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SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON ASSOCIATION FOR SUBSTANCE ABUSE AND
VIOLENCE PREVENTION, a Washington non-profit corporation;
DAVID GRUMBOIS, an individual,

Appellants,

v.

The STATE OF WASHINGTON

Respondent,

and

JOHN MCKAY, BRUCE BECKETT, COSTCO WHOLESALE
CORPORATION, WASHINGTON RESTAURANT ASSOCIATION,
THE YES ON 1183 COALITION, MACKAY RESTAURANT GROUP,
NORTHWEST GROCERY ASSOCIATION, SAFEWAY, INC., THE
KROGER COMPANY, and FAMILY WINERIES OF WASHINGTON,

Respondent-Intervenors.

STATE'S RESPONSE BRIEF

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I. INTRODUCTION

Initiative 1183 (“I-1183”)¹ was passed by 59 percent of the voters in November 2011. Clerk’s Papers (CP) at 219. Initiatives are presumed to be constitutional. That is especially true where, as here, I-1183 contains only one subject and the initiative’s ballot title gave a clear understanding of what is found in the body of the initiative. Appellants’ arguments that I-1183 violates article II, section 19 of the Washington Constitution are not supported by Washington law nor a clear reading of I-1183.

I-1183 concerns a single subject, liquor, which includes wine, beer, and spirits. The initiative changed several aspects of the state’s control and regulation of liquor, and all are rationally related to the initiative’s ballot title and to one another. Accordingly, I-1183 complies with article II, section 19’s mandate that a bill may not embrace more than one subject.

Moreover, I-1183’s broad ballot title gave sufficient notice to voters of the legal impact of the initiative and what would occur after its passage. I-1183 therefore also complies with the subject-in-title rule of article II, section 19.

¹ Initiative 1183 is attached as an Appendix to this brief.

The State respectfully requests that the Court reject Appellants' attempt to overturn the will of the people and that it uphold I-1183 in its entirety.

II. ISSUES PRESENTED

Initiatives, like bills enacted by the legislature, must not embrace more than one subject, and that subject must be expressed in the title.

A. Does I-1183 embrace more than one subject, when the ballot title broadly relates to liquor, including wine, beer, and spirits, and each aspect of the initiative relates to that subject and to one another?

B. Does the description in the ballot title for I-1183 that it would "set license fees based on sales" adequately express the effect of the initiative, which imposes charges called "license fees" that are based on the amount of sales by the licensee?

III. STATEMENT OF THE CASE

The Washington State Liquor Act, Laws of 1933, ch. 62 ("Liquor Act"),² created the first regulatory structure for the legal sale of liquor (beer, wine, and spirits) in the state, after passage of the Twenty-first Amendment to the United States Constitution repealed Prohibition. The Liquor Act established a comprehensive scheme for the regulation of the

² The Liquor Act is sometimes referred to as the Steele Act.

distribution, sale, and consumption of liquor in Washington.³ The initial regulatory framework has been extensively modified through the years. Historically, the private sector has been permitted to sell and distribute wine in Washington, while only the state was permitted to sell and distribute spirits.⁴ I-1183 makes changes that conform and align the regulatory schemes for these products.

A. Initiative Measure No. 1183

Initiative Measure No. 1183 was enacted by a popular vote of 59 percent of the people and became effective December 8, 2011. *See* Const. art. II, § 1(d). It is codified as Laws of 2012, ch. 2.

Initiative 1183 concerns liquor. Its ballot title is:

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.

CP 238 (Voters' Pamphlet, Nov. 8, 2011 Gen. Election).

I-1183's stated purpose is:

³ The State uses the term "liquor" as defined in state law, which definition is not changed by I-1183. "Liquor," for these purposes, includes beer, wine, and spirits (hard liquor). The State will use the term "spirits" to refer to the subset of "liquor" that Appellants refer to as "hard liquor."

⁴ For more background on the history of liquor regulation in Washington, *see* Br. of Intervenor-Respondents John McKay et al. The State understands that Intervenor-Respondents will also address this history in their brief filed on April 30, 2012, so the State will not address it here.

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.

I-1183, § 101(1).

I-1183 primarily makes changes to Title 66 RCW, the law that created the Washington State Liquor Control Board (“Board”). The Board was created to implement and administer the Liquor Act, and the operation of state stores as the exclusive outlet for the sale of packaged spirits has always been vested in the Board.

I-1183 replaces the Board’s sale and distribution of spirits with newly-created licenses for retailers, distributors, and importers, which allow private parties to sell and distribute packaged spirits.⁵ I-1183, §§ 102, 103, 105, 113. It replaces the revenue stream derived from state sale of spirits with license fees imposed on the new forms of licenses but leaves in place the current taxes on spirits, beer, and wine. I-1183, §§ 103, 105, 106. I-1183 also aligns the laws governing the sale and distribution

⁵ Wine is currently sold by both the state and private parties. The Board sells wine in its stores, and there are several types of licenses allowing wine sales by private parties. *See, e.g.*, RCW 66.24.354, 66.24.360, 66.24.371, 66.24.540, 66.24.550.

of wine with the new laws governing distribution of spirits by licensees, by allowing the same rules for pricing and allowing retailers to sell limited quantities of wine and spirits to restaurants for resale. I-1183, §§ 103(1), 104, 119, 120, 121.

Many of the operative provisions of I-1183 have already gone into effect. For example, two provisions took effect on December 8, 2011: elimination of the requirement that wine sold at wholesale be sold at the same price to any purchaser for resale⁶ and wine retailer reseller endorsements allowing grocery stores to sell limited quantities of wine to restaurants.⁷ As of March 1, 2012, licensed spirits distributors can sell spirits to restaurants,⁸ and certificate of approval holders (spirits suppliers and manufacturers) and distiller licensees can sell spirits to restaurants.⁹ The auction of rights to operate retail sales in former state liquor stores concluded on April 19, 2012.¹⁰ On June 1, 2012, state liquor stores are scheduled to close.¹¹

B. Challenges to I-1183

Appellants filed this action in Cowlitz County Superior Court, alleging that I-1183 violated article II, section 19 of the Constitution.

⁶ I-1183, § 121.

⁷ I-1183, § 104(2).

⁸ I-1183, §§ 102(3) and 105.

⁹ I-1183, § 206.

¹⁰ I-1183, § 102(3)(c).

¹¹ I-1183, § 102(2).

Appellants moved for a preliminary injunction to prevent the implementation of I-1183.¹² The Court denied Appellants' motion for preliminary injunction and allowed Respondent-Intervenors to intervene as defendants. CP 440-443.

The Cowlitz County court ultimately granted summary judgment to the State and Intervenors. CP 1988-1991. This appeal followed.

III. ARGUMENT

I-1183 is entitled to a strong presumption of constitutionality like any other law duly enacted by the legislature or by the people. Appellants must meet a heavy burden of showing that I-1183 is unconstitutional, which they fail to do. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762 (2000), *opinion corrected by* 27 P.3d 608 (2001).

