


The trial court erred both in ruling that the City lacked standing to challenge the WSLCB's illegal granting of a license at a new location and

in ruling in its order, contrary to its oral ruling, that relocation was proper under I-1183 or the Liquor Act.

This Court should reverse the trial court's order and remand the case to the WSLCB with directions to deny the license applicant's request to relocate the license. Costs on appeal should be awarded to the City.

DATED this 24th day of February, 2014.

Respectfully submitted,



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APPENDIX

A

INITIATIVE MEASURE

AN ACT Relating to liquor; amending RCW 66.24.360, 82.08.150, 66.08.050, 66.08.060, 66.20.010, 66.20.160, 66.24.310, 66.24.380, 66.28.030, 66.24.540, 66.24.590, 66.28.060, 66.28.070, 66.28.170, 66.28.180, 66.28.190, 66.28.280, 66.04.010, 43.19.19054, 66.08.020, 66.08.026, 66.08.030, 66.24.145, 66.24.160, 66.32.010, 66.44.120, 66.44.150, 66.44.340, 19.126.010, and 19.126.040; reenacting and amending RCW 66.28.040 and 19.126.020; adding new sections to chapter 66.24 RCW; adding new sections to chapter 66.28 RCW; creating new sections; repealing RCW 66.08.070, 66.08.075, 66.08.160, 66.08.165, 66.08.166, 66.08.167, 66.08.220, 66.08.235, 66.16.010, 66.16.040, 66.16.041, 66.16.050, 66.16.060, 66.16.070, 66.16.100, 66.16.110, 66.16.120, and 66.28.045; contingently repealing ESSB 5942, 2011 1st sp.s. c ... ss 1 through 10; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

PART I

LICENSED SALE OF SPIRITS

NEW SECTION. Sec. 101. (1) The people of the state of Washington, in enacting this initiative measure, find that the state government monopoly on liquor distribution and liquor stores in Washington and the state government regulations that arbitrarily restrict the wholesale distribution and pricing of wine are outdated, inefficient, and costly to local taxpayers, consumers, distributors, and retailers. Therefore, the people wish to privatize and modernize both wholesale distribution and retail sales of liquor and remove outdated restrictions on the wholesale distribution of wine by enacting this initiative.

(2) This initiative will:

(a) Privatize and modernize wholesale distribution and retail sales of liquor in Washington state in a manner that will reduce state government costs and provide increased funding for state and local government services, while continuing to strictly regulate the distribution and sale of liquor;

(b) Get the state government out of the commercial business of distributing, selling, and promoting the sale of liquor, allowing the state to focus on the more appropriate government role of enforcing liquor laws and protecting public health and safety concerning all alcoholic beverages;

(c) Authorize the state to auction off its existing state liquor distribution and state liquor store facilities and equipment;

(d) Allow a private distributor of alcohol to get a license to distribute liquor if that distributor meets the requirements set by the Washington state liquor control board and is approved for a license by the board and create provisions to promote investments by private distributors;

(e) Require private distributors who get licenses to distribute liquor to pay ten percent of their gross spirits revenues to the state during the first two years and five percent of their gross spirits revenues to the state after the first two years;

(f) Allow for a limited number of retail stores to sell liquor if they meet public safety requirements set by this initiative and the liquor control board;

(g) Require that a retail store must have ten thousand square feet or more of fully enclosed retail space within a single structure in order to get a license to sell liquor, with limited exceptions;

(h) Require a retail store to demonstrate to state regulators that it can effectively prevent sales of alcohol to minors in order to get a license to sell liquor;

(i) Ensure that local communities have input before a liquor license can be issued to a local retailer or distributor and maintain all local zoning requirements and authority related to the location of liquor stores;

(j) Require private retailers who get licenses to sell liquor to pay seventeen percent of their gross spirits revenues to the state;

(k) Maintain the current distribution of liquor revenues to local governments and dedicate a portion of the new revenues raised from liquor license fees to increase funding for local public safety programs, including police, fire, and emergency services in communities throughout the state;

(l) Make the standard fines and license suspension penalties for selling liquor to minors twice as strong as the existing fines and penalties for selling beer or wine to minors;

(m) Make requirements for training and supervision of employees selling spirits at retail more stringent than what is now required for sales of beer and wine;

(n) Update the current law on wine distribution to allow wine distributors and wineries to give volume discounts on the wholesale price of wine to retail stores and restaurants; and

(o) Allow retailers and restaurants to distribute wine to their own stores from a central warehouse.

NEW SECTION. Sec. 102. A new section is added to chapter 66.24 RCW to read as follows:

(1) The holder of a spirits distributor license or spirits retail license issued under this title may commence sale of spirits upon issuance thereof, but in no event earlier than March 1, 2012, for distributors, or June 1, 2012, for retailers. The board must complete application processing by those dates of all complete applications for

spirits licenses on file with the board on or before sixty days from the effective date of this section.

(2) The board must effect orderly closure of all state liquor stores no later than June 1, 2012, and must thereafter refrain from purchase, sale, or distribution of liquor, except for asset sales authorized by this act.

(3) The board must devote sufficient resources to planning and preparation for sale of all assets of state liquor stores and distribution centers, and all other assets of the state over which the board has power of disposition, including without limitation goodwill and location value associated with state liquor stores, with the objective of depleting all inventory of liquor by May 31, 2012, and closing all other asset sales no later than June 1, 2013. The board, in furtherance of this subsection, may sell liquor to spirits licensees.

(4) (a) Disposition of any state liquor store or distribution center assets remaining after June 1, 2013, must be managed by the department of revenue.

(b) The board must obtain the maximum reasonable value for all asset sales made under this section.

(c) The board must sell by auction open to the public the right at each state-owned store location of a spirits retail licensee to operate a liquor store upon the premises. Such right must be freely alienable and subject to all state and local zoning and land use requirements applicable to the property. Acquisition of the operating rights must be a precondition to, but does not establish eligibility for, a spirits retail license at the location of a state store and does not confer any privilege conferred by a spirits retail license. Holding the rights does not require the holder of the right to operate a liquor-licensed business or apply for a liquor license.

(5) All sales proceeds under this section, net of direct sales expenses and other transition costs authorized by this section, must be deposited into the liquor revolving fund.

(6) (a) The board must complete the orderly transition from the current state-controlled system to the private licensee system of spirits retailing and distribution as required under this chapter by June 1, 2012.

(b) The transition must include, without limitation, a provision for applying operating and asset sale revenues of the board to just and reasonable measures to avert harm to interests of tribes, military buyers, and nonemployee liquor store operators under then existing contracts for supply by the board of distilled spirits, taking into account present value of issuance of a spirits retail license to the holder of such interest. The provision may extend beyond the time for completion of transition to a spirits licensee system.

(c) Purchases by the federal government from any licensee of the board of spirits for resale through commissaries at military installations are exempt from sales tax based on selling price levied by RCW 82.08.150.

NEW SECTION. Sec. 103. A new section is added to chapter 66.24 RCW to read as follows:

(1) There is a spirits retail license to: Sell spirits in original containers to consumers for consumption off the licensed premises and to permit holders; sell spirits in original containers to retailers licensed to sell spirits for consumption on the premises, for resale at their licensed premises according to the terms of their licenses, although no single sale may exceed twenty-four liters, unless the sale is by a licensee that was a contract liquor store manager of a contract liquor store at the location of its spirits retail licensed premises from which it makes such sales; and export spirits.

(2) For the purposes of this title, a spirits retail license is a retail license, and a sale by a spirits retailer is a retail sale only if not for resale. Nothing in this title authorizes sales by on-sale licensees to other retail licensees. The board must establish by rule an obligation of on-sale spirits retailers to:

(a) Maintain a schedule by stock-keeping unit of all their purchases of spirits from spirits retail licensees, indicating the identity of the seller and the quantities purchased; and

(b) Provide, not more frequently than quarterly, a report for each scheduled item containing the identity of the purchasing on-premise licensee and the quantities of that scheduled item purchased since any preceding report to:

(i) A distributor authorized by the distiller to distribute a scheduled item in the on-sale licensee's geographic area; or

(ii) A distiller acting as distributor of the scheduled item in the area.

(3)(a) Except as otherwise provided in subsection (c) of this section, the board may issue spirits retail licenses only for premises comprising at least ten thousand square feet of fully enclosed retail space within a single structure, including storerooms and other interior auxiliary areas but excluding covered or fenced exterior areas, whether or not attached to the structure, and only to applicants that the board determines will maintain systems for inventory management, employee training, employee supervision, and physical security of the product substantially as effective as those of stores currently operated by the board with respect to preventing sales to or pilferage by underage or inebriated persons.

(b) License issuances and renewals are subject to RCW 66.24.010 and the regulations promulgated thereunder, including without limitation rights of cities, towns, county legislative authorities, the public, churches, schools, and public institutions to object to or prevent

issuance of local liquor licenses. However, existing grocery premises licensed to sell beer and/or wine are deemed to be premises "now licensed" under RCW 66.24.010(9)(a) for the purpose of processing applications for spirits retail licenses.

(c) The board may not deny a spirits retail license to an otherwise qualified contract liquor store at its contract location or to the holder of former state liquor store operating rights sold at auction under section 102 of this act on the grounds of location, nature, or size of the premises to be licensed. The board shall not deny a spirits retail license to applicants that are not contract liquor stores or operating rights holders on the grounds of the size of the premises to be licensed, if such applicant is otherwise qualified and the board determines that:

(i) There is no retail spirits license holder in the trade area that the applicant proposes to serve;

(ii) The applicant meets, or upon licensure will meet, the operational requirements established by the board by rule; and

(iii) The licensee has not committed more than one public safety violation within the three years preceding application.

(d) A retailer authorized to sell spirits for consumption on or off the licensed premises may accept delivery of spirits at its licensed premises or at one or more warehouse facilities registered with the board, which facilities may also warehouse and distribute nonliquor items, and from which the retailer may deliver to its own licensed premises and, pursuant to sales permitted under subsection (1) of this section:

(i) To other retailer premises licensed to sell spirits for consumption on the licensed premises;

(ii) To other registered facilities; or

(iii) To lawful purchasers outside the state. The facilities may be registered and utilized by associations, cooperatives, or comparable

groups of retailers, including at least one retailer licensed to sell spirits.

(4) Each spirits retail licensee must pay to the board, for deposit into the liquor revolving fund, a license issuance fee equivalent to seventeen percent of all spirits sales revenues under the license, exclusive of taxes collected by the licensee and of sales of items on which a license fee payable under this section has otherwise been incurred. The board must establish rules setting forth the timing of such payments and reporting of sales dollar volume by the licensee, with payments required quarterly in arrears. The first payment is due October 1, 2012.

(5) In addition to the payment required under subsection (4) of this section, each licensee must pay an annual license renewal fee of one hundred sixty-six dollars. The board must periodically review and adjust the renewal fee as may be required to maintain it as comparable to annual license renewal fees for licenses to sell beer and wine not for consumption on the licensed premises. If required by law at the time, any increase of the annual renewal fee becomes effective only upon ratification by the legislature.

(6) As a condition to receiving and renewing a retail spirits license the licensee must provide training as prescribed by the board by rule for individuals who sell spirits or who manage others who sell spirits regarding compliance with laws and regulations regarding sale of spirits, including without limitation the prohibitions against sale of spirits to individuals who are underage or visibly intoxicated. The training must be provided before the individual first engages in the sale of spirits and must be renewed at least every five years. The licensee must maintain records documenting the nature and frequency of the training provided. An employee training program is presumptively sufficient if it incorporates a "responsible vendor program" promulgated by the board.

(7) The maximum penalties prescribed by the board in WAC 314-29-020 through 314-29-040 relating to fines and suspensions are doubled for violations relating to the sale of spirits by retail spirits licensees.

(8)(a) The board must promulgate regulations concerning the adoption and administration of a compliance training program for spirits retail licensees, to be known as a "responsible vendor program," to reduce underage drinking, encourage licensees to adopt specific best practices to prevent sales to minors, and provide licensees with an incentive to give their employees on-going training in responsible alcohol sales and service.

(b) Licensees who join the responsible vendor program under this section and maintain all of the program's requirements are not subject to the doubling of penalties provided in this section for a single violation in any period of twelve calendar months.

(c) The responsible vendor program must be free, voluntary, and self-monitoring.

(d) To participate in the responsible vendor program, licensees must submit an application form to the board. If the application establishes that the licensee meets the qualifications to join the program, the board must send the licensee a membership certificate.

(e) A licensee participating in the responsible vendor program must at a minimum:

- (i) Provide on-going training to employees;
- (ii) Accept only certain forms of identification for alcohol sales;
- (iii) Adopt policies on alcohol sales and checking identification;
- (iv) Post specific signs in the business; and
- (v) Keep records verifying compliance with the program's requirements.

Sec. 104. RCW 66.24.360 and 2011 c 119 s 203 are each amended to read as follows:

(1) There (~~shall be~~) is a (~~beer and/or wine retailer's license to be designated as a~~) grocery store license to sell wine and/or beer, including without limitation strong beer(~~, and/or wine~~) at retail in (~~bottles, cans, and~~) original containers, not to be consumed upon the premises where sold(~~, at any store other than the state liquor stores~~)).