Article II, section 19 of the Washington Constitution provides: "No bill shall embrace more than one subject, and that shall be expressed in the title." This constitutional provision contains two parts. First, a bill may not embrace more than one subject, the "single subject rule." The

¹² The day before, an action was filed in King County seeking the same relief as Appellants, except those plaintiffs did not immediately move for a preliminary injunction. *General Teamsters Local Union No. 174 and United Food and Commercial Workers Local Union No. 21 v. The State of Washington and Christine Gregoire*, King County Super. Ct. No. 11-2-41541-4. Proceedings in the King County action are stayed by order of the King County court, pending a final order of this Court. Respondent-Intervenors have intervened in both cases.

second part, that the subject of every bill shall be expressed in its title, is often called the “subject-in-title rule.”

All sections of I-1183 relate to the subject of liquor and to each other, and all are expressed in its title. Therefore, as the trial court found, the initiative has the rational unity required to comply with article II, section 19 of the Constitution and should be upheld.

A. Standard of review

In this case, the trial court granted summary judgment to the State, concluding that I-1183 addressed one general subject, which was adequately expressed in the ballot title. This Court’s review is de novo. *Pierce County v. State*, 150 Wn.2d 422, 429, 78 P.3d 640 (2004); *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003).

In reviewing article II, section 19 challenges to legislation, the Court applies several bedrock principles of statutory review.¹³

First, the Court presumes a statute is constitutional, and the party challenging it must demonstrate its unconstitutionality “beyond a reasonable doubt.” *E.g., Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000). This principle applies to article II, section 19 challenges.

¹³ This Court has repeatedly affirmed that statutes enacted by citizen initiative are accorded the same degree of deference as other laws. *Citizens for Responsible Wildlife Mgmt.* 149 Wn.2d at 631; *Amalgamated Transit Union* 142 Wn.2d at 204-05.

E.g., Amalgamated Transit Union, 142 Wn.2d at 205. Any reasonable doubt or ambiguity is resolved in favor of finding the statute constitutional. *Id.* This standard is met only “if argument and research show that there is no reasonable doubt that the statute violates the constitution.” *Id.*

Second, the constitutional provision at issue, article II, section 19, “is to be liberally construed so as to sustain the validity of a legislative enactment.”¹⁴ *State ex. rel. Citizens Against Tolls v. Murphy*, 151 Wn.2d 226, 249, 88 P. 3d 644 (2004); *State v. Thorne*, 129 Wn.2d 736, 757, 921 P.2d 514 (1996).

B. Initiative 1183 embraces a single subject: liquor

The first requirement of article II, section 19 is that “[n]o bill shall embrace more than one subject.” The purpose of the single subject rule is “to prevent grouping of incompatible measures as well as the pushing through of unpopular legislation by attaching it to popular or necessary legislation.” *Wash. Ass’n of Neighborhood Stores v. State*, 149 Wn.2d 359, 368, 70 P.3d 920 (2003). Appellants’ statement, “The single subject

¹⁴ Title 66 RCW, which created the Liquor Control Board and laws governing the sale and distribution of liquor in Washington, must also be liberally construed:

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.

RCW 66.08.010.

rule is violated whenever the *potential* for logrolling is established,” overstates the Court’s reasoning in *Amalgamated Transit Union*. Appellants’ Br. at 19 (emphasis added). This Court in *Amalgamated* did indicate that a challenger is not required to establish *actual* logrolling. It did not set a standard of invalidating statutes whenever the *possibility* of logrolling is present. *Amalgamated Transit Union*, 142 Wn.2d at 212 n.5. To set such a standard would be contrary to the presumption of constitutionality and requirement that ballot titles and article II, section 19 be liberally construed to uphold, rather than to overturn, statutes.

As explained below, where a ballot title is general, as here, the bill may encompass numerous provisions, and the only constitutional requirement is that the various provisions have some “rational unity.” Because I-1183’s provisions all rationally relate to the general subject of liquor and to each other, the act is constitutional.

1. I-1183 has a general title

The first step in resolving a single-subject challenge is to determine whether the ballot title is general or restrictive. *Burien v. Kiga*, 144 Wn.2d 819, 825, 31 P.3d 659 (2001). “A general title is broad, comprehensive, and generic as opposed to a restrictive title that is specific and narrow.” *Burien v. Kiga*, 144 Wn.2d at 825.

As RCW 29A.72.050 contemplates, the ballot title for I-1183 begins with a statement of the subject of the measure, followed by a concise description of the initiative's "essential contents."¹⁵ "General ballot titles are constitutional as long as, when read in entirety, the title broadly encompasses the topic of the enactment." *Wash. Ass'n of Neighborhood Stores v. State*, 149 Wn.2d 359 at 369. Here, the ballot title relates to the general subject of "liquor," and all parties agree that I-1183 has a general title. *See* Appellants' Br. at 20 n.7. I-1183's general title establishes that it concerns liquor and accurately reflects the single subject of the measure.

2. All the provisions of I-1183 are related to its subject and to each other

Legislation bearing a general title is constitutional "even if the general subject contains several incidental subjects or subdivisions. . . . All that is required is that there be some 'rational unity' between the general subject and the incidental subdivisions." *State v. Broadaway*, 133 Wn.2d

¹⁵ To help ensure that a fair and appropriate title is crafted, the law charges the attorney general, then, if an appeal is filed, the superior court, with crafting a title that must be a "true and impartial description of the measure's essential contents, clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure." RCW 29A.72.050; *see also* RCW 29A.72.060, 29A.72.080. For initiatives, courts examine the ballot title. *Washington Fed'n of State Employees v. State*, 127 Wn.2d 544, 555, 901 P.2d 1028 (1995). The statement of the subject and the concise description may contain no more than ten and thirty words, respectively. RCW 29A.72.050.

118, 126-27, 942 P.2d 363 (1997) (internal quotation marks omitted) (quoting *State v. Grisby*, 97 Wn.2d 493, 498, 647 P.2d 6 (1982)).

As the title of I-1183 shows, the “subject” of the initiative is liquor, which is defined by statute as:

"Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating . . .

RCW 66.04.010(25).

This definition demonstrates the historical approach the State has taken in regulating liquor—all varieties of beverage alcohol are closely regulated, and the mere inclusion of more than one variety of liquor in amendatory legislation has never been held to include more than one subject. *See* CP 675-676 (Intervenor-Defendants’ Opp. to Pls’ Summ. J. Mot.).

One way to satisfy the rational unity test is to examine “whether the matters within the body of the initiative are germane to the general title and whether they are germane to one another.” *Burien v. Kiga*, 144 Wn.2d at 826 (citing *Amalgamated Transit Union*, 142 Wn.2d at 209-10)).¹⁶ As stated in *State v. Waggoner*, 80 Wn.2d 7, 9, 490 P.2d 1308

¹⁶ In the trial court, Appellants relied on language in *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 71 P.3d 644 (2003) to support an argument that the rational unity test requires the court to find that all parts of a law are necessary to each

(1971), this Court has never favored a narrow construction of the term “subject” as used in article II, section 19. A bill may properly contain one broad subject embracing many provisions without violating the single subject rule. *Id.*

The single-subject requirement has been explained as follows:

[A constitutional single-subject prohibition] does not by restricting the contents of an “act” to one subject, contemplate a metaphysical singleness of idea or thing, but rather that there must be some rational unity between the matters embraced in the act, the unity being found in the general purpose of the act and the practical problems of efficient administration. It is hardly necessary to suggest that *matters which ordinarily would not be thought to have any common features or characteristics might, for purposes of legislative treatment, be grouped together and treated as one subject.* For purposes of legislation, “subjects” are not absolute existences to be discovered by some sort of *a priori* reasoning, but are the result of classification for convenience of treatment and for greater effectiveness in attaining the general purpose of the particular legislative act.