~~((1))~~ (2) There is a wine retailer reseller endorsement of a grocery store license, to sell wine at retail in original containers to retailers licensed to sell wine for consumption on the premises, for resale at their licensed premises according to the terms of the license. However, no single sale may exceed twenty-four liters, unless the sale is made by a licensee that was a contract liquor store manager of a contract-operated liquor store at the location from which such sales are made. For the purposes of this title, a grocery store license is a retail license, and a sale by a grocery store licensee with a reseller endorsement is a retail sale only if not for resale.

(3) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

~~((2))~~ (4) The annual fee for the grocery store license is one hundred fifty dollars for each store.

~~((3))~~ (5) The annual fee for the wine retailer reseller endorsement is one hundred sixty-six dollars for each store.

(6) The board (~~shall~~) must issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board (~~shall~~) must consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it ~~((shall))~~ must issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

~~((4))~~ (7) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, or wine.

~~((5))~~ (8) A grocery store licensee with a wine retailer reseller endorsement may accept delivery of wine at its licensed premises or at one or more warehouse facilities registered with the board, which facilities may also warehouse and distribute nonliquor items, and from which it may deliver to its own licensed premises and, pursuant to sales permitted by this title, to other licensed premises, to other registered facilities, or to lawful purchasers outside the state. Facilities may be registered and utilized by associations, cooperatives, or comparable groups of grocery store licensees.

(9) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) Any beer, strong beer, or wine sold under this (~~license~~) endorsement must be sold at a price no less than the acquisition price paid by the holder of the license.

(d) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license.

~~((6))~~ (10) A grocery store licensee holding a snack bar license under RCW 66.24.350 may receive an endorsement to allow the sale of confections containing more than one percent but not more than ten percent alcohol by weight to persons twenty-one years of age or older.

NEW SECTION. Sec. 105. A new section is added to chapter 66.24 RCW to read as follows:

(1) There is a license for spirits distributors to (a) sell spirits purchased from manufacturers, distillers, or suppliers including, without limitation, licensed Washington distilleries, licensed spirits importers, other Washington spirits distributors, or suppliers of foreign spirits located outside of the United States, to spirits retailers including, without limitation, spirits retail licensees, special occasion license holders, interstate common carrier license holders, restaurant spirits retailer license holders, spirits, beer, and wine private club license holders, hotel license holders, sports entertainment facility license holders, and spirits, beer, and wine nightclub license holders, and to other spirits distributors; and (b) export the same from the state.

(2) By January 1, 2012, the board must issue spirits distributor licenses to all applicants who, upon the effective date of this

section, have the right to purchase spirits from a spirits manufacturer, spirits distiller, or other spirits supplier for resale in the state, or are agents of such supplier authorized to sell to licensees in the state, unless the board determines that issuance of a license to such applicant is not in the public interest.

(3)(a) As limited by (b) of this subsection and subject to (c) of this subsection, each spirits distributor licensee must pay to the board for deposit into the liquor revolving fund, a license issuance fee calculated as follows:

(i) In each of the first two years of licensure, ten percent of the total revenue from all the licensee's sales of spirits made during the year for which the fee is due, respectively; and

(ii) In the third year of licensure and each year thereafter, five percent of the total revenue from all the licensee's sales of spirits made during the year for which the fee is due, respectively.

(b) The fee required under this subsection (3) is calculated only on sales of items which the licensee was the first spirits distributor in the state to have received:

(i) In the case of spirits manufactured in the state, from the distiller; or

(ii) In the case of spirits manufactured outside the state, from an authorized out-of-state supplier.

(c) By March 31, 2013, all persons holding spirits distributor licenses on or before March 31, 2013, must have paid collectively one hundred fifty million dollars or more in spirits distributor license fees. If the collective payment through March 31, 2013, totals less than one hundred fifty million dollars, the board must, according to rules adopted by the board for the purpose, collect by May 31, 2013, as additional spirits distributor license fees the difference between one hundred fifty million dollars and the actual receipts, allocated among persons holding spirits distributor licenses at any time on or before

March 31, 2013, ratably according to their spirits sales made during calendar year 2012. Any amount by which such payments exceed one hundred fifty million dollars by March 31, 2013, must be credited to future license issuance fee obligations of spirits distributor licensees according to rules adopted by the board.

(d) A retail licensee selling for resale must pay a distributor license fee under the terms and conditions in this section on resales of spirits the licensee has purchased on which no other distributor license fee has been paid. The board must establish rules setting forth the frequency and timing of such payments and reporting of sales dollar volume by the licensee, with payments due quarterly in arrears.

(e) No spirits inventory may be subject to calculation of more than a single spirits distributor license issuance fee.

(4) In addition to the payment set forth in subsection (3) of this section, each spirits distributor licensee renewing its annual license must pay an annual license renewal fee of one thousand three hundred twenty dollars for each licensed location.

(5) There is no minimum facility size or capacity for spirits distributor licenses, and no limit on the number of such licenses issued to qualified applicants. License applicants must provide physical security of the product that is substantially as effective as the physical security of the distribution facilities currently operated by the board with respect to preventing pilferage. License issuances and renewals are subject to RCW 66.24.010 and the regulations promulgated thereunder, including without limitation rights of cities, towns, county legislative authorities, the public, churches, schools, and public institutions to object to or prevent issuance of local liquor licenses. However, existing distributor premises licensed to sell beer and/or wine are deemed to be premises "now licensed" under RCW 66.24.010(9)(a) for the purpose of processing applications for spirits distributor licenses.

Sec. 106. RCW 82.08.150 and 2009 c 479 s 65 are each amended to read as follows:

(1) There is levied and ~~((shall be))~~ collected a tax upon each retail sale of spirits in the original package at the rate of fifteen percent of the selling price ~~((The tax imposed in this subsection shall apply to all such sales including sales by the Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees))~~.

(2) There is levied and ~~((shall be))~~ collected a tax upon each sale of spirits in the original package at the rate of ten percent of the selling price on sales by ~~((Washington state liquor stores and agencies to spirits, beer, and wine restaurant licensees))~~ a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to restaurant spirits retailers.

(3) There is levied and ~~((shall be))~~ collected an additional tax upon each ~~((retail))~~ sale of spirits in the original package by a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to a restaurant spirits retailer and upon each retail sale of spirits in the original package by a licensee of the board at the rate of one dollar and seventy-two cents per liter. ~~((The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.))~~

(4) An additional tax is imposed equal to fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each ~~((retail))~~ sale of spirits in the original package by a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to a restaurant spirits retailer and upon each retail sale of spirits

in the original package by a licensee of the board at the rate of seven cents per liter. (~~The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.~~) All revenues collected during any month from this additional tax (~~shall~~) must be deposited in the state general fund by the twenty-fifth day of the following month.

(6) (a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of (~~one and seven tenths percent of the selling price through June 30, 1995, two and six tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and~~) three and four-tenths percent of the selling price (~~thereafter, this additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees~~).

(b) An additional tax is imposed upon retail sale of spirits in the original package to a restaurant spirits retailer at the rate of (~~one and one tenth percent of the selling price through June 30, 1995, one and seven tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and~~) two and three-tenths percent of the selling price (~~thereafter, this additional tax applies to all such sales to spirits, beer, and wine restaurant licensees~~).

(c) An additional tax is imposed upon each (~~retail~~) sale of spirits in the original package by a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to a restaurant spirits retailer and upon each retail sale of spirits in the original package by a licensee of the board at the rate of (~~twenty cents per liter through June 30, 1995, thirty cents per liter for the period July 1, 1995, through June 30, 1997, and~~) forty-one cents per liter (~~thereafter, this additional tax applies to all such~~

~~sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees~~)).

(d) All revenues collected during any month from additional taxes under this subsection ~~((shall))~~ must be deposited in the state general fund by the twenty-fifth day of the following month.

(7)(a) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of one dollar and thirty-three cents per liter. ~~((This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.))~~

(b) All revenues collected during any month from additional taxes under this subsection ~~((shall))~~ must be deposited by the twenty-fifth day of the following month into the general fund.

(8) The tax imposed in RCW 82.08.020 ~~((shall))~~ does not apply to sales of spirits in the original package.

(9) The taxes imposed in this section ~~((shall))~~ must be paid by the buyer to the seller, and each seller ~~((shall))~~ must collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller ~~((shall))~~ must be stated separately from the selling price, and for purposes of determining the tax due from the buyer to the seller, it ~~((shall be))~~ is conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section. Sellers must report and return all taxes imposed in this section in accordance with rules adopted by the department.

(10) As used in this section, the terms, "spirits" and "package" ~~((shall))~~ have the same meaning ~~((ascribed to them))~~ as provided in chapter 66.04 RCW.

Sec. 107. RCW 66.08.050 and 2011 c 186 s 2 are each amended to read as follows:

The board, subject to the provisions of this title and the rules, ~~((shall))~~ must:

~~(1) ((Determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;~~

~~(2) Appoint in cities and towns and other communities, in which no state liquor store is located, contract liquor stores. In addition, the board may appoint, in its discretion, a manufacturer that also manufactures liquor products other than wine under a license under this title, as a contract liquor store for the purpose of sale of liquor products of its own manufacture on the licensed premises only. Such contract liquor stores shall be authorized to sell liquor under the guidelines provided by law, rule, or contract, and such contract liquor stores shall be subject to such additional rules and regulations consistent with this title as the board may require. Sampling on contract store premises is permitted under this act;~~

~~(3) Establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;~~

~~(4) Provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business, and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies, and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects shall be subject to the direction of the board;~~

~~(5)) Determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;~~

~~((6))~~ (2) Execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

~~((7))~~ (3) Pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

~~((8))~~ (4) Require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

~~((9))~~ (5) Perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

~~((10))~~ (6) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program (~~shall~~) must cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

~~((11))~~ (7) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and (~~shall have~~) has full power to do each and every act necessary to the conduct of its (~~business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor. PROVIDED, That the board shall have~~) regulatory functions, including all supplies procurement, preparation and approval of forms, and every other undertaking necessary to perform its regulatory functions whatsoever, subject only to audit by the state auditor. However, the board has no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not

a clear and present danger of disorderly conduct being provoked by such language or to restrict advertising of lawful prices.

Sec. 108. RCW 66.08.060 and 2005 c 231 s 3 are each amended to read as follows:

~~((1) The board shall not advertise liquor in any form or through any medium whatsoever.~~

~~(2) In store liquor merchandising is not advertising for the purposes of this section.~~

~~(3))~~ The board ~~((shall have))~~ has power to adopt any and all reasonable rules as to the kind, character, and location of advertising of liquor.

Sec. 109. RCW 66.20.010 and 2011 c 119 s 213 are each amended to read as follows:

Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee ~~((shall))~~ must issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanitorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in

scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation (~~at prices to be fixed by the board~~);

(8) Where the application is for a special permit by a vendor that manufactures or sells a product which cannot be effectively presented to potential buyers without serving it with liquor or by a

manufacturer, importer, or distributor, or representative thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in this title ((66-RCW)) to the contrary notwithstanding. Any such spirituous liquor ((shall)) must be purchased from ((~~the board or a spirits, beer, and wine restaurant licensee~~)) a spirits retailer or distributor, and any such ((~~beer and wine shall be~~)) liquor is subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in this title ((66-RCW)) to the contrary notwithstanding. Any such spirituous liquor ((shall)) must be purchased from ((~~the board or a spirits, beer, and wine restaurant licensee~~)) a spirits retailer or distributor, and any such ((~~beer and wine shall be~~)) liquor is subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a nonprofit organization, anything in this title ((66-RCW)) to the contrary notwithstanding. Any such spirituous liquor ((shall))

must be purchased from ~~((the board))~~ a liquor spirits retailer or distributor, and any such ~~((beer or wine shall be))~~ liquor is subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a facility offering from one to eight lodging units and breakfast to travelers and guests.

Sec. 110. RCW 66.20.160 and 2005 c 151 s 8 are each amended to read as follows:

~~((Words and phrases))~~ As used in RCW 66.20.160 ~~((to))~~ through 66.20.210, inclusive, ~~((shall have the following meaning:~~

~~"Card of identification" means any one of those cards described in RCW 66.16.040.))~~

"licensee" means the holder of a retail liquor license issued by the board, and includes any employee or agent of the licensee.

~~(("Store employee" means a person employed in a state liquor store to sell liquor.))~~

Sec. 111. RCW 66.24.310 and 2011 c 119 s 301 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, no person ~~((shall))~~ may canvass for, solicit, receive, or take orders for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless ~~((such person shall be the accredited representative of a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer distributor's license, a microbrewer's license, a domestic brewer's~~

~~license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, and shall have)~~ the person is the representative of a licensee or certificate holder authorized by this title to sell liquor for resale in the state and has applied for and received a representative's license.