Amalgamated Transit Union, 142 Wn.2d at 209-210 (emphasis added) (quoting *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 61 Wn.2d 28, 33, 377 P.2d 466 (1962)).

An example from our history of initiatives demonstrates this principle. Even an initiative as complex as the one that created the state’s public disclosure act was found to possess sufficient rational unity among

other part. This Court in *Citizens* actually rejected that proposition. *Id.* at 637-638. While Appellants appear to have abandoned this argument on appeal, the Court should reject any attempt to narrow the rational unity test to require that all parts of a law be necessary to implement all other parts of the law.

its component parts to pass single subject muster. Initiative 276 ("I-276"), passed in 1972, created the Public Disclosure Commission; required financial reporting by candidates for political office at all levels of government; imposed limitations on campaign spending; required lobbyists to register and report their lobbying efforts; regulated grass roots educational activities; required disclosure of the financial affairs of elected and appointed officials; created a requirement for disclosure of public records by state agencies and local governments, including counties, cities, and numerous types of municipal corporations; provided fines and penalties for failure to disclose records; and created a cause of action in the courts for enforcement of the public records disclosure requirements.

Fritz v. Gorton, 83 Wn.2d 275, 289-290, 517 P.2d 911 (1974).

In finding that I-276 satisfied article II, section 19, the Court explained: "We do not agree that the initiative covers a multiplicity of subjects or subjects that are not reasonably related. On the contrary, each of the subtopics of Initiative 276 bears a close interrelationship to the dominant intendment of the measure." *Fritz v. Gorton*, 83 Wn.2d at 290.

Similarly here, although I-1183 addresses several subtopics, each relates to the subject of liquor and to each other. I-1183 enacted a comprehensive reform of liquor laws in Washington. It allowed private parties to sell and distribute spirits. It enacted a comprehensive regulatory

scheme applicable to newly licensed spirits sellers and distributors, and adjusted laws applicable to wine sale and distribution to bring them more in line with the newly adopted scheme applicable to spirits. I-1183 also addressed the impact that closing state liquor stores would have on revenue, imposing fees to replace that revenue, and directing a portion of the fees for purposes possibly impacted by the likely greater availability of liquor caused by the privatization of liquor sales. Just as each of the various subtopics in I-276 related to its general subject, so do all of the subtopics of I-1183 relate to reform of laws regarding liquor sales.

Appellants cite *State ex rel. Washington Bridge Auth. v. Yelle*, 49 Wn.2d 520, 30 P.2d 676 (1956) (*Wash. Toll Bridge Auth. II*), as authority for the proposition that where an act does not comprehensively address a subject, but addresses two aspects of a broad subject, it must be found to include multiple subjects. Appellants' Br. at 27. Appellants exaggerate the holding of the case. The Court in *Wash. Toll Bridge Auth. II* did not address whether the challenged law was a comprehensive enactment but did find it addressed two subjects. The primary basis for its finding was that the law had two purposes, one that was continuing in nature (a grant of power to build toll roads in general) and one that was not (authorizing construction of a Tacoma-Seattle-Everett toll road). *Wash. Toll Bridge Auth. II*, 49 Wn.2d at 524.

a. **Washington's historically broad regulation of liquor demonstrates the rational unity of I-1183's provisions**

Appellants claim that I-1183 has multiple subjects that lack rational unity with any one topic and that there is no rational unity among those subjects. Appellants' Br. at 23. The Liquor Act itself refutes Appellants' characterization of liquor regulation in Washington, and reinforces that I-1183 addresses only one general subject.

When the Liquor Act was challenged, in part because it allegedly modified an initiative passed in 1932 that allowed liquor sales, the Court included a two-page recitation that demonstrates the genesis of the scope of the liquor laws. *Ajax v. Gregory*, 177 Wash. 465, 467-469, 32 P.2d 560 (1934) (upholding Liquor Act). The Liquor Act created an agency to administer and apply the law, a scheme of licensing businesses to sell and distribute certain types of liquor while reserving the sale and distribution of spirits to the state, established rules for the sale of liquor to certain persons, and created the Liquor Revolving Fund with formulas for distribution of the proceeds of liquor regulation to local jurisdictions. *Id.*

The regulation of liquor in the state, for many years, has been a complex and nuanced subject. An initiative that changes many but not all of those laws does not mean that the Court must find the initiative addresses multiple subjects. The past regulatory treatment of spirits and

wine resulted from the prohibition on sale and distribution of spirits by private parties. Only the state has been allowed to perform those functions.

Initiative 1183 modifies many of the laws relating to how liquor can be sold, how the distribution and sale of liquor is regulated, the eligibility for liquor licenses, and the privileges that can be exercised by licensees. It also adds new criteria for the size of stores that can be licensed to sell spirits at retail and how the funds derived from license fees, penalties, and fines are distributed. These changes all relate to the general subject of liquor and do not represent a departure from the way the state has legislatively addressed liquor, but continue to refine the historically broad approach to the regulation of liquor.¹⁷

b. Aligning regulation of the sale and distribution of wine with changes made by I-1183 to the sale of spirits is related to the subject of liquor

Appellants argue that the privatization of liquor sales and reduction of government regulation of wine distribution are unrelated. Appellants' Br. at 26. Appellants misconstrue both the nature of the initiative and the nature of Washington's pre-existing liquor laws. Both wine deregulation and liquor privatization share rational unity because both represent a

¹⁷ For examples of prior amendments to the Liquor Act, see CP 651-652 (Defendant-Intervenors' Opp. to Pls' Mot. for Summ. J.); CP 914-916 (Supp. Connelly Decl.); and CP 1214-1424 (text of statutes).

lessening of government control over the sale of liquor. Appellants' Br. at 26-30.

Appellants parse the individual sections of I-1183 and urge the court to review the historical treatment of spirits and wine, suggesting that because of occasional different treatment, aligning the regulation of spirits and wine under the new law somehow creates unrelated subjects. From that erroneous conclusion, they extrapolate that changes in laws regulating the sale and distribution of wine are not related to the narrow subject of privatization of hard liquor sales they have chosen to ascribe to the initiative.

Appellants' argument focuses on the unsupported claim that the "purpose" of wine deregulation is to reduce competition. Appellants' Br. at 26. Appellants' argument can cite to no such purpose expressed in the initiative or title, and its analysis of the initiative in an attempt to show reduced competition is incorrect. The changes in the regulation of wine sales and spirits sales have rational unity because they align the laws governing the sale of wine and spirits, now that the state's monopoly on spirits sales is ending.

I-1183 includes changes to the liquor laws that (1) eliminate the uniform pricing requirements for wine;¹⁸ (2) allow grocery stores to sell wine to other retailers;¹⁹ and (3) allow retailers to store spirits and wine they purchase in a warehouse registered with the Board.²⁰ Appellants allege these changes *reduce* competition for those licensed to sell wine at retail, then conclude they are not rationally related to the privatization of spirits sales, which they allege *increases* competition.