(b) (a) of this subsection (~~shall~~) does not apply to: (i) Drivers who deliver spirits, beer, or wine; or (ii) domestic wineries or their employees.

(2) Every representative's license issued under this title (~~shall be~~) is subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board; the board, for the purpose of maintaining an orderly market, may limit the number of representative's licenses issued for representation of specific classes of eligible employers.

(3) Every application for a representative's license must be approved by a holder of a certificate of approval (~~issued pursuant to RCW 66.24.270 or 66.24.206~~), a licensed beer distributor, a licensed domestic brewer, a licensed beer importer, a licensed microbrewer, a licensed domestic winery, a licensed wine importer, a licensed wine distributor, or by a distiller, manufacturer, importer, or distributor of (~~spirituous liquor~~) spirits, or of foreign-produced beer or wine, as required by the rules and regulations of the board (~~shall require~~).

(4) The fee for a representative's license (~~shall be~~) is twenty-five dollars per year.

~~((5) An accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may, after he or she has applied for and received a representative's license, contact retail~~

~~licensees of the board only in goodwill activities pertaining to spirituous liquor products.))~~

Sec. 112. RCW 66.24.380 and 2005 c 151 s 10 are each amended to read as follows:

There ~~((shall be))~~ is a retailer's license to be designated as a special occasion license to be issued to a not-for-profit society or organization to sell spirits, beer, and wine by the individual serving for on-premises consumption at a specified event, such as at picnics or other special occasions, at a specified date and place; fee sixty dollars per day.

(1) The not-for-profit society or organization is limited to sales of no more than twelve calendar days per year. For the purposes of this subsection, special occasion licensees that are "agricultural area fairs" or "agricultural county, district, and area fairs," as defined by RCW 15.76.120, that receive a special occasion license may, once per calendar year, count as one event fairs that last multiple days, so long as alcohol sales are at set dates, times, and locations, and the board receives prior notification of the dates, times, and locations. The special occasion license applicant will pay the sixty dollars per day for this event.

(2) The licensee may sell spirits, beer, and/or wine in original, unopened containers for off-premises consumption if permission is obtained from the board prior to the event.

(3) Sale, service, and consumption of spirits, beer, and wine is to be confined to specified premises or designated areas only.

(4) ~~((Spirituous))~~ Liquor sold under this special occasion license must be purchased ~~((at a state liquor store or contract liquor store without discount at retail prices, including all taxes))~~ from a licensee of the board.

(5) Any violation of this section is a class 1 civil infraction having a maximum penalty of two hundred fifty dollars as provided for in chapter 7.80 RCW.

Sec. 113. RCW 66.28.030 and 2004 c 160 s 10 are each amended to read as follows:

Every domestic distillery, brewery, and microbrewery, domestic winery, certificate of approval holder, licensed liquor importer, licensed wine importer, and licensed beer importer (~~shall be~~) is responsible for the conduct of any licensed spirits, beer, or wine distributor in selling, or contracting to sell, to retail licensees, spirits, beer, or wine manufactured by such domestic distillery, brewery, microbrewery, domestic winery, manufacturer holding a certificate of approval, sold by an authorized representative holding a certificate of approval, or imported by such liquor, beer, or wine importer. Where the board finds that any licensed spirits, beer, or wine distributor has violated any of the provisions of this title or of the regulations of the board in selling or contracting to sell spirits, beer, or wine to retail licensees, the board may, in addition to any punishment inflicted or imposed upon such distributor, prohibit the sale of the brand or brands of spirits, beer, or wine involved in such violation to any or all retail licensees within the trade territory usually served by such distributor for such period of time as the board may fix, irrespective of whether the distiller manufacturing such spirits or the liquor importer importing such spirits, brewer manufacturing such beer or the beer importer importing such beer, or the domestic winery manufacturing such wine or the wine importer importing such wine or the certificate of approval holder manufacturing such spirits, beer, or wine or acting as authorized representative actually participated in such violation.

Sec. 114. RCW 66.24.540 and 1999 c 129 s 1 are each amended to read as follows:

(1) There ~~((shall be))~~ is a retailer's license to be designated as a motel license. The motel license may be issued to a motel regardless of whether it holds any other class of license under this title. No license may be issued to a motel offering rooms to its guests on an hourly basis. The license authorizes the licensee to:

~~((1))~~ (a) Sell, at retail, in locked honor bars, spirits in individual bottles not to exceed fifty milliliters, beer in individual cans or bottles not to exceed twelve ounces, and wine in individual bottles not to exceed one hundred eighty-seven milliliters, to registered guests of the motel for consumption in guest rooms.

~~((a))~~ (i) Each honor bar must also contain snack foods. No more than one-half of the guest rooms may have honor bars.

~~((b))~~ (ii) All spirits to be sold under the license must be purchased from a spirits retailer or a spirits distributor licensee of the board.

~~((c))~~ (iii) The licensee ~~((shall))~~ must require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest ~~((shall))~~ must also execute an affidavit verifying that no one under twenty-one years of age ~~((shall have))~~ has access to the spirits, beer, and wine in the honor bar.

~~((2))~~ (b) Provide without additional charge, to overnight guests of the motel, spirits, beer, and wine by the individual serving for on-premises consumption at a specified regular date, time, and place as may be fixed by the board. Self-service by attendees is prohibited. All spirits, beer, and wine service must be done by an alcohol server as defined in RCW 66.20.300 and comply with RCW 66.20.310.

(2) The annual fee for a motel license is five hundred dollars.

(3) For the purposes of this section, "motel" ((as used in this section)) means a transient accommodation licensed under chapter 70.62 RCW.

~~((As used in this section, "spirits," "beer," and "wine" have the meanings defined in RCW 66.04.010.))~~

Sec. 115. RCW 66.24.590 and 2011 c 119 s 403 are each amended to read as follows:

(1) There ~~((shall be))~~ is a retailer's license to be designated as a hotel license. No license may be issued to a hotel offering rooms to its guests on an hourly basis. Food service provided for room service, banquets or conferences, or restaurant operation under this license ~~((shall))~~ must meet the requirements of rules adopted by the board.

(2) The hotel license authorizes the licensee to:

(a) Sell spirituous liquor, beer, and wine, by the individual glass, at retail, for consumption on the premises, including mixed drinks and cocktails compounded and mixed on the premises;

(b) Sell, at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms. The licensee ~~((shall))~~ must require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest ~~((shall))~~ must also execute an affidavit verifying that no one under twenty-one years of age ~~((shall))~~ will have access to the spirits, beer, and wine in the honor bar;

(c) Provide without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for on-premises consumption at a specified regular date, time, and place as may be fixed by the board. Self-service by attendees is prohibited;

(d) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings that include the hotel;

(e) Sell beer, including strong beer, spirits, or wine, in the manufacturer's sealed container at retail sales locations within the hotel premises;

(f) Sell beer to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap in the restaurant area by the licensee at the time of sale;

(g) Sell for on or off-premises consumption, including through room service and service to occupants of private residential units managed by the hotel, wine carrying a label exclusive to the hotel license holder;

(h) Place in guest rooms at check-in, a complimentary bottle of (~~beer, including strong beer, or wine~~) liquor in a manufacturer-sealed container, and make a reference to this service in promotional material.

(3) If all or any facilities for alcoholic beverage service and the preparation, cooking, and serving of food are operated under contract or joint venture agreement, the operator may hold a license separate from the license held by the operator of the hotel. Food and beverage inventory used in separate licensed operations at the hotel may not be shared and ~~((shall))~~ must be separately owned and stored by the separate licensees.

(4) All spirits to be sold under this license must be purchased from a spirits retailer or spirits distributor licensee of the board.

(5) All on-premise alcoholic beverage service must be done by an alcohol server as defined in RCW 66.20.300 and must comply with RCW 66.20.310.

(6)(a) The hotel license allows the licensee to remove from the liquor stocks at the licensed premises, liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived.

(b) The holder of this license (~~shall~~) must, if requested by the board, notify the board or its designee of the date, time, place, and location of any event. Upon request, the licensee (~~shall~~) must provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) Licensees may cater events on a domestic winery, brewery, or distillery premises.

(7) The holder of this license or its manager may furnish spirits, beer, or wine to the licensee's employees who are twenty-one years of age or older free of charge as may be required for use in connection with instruction on spirits, beer, and wine. The instruction may include the history, nature, values, and characteristics of spirits, beer, or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling spirits, beer, or wine. The licensee must use the (~~beer or wine~~) liquor it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the licensee.

(8) Minors may be allowed in all areas of the hotel where (~~alcohol~~) liquor may be consumed; however, the consumption must be incidental to the primary use of the area. These areas include, but are not limited to, tennis courts, hotel lobbies, and swimming pool areas.

If an area is not a mixed use area, and is primarily used for alcohol service, the area must be designated and restricted to access by ~~((miners))~~ persons of lawful age to purchase liquor.

(9) The annual fee for this license is two thousand dollars.

(10) As used in this section, "hotel," "spirits," "beer," and "wine" have the meanings defined in RCW 66.24.410 and 66.04.010.

Sec. 116. RCW 66.28.040 and 2011 c 186 s 4, 2011 c 119 s 207, and 2011 c 62 s 4 are each reenacted and amended to read as follows:

Except as permitted by the board under RCW 66.20.010, no domestic brewery, microbrewery, distributor, distiller, domestic winery, importer, rectifier, certificate of approval holder, or other manufacturer of liquor ~~((shall))~~ may, within the state of Washington, give to any person any liquor; but nothing in this section nor in RCW 66.28.305 prevents a domestic brewery, microbrewery, distributor, domestic winery, distiller, certificate of approval holder, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210 ~~((, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board));~~ nothing in this section ~~((shall))~~ prevents a domestic brewery, microbrewery, domestic winery, distillery, certificate of approval holder, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150; nothing in this section ~~((shall))~~ prevents a domestic winery, certificate of approval holder, or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a

not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, or a domestic distiller licensed under RCW 66.24.140 or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310, from furnishing spirits without charge, to a nonprofit charitable corporation or association exempt from taxation under ~~((section))~~ 26 U.S.C. Sec. 501(c)(3) or (6) of the internal revenue code of 1986 ~~((~~26 U.S.C. Sec. 501(c)(3) or (6)~~))~~ for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section ~~((shall))~~ prevents a domestic brewery or microbrewery from serving beer without charge, on the brewery premises; nothing in this section ~~((shall))~~ prevents donations of wine for the purposes of RCW 66.12.180; nothing in this section ~~((shall))~~ prevents a domestic winery from serving wine without charge, on the winery premises; nothing in this section ~~((shall))~~ prevents a craft distillery from serving spirits without charge, on the distillery premises subject to RCW 66.24.145; nothing in this section prohibits spirits sampling under chapter 186, Laws of 2011; and nothing in this section ~~((shall))~~ prevents a winery or microbrewery from serving samples at a farmers market under section 1, chapter 62, Laws of 2011.

Sec. 117. RCW 66.28.060 and 2008 c 94 s 7 are each amended to read as follows:

Every distillery licensed under this title ~~((shall))~~ must make monthly reports to the board pursuant to the regulations. ~~((No such~~

~~distillery shall make any sale of spirits within the state of Washington except to the board and as provided in RCW 66.24.145.)~~

Sec. 118. RCW 66.28.070 and 2006 c 302 s 8 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, it ~~((shall be))~~ is unlawful for any retail spirits, beer, or wine licensee to purchase spirits, beer, or wine, except from a duly licensed distributor, domestic winery, domestic brewer, or certificate of approval holder with a direct shipment endorsement ~~((, or the board))~~.

(2)(a) A spirits, beer, or wine retailer ~~((licensee))~~ may purchase spirits, beer, or wine:

(i) From a government agency ~~((which))~~ that has lawfully seized ~~((beer or wine from))~~ liquor possessed by a licensed ~~((beer))~~ distributor or ~~((wine))~~ retailer~~((, or))~~;

(ii) From a board-authorized ~~((retailer))~~ manufacturer or certificate holder authorized by this title to act as a distributor of liquor~~((, or))~~;

(iii) From a licensed retailer which has discontinued business if the distributor has refused to accept spirits, beer, or wine from that retailer for return and refund~~((, Beer and wine))~~;

(iv) From a retailer whose license or license endorsement permits resale to a retailer of wine and/or spirits for consumption on the premises, if the purchasing retailer is authorized to sell such wine and/or spirits.

(b) Goods purchased under this subsection ~~((shall))~~ (2) must meet the quality standards set by ~~((its))~~ the manufacturer of the goods.

(3) Special occasion licensees holding a special occasion license may only purchase spirits, beer, or wine from a spirits, beer, or wine retailer duly licensed to sell spirits, beer, or wine for off-premises

consumption, (~~the board,~~) or from a duly licensed spirits, beer, or wine distributor.

Sec. 119. RCW 66.28.170 and 2004 c 160 s 17 are each amended to read as follows:

It is unlawful for a manufacturer of spirits, wine, or malt beverages holding a certificate of approval (~~issued under RCW 66.24.270 or 66.24.206~~) or the manufacturer's authorized representative, a distillery, brewery, or a domestic winery to discriminate in price in selling to any purchaser for resale in the state of Washington. Price differentials for sales of spirits or wine based upon competitive conditions, costs of servicing a purchaser's account, efficiencies in handling goods, or other bona fide business factors, to the extent the differentials are not unlawful under trade regulation laws applicable to goods of all kinds, do not violate this section.

NEW SECTION. Sec. 120. A new section is added to chapter 66.28 RCW to read as follows:

(1) No price for spirits sold in the state by a distributor or other licensee acting as a distributor pursuant to this title may be below acquisition cost unless the item sold below acquisition cost has been stocked by the seller for a period of at least six months. The seller may not restock the item for a period of one year following the first effective date of such below cost price.

(2) Spirits sold to retailers for resale for consumption on or off the licensed premises may be delivered to the retailer's licensed premises, to a location specified by the retailer and approved for deliveries by the board, or to a carrier engaged by either party to the transaction.

(3) In selling spirits to another retailer, to the extent consistent with the purposes of this act, a spirits retail licensee must comply with all provisions of and regulations under this title applicable to wholesale distributors selling spirits to retailers.

(4) A distiller holding a license or certificate of compliance as a distiller under this title may act as distributor in the state of spirits of its own production or of foreign-produced spirits it is entitled to import. The distiller must, to the extent consistent with the purposes of this act, comply with all provisions of and regulations under this title applicable to wholesale distributors selling spirits to retailers.

(5) With respect to any alleged violation of this title by sale of spirits at a discounted price, all defenses under applicable trade regulation laws are available, including without limitation good faith meeting of a competitor's lawful price and absence of harm to competition.

(6) Notwithstanding any other provision of law, no licensee may import, purchase, distribute, or accept delivery of any wine that is produced outside of the United States or any distilled spirits without the written consent of the brand owner or its authorized agent.

Sec. 121. RCW 66.28.180 and 2009 c 506 s 10 are each amended to read as follows:

(1) Beer and/or wine distributors.

(a) Every beer (~~or wine~~) distributor (~~shall~~) must maintain at its liquor-licensed location a price list showing the wholesale prices at which any and all brands of beer (~~and wine~~) sold by (~~such beer and/or wine~~) the distributor (~~shall be~~) are sold to retailers within the state.

(b) Each price list (~~shall~~) must set forth:

(i) All brands, types, packages, and containers of beer (~~(or wine)~~) offered for sale by (~~(such beer and/or wine)~~) the distributor; and

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer (~~(and/or wine)~~) distributor may sell or offer to sell any package or container of beer (~~(or wine)~~) to any retail licensee at a price differing from the price for such package or container as shown in the price list, according to rules adopted by the board.

(d) Quantity discounts of sales prices of beer are prohibited. No distributor's sale price of beer may be below the distributor's acquisition cost.

(e) Distributor prices below acquisition cost on a "close-out" item (~~(shall be)~~) are allowed if the item to be discontinued has been listed for a period of at least six months, and upon the further condition that the distributor who offers such a close-out price (~~(shall)~~) may not restock the item for a period of one year following the first effective date of such close-out price.

(f) Any beer (~~(and/or wine)~~) distributor (~~(or employee authorized by the distributor employer)~~) may sell beer (~~(and/or wine)~~) at the distributor's listed prices to any annual or special occasion retail licensee upon presentation to the distributor (~~(or employee)~~) at the time of purchase or delivery of an original or facsimile license or a special permit issued by the board to such licensee.

(g) Every annual or special occasion retail licensee, upon purchasing any beer (~~(and/or wine)~~) from a distributor, (~~(shall)~~) must immediately cause such beer (~~(or wine)~~) to be delivered to the licensed premises, and the licensee (~~(shall)~~) may not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(h) Beer (~~(and wine)~~) sold as provided in this section (~~(shall)~~) must be delivered by the distributor or an authorized employee either

to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises. When a (~~domestic winery,~~) brewery, microbrewery, or certificate of approval holder with a direct shipping endorsement is acting as a distributor of beer of its own production, a licensed retailer may contract with a common carrier to obtain the (~~product~~) beer directly from the (~~domestic winery,~~) brewery, microbrewery, or certificate of approval holder with a direct shipping endorsement. A distributor's prices to retail licensees (~~shall~~) for beer must be the same at both such places of delivery. Wine sold to retailers must be delivered to the retailer's licensed premises, to a location specified by the retailer and approved for deliveries by the board, or to a carrier engaged by either party to the transaction.

(2) Beer (~~and wine~~) suppliers' contracts and memoranda.

(a) Every domestic brewery, microbrewery, (~~domestic winery,~~) certificate of approval holder, and beer and/or wine importer offering beer (~~and/or wine~~) for sale to distributors within the state and any beer (~~and/or wine~~) distributor who sells to other beer (~~and/or wine~~) distributors (~~shall~~) must maintain at its liquor-licensed location a beer price list and a copy of every written contract and a memorandum of every oral agreement which such brewery (~~or winery~~) may have with any beer (~~or wine~~) distributor for the supply of beer, which contracts or memoranda (~~shall~~) must contain:

(i) All advertising, sales and trade allowances, and incentive programs; and

(ii) All commissions, bonuses or gifts, and any and all other discounts or allowances.

(b) Whenever changed or modified, such revised contracts or memoranda (~~shall~~) must also be maintained at its liquor licensed location.

(c) Each price list (~~shall~~) must set forth all brands, types, packages, and containers of beer (~~or wine~~) offered for sale by such (~~licensed brewery or winery~~) supplier.

(d) Prices of a domestic brewery, microbrewery, (~~domestic winery~~) or certificate of approval holder (~~shall~~) for beer must be uniform prices to all distributors or retailers on a statewide basis less bona fide allowances for freight differentials. Quantity discounts of suppliers' prices for beer are prohibited. No price (~~shall~~) may be below the supplier's acquisition(~~/~~) or production cost.

(e) A domestic brewery, microbrewery, (~~domestic winery~~) certificate of approval holder, (~~beer or wine~~) importer, or (~~beer or wine~~) distributor acting as a supplier to another distributor must file (~~a distributor appointment~~) with the board a list of all distributor licensees of the board to which it sells or offers to sell beer.

(f) No domestic brewery, microbrewery, (~~domestic winery~~) or certificate of approval holder may sell or offer to sell any package or container of beer (~~or wine~~) to any distributor at a price differing from the price list for such package or container as shown in the price list of the domestic brewery, microbrewery, (~~domestic winery~~) or certificate of approval holder and then in effect, according to rules adopted by the board.

(3) In selling wine to another retailer, to the extent consistent with the purposes of this act, a grocery store licensee with a reseller endorsement must comply with all provisions of and regulations under this title applicable to wholesale distributors selling wine to retailers.

(4) With respect to any alleged violation of this title by sale of wine at a discounted price, all defenses under applicable trade regulation laws are available including, without limitation, good faith

meeting of a competitor's lawful price and absence of harm to competition.

Sec. 122. RCW 66.28.190 and 2003 c 168 s 305 are each amended to read as follows:

~~((RCW 66.28.010))~~ (1) Any other provision of this title notwithstanding, persons licensed under ~~((RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors))~~ this title to sell liquor for resale may sell at wholesale nonliquor food and food ingredients on thirty-day credit terms to persons licensed as retailers under this title, but complete and separate accounting records ~~((shall))~~ must be maintained on all sales of nonliquor food and food ingredients to ensure that such persons are in compliance with ~~((RCW 66.28.010))~~ this title.

(2) For the purpose of this section, "nonliquor food and food ingredients" includes, without limitation, all food and food ingredients for human consumption as defined in RCW 82.08.0293 as it ~~((exists))~~ existed on July 1, 2004.

NEW SECTION. Sec. 123. A new section is added to chapter 66.28 RCW to read as follows:

A retailer authorized to sell wine may accept delivery of wine at its licensed premises or at one or more warehouse facilities registered with the board, which facilities may also warehouse and distribute nonliquor items, and from which it may deliver to its own licensed premises and, pursuant to sales permitted by this title, to other licensed retailers, to other registered facilities, or to lawful purchasers outside the state; such facilities may be registered and utilized by associations, cooperatives, or comparable groups of retailers including at least one retailer licensed to sell wine. A restaurant retailer authorized to sell spirits may accept delivery of

spirits at its licensed premises or at one or more warehouse facilities registered with the board, which facilities may also warehouse and distribute nonliquor items, from which it may deliver to its own licensed premises and, pursuant to sales permitted by this title, to other licensed retailers, to other registered facilities, or to lawful purchasers outside the state; such facilities may be registered and utilized by associations, cooperatives, or comparable groups of retailers including at least one restaurant retailer licensed to sell spirits. Nothing in this section authorizes sales of spirits or wine by a retailer holding only an on-sale privilege to another retailer.

Sec. 124. RCW 66.28.280 and 2009 c 506 s 1 are each amended to read as follows:

~~((The legislature recognizes that Washington's current three tier system, where the functions of manufacturing, distributing, and retailing are distinct and the financial relationships and business transactions between entities in these tiers are regulated, is a valuable system for the distribution of beer and wine.))~~ The legislature ~~((further))~~ recognizes that the historical total prohibition on ownership of an interest in one tier by a person with an ownership interest in another tier, as well as the historical restriction on financial incentives and business relationships between tiers, is unduly restrictive. The legislature finds the ~~((modifications contained in chapter 506, Laws of 2009 are appropriate, because the modifications))~~ provisions of RCW 66.28.285 through 66.28.320 appropriate for all varieties of liquor, because they do not impermissibly interfere with ~~((the goals of orderly marketing of alcohol in the state, encouraging moderation in consumption of alcohol by the citizens of the state,))~~ protecting the public interest and advancing public safety by preventing the use and consumption of

alcohol by minors and other abusive consumption, and promoting the efficient collection of taxes by the state.

NEW SECTION. sec. 125. A new section is added to chapter 66.04 RCW to read as follows:

In this title, unless the context otherwise requires:

(1) "Retailer" except as expressly defined by RCW 66.28.285(5) with respect to its use in RCW 6.28280 through 66.28.315, means the holder of a license or permit issued by the board authorizing sale of liquor to consumers for consumption on and/or off the premises. With respect to retailer licenses, "on-sale" refers to the license privilege of selling for consumption upon the licensed premises.

(2) "Spirits distributor" means a person, other than a person who holds only a retail license, who buys spirits from a domestic distiller, manufacturer, supplier, spirits distributor, or spirits importer, or who acquires foreign-produced spirits from a source outside of the United States, for the purpose of reselling the same not in violation of this title, or who represents such distiller as agent.

(3) "Spirits importer" means a person who buys distilled spirits from a distiller outside the state of Washington and imports such spirits into the state for sale or export.

PART II

LIQUOR CONTROL BOARD--DISCONTINUING RETAIL SALES--TECHNICAL CHANGES

Sec. 201. RCW 43.19.19054 and 1975-'76 2nd ex.s. c 21 s 7 are each amended to read as follows:

The provisions of RCW 43.19.1905 ((shall)) do not apply to materials, supplies, and equipment purchased for resale to other than public agencies by state agencies, including educational institutions.

~~((In addition, RCW 43.19.1905 shall not apply to liquor purchased by the state for resale under the provisions of Title 66 RCW.))~~

Sec. 202. RCW 66.08.020 and 1933 ex.s. c 52 s 5 are each amended to read as follows:

The administration of this title ~~((, including the general control, management and supervision of all liquor stores, shall be))~~ is vested in the liquor control board, constituted under this title.

Sec. 203. RCW 66.08.026 and 2008 c 67 s 1 are each amended to read as follows:

Administrative expenses of the board ~~((shall))~~ must be appropriated and paid from the liquor revolving fund. These administrative expenses ~~((shall))~~ include, but not be limited to: The salaries and expenses of the board and its employees, ~~((the cost of opening additional state liquor stores and warehouses,))~~ legal services, pilot projects, annual or other audits, and other general costs of conducting the business of the board. The administrative expenses ~~((shall))~~ do not include ~~((costs of liquor and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, the cost of operating, maintaining, relocating, and leasing state liquor stores and warehouses, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, agency commissions for contract liquor stores, transaction fees associated with credit or debit card purchases for liquor in state liquor stores and in contract liquor stores pursuant to RCW 66.16.040 and 66.16.041, sales tax, and))~~ those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, or 66.08.210 ~~((and 66.08.220))~~. Agency commissions for contract liquor stores ~~((shall))~~ must be established by the liquor control board after consultation with and approval by the director of the office of financial management. All expenditures and payment of obligations

authorized by this section are subject to the allotment requirements of chapter 43.88 RCW.