First, even if the initiative's effect was to reduce competition in one area and increase it in another, this would not violate the single-subject rule because the subject of I-1183 is not to increase competition, as Appellants allege. Rather, both privatization of liquor sales and wine deregulation share rational unity with the general subject of the initiative: liquor. Both address a common perceived value in reducing government involvement (whether through monopoly control or extensive regulation) in liquor sales.

Second, Appellants' arguments that I-1183 allows "price discrimination" or is otherwise anti-competitive misconstrue the

¹⁸ See Sections 119, 120, and 121. Section 119 addresses sales practices of the manufacturers, and specifically allows price differences based on competitive conditions and other bona fide business factors. Section 120 forbids sales by distributors for less than their cost of acquisition of the product. Section 121 amends RCW 66.28.180 to prohibit quantity discounts on sales of beer but not other forms of liquor.

¹⁹ Section 104(2) allows a grocery store licensee to obtain a wine reseller's endorsement under which the grocery store may sell up to 24 liters of wine per sale to retailers licensed to sell wine for consumption on the premises, such as restaurants.

²⁰ Sections 103(3)(d) and 104.

initiative.²¹ I-1183 prohibits price discrimination by manufacturers, but allows legitimate price differences for business reasons. Section 119 of I-1183 amends RCW 66.28.170 to allow manufacturers and distillers to base their price on competitive conditions, costs of serving a particular customer, efficiencies in handling goods, and other bona fide business factors. Prior to this amendment, manufacturers, including wineries, were required to sell their product to any purchaser at the same price, regardless of location, volume purchased, or efficiencies involved in serving the account. CP 74. Section 119 still prohibits price *discrimination* when there is no business justification for charging a different price. RCW 66.28.170.²² Section 121(1)(d) of I-1183 modifies RCW 66.28.180(1)(d), (addressing the activities of beer and wine distributors) to allow wine distributors to provide quantity discounts.

In allowing newly licensed spirits distributors to sell spirits, I-1183 imposes no prohibition on quantity discounts. Thus, I-1183 allows wine distributors and spirits distributors the same freedom in pricing their

²¹ Appellants do not explain what they mean by “price discrimination,” but the State assumes they are referring to removing the mandate of uniform pricing and allowing retail-to-retail sales and central warehousing.

²² As amended by I-1183, § 119.

products for resale. These changes *allow* competition, rather than reduce competition, as Appellants assert. *See* Appellants' Br. at 28, 30.²³

Similarly, Appellants' hyperbole that I-1183's "dramatic changes to wine regulation foster price discrimination" is off-base. *See* Appellants' Br. at 29. I-1183 does not create unlimited opportunity for retailer-to-retailer sales. Appellants assert that Costco and other grocery stores that obtain wine retailer resellers endorsements will become distributors under section 104(8). Appellants' Br. at 29-30. They make the unsupported assertion that eliminating the uniform pricing requirement and allowing retail-to-retail sales will disrupt a level playing field. *Id.* To the contrary, these changes allow legitimate price competition.

The privilege of selling wine to another retailer allows sales of only twenty-four liters of wine per single sale. The same limitation is imposed on a spirits retailers' sale of spirits to another retailer. Such retail-to-retail sales may be made only to licensees who sell wine or spirits for consumption on their licensed premises. *See* §§ 103(1) and 104(2). Thus, the initiative does not provide an unfettered market for retailer-to-retailer sales of wine or packaged spirits as a distributor.

²³ In fact, one source of "price discrimination" that currently exists is eliminated by removing the state from the retail sales of wine. "The LCB does not have to follow the same rules as all other retailers, including price posting, mandatory mark-up, and quantity discounts, and sometimes sells wine products for less than other retailers." *Beer and Wine Three-Tier Task Force Report*, CP 78.

I-1183 also allows spirits retail licensees to store spirits that they purchase for resale in an offsite warehouse registered with the Board. I-1183, § 103(3)(d). Similarly, retailers licensed to sell wine at retail may now register a warehouse with the Board to store their wine. I-1183, § 123. A grocery store that obtains a spirits retail license may thus purchase larger quantities of both spirits and wine, store both at their registered warehouse, and potentially obtain a better price from the distributor or manufacturer due to the consolidated delivery location. Again, rather than reducing competition, I-1183 fosters competition in the purchase and sale of both wine and spirits.

Appellants also base their argument on their erroneous and unsupported assertion that “liquor” has traditionally been parsed by the state into beer, wine, and spirits. Appellants’ Br. at 7-10. Appellants have not proven this to be the case, nor have they shown, even if true, that there is any prohibition on a single law addressing several forms of liquor, particularly when private parties are being allowed, for the first time, to sell and distribute packaged spirits.

In conclusion, the changes to wine regulation do not create a separate subject unrelated to liquor. Aligning regulation of the sale and distribution of wine and spirits is related to the subject of I-1183: liquor.

c. Allocating a portion of funds distributed from the Liquor Revolving Fund to local jurisdictions to enhance public safety is related to liquor

Allocating a portion of funds distributed from the Liquor Revolving Fund for public safety is not a separate subject from liquor, but is related to ameliorating the effects of liquor sales. Washington has a long history of supporting local governments for general governmental purposes with revenues derived from the sale of liquor, whether those revenues were derived from taxes, license fees, penalties imposed on licensees, or the state's profit from liquor sales. *See* Liquor Act, §§ 73, 77, 78. I-1183 continues this historical practice.

Laws now codified at RCW 66.08.170 through .225 established the Liquor Revolving Fund in 1933, into which "all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board" must be deposited. Laws of 1933, Ex. Sess., ch. 62, § 73. I-1183 did not change these sections of the law except for RCW 66.08.220, which was repealed because it dealt with money from liquor sales by the Board that the state no longer receives.²⁴

RCW 66.08.190 directs quarterly distributions of funds from the Liquor Revolving Fund to the state general fund, counties, cities, and

²⁴ I-1183 repealed RCW 66.08.220, which required the Board to set aside a percentage of its sales to licensees in a separate fund, for distribution pursuant to RCW 66.08.190, .200, and .210, but did not change the other formulas for distribution of funds from the Liquor Revolving Fund.

towns. RCW 66.08.196 determines the distribution of funds to border areas, as defined in RCW 66.08.195, with reference to border area traffic totals, border-related crime statistics, and border area per capita law enforcement spending. *See also, e.g.,* RCW 66.24.210(3) and (5) (imposing specific tax on wine and hard cider, with the proceeds allocated to the state general fund without any requirement that they be used for alcohol-related purposes.)

Section 302 of the initiative is consistent with this historical practice of distributing revenues from the Liquor Revolving Fund to local governments. The last sentence of the section, alleged by Appellants to create a separate subject, simply allocates an additional, specific sum to be used to enhance public safety programs.

Sec. 302. A new section is added to chapter 66.24 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.*

I-1183, § 302 (emphasis added).

Thus, the history of the liquor laws, from the creation of the Liquor Control Board in 1934, shows that moneys derived from liquor taxes, penalties, and license fees have all been allocated to general government purposes without differentiation. The allocation of an additional amount of those funds to local governments in section 302 for a specific governmental purpose continues the longstanding state policy of allocating license fees and other proceeds from the regulation of liquor sales to general governmental purposes.