Sec. 204. RCW 56.08.030 and 2002 c 119 s 2 are each amended to read as follows:

~~((1) For the purpose of carrying into effect the provisions of this title according to their true intent or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable. All regulations so made shall be a public record and shall be filed in the office of the code reviser, and thereupon shall have the same force and effect as if incorporated in this title. Such regulations, together with a copy of this title, shall be published in pamphlets and shall be distributed as directed by the board.~~

~~(2) Without thereby limiting the generality of the provisions contained in subsection (1), it is declared that)~~ The power of the board to make regulations ~~((in the manner set out in that subsection shall))~~ under chapter 34.05 RCW extends to

~~((a) regulating the equipment and management of stores and warehouses in which state liquor is sold or kept, and prescribing the books and records to be kept therein and the reports to be made thereon to the board,~~

~~(b)):~~

(1) Prescribing the duties of the employees of the board, and regulating their conduct in the discharge of their duties;

~~((c) governing the purchase of liquor by the state and the furnishing of liquor to stores established under this title,~~

~~(d) determining the classes, varieties, and brands of liquor to be kept for sale at any store;~~

~~(e) prescribing, subject to RCW 66.16.080, the hours during which the state liquor stores shall be kept open for the sale of liquor;~~

~~(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each variety of liquor kept for sale under this title;~~

~~(g))~~ (2) Prescribing an official seal and official labels and stamps and determining the manner in which they ~~((shall))~~ must be attached to every package of liquor sold or sealed under this title, including the prescribing of different official seals or different official labels for different classes of liquor;

~~((h) providing for the payment by the board in whole or in part of the carrying charges on liquor shipped by freight or express;~~

~~(i))~~ (3) Prescribing forms to be used for purposes of this title or the regulations, and the terms and conditions to be contained in permits and licenses issued under this title, and the qualifications for receiving a permit or license issued under this title, including a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board ~~((shall))~~ must require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

~~((j))~~ (4) Prescribing the fees payable in respect of permits and licenses issued under this title for which no fees are prescribed in this title, and prescribing the fees for anything done or permitted to be done under the regulations;

~~((k))~~ (5) Prescribing the kinds and quantities of liquor which may be kept on hand by the holder of a special permit for the purposes named in the permit, regulating the manner in which the same ~~((shall be))~~ is kept and disposed of, and providing for the inspection of the same at any time at the instance of the board;

~~((1))~~ (6) Regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;

~~((m))~~ (7) Prescribing the records of purchases or sales of liquor kept by the holders of licenses, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

~~((a))~~ (8) Prescribing the kinds and quantities of liquor for which a prescription may be given, and the number of prescriptions which may be given to the same patient within a stated period;

~~((e))~~ (9) Prescribing the manner of giving and serving notices required by this title or the regulations, where not otherwise provided for in this title;

~~((p))~~ (10) Regulating premises in which liquor is kept for export from the state, or from which liquor is exported, prescribing the books and records to be kept therein and the reports to be made thereon to the board, and providing for the inspection of the premises and the books, records and the liquor so kept;

~~((q))~~ (11) Prescribing the conditions and qualifications requisite for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, prescribing the manner of licensing clubs in any municipality or other locality, and providing for the inspection of clubs;

~~((r))~~ (12) Prescribing the conditions, accommodations, and qualifications requisite for the obtaining of licenses to sell beer ~~((and))~~, wines, and spirits, and regulating the sale of beer ~~((and))~~, wines, and spirits thereunder;

~~((s))~~ (13) Specifying and regulating the time and periods when, and the manner, methods and means by which manufacturers ~~((shall))~~ must deliver liquor within the state; and the time and periods when, and the manner, methods and means by which liquor may lawfully be conveyed or carried within the state;

~~((t))~~ (14) Providing for the making of returns by brewers of their sales of beer shipped within the state, or from the state, showing the gross amount of such sales and providing for the inspection of brewers' books and records, and for the checking of the accuracy of any such returns;

~~((w))~~ (15) Providing for the making of returns by the wholesalers of beer whose breweries are located beyond the boundaries of the state;

~~((w))~~ (16) Providing for the making of returns by any other liquor manufacturers, showing the gross amount of liquor produced or purchased, the amount sold within and exported from the state, and to whom so sold or exported, and providing for the inspection of the premises of any such liquor manufacturers, their books and records, and for the checking of any such return;

~~((w))~~ (17) Providing for the giving of fidelity bonds by any or all of the employees of the board(~~(- PROVIDED, That)~~). However, the premiums therefor ~~((shall))~~ must be paid by the board;

~~((w))~~ (18) Providing for the shipment (~~(by mail or common carrier)~~) of liquor to any person holding a permit and residing in any unit which has, by election pursuant to this title, prohibited the sale of liquor therein;

~~((w))~~ (19) Prescribing methods of manufacture, conditions of sanitation, standards of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled, or handled by licensees and the board; and conducting from time to time, in the interest of the public health and general welfare, scientific studies and research relating to alcoholic beverages and the use and effect thereof;

~~((w))~~ (20) Seizing, confiscating and destroying all alcoholic beverages manufactured, sold or offered for sale within this state which do not conform in all respects to the standards prescribed by this title or the regulations of the board(~~(- PROVIDED,)~~). However, nothing herein contained ~~((shall))~~ may be construed as authorizing the

liquor board to prescribe, alter, limit or in any way change the present law as to the quantity or percentage of alcohol used in the manufacturing of wine or other alcoholic beverages.

Sec. 205. RCW 66.24.145 and 2010 c 290 s 2 are each amended to read as follows:

(1) Any craft distillery may sell spirits of its own production for consumption off the premises, up to two liters per person per day. (~~Spirits sold under this subsection must be purchased from the board and sold at the retail price established by the board.~~) A craft distillery selling spirits under this subsection must comply with the applicable laws and rules relating to retailers.

(2) Any craft distillery may contract distill spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export.

(3) Any craft distillery licensed under this section may provide, free of charge, one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery. The maximum total per person per day is two ounces. Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit. (~~Spirits used for samples must be purchased from the board.~~)

(4) The board (~~shall~~) must adopt rules to implement the alcohol server permit requirement and may adopt additional rules to implement this section.

(5) Distilling is an agricultural practice.

NEW SECTION. Sec. 206. A new section is added to chapter 66.24 RCW to read as follows:

Any distiller licensed under this title may act as a retailer and/or distributor to retailers selling for consumption on or off the

licensed premises of spirits of its own production, and any manufacturer, importer, or bottler of spirits holding a certificate of approval may act as a distributor of spirits it is entitled to import into the state under such certificate. The board must by rule provide for issuance of certificates of approval to spirits suppliers. An industry member operating as a distributor and/or retailer under this section must comply with the applicable laws and rules relating to distributors and/or retailers, except that an industry member operating as a distributor under this section may maintain a warehouse off the distillery premises for the distribution of spirits of its own production to spirits retailers within the state, if the warehouse is within the United States and has been approved by the board.

Sec. 207. RCW 66.24.160 and 1981 1st ex.s. c 5 s 30 are each amended to read as follows:

A ~~((Liquor))~~ spirits importer's license may be issued to any qualified person, firm or corporation, entitling the holder thereof to import into the state any liquor other than beer or wine; to store the same within the state, and to sell and export the same from the state; fee six hundred dollars per annum. Such ~~((Liquor))~~ spirits importer's license ~~((shall be))~~ is subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board, and ~~((shall be))~~ is issued only upon such terms and conditions as may be imposed by the board. ~~((No liquor importer's license shall be required in sales to the Washington state liquor control board.))~~

Sec. 208. RCW 66.32.010 and 1955 c 39 s 3 are each amended to read as follows:

~~((Except as permitted by))~~ The board may, ~~((no liquor shall be kept or had by any person within this state unless the package in which the liquor was contained had, while containing that liquor, been))~~ to the

extent required to control unlawful diversion of liquor from authorized channels of distribution, require that packages of liquor transported within the state be sealed with ((the)) such official seal as may be adopted by the board, except in the case of:

(1) ~~((Liquor imported by the board; or
---(2))~~) Liquor manufactured in the state ~~((for sale to the board or
for export))~~; or

~~((3 Beer))~~ (2) Liquor purchased within the state or for shipment to a consumer within the state in accordance with the provisions of law; or

~~((4))~~ (3) Wine or beer exempted in RCW 66.12.010.

Sec. 209. RCW 66.44.120 and 2011 c 96 s 46 are each amended to read as follows:

(1) No person other than an employee of the board ~~((shall))~~ may keep or have in his or her possession any official seal ~~((prescribed))~~ adopted by the board under this title, unless the same is attached to a package ((which has been purchased from a liquor store or contract liquor store)) in accordance with the law; nor ((shall)) may any person keep or have in his or her possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed, or otherwise marked.

(2) (a) Except as provided in (b) of this subsection, every person who willfully violates this section is guilty of a gross misdemeanor and ~~((shall be))~~ is liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine, and for a second offense, to imprisonment in the county jail for

not less than six months nor more than three hundred sixty-four days, without the option of the payment of a fine.

(b) A third or subsequent offense is a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than two years.

Sec. 210. RCW 66.44.150 and 1955 c 289 s 5 are each amended to read as follows:

If any person in this state buys alcoholic beverages from any person other than ~~((the board, a state liquor store, or some))~~ a person authorized by the board to sell ~~((them, he shall be))~~ alcoholic beverages, he or she is guilty of a misdemeanor.

Sec. 211. RCW 66.44.340 and 1999 c 281 s 11 are each amended to read as follows:

(1) Employers holding grocery store or beer and/or wine specialty shop licenses exclusively are permitted to allow their employees, between the ages of eighteen and twenty-one years, to sell, stock, and handle ~~((beer or wine))~~ liquor in, on or about any establishment holding a ~~((grocery store or beer and/or wine specialty shop))~~ license ~~((exclusively. PROVIDED, That))~~ to sell such liquor, if:

(a) There is an adult twenty-one years of age or older on duty supervising the sale of liquor at the licensed premises ~~((PROVIDED, That))~~; and

(b) In the case of spirits, there are at least two adults twenty-one years of age or older on duty supervising the sale of spirits at the licensed premises.

(2) Employees under twenty-one years of age may make deliveries of beer and/or wine purchased from licensees holding grocery store or beer and/or wine specialty shop licenses exclusively, when delivery is made

to cars of customers adjacent to such licensed premises but only, however, when the underage employee is accompanied by the purchaser.

Sec. 212. RCW 19.126.010 and 2003 c 59 s 1 are each amended to read as follows:

(1) The legislature recognizes that both suppliers and wholesale distributors of malt beverages and spirits are interested in the goal of best serving the public interest through the fair, efficient, and competitive distribution of such beverages. The legislature encourages them to achieve this goal by:

(a) Assuring the wholesale distributor's freedom to manage the business enterprise, including the wholesale distributor's right to independently establish its selling prices; and

(b) Assuring the supplier and the public of service from wholesale distributors who will devote their best competitive efforts and resources to sales and distribution of the supplier's products which the wholesale distributor has been granted the right to sell and distribute.

(2) This chapter governs the relationship between suppliers of malt beverages and spirits and their wholesale distributors to the full extent consistent with the Constitution and laws of this state and of the United States.

Sec. 213. RCW 19.126.020 and 2009 c 155 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreement of distributorship" means any contract, agreement, commercial relationship, license, association, or any other arrangement, for a definite or indefinite period, between a supplier and distributor.

(2) "Authorized representative" has the same meaning as "authorized representative" as defined in RCW 66.04.010.

(3) "Brand" means any word, name, group of letters, symbol, or combination thereof, including the name of the distiller or brewer if the distiller's or brewer's name is also a significant part of the product name, adopted and used by a supplier to identify ((a)) specific spirits or a specific malt beverage product and to distinguish that product from other spirits or malt beverages produced by that supplier or other suppliers.

(4) "Distributor" means any person, including but not limited to a component of a supplier's distribution system constituted as an independent business, importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any spirits or malt beverages for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is conducted under the terms of any agreement with a distiller or malt beverage manufacturer.

(5) "Importer" means any distributor importing spirits or beer into this state for sale to retailer accounts or for sale to other distributors designated as "subjobbers" for resale.

(6) "Malt beverage manufacturer" means every brewer, fermenter, processor, bottler, or packager of malt beverages located within or outside this state, or any other person, whether located within or outside this state, who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the state of Washington.

(7) "Person" means any natural person, corporation, partnership, trust, agency, or other entity, as well as any individual officers, directors, or other persons in active control of the activities of such entity.

(8) "Spirits manufacturer" means every distiller, processor, bottler, or packager of spirits located within or outside this state, or any other person, whether located within or outside this state, who enters into an agreement of distributorship for the resale of spirits in this state with any wholesale distributor doing business in the state of Washington.

(9) "Successor distributor" means any distributor who enters into an agreement, whether oral or written, to distribute a brand of spirits or malt beverages after the supplier with whom such agreement is made or the person from whom that supplier acquired the right to manufacture or distribute the brand has terminated, canceled, or failed to renew an agreement of distributorship, whether oral or written, with another distributor to distribute that same brand of spirits or malt beverages.

~~((9))~~ (10) "Supplier" means any spirits or malt beverage manufacturer or importer who enters into or is a party to any agreement of distributorship with a wholesale distributor. "Supplier" does not include: (a) Any ~~((domestic))~~ distiller licensed under RCW 66.24.140 or 66.24.145 and producing less than sixty thousand proof gallons of spirits annually or any brewery or microbrewery licensed under RCW 66.24.240 and producing less than two hundred thousand barrels of malt liquor annually; (b) any brewer or manufacturer of malt liquor producing less than two hundred thousand barrels of malt liquor annually and holding a certificate of approval issued under RCW 66.24.270; or (c) any authorized representative of distillers or malt liquor manufacturers who holds an appointment from one or more distillers or malt liquor manufacturers which, in the aggregate, produce less than two hundred thousand barrels of malt liquor or sixty thousand proof gallons of spirits.

~~((10))~~ (11) "Terminated distribution rights" means distribution rights with respect to a brand of malt beverages which are lost by a

terminated distributor as a result of termination, cancellation, or nonrenewal of an agreement of distributorship for that brand.

~~((411))~~ (12) "Terminated distributor" means a distributor whose agreement of distributorship with respect to a brand of spirits or malt beverages, whether oral or written, has been terminated, canceled, or not renewed.

Sec. 214. RCW 19.126.040 and 2009 c 155 s 3 are each amended to read as follows:

Wholesale distributors are entitled to the following protections which are deemed to be incorporated into every agreement of distributorship:

(1) Agreements between wholesale distributors and suppliers ~~((shall))~~ must be in writing;

(2) A supplier ~~((shall))~~ must give the wholesale distributor at least sixty days prior written notice of the supplier's intent to cancel or otherwise terminate the agreement, unless such termination is based on a reason set forth in RCW 19.126.030(5) or results from a supplier acquiring the right to manufacture or distribute a particular brand and electing to have that brand handled by a different distributor. The notice ~~((shall))~~ must state all the reasons for the intended termination or cancellation. Upon receipt of notice, the wholesale distributor ~~((shall-have))~~ has sixty days in which to rectify any claimed deficiency. If the deficiency is rectified within this sixty-day period, the proposed termination or cancellation is null and void and without legal effect;

(3) The wholesale distributor may sell or transfer its business, or any portion thereof, including the agreement, to successors in interest upon prior approval of the transfer by the supplier. No supplier may unreasonably withhold or delay its approval of any transfer, including wholesaler's rights and obligations under the terms of the agreement,

if the person or persons to be substituted meet reasonable standards imposed by the supplier;

(4) If an agreement of distributorship is terminated, canceled, or not renewed for any reason other than for cause, failure to live up to the terms and conditions of the agreement, or a reason set forth in RCW 19.126.030(5), the wholesale distributor is entitled to compensation from the successor distributor for the laid-in cost of inventory and for the fair market value of the terminated distribution rights. For purposes of this section, termination, cancellation, or nonrenewal of a distributor's right to distribute a particular brand constitutes termination, cancellation, or nonrenewal of an agreement of distributorship whether or not the distributor retains the right to continue distribution of other brands for the supplier. In the case of terminated distribution rights resulting from a supplier acquiring the right to manufacture or distribute a particular brand and electing to have that brand handled by a different distributor, the affected distribution rights will not transfer until such time as the compensation to be paid to the terminated distributor has been finally determined by agreement or arbitration;

(5) When a terminated distributor is entitled to compensation under subsection (4) of this section, a successor distributor must compensate the terminated distributor for the fair market value of the terminated distributor's rights to distribute the brand, less any amount paid to the terminated distributor by a supplier or other person with respect to the terminated distribution rights for the brand. If the terminated distributor's distribution rights to a brand of spirits or malt beverages are divided among two or more successor distributors, each successor distributor must compensate the terminated distributor for the fair market value of the distribution rights assumed by that successor distributor, less any amount paid to the terminated distributor by a supplier or other person with respect to the

terminated distribution rights assumed by the successor distributor. A terminated distributor may not receive total compensation under this subsection that exceeds the fair market value of the terminated distributor's distribution rights with respect to the affected brand. Nothing in this section (~~shall~~) may be construed to require any supplier or other third person to make any payment to a terminated distributor;

(6) For purposes of this section, the "fair market value" of distribution rights as to a particular brand means the amount that a willing buyer would pay and a willing seller would accept for such distribution rights when neither is acting under compulsion and both have knowledge of all facts material to the transaction. "Fair market value" is determined as of the date on which the distribution rights are to be transferred in accordance with subsection (4) of this section;

(7) In the event the terminated distributor and the successor distributor do not agree on the fair market value of the affected distribution rights within thirty days after the terminated distributor is given notice of termination, the matter must be submitted to binding arbitration. Unless the parties agree otherwise, such arbitration must be conducted in accordance with the American arbitration association commercial arbitration rules with each party to bear its own costs and attorneys' fees;

(8) Unless the parties otherwise agree, or the arbitrator for good cause shown orders otherwise, an arbitration conducted pursuant to subsection (7) of this section must proceed as follows: (a) The notice of intent to arbitrate must be served within forty days after the terminated distributor receives notice of terminated distribution rights; (b) the arbitration must be conducted within ninety days after service of the notice of intent to arbitrate; and (c) the arbitrator or

arbitrators must issue an order within thirty days after completion of the arbitration;

(9) In the event of a material change in the terms of an agreement of distribution, the revised agreement must be considered a new agreement for purposes of determining the law applicable to the agreement after the date of the material change, whether or not the agreement of distribution is or purports to be a continuing agreement and without regard to the process by which the material change is effected.

NEW SECTION. Sec. 215. The following acts or parts of acts are each repealed:

(1) RCW 66.08.070 (Purchase of liquor by board--Consignment not prohibited--Warranty or affirmation not required for wine or malt purchases) and 1985 c 226 s 2, 1973 1st ex.s. c 209 s 1, & 1933 ex.s. c 62 s 67;

(2) RCW 66.08.075 (Officer, employee not to represent manufacturer, wholesaler in sale to board) and 1937 c 217 s 5;

(3) RCW 66.08.160 (Acquisition of warehouse authorized) and 1947 c 134 s 1;

(4) RCW 66.08.165 (Strategies to improve operational efficiency and revenue) and 2005 c 231 s 1;

(5) RCW 66.08.166 (Sunday sales authorized--Store selection and other requirements) and 2005 c 231 s 2;

(6) RCW 66.08.167 (Sunday sales--Store selection) and 2005 c 231 s 4;

(7) RCW 66.08.220 (Liquor revolving fund--Separate account--Distribution) and 2011 c 325 s 8, 2009 c 271 s 4, 2007 c 370 s 15, 1999 c 281 s 2, & 1949 c 5 s 11;

(8) RCW 66.08.235 (Liquor control board construction and maintenance account) and 2011 c 5 s 918, 2005 c 151 s 4, 2002 c 371 s 918, & 1997 c 75 s 1;

(9) RCW 66.16.010 (Board may establish--Price standards--Prices in special instances) and 2005 c 518 s 935, 2003 1st sp.s. c 25 s 928, 1939 c 172 s 10, 1937 c 62 s 1, & 1933 ex.s. c 62 s 4;

(10) RCW 66.16.040 (Sales of liquor by employees--Identification cards--Permit holders--Sales for cash--Exception) and 2005 c 206 s 1, 2005 c 151 s 5, 2005 c 102 s 1, 2004 c 61 s 1, 1996 c 291 s 1, 1995 c 16 s 1, 1981 1st ex.s. c 5 s 8, 1979 c 158 s 217, 1973 1st ex.s. c 209 s 3, 1971 ex.s. c 15 s 1, 1959 c 111 s 1, & 1933 ex.s. c 62 s 7;

(11) RCW 66.16.041 (Credit and debit card purchases--Rules--Provision, installation, maintenance of equipment by board--Consideration of offsetting liquor revolving fund balance reduction) and 2011 1st sp.s. c (ESSB 5921) s 16, 2005 c 151 s 6, 2004 c 63 s 2, 1998 c 265 s 3, 1997 c 148 s 2, & 1996 c 291 s 2;

(12) RCW 66.16.050 (Sale of beer and wine to person licensed to sell) and 1933 ex.s. c 62 s 8;

(13) RCW 66.16.060 (Sealed packages may be required, exception) and 1943 c 216 s 1 & 1933 ex.s. c 62 s 9;

(14) RCW 66.16.070 (Liquor cannot be opened or consumed on store premises) and 2011 c 186 s 3 & 1933 ex.s. c 62 s 10;

(15) RCW 66.16.100 (Fortified wine sales) and 1997 c 321 s 42 & 1987 c 386 s 5;

(16) RCW 66.16.110 (Birth defects from alcohol--Warning required) and 1993 c 422 s 2;

(17) RCW 66.16.120 (Employees working on Sabbath) and 2005 c 231 s 5; and

(18) RCW 66.28.045 (Furnishing samples to board--Standards for accountability--Regulations) and 1975 1st ex.s. c 173 s 9.

NEW SECTION. Sec. 216. The following acts or parts of acts are each repealed:

(1) ESSB 5942 ss 1 through 6, as later assigned a session law number and/or codified;

(2) ESSB 5942 ss 7 through 10, as later assigned a session law number; and

(3) Any act or part of act relating to the warehousing and distribution of liquor, including the lease of the state's liquor warehousing and distribution facilities, adopted subsequent to May 25, 2011 in any 2011 special session.

PART III

MISCELLANEOUS PROVISIONS

NEW SECTION. Sec. 301. This act does not increase any tax, create any new tax, or eliminate any tax. Section 106 of this act applies to spirits licensees upon the effective date of this section, but all taxes presently imposed by RCW 82.08.150 on sales of spirits by or on behalf of the liquor control board continue to apply so long as the liquor control board makes any such sales.

NEW SECTION. Sec. 302. A new section is added to chapter 56.24 RCW to read as follows:

The distribution of spirits license fees under sections 103 and 105 of this act through the liquor revolving fund to border areas, counties, cities, towns, and the municipal research center must be made in a manner that provides that each category of recipients receive, in the aggregate, no less than it received from the liquor revolving fund during comparable periods prior to the effective date of this section. An additional distribution of ten million dollars per year from the spirits license fees must be provided to border areas, counties,

cities, and towns through the liquor revolving fund for the purpose of enhancing public safety programs.

NEW SECTION. Sec. 303. The department of revenue must develop rules and procedures to address claims that this act unconstitutionally impairs any contract with the state and to provide a means for reasonable compensation of claims it finds valid, funded first from revenues based on spirits licensing and sale under this act.

NEW SECTION. Sec. 304. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of this act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 305. This act takes effect upon approval by the voters. Section 216, subsections (1) and (2) of this act take effect if Engrossed Substitute House Bill No. 5942 is enacted by the legislature in 2011 and the bill, or any portion of it, becomes law. Section 216, subsection (3) of this act takes effect if any act or part of an act relating to the warehousing and distribution of liquor, including the lease of the state's liquor warehousing and distribution facilities, is adopted subsequent to May 25, 2011 in any 2011 special session.

B

Measures Legislative Judicial

Search

State Measures
 Initiative Measure 1125
 Concerning state expenditures on transportation.
 Initiative Measure 1163
 Concerning long-term care workers and services for elderly and disabled people.
 Initiative Measure 1183
 Concerning liquor: beer, wine, and spirits (hard liquor).
 Senate Joint Resolution 8205
 Concerning the length of time a voter must reside in Washington to vote for president and vice president.
 Senate Joint Resolution 8206
 Concerning the budget stabilization account maintained in the state treasury.

Initiative Measure 1183

Ballot Title

Full Text

Initiative Measure No. 1183 concerns liquor: beer, wine, and spirits (hard liquor).

This measure would close state liquor stores and sell their assets; license private parties to sell and distribute spirits; set license fees based on sales; regulate licensees; and change regulation of wine distribution.

Should this measure be enacted into law?

- Yes
- No

The Official Ballot Title was written by the Attorney General as required by law and revised by the court. The Explanatory Statement was written by the Attorney General as required by law. The Fiscal Impact Statement was written by the Office of Financial Management as required by law. The Secretary of State is not responsible for the content of arguments or statements (WAC 434-881-180).

Explanatory Statement

The Law as It Presently Exists

In Washington, the state sells and controls the distribution and sale of "spirits." The term "spirits" refers to alcoholic beverages also called "hard liquor" (whiskies, vodka, gin, etc.). Spirits include beverages containing distilled alcohol and wines exceeding twenty-four percent alcohol by volume. Spirits do not include lower alcohol content beverages such as flavored malt beverages, beer, or wines containing less than twenty-four percent alcohol by volume.

In Washington, spirits are sold at retail at state-run liquor stores and at "contract liquor stores." Contract liquor stores are private businesses that sell spirits and other liquor under a contract with the state. Washington has approximately 165 state liquor stores and 160 contract liquor stores.

The Washington State Liquor Control Board ("the Board") operates the state liquor stores and oversees the contract liquor stores. Among its responsibilities, the Board regulates liquor advertising in the state. The Board, however, cannot advertise liquor sales.