Contrary to Appellants' argument, simply because section 302 does not, on its face, require the funds to be used for public safety purposes that are directly *caused by* liquor sales does not mean it is not related to the general subject of liquor. The nexus between liquor and its potential harm to public safety is well known and well established.²⁵

The Supreme Court Commissioner's Ruling Denying Injunctive Relief puts it clearly: "Certainly there is a commonsense relationship between beverage alcohol and public safety." Commissioner's Ruling at 8. In the same vein, the trial court recognized: "Public safety spending does bear a natural rational unity with the possible consequences of liquor

²⁵ See, e.g., CP 1585, 1589, 1591 (FY 2011 Annual Report, Wash. State Liquor Control Board).

sales.” Tr. 3/19/12 at 23. This nexus is buttressed by the historical allocation of funds in the Liquor Revolving Fund to local authorities for general public safety purposes.

d. Aligning the Board’s authority to regulate advertising of liquor with changes made by I-1183 is related to the subject of liquor

Appellants allege that I-1183’s amendment of the Liquor Control Board’s authority relating to advertising of liquor is a separate, unrelated subject. Appellants’ Br. at 30-31. This allegation is unfounded.

Section 108 of I-1183 repealed language from RCW 66.08.060 that prohibited *the Board* from advertising liquor because the Board may no longer sell liquor after May 31, 2012. The language of RCW 66.08.060 with respect to the regulation of advertising *by others* remains unchanged, reading:²⁶

The board has power to adopt any and all reasonable rules as to the kind, character, and location of advertising of liquor.

RCW 66.08.060.

The only change to the power of the Board to regulate the advertising of liquor *by others* is the addition of a statement in section

²⁶ In their Emergency Motion, filed in this Court, at 12, Appellants assert the language in section 107 prohibits the State from regulating *any aspect* of liquor advertising, so long as the advertisement contains a lawful price. This construction would require the Court to ignore the authority granted to the Board by RCW 66.08.080. The Court should not construe this language to be superfluous.

107(7) of I-1183, which provides that the Board may not restrict advertising of lawful prices.²⁷ Appellants argue that this prohibition goes farther than what is required by the First Amendment to the United States Constitution. Appellants' Br. at 31. The U.S. Supreme Court ruled that states may not completely ban lawful price advertising of liquor. 44 *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 516, 116 S. Ct. 1495, 134 L. Ed.2d 711 (1996). Regardless of the level of regulation chosen, the language prohibiting restrictions on lawful price advertising relates to liquor. Accordingly, this provision has rational unity with the subject of the initiative.

e. Removal of a reference to policy that has no operative effect is not a substantive change in the law and is related to the subject of liquor

Appellants assert that section 124 of I-1183,²⁸ which removed a portion of a sentence in RCW 66.28.280, is a fundamental restatement of

²⁷ The complete sentence reads, "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." I-1183, § 107(7) (amendatory language underlined). Section 107 amended RCW 66.08.050, which governs the Board's general powers.

²⁸ The sentence as it appears in section 124 is:

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

. . . 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,))~~

State policy. Appellants' Br. at 31. However, the language had no operative effect and its removal does not represent any substantive change in the law.

In *Pierce County v. State*, 150 Wn.2d 422, 436, 78 P.3d 640 (2003), this Court rejected the trial court's determination that certain policy statements in Initiative 776 introduced new subjects and held that policy expressions in a bill or initiative do not contribute additional subjects within the meaning of article II, section 19. *Pierce County*, 150 Wn.2d at 436. The Court held that "precatory language cannot yield additional 'subjects' for Const. art. II, section 19 purposes," even if the policy statements are unrelated to the rest of the bill or initiative. *Id.* at 435-36.

Section 124 does not change any legally enforceable obligation or requirement of law. It modifies a legislative recognition and finding that justify why the 2009 changes to the three-tier system of liquor regulation were consistent with what Appellants characterize as a "longstanding" state policy. Appellants' Br. at 12; *see* Laws of 2009, ch. 506, §§ 1, 10

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.

I-1183, § 124.

(adding language later deleted by I-1183).²⁹ Thus, Appellants' challenge fails.

In any event, I-1183 does not change fundamental state policy, as Appellants allege. Numerous sections in both I-1183 and Title 66 RCW that remain unchanged clearly retain the State's objectives of encouraging moderation in the consumption of alcohol and an orderly market, which existed before RCW 66.28.280 was adopted.³⁰ The words removed by section 124 did not "establish" a state policy, but merely reflected the view that such a policy existed. Removing this reference did not create a new subject of the initiative.

f. The subtopics not included in the ballot title are severable if the Court finds they are separate subjects

All of the provisions challenged by Appellants are related to the subject of I-1183. If this Court finds otherwise, the provisions related to funds allocated for public safety, liquor price advertising, and state policy goals are severable from the initiative.

²⁹ CP 1574, 1580.

³⁰ Appellant's citation to CP 41 in Appellants' Br. at 12 does not support their statement that the regulatory objective of encouraging moderation in consumption has been in place since 1934. While the State does not dispute the policy existed since 1934, it has not been codified in statute since then. CP 41 refers to the recitation in the 2006 task force report that the policies exist, without reference to their codification in statute. The 2006 Task Force Report at CP 49-50 more fully explains the policy objectives, and notes, "Although these principles have been used by the state, and some portions adopted in RCW language, they have not been formally stated and adopted as policy goals." CP 49.

Appellants argue that the Court has no authority to engage in a severability analysis here, contending that the Court may only do so when a subject-in-title challenge is made. Appellants' Br. at 39. The State is unaware of any case in which this Court has announced such an absolute restriction on its authority. Appellants appear to argue that the persons challenging the legislation, rather than the Court, can determine whether severability applies based on how they choose to argue their case. *See* Appellants' Br. at 41 (distinguishing prior cases that severed portions of acts challenged on multiple-subject basis on request of plaintiffs). Here, Appellants could have framed their challenge to these subtopics as a multiple-subject violation, a subject-in-title violation, or both. Appellants contend that these subtopics are "subjects" of the initiative and that they are not germane to what Appellants claim is the subject of the legislation. Appellants' Br. at 23, 31. Since the ballot title does not specifically mention these subtopics, Appellants could have just as easily framed their argument as a subject-in-title claim.

The Court's prior opinions reinforce that severability is proper here. The Court has generally struck down acts for violating the single subject rule, without resort to a severability analysis, when *both* the title and the body of the legislation included two or more unrelated subjects. *See*

Power, Inc. v. Huntley, 39 Wn.2d 191, 199-201, 235 P.2d 173 (1951); see also *Burien v. Kiga*, 144 Wn.2d at 826-27; *Amalgamated Transit Union*, 142 Wn.2d at 216-17; *Wash. Toll Bridge Auth. II*, 49 Wn.2d at 524. Contrary to Appellant's argument, *Burien v. Kiga*, 144 Wn.2d at 819, is consistent with these cases because, in the initiative construed in that case, the separate subject was included in the initiative's title. See Appellants' Br. at 35-36. In *Burien v. Kiga*, the Court did not even analyze whether the provisions were severable.