The Board sets the price for spirits sold at state-run and contract liquor stores based on the wholesale cost of the spirits, taxes, and a markup authorized by statute. The Board also collects the taxes imposed on the retail sale of spirits, and collects license fees and penalties. The proceeds received from the sale of spirits, the tax revenues on spirits, and license fees are distributed to cities, counties, and the state. Certain revenues are dedicated to funding programs addressing alcohol and drug abuse treatment and prevention.

In Washington, manufacturers and suppliers of spirits may only sell spirits to the Board. The Board acts as the sole distributor of spirits sold in the state liquor stores and contract liquor stores, and sold by restaurants and certain other licensed sellers. Under a law effective June 15, 2011, the state must examine whether to lease the state's liquor distribution facilities to a private party, and whether such a lease would produce better financial returns for the state.

Existing law allows private parties to sell or distribute alcoholic beverages that are not spirits, such as wine or beer. Wine and beer sellers are licensed by the state. There are different licenses for each of "three tiers" of the wine and beer business: (1) manufacturing; (2) distribution; and (3) retail sales. Existing law regulates the financial relationships and business transactions allowed between manufacturers, distributors, and retailers. While there are some exceptions, retailers are allowed to purchase wine or beer only from distributors. Similarly, distributors are allowed to purchase only from manufacturers, with certain exceptions.

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EXHIBIT B

Existing law requires wine and beer manufacturers and distributors to maintain published price lists and offer the same price to every buyer. This requirement of uniform pricing prevents manufacturers or distributors from selling wine or beer at discounted prices to select customers, such as a quantity discount or other business reason for a discount. Existing law also requires wine and beer retailers to receive all wine and beer at their retail store and to not take delivery or store wine or beer at a separate warehouse location.

The Effect of the Proposed Measure, if Approved

Initiative 1183 allows private parties to sell and distribute spirits, and alters the Liquor Control Board's powers and duties. It eliminates the Board's power to operate state liquor stores, to supervise the contract liquor stores, to distribute liquor, and to set the prices of spirits. Initiative 1183 directs the Board to close state liquor stores by June 1, 2012. It directs the Board to sell assets connected with liquor sales and distribution, and to sell at auction the right to operate a private liquor store at the location of any existing state liquor store. Initiative 1183 repeals a 2011 law that directed the state to examine the financial benefit of leasing the state liquor distribution facilities to a private party.

Under Initiative 1183, qualifying private parties may obtain licenses to distribute spirits or to sell spirits at retail. A retail spirits license allows the retailer to sell spirits directly to consumers, and allows the sale of up to 24 liters of spirits for resale at a licensed premise, such as to a restaurant. Initiative 1183 allows private distributors to start selling spirits on March 1, 2012, and private retail spirits sales to start on June 1, 2012.

To obtain a retail spirits license, a store must have at least 10,000 square feet of enclosed retail space in a single structure. However, Initiative 1183 also allows a retail spirits license for a store at the location of a former state liquor store or contract liquor store, even if the store is smaller than 10,000 square feet. It also allows smaller stores where there are no 10,000 square foot licensed spirits stores in the area. Initiative 1183 requires retail stores to participate in training their employees to prevent sales of alcohol to minors and inebriated persons.

Initiative 1183 allows local governments and the public to provide input before issuance of a license to sell spirits. Initiative 1183 preserves local government power to zone and regulate the location of liquor stores.

Initiative 1183 would not change the existing taxes on spirits. Initiative 1183 would require spirits retailers and distributors to pay license fees to the state. Retail stores would pay a fee of seven percent of gross revenues from spirits sales under the license, plus an annual \$166 fee. Spirits distributors would pay an annual \$1,320 fee, plus a percentage of gross revenues from spirits sales under the license. During the first two years of a spirits distributor license, the distributor license fee would be ten percent of the distributor's gross spirits sales. After two years, the spirits distributor fee would drop to five percent of the distributor's gross spirits sales.

Initiative 1183 also requires that all persons holding spirits distributor licenses must have together paid a total of one hundred fifty million dollars in spirits distributor license fees by March 31, 2013. If the total license fees received from all distributor license holders is less than one hundred fifty million dollars, the Board must collect additional spirits distributor license fees to make up the difference. This additional fee would be allocated among the persons who held a spirits distributor license at any time before March 31, 2013.

In addition to existing laws controlling the distribution of moneys received by the Board, a portion of fees from retail spirits licenses and spirits distributor licenses would be distributed to border areas, counties, and cities to enhance public safety programs.

Initiative 1183 also changes laws that regulate the retailers, distributors, and manufacturers of wine. Initiative 1183 eliminates the requirement that distributors and manufacturers of wine sell at a uniform price, which would allow the sale of wine at different prices based on business reasons. Spirits could also be sold to different distributors and retailers at different prices. Beer manufacturers and distributors, however, would continue to be regulated by existing laws requiring uniform pricing. Under Initiative 1183, retailers could accept delivery of wine at a retail store or at a warehouse location. Under Initiative 1183, a store licensed to sell wine at retail may also obtain an endorsement allowing the store to sell to license holders who sell wine for consumption on the premise. For example, this would allow the store to sell wine to a restaurant that resells the wine by the glass or bottle to its customers.

Fiscal Impact Statement

The fiscal impact cannot be precisely estimated because the private market will determine bottle cost and markup for spirits. Using a range of assumptions, total State General Fund revenues increase an estimated \$216 million to \$253 million and total local revenues increase an estimated \$186 million to \$227 million, after Liquor Control Board one-time and ongoing expenses, over six

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fiscal years. A one-time net state revenue gain of \$28.4 million is estimated from sale of the state liquor distribution center. One-time debt service costs are \$5.3 million. Ongoing new state costs are estimated at \$158,600 over six fiscal years.

General Assumptions

- The Initiative uses the term "spirits" to describe alcoholic beverages that are distilled instead of fermented. For purposes of the fiscal impact statement, the term "liquor" is used for "spirits" to maintain consistent terminology. Beer and wine are not spirits or liquor.
- Estimates are described using the state's fiscal year (FY) of July 1 through June 30.
- New liquor distributor licenses and new liquor retailer licenses are available beginning Feb. 8, 2012. There is no limit on the number of licenses that can be issued.
- Liquor distributor licensees can begin making sales of liquor March 1, 2012. Liquor retailer licensees can begin making sales of liquor June 1, 2012.
- By June 15, 2012, the state will no longer operate the state liquor distribution center or state liquor stores.
- Estimates assume 1,428 licensed liquor retailers based on research from implementation of Substitute Senate Bill 6328 that authorized beer and wine tasting at grocery stores with a fully enclosed retail area of 8,000 square feet and the current number of state-operated and contract-operated liquor stores (328). The number of licenses is assumed to be constant for each fiscal year.
- Estimates assume 184 licensed liquor distributors, based on the number of current Washington State Liquor Control Board (LCB) licensed beer and wine distributors, wine distributors, distilleries and liquor importers. The number of licenses is assumed to be constant for each fiscal year.
- Estimates of impacts are measured against the June 2011 LCB revenue forecast (forecast).
- Retail liquor liter sales are estimated to grow 5 percent from increased access to liquor. This assumption is based on an academic study and growth experienced in Alberta, Canada, after converting from state-operated liquor stores to private liquor stores. A decrease in liquor liter sales is estimated using the forecast price elasticity assumption of 0.49 percent. Price elasticity is a method used to calculate the change in consumption of a good when price increases or decreases. For every 1 percent increase/decrease in price, liquor liter sales increase/decrease 0.49 percent. Growth from increased access and price elasticity is in addition to normal 3 percent growth in liquor liter sales assumed in the forecast.

State and Local Revenues

Actual fiscal impacts depend on liquor bottle cost in the private market and the markup applied by both private liquor distributors and retailers. Therefore, there is a wide range of potential fiscal impacts.

To estimate gains or losses to the state and local governments, the fiscal impact statement used a model developed for prior initiatives, adjusted to reflect the content of this initiative. The model measures the difference between LCB forecasted liquor revenues and the sum of the revenue gains and losses generated under the initiative using the set of assumptions set forth below.

Total Estimated State General Fund Revenues

Fiscal Year	2012	2013	2014	2015	2016	2017	TOTAL
Low Markup	\$5,404,000	\$51,373,000	\$52,007,000	\$36,083,000	\$35,689,000	\$35,244,000	\$215,780,000
High Markup	\$6,777,000	\$59,054,000	\$58,372,000	\$42,164,000	\$42,204,000	\$42,260,000	\$252,831,000

Total Estimated Local Government Revenues

Fiscal Year	2012	2013	2014	2015	2016	2017	TOTAL
Low Markup	\$6,012,000	\$56,813,000	\$42,500,000	\$27,873,000	\$26,757,000	\$25,492,000	\$185,647,000

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High Markup	\$8,361,000	\$63,034,000	\$50,741,000	\$35,770,000	\$34,949,000	\$34,098,000	\$226,953,000
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State and Local Government Revenue Assumptions

- LCB's forecasted average bottle price for a liter of liquor (before taxes and markup) is used to estimate both state and private market bottle price.
- State's markup on liquor is 51.9 percent during FY 2012 and FY 2013, and 39.2 percent thereafter.
- Total private distributor/retailer markup for liquor sold in stores is set at a low of 52 percent and a high of 72 percent from March 1, 2012, to March 1, 2014. Thereafter, the private market markup is assumed to be a low of 47 percent and a high of 67 percent. The selected range was based on the following sources:
 - o Low markup — 25 percent — is based on U.S. Internal Revenue Service data (sales revenue minus cost of goods) of retail food, beverage and liquor stores throughout the United States.
 - o High markup — 45 percent — is the total liquor markup contained in the Washington State Auditor review and is based on information from the Distilled Spirits Council of the United States.
 - o To these percentages, 27 percent is added through Feb. 28, 2014, and 22 percent is added thereafter. These percentages represent the total amount of new liquor distributor and retailer license fees under the initiative. While individual distributor and retailer actions will vary, academic research supports an assumption that, in the aggregate statewide, the value of the new liquor distributor and retailer license fees will be passed on to the consumer in the private market markup.

Markup Assumptions

Fiscal Year	2012	2013	July 1, 2013 to Feb. 28, 2014	March 1, 2014 to June 30, 2014	2015	2016	2017
State Markup	51.90%	51.90%	39.20%	39.20%	39.20%	39.20%	39.20%
Low Markup	52%	52%	52%	47%	47%	47%	47%
High Markup	72%	72%	72%	67%	67%	67%	67%

- The initiative imposes a new liquor distributor license fee of 10 percent of total liquor revenues from March 1, 2012, to March 1, 2014; the fee decreases to 5 percent thereafter. The initiative imposes a new liquor retailer license fee of 17 percent of total liquor revenues beginning June 1, 2012.
- Based on inventory information from the Retail Owners Institute®, private liquor stores are estimated to maintain two months of liquor inventory. In contrast, state-operated liquor stores maintain 1.2 months of liquor inventory. Therefore, an additional 0.8 month of liquor liter sales to liquor retailers is assumed during FY 2012.
- If the new liquor distributor license fee totals less than \$150 million by March 31, 2013, these licensees must pay the difference between \$150 million and actual receipts by May 31, 2013. The model estimates that \$84 million to \$91 million will be paid by licensees during FY 2013 due to this requirement.
- The initiative sets a \$1,320 license fee for each liquor distribution location and a \$186 license fee for each liquor retailer license. Both fees are due at the time of license renewal.
- Liquor distributor licensees are assumed to be subject to the wholesaling business and occupation (B&O) tax. Liquor retailer licensees are assumed to be subject to the retailing B&O tax.
- Liquor liter taxes and liquor sales taxes are amended by the initiative, but these changes are assumed not to increase, create or eliminate any tax.
- Except for the loss of sales in state-operated liquor stores, estimates do not assume any change in pricing or volume of sales of beer and wine.

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- State-operated liquor stores sell Washington State Lottery products to the public. The estimate assumes 25 percent of these sales will be lost and remaining sales will occur in other outlets selling Washington State Lottery products. This revenue loss is estimated to be \$1.8 million over six years.
- Estimates of sales by current restaurant licensees who sell liquor at retail are limited to changes from price elasticity and the loss of the state's 15 percent quantity price discount to these licensees.
- Estimates do not assume any change in sales by liquor stores operated on military bases. Such sales are assumed not to be subject to liquor liter taxes, liquor sales taxes or B&O tax.
- Estimates do not assume any change in sales by liquor stores operated by tribes. Such sales are assumed to be subject to liquor liter taxes and liquor sales taxes based on current agreements between tribes and LCB, but are not subject to B&O tax.
- No additional change is assumed for tax avoidance/non-compliance by consumers or migration of sales in and out of state by consumers. These items are assumed in the forecast price elasticity assumption.
- Revenue from the state markup used to pay for the state liquor distribution center and state liquor store costs are netted to zero. The initiative eliminates both the revenue (markup) and the costs (state liquor distribution center and state liquor stores), which results in no additional revenue to the state.
- The initiative requires new liquor distributor and retailer fees to be deposited into the Liquor Revolving Fund. The Liquor Revolving Fund is distributed by statute in the following order:
 1. Payment of LCB administrative costs;
 2. Distributions to state accounts for specific purposes (such as drug and alcohol research at the University of Washington and Washington State University);
 3. Border areas (cities, towns and counties adjacent to the Canadian border); and
 4. The remainder after these distributions: a) 50 percent to the State General Fund; b) 10 percent to counties; and c) 40 percent to cities and towns.

Therefore, the model first reduces the Liquor Revolving Fund by LCB costs, one-time and ongoing, to determine total revenues distributed to the State General Fund and local governments. Other revenues (beer taxes, wine taxes, penalties, etc.) deposited into the Liquor Revolving Fund are assumed to be unaffected by the initiative and continue to be shared between the state and local governments.

Specific Local Government Revenue Assumptions

- New liquor distributor and retailers license fees must be used to maintain, in the aggregate, Liquor Revolving Fund distributions to counties, cities, towns, border areas and the Municipal Research Service Center in an amount no less than the amount received in comparable periods. For purposes of the model, comparable period is measured by funds forecasted for calendar year 2011. The model estimates that local distributions will exceed the maintenance level required by the initiative each fiscal year.
- An additional \$10 million is also provided to counties, cities, towns and border areas.
- Approximately 38 cities and towns impose a local B&O tax. Using data from the Washington State Department of Revenue's 2008 Tax Reference Manual, total local B&O tax is approximately 10 percent of total state B&O tax. Assuming this ratio, \$3 million is estimated as new local B&O taxes from liquor sales over six fiscal years.
- Total local government revenues are the sum of the increased Liquor Revolving Fund distributions, the additional \$10 million and local B&O tax.

Specific State Asset Assumptions

The sale of the state liquor distribution center is estimated to generate a potential net \$28.4 million in revenue. Because the sale date cannot be precisely determined, this revenue is stated separately and excluded from the total State General Fund revenue estimates in the first table above. The value of the state liquor distribution center is estimated to be \$20.4 million, based on the King County Assessor's Office 2011 assessed value of the property. The sale of the equipment in the state liquor distribution center is estimated to be \$8 million, based on the 2010 Washington State Auditor review, which assumed the sale of \$16 million in assets would return about \$8 million. Costs to sell the state liquor distribution center are estimated to total \$1 million at the time of sale.

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The Initiative requires LCB to sell by public auction the right — at each state-owned store location — to operate a liquor store upon the premises without regard to the size of the premises if the applicant otherwise qualifies for a liquor retailer license. All state-operated liquor stores are leased and cannot be transferred or assigned. In addition, of the 166 state-operated liquor stores, 127 are located within one block of a grocery store. Because these factors (location, competition and lessor) will vary by state-operated liquor store and will affect the value of each operating right, revenue generated from the auction is indeterminate and not assumed in the model.

The Initiative would repeal Engrossed Substitute Senate Bill 5942 (ESSB 5942), which directed the Office of Financial Management to conduct a competitive process for the selection of a private sector entity to lease and modernize the state's liquor warehousing and distribution facilities. Under ESSB 5942, if a proposal is determined to be in the best interests of the state by the Office of Financial Management after consultation with LCB and an advisory board created through the legislation, LCB may contract with that private entity for the lease of the state's liquor warehousing and distribution facilities. Because it is not known if LCB will enter into a contract, no revenue is assumed in the model.

State and Local Expenditure Estimate Assumptions

Revenue gains will accrue to existing accounts, the largest being the State General Fund, which may be used for any governmental purpose as appropriated by the Legislature.

Washington State Lottery proceeds in excess of expenses are deposited into the State Opportunity Pathways Account to support programs in higher education and early learning. Due to the loss of some lottery product sales in state liquor stores, it is estimated that funds to this account will decrease \$1.8 million over six fiscal years.

Each county and city is required to spend 2 percent of its share of liquor revenues on alcohol and chemical dependency services, and these expenditures will increase. The additional \$10 million distributed to cities, towns, counties and border areas are for enhancing public safety programs. The remaining revenue can be used for any allowable local government purpose.

State and Local Cost Estimate Assumptions

The fiscal impact statement does not estimate state costs or state savings due to social impacts from approval of the Initiative. No costs are assumed for local governments.

Liquor Control Board Costs

Estimated one-time and ongoing LCB costs are assumed to be paid by the Liquor Revolving Fund. Therefore, payment of the following costs is reflected in the State General Fund revenue estimate.

LCB ongoing costs for licensing, enforcement and administration are estimated to increase by \$350,000 for new fee-collection costs and implementing the "responsible vendor program." No state costs from increased enforcement activities are assumed in the estimate.

Assuming a closure date of June 15, 2012, LCB will incur one-time state costs associated with managing the closure of the state liquor distribution center and state liquor stores. There will be additional one-time costs for issuing new licenses. These state costs are estimated to total \$28.7 million during FYs 2012 and 2013:

- Unemployment, sick leave and vacation buyout costs for state employees estimated at \$11.8 million.
- Information technology changes and staff to issue new licenses estimated at \$2.7 million.
- Staffing costs to coordinate the sale of existing inventory, termination of contract store leases, surplus of store fixtures and auction of state-operated store operating rights estimated at \$11 million.
- Final audits of each state and contract liquor store estimated at \$1.9 million.
- Project management and additional human resource staff estimated at \$1.3 million.

Department of Revenue Costs

The Washington State Department of Revenue will administer the collection of liquor excise tax from licensed liquor distributors and retailers. Costs include additional staff, information technology changes, rule-making and policy activities, taxpayer mailings and workshops, supplies and

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materials. Total one-time state costs are estimated to total \$120,100 during FY 2012. Ongoing costs are estimated to be \$38,500 each fiscal year beginning FY 2013.

State Indebtedness

There is \$5.3 million in debt service costs for a Certificate of Participation bond for the state liquor distribution center that is scheduled to be paid by Dec. 1, 2013. This one-time state cost is assumed in FY 2014.

Arguments For and Against

Argument For	Argument Against
<p>Initiative 1183 gets our state government out of the business of distributing and selling liquor</p>	<p>Last year more than one million Washingtonians voted "no" twice to big box stores and grocery chains selling liquor. Yet despite the clear message we sent, they're back again spending millions to push I-1183. What part of "no" don't they understand?</p>
<p>I-1183 ends Washington's outdated state liquor store monopoly and allows consumers to buy spirits at licensed retail stores, like consumers do in most other states. It allows a limited number of grocery and retail stores to get licenses to sell liquor, if approved by the Liquor Control Board, and prevents liquor sales at gas stations and convenience stores.</p>	<p>More Consumption, More Problems Alcohol already kills more kids than all other drugs combined. Yet 1183 allows more than four times as many liquor outlets. The Centers for Disease Control recently came out against privatization because it leads to a 48 percent or more increase in problem drinking. That means more underage drinking and crime, overburdening police and first responders.</p>
<p>1183 provides vitally needed new revenues for state and local services Distributors and stores approved for liquor licenses will pay a percentage of their sales as license fees, generating hundreds of millions of dollars in new revenues for state and local services like education, health care and public safety.</p>	<p>Mini-Mart Loophole 1183 is another flawed measure designed to benefit the big chains, not the public. It gives chains an unfair competitive advantage over smaller grocers, while a major loophole written into the measure will allow mini-marts to sell liquor across much of the state. State stores have one of the best enforcement rates in the country; groceries, gas stations and mini-marts sell to teenagers one time out of four.</p>
<p>1183 strengthens laws governing the sale of liquor 1183 doubles penalties for retailers who sell spirits to minors, ensures local input into which grocery and retail stores get liquor licenses, mandates new training programs and increases compliance requirements for retailers, and dedicates new revenues to increase funding for local police, fire, and emergency services statewide.</p>	<p>Higher Taxes on Consumers The sponsors of this measure say it increases government revenue. But they do it by creating a new 27 percent tax passed on to consumers. Ask yourself: when was the last time a big corporation spent millions, twice, to try and save us money?</p>
<p>1183 eliminates outdated wine regulations 1183 eliminates outdated regulations that currently restrict price competition and wholesale distribution of wine in Washington. This will help small Washington wineries and lead to better selections and more competitive wine prices for consumers.</p>	<p>Firefighters, first responders, and law enforcement leaders oppose 1183. It's too risky, and too high a price to pay for a little convenience. Vote no on 1183.</p>
<p>Yes on 1183 will create true competition in liquor and wine distribution and sales, strengthen liquor law enforcement, benefit Washington taxpayers and consumers, and generate vitally needed new revenues for state and local services.</p>	
<p>Rebuttal of Argument Against</p>	<p>Rebuttal of Argument For</p>

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The campaign against 1183 is funded by big national liquor distributors that profit from Washington's outdated liquor monopoly. Their claims are false and self-serving. 1183 specifically prevents liquor sales at gas stations and convenience stores, doubles penalties for selling spirits to minors and generates hundreds of millions in new revenues to schools, health care, police and emergency services *without raising taxes*. That's why community leaders, law enforcement officials and taxpayer advocates support yes on 1183.

The Liquor Control Board determined 1183 contains loopholes that enable mini-marts and gas stations to sell liquor. Local independent grocers oppose 1183 because it lifts the rules against them. And 1183 creates a new 27 percent hidden tax passed onto consumers, raising taxes to fund corporate profits. Four times the number of outlets is too much. 1183 is another flawed, risky initiative putting corporate profits over our safety. The responsible choice: Vote no 1183.

Argument Prepared By

Anthony Anton, President, Washington Restaurant Association; Eric Robertson, Former Captain, Washington State Patrol; Daniel J. Evans, Former Governor of Washington; Cherie Myers, Washington State Chair, Northwest Grocery Association; Bob Edwards, Former President, Association of Washington Cities; John Morgan, Winemaker/Board Member, Family Wineries of Washington State.

Contact: (800) 956-3460; info@YESon1183.com; www.YESon1183.com

Argument Prepared By

Jim Cooper, Washington Association for Substance Abuse and Violence Prevention; Alice Woldt, Co-Director, Faith Action Network; Kelly Fox, President, Washington State Council of Firefighters; Sharon Ness, RN, Acute Care Nurse; Craig Soucy, Emergency Medical Technician, Renton Fire and Emergency Services; Linda Thompson, Executive Director, Greater Spokane Substance Abuse Council.

Contact: (206) 436-6535; info@protectourcommunities.com; www.protectourcommunities.com

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**Washington State
Liquor Control Board**

Licensing and Regulation
PO Box 43098, 3000 Pacific Ave SE
Olympia WA 98504-3098
Phone – (360) 664-1600
Fax – (360) 753-2710

May 14, 2012

MAYOR OF BURLINGTON

Re: Application for a Spirits Retailer License

Applicant: HK INTERNATIONAL LLC
Principals: HAKAM SINGH; KULWANT KAUR; HARVINDER SINGH; BALJINDER SINGH
License No: 080190-3C
Tradename: STATE LIQUOR STORE # 152/SKAGIT BIG MINI MART
UBI: 602-365-483-001-0001
Address: 157 S BURLINGTON BLVD
BURLINGTON, WA 98233-1706

Contact Name: Hakam Singh

Phone No: 360-941-4000

This letter is to notify you that HK INTERNATIONAL LLC, has applied for a liquor license at the above location to sell **spirits** in original containers to:

- Consumers for off-premises consumption
- Permit holders
- Retailers licensed to sell spirits for on-premises consumption; and to
- Export spirits

Per state law adopted under Initiative 1183 (RCW 66.24.620 (1)), if this application is approved, sales cannot begin until **June 1, 2012**.

The applicant's location is a former WSLCB state liquor store. In accordance with Initiative 1183 (RCW 66.24.630 (c)), The Board may not deny a Spirits Retailer license to an otherwise qualified holder of a former state liquor store operating rights sold at auction. Therefore, this notice is being provided to you as an informational courtesy only.

Alan E. Rathbun, Director
Licensing & Regulation

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RCW 34.05.530:

A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:

- (1) The agency action has prejudiced or is likely to prejudice that person;
- (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
- (3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action

RCW 34.05.562:

(1) The court may receive evidence in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

- (a) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;
- (b) Unlawfulness of procedure or of decision-making process; or
- (c) Material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

(2) The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

- (a) The agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover or could not have reasonably been discovered until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record;
or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome.

RCW 34.05.570:

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

....

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited in the U.S. Mail for service a true and accurate copy of the Brief of Appellant in Court of Appeals Cause No. 45565-0-II to the following parties:

Mary M. Tennyson
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Burlington, WA 98233-2810

Original efiled with:

Court of Appeals, Division II
Clerk's Office
950 Broadway, Suite 300
Tacoma, WA 98402-4427

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: February ^{29th} 20th, 2014, at Tukwila, Washington.



Roya Kolahi, Legal Assistant
Talmadge/Fitzpatrick

TALMADGE FITZPATRICK LAW

February 28, 2014 - 10:54 AM

Transmittal Letter

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Court of Appeals Case Number: 45565-0

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Answer/Reply to Motion: ____

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Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

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Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

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A copy of this document has been emailed to the following addresses:

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