Likewise, Appellants' reliance on *State ex rel. Wash. Toll Bridge Auth. v. Yelle (Wash. Toll Bridge Auth. I)*, 32 Wn.2d 13, 200 P.2d 467 (1948), is misplaced. See Appellants' Br. at 34-35. In that case, the Court held that the body of the act included multiple subjects (toll bridges and ferries) and thus invalidated it. *Id.* at 23, 27. The legislation addressed in *Wash. Toll Bridge Auth. I* had a restrictive title which, as Appellants themselves point out, is not construed as liberally as a measure with a general title. Appellants' Br. at 40. The Court did not announce any rules regarding severability and—unlike the present case—was addressing two significant and unrelated provisions of law. *Id.* at 27-28 (describing second subject improperly included in act as the power to acquire and operate a general water transportation system). Accordingly, the case is of limited application here.

To serve the purpose of preventing “logrolling,” allowing severability when a subtopic is not included in a title makes sense. If both the title and the body of an enactment contain two distinct subjects, it may be impossible to tell whether either one would have obtained majority support if voted on separately. In that circumstance, it is impossible for a court to determine which one to uphold and which one to void. *Power*, 39 Wn.2d at 198-200.

On the other hand, this Court has held an objectionable provision can be severed if two criteria are met:

Where proposed legislation with a single subject title has multiple subjects, those matters not encompassed within the title are invalid but the remainder is not unconstitutional if (a) the objectionable portions are severable in a way that a court can presume the enacting body would have enacted the valid portion without the invalid portion, and (b) elimination of the invalid part would not render the remainder of the act incapable of accomplishing the legislative purpose. See *Municipality of Metro. Seattle v. O'Brien*, 86 Wn.2d 339, 348-349, 54 P.2d 729 (1976); *Swedish Hosp. v. Dep't of Labor & Indus.*, 26 Wn.2d 819, 832, 176 P.2d 429 (1947).

State v. Broadaway, 133 Wn.2d 118, 128, 942 P.2d 363 (1997).

The purposes of the single subject rule can be accommodated by severing those provisions not related to the subject in the title, as long as the valid and invalid provisions are not inextricably intertwined. See *Power*, 39 Wn.2d at 198-200; see also *Broadaway*, 133 Wn.2d at 128.

Where the title embraces only one subject, the Court may assume that it was enacted with that subject in mind, particularly where initiatives are concerned. See *Amalgamated Transit Union*, 142 Wn.2d at 217 (recognizing that often voters may not reach the text of the measure but will cast their votes based on the ballot title); see also *Wash. Fed'n of State Employees v. State*, 127 Wn.2d 544, 554, 901 P.2d 1028 (1995) (same).

Appellants claim that allowing severability will encourage logrolling because initiative sponsors will include minor giveaways, knowing that at worst such provisions will be severed. Appellants' Br. at 36. Appellants misunderstand that a severability analysis does not *require* severing every subject not included in a ballot title, it merely *allows* it.³¹ The severability analysis itself, which severs and invalidates provisions only if it can presume the valid provision would have been enacted even without the invalid portion, protects against the dangers Appellants envision.

In the present case, the provision that allocates a portion of funds from the Liquor Revolving Fund for public safety could be severed from I-1183 if found to be a separate subject. I-1183, § 302. These funds are not included in the ballot title, they are not "inextricably intertwined" with the

³¹ See *Swedish Hosp. v. Dep't of Labor and Indus.*, 26 Wn.2d 819, 832-33, 176 P.2d 429 (1947) (applying severability analysis, but concluding that entire act was invalid because the multiple subjects were intertwined).

remainder of I-1183, and their elimination would not render the initiative incapable of accomplishing its purpose. The provision is relatively insignificant in the context of the initiative as a whole and, if deleted, the funds would likely continue to be distributed to local governments but would not be earmarked for public safety purposes. Moreover, the ten million dollars allocated by the last sentence of section 302 is a tiny fraction of the revenues that are expected to be generated by I-1183. CP 223-229. Some sense of its financial insignificance can be gleaned from a comparison with the amount of revenue currently generated by taxes on liquor sales, liquor license fees,³² and sales by the Board. In Fiscal Year 2011, a total of \$425,700,000 was distributed from the Liquor Revolving Fund to the general fund or local governments. CP 1605-1607.

Similarly, two other provisions could be severed from I-1183 if this Court finds they are separate subjects: the provision of section 107(7) that limits the Board's authority to restrict price advertising of liquor and the provision of section 124 that repealed language referring to state policy goals. These provisions are not included in the ballot title, they are not "inextricably intertwined" with the remainder of I-1183, and their

³² These amounts include taxes on sales of all three types of liquor (beer, wine and spirits) and license fees and penalties collected on all types of licenses, not simply the new licenses to sell spirits. CP 1605-1607 (FY 2011 Annual Report, Wash. State Liquor Control Board).

elimination would not render the initiative incapable of accomplishing its purpose.

Severability of these provisions is also supported by the initiative itself. I-1183 contains a severability clause at section 304, which creates a presumption that voters would have passed the initiative without an allegedly invalid provision if the criteria for severability are otherwise met. “A saving clause may indicate legislative intent that the remainder of the act would have been enacted without the invalid portions.” *State v. Broadaway*, 133 Wn.2d at 128 (citing *Swedish Hosp. v. Dep’t of Labor & Indus.*, 26 Wn.2d 819, 833, 176 P.2d 429 (1947)).

C. All of the provisions of I-1183 are expressed in its title

“The second requirement of article II, section 19 is that the subject of an act must be expressed in its title.” *Amalgamated Transit Union*, 142 Wn.2d at 217. The ballot title of I-1183 reflects the subject of the initiative as required by the “subject-in-title” rule. The title of an act complies with this rule “if it gives notice which would lead to an inquiry into the body of the act or indicates the scope and purpose of the law to an inquiring mind.” *Id.* This does not mean the title must convey details of the act’s contents. “[T]he title need not be an index to the contents, nor must it provide details of the measure.” *Id.* “Any objections to the title must be grave and the conflict between it and the constitution palpable

before we will hold an act unconstitutional.” *Wash. Ass’n of Neighborhood Stores v. State*, 149 Wn.2d 359, 372, 70 P.3d 920 (2003) (quoting *N. Cedar Co. v. French*, 131 Wn. 394, 419, 230 P. 837 (1924)).

The title for I-1183 meets this test. First, it references in general terms that the initiative “concerns liquor: beer, wine, and spirits (hard liquor).” The initiative then provides a concise description that refers to closure of state liquor stores and the sale of assets, the licensing of private parties to sell and distribute spirits, the setting of license fees based on sales, the regulation of licensees, and changes in the regulation of wine distribution. This title provided voters with the notice required by article II, section 19 to apprise them of the general scope and purpose of the law and led voters interested in more detail to inquire into the body of the act.

Appellants’ sole argument that the title does not accurately reflect the subject of the initiative is that the title states the initiative would “set license fees based on sales.” Appellants’ Br. at 42-49. The initiative does in fact set “license fees” based on sales. I-1183, §§ 103, 105. Nevertheless, Appellants contend the license fees based on sales referred to in the ballot title are actually “taxes” rather than fees and should have

been described as such. Therefore, they conclude that the subject-in-title rule is violated.³³

Appellants are mistaken. Appellants rely for their argument not on a common understanding of the word “fee,” nor on a common understanding of the entire phrase used in the ballot title, but on a specific legal definition used by courts to determine what “regulatory fees” are within a municipality’s authority to enact, or other definitions used in specific legal analyses. I-1183 sets the value of the privilege of selling and distributing spirits based on the amount of sales, and requires payment of the charge to retain a license to sell liquor. Describing these charges as license fees informed voters of the scope and purpose of the law.

1. The phrase “sets license fees based on sales” in the title adequately informed voters of the effect of I-1183

Courts examining titles in the context of the subject-in-title rule have historically focused their article II, section 19 analysis on whether terms used in the ballot title are defined within the body of the act differently from what an average voter would assume. *See Amalgamated Transit Union*, 142 Wn.2d 183, 205, 219-27, 11 P.3d 762 (2000) (“the

³³ Appellants argued this issue before the Thurston County Superior Court in their challenge to the ballot title drafted by the attorney general. *In re Ballot Title for Initiative No. 1183*, Thurston County Case No. 11-2-01292-9. That court rejected the argument that the ballot title should include the word “tax” and retained the description of the license fees as a “fee” in the ballot title.

court focuses on the language as the average informed voter would read it”); *DeCano v. State*, 7 Wn.2d 613, 626, 110 P 2d 627 (1941).

Appellants ignore this requirement, instead relying on a technical, legalistic definition of “fee” developed by courts for the limited purpose of determining whether a monetary charge is a legally permissible regulatory fee or an impermissible tax.

Appellants do not demonstrate the use of the term “fees based on sales” in I-1183 violated the expectations of the voters. A common definition of a fee is “a charge fixed by law or by an institution for certain privileges or services.” *Webster’s Third New International Dictionary of the English Language Unabridged* 833 (1993); see also *Black’s Law Dictionary* 553 (5th ed. 1979) (“A charge fixed by law ... for use of a privilege under control of government.”). The plain and ordinary definition of “fee” does not concern itself with the use to which fee revenues will be put.

The license fee established by I-1183 clearly meets the dictionary definition of a fee: it is a charge levied for the privilege of selling liquor, a privilege under the control of the state of Washington. Reinforcing this understanding of fee is at least one commonly understood distinguishing factor of a tax—that it is involuntary. In *Amalgamated Transit Union*, this Court stated:

Tax is a pecuniary burden laid upon individuals or property to support the government, and is a payment exacted by legislative authority. Essential characteristics of a tax are that it is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority. *Black's Law Dictionary* 1457 (6th ed. 1990).

Amalgamated Transit Union, 142 Wn.2d at 220 (citation omitted). The fees at issue here are voluntary as they are a payment for the privilege of engaging in a specific business.

Appellants urge this Court to construe the clearly stated license fees as taxes, hoping to create a subject-in-title violation where none exists. The Court should reject this invitation. The fees that Appellants characterize as taxes are described in the initiative as license fees, paid by licensees who sell spirits, based on amount of their sales. The fees are not imposed on the general public and, in contrast to the taxes on spirits, the law does not require that the fees be collected from purchasers.³⁴ The title of I-1183 provides notice that the law “set[s] license fees *based on sales*,” (emphasis added) thus informing the voting public of the measure of the fees.

³⁴ The taxes imposed on spirits by RCW 82.08.150 are codified in the state tax code. RCW 82.08.150(9) requires that the buyer must pay the taxes to the seller, and the seller must collect the full amount of the tax from the buyer. RCW 82.08.150 is modified by section 106 of I-1183, to reflect the fact that the Board no longer will sell spirits. Section 106(9) requires sellers to report and return the taxes to the Department of Revenue. The Board currently collects the taxes on spirits when the products are sold, whether to restaurants and other retailers for resale, or to individual consumers.

I-1183 differs significantly from the initiative at issue in *Amalgamated Transit Union*, on which Appellants' "tax vs. fee" argument relies. Initiative 695 ("I-695"), construed in that case, repealed the Motor Vehicle Excise Tax, imposed a flat thirty dollar fee for vehicle licenses, and mandated that any state tax increases obtain voter approval. *Amalgamated Transit Union*, 142 Wn.2d at 183. I-695 included a specific, and very broad, definition of the term "tax" in its text that the Court found broader than the common understanding of the term used standing alone in the title. *Id.* at 220-221.³⁵ In fact, the list of charges that I-695 defined as "taxes" included "any monetary charge by government." I-695, § 2(2). The court concluded that, "The average informed voter would not conclude that the charge for a state nurse's license, for example, is a tax in its traditional sense." *Id.* at 221. The Court's analysis

³⁵ Section 2(1) of I-695 provided: "Any tax increase imposed by the state shall require voter approval." Subsections 2(2), (3) and (4) provided:

(2) For the purposes of this section, tax includes, but is not necessarily limited to, sales and use taxes, property taxes, business and occupation taxes, excise taxes, fuel taxes, impact fees, license fees, permit fees, and any monetary charge by government.

(3) For the purposes of this section, tax does not include:

(a) Higher education tuition, and

(b) Civil and criminal fines and other charges collected in cases of restitution or violation of law or contract.

(4) For the purposes of this section, tax increase includes, but is not necessarily limited to, a new tax, a monetary increase of an existing tax, a tax rate increase, an expansion in the legal definition of a tax base, and an extension of an expiring tax.

suggested that the term “tax,” as defined by I-695, could even include city charges for water or bus passes. *Id.* at 223-24.

In determining that voters might not understand that “tax” included such charges, the *Amalgamated* Court did not rely on legal distinctions between regulatory fees and taxes used by courts when analyzing a local government’s authority to impose charges. Instead, the Court focused on the common meaning of the term as voters would understand it, relying primarily on dictionary definitions. *Id.* at 219. Because the Court concluded that the term “tax” used in I-695 did not give notice to voters of what government charges would require a public vote, the Court invalidated the initiative. *Id.* at 226.

In contrast, the concise description in the ballot title of I-1183 gave notice of how it used the term “fees.” Unlike the definition of “taxes” in I-695 that was much broader than the common understanding of taxes, I-1183 uses “fees” consistently with the plain and ordinary meaning of the term. Moreover, explaining that the license fees are “based on sales” provided additional notice to an inquiring mind of the scope and purpose of the initiative.

In assessing the meaning of “tax,” the *Amalgamated Transit* Court also looked to the provisions of the initiative as a whole in determining that the term “tax” in the ballot title without further explanation would not

put voters on notice of the actual effects of the initiative. *Id.* at 220. Here, examining I-1183 as a whole, in the context of the system it was replacing, reinforces that the term “license fees based on sales” put voters on notice of the initiative’s effect.

I-1183 creates spirits retail licenses and spirits distributor licenses. I-1183, §§ 103, 105. Spirits retail licensees and spirits distributor licensees must pay annual “license issuance fees.” I-1183, §§ 103(4), 105(3). The fees are based on licensees’ sales and are deposited into the Liquor Revolving Fund. *Id.* Licensee must pay the license issuance fee to retain the privilege to sell or distribute spirits, and only licensees are required to pay the fee. *Id.*

For decades, the state has imposed a markup on spirits that it sells, which brought revenue to the state that was used for particular purposes and redistributed to local governments pursuant to statutes that remain unchanged. The state did not consider the imposition of the markup a tax, and did not label it as such. The state has consistently detailed the components of the cost of the spirits it sells by separately listing the costs, the taxes, and the markup as separate items. This continues to the present. CP 1605-1608 (FY 2011 Annual Report, Wash. State Liquor Control Board).

The new license issuance fees are imposed on those who seek and exercise the privilege of selling and distributing spirits, and replace, in part, the revenues that the state now collects via its markup on the spirits it sells. The license fees based on sales do not become “taxes” simply because the value of the privilege is determined by the amount of sales the licensee makes.

When words in the title of a bill can be given two interpretations, one which might render the act constitutional and the other unconstitutional, courts adopt the constitutional interpretation. *Wash. Fed’n of State Employees*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995); *Treffry v. Taylor*, 67 Wn.2d 487, 491, 408 P.2d 269 (1965). Any reasonable doubt is to be resolved in favor of constitutionality. *Id.* The Court should reject Appellants’ invitation to find that the voters were not informed that I-1183 would establish license fees based on sales.

2. Fees imposed on spirits retail and spirits distributor licensees are not taxes for purposes of article II, section 19

Appellants argue that unless the revenue from the fees is required to be used exclusively to fund programs to alleviate the harm they speculate I-1183 will bring about, the license fees imposed by sections 103(4) and 105(3) must be characterized as taxes rather than fees. First, as discussed above, Appellants ignore the real issue, which is the common

understanding of the term “fees based on sales.” Second, Appellants’ argument fails because it assumes that the State can only enact fees that have a strictly regulatory purpose and no other fees. The past treatment of the revenue from liquor fees and other charges shows that the test for what is a “regulatory fee” does not establish the universe of government charges that are considered fees.³⁶

Appellants rely on the criteria for distinguishing between a tax and a regulatory fee set out in *Covell v. City of Seattle*, 127 Wn.2d 874, 879, 905 P.2d 324 (1995). Appellants’ Br. at 44. Appellants’ reliance is misplaced because the State is not subject to the restrictions imposed on municipal corporations when imposing fees and taxes. They flatly assert that a comprehensive analytical framework for determining whether a charge is a tax or a fee was established by *Covell*. This misstates *Covell*.

The issue in *Covell* was whether a residential street utility charge, for the “use or availability of the streets,” was a regulatory fee or an unconstitutionally imposed *property tax*. *Id.* at 876-878. The *Covell* court noted that, although municipalities may impose *regulatory* fees under their general police powers set out in article XI, section 11 of the Washington

³⁶ Whether a government charge is considered a “tax” or a “fee” may depend on the context in which the question arises, since different legal tests may apply. Here, the context is whether, construing the term liberally and in favor of a constitutional reading, “license fees based on sales” gives notice which would lead to an inquiry into the body of the act or indicates the scope and purpose of the law to an inquiring mind. See *Amalgamated Transit Union*, 142 Wn.2d at 217.

Constitution (so long as the subject matter is local and does not conflict with the general laws), municipalities may impose taxes only pursuant to specific legislative or constitutional authority. *Id.* at 878-9; *accord, Margola Associates v. City of Seattle*, 121 Wn.2d 625, 634-635, 854 P.2d 23 (1993).

Thus, the *Covell* test for determining whether a given charge is a regulatory fee is used for the purpose of deciding whether a municipality's fee passes muster under article XI, section 11 and is not an unauthorized tax. *Covell* does not stand for the proposition that regulatory fees are the *only* type of fees that can be enacted or that the test applies to other types of fees. The test is inapplicable to determining whether describing a monetary charge as a "fee based on sales" adequately informed voters of I-1183's effect, as the State is not subject to the restrictions of article XI, section 11.

The historical treatment of liquor fees demonstrates that the definition applicable to "regulatory fees" used in *Covell* does not apply in other contexts. Appellants argue that *Covell* and its progeny require a "regulatory fee" to be allocated and used only for a regulatory purpose. Appellants' Br. at 45 (citing *Samis Land Co. v. City of Soap Lake*, 143 Wn.2d 798, 809-10, 23 P.3d 477 (2001)). Yet ever since the adoption of the Liquor Act, fees generated from liquor have been used to support both

the State's regulation of liquor sales and purposes not related to the regulation of liquor. Section 73 of the Liquor Act created the Liquor Revolving Fund, "which shall consist of all *license fees, permit fees, penalties, forfeitures* and all other moneys, income or revenue received under this act." CP 1051-1100. (emphasis added) That fees were merged with the other revenues deposited into the fund did not mean they ceased to be "fees" as a result of their deposit into the fund. On that score, I-1183 breaks no new ground.³⁷

Appellants also cite *Franks & Sons, Inc. v. State*, 136 Wn.2d 737, 749, 966 P.2d 1232 (1998), for the definition of a tax. Appellants' Br. at 44. Once again, however, in that case the Court was examining whether a governmental charge was a type of fee that could be imposed without regard to Commerce Clause restrictions on interstate taxation. *Franks & Sons*, 136 Wn.2d at 751. Like the *Covell* case, the analysis simply has no application here.

The Court referred to the *Covell* test in one case in discussing whether a state charge assessed on inmates in correctional institutions was a fee or a tax, *Dean v. Lehman*, 143 Wn.2d 12, 18. P.3d 523 (2001).

³⁷ In *Ajax v. Gregory*, the Court upheld the payment of liquor license fees into the Liquor Revolving Fund, as directed by section 78 of the Liquor Act, despite the requirement of article VII, section 6 of the Washington Constitution, which requires that all taxes collected for state purposes be deposited into the state treasury. *Ajax*, 177 Wash. at 476-77.

Although *Dean* applied the *Covell* test, *Dean* is consistent with the State's argument here. The Court noted, "[w]here the charge is related to a direct benefit or service, it is generally not considered a tax or assessment." *Id.* (citing *State ex rel. City of Seattle v. Dep't of Pub. Utilities*, 33 Wn.2d 896, 902, 207 P.2d 712 (1949)). The license fees imposed by I-1183 are a charge related to the direct benefit of being a licensed spirits retailer or distributor, a privilege previously reserved to the state.

In conclusion, the determination of whether a state-imposed charge is a "tax" or "fee" is largely academic, except in certain limited circumstances. Legal tests developed for those limited circumstances should not determine the outcome here. Rather, the Court should determine that voters were adequately informed that I-1183 would impose government charges based on sales (whether tax or fee) when they were told it would impose "license fees based on sales." Appellants' argument that the use of "fee" in I-1183's title violates the subject-in-title provision of article II, section 19 should be rejected.

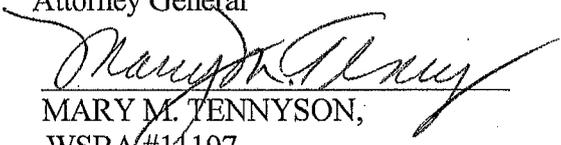
IV. CONCLUSION

Initiative 1183 concerns a single subject: liquor. I-1183 changes many aspects of the complex laws that regulate the sale and distribution of liquor in Washington, but that does not mean it addresses multiple subjects. Each section in I-1183 has a rational unity to the ballot title and

each other. The voters were given sufficient notice in the title of the contents of the initiative. Appellants cannot demonstrate that I-1183 violates article II, section 19 beyond a reasonable doubt. The State asks this Court to declare that I-1183 is consistent with the Washington Constitution.

RESPECTFULLY SUBMITTED this 30th day of April 2012.

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APPENDIX

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 sanatorium 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 ~~((minors))~~ 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 62 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 66.08.030 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;

~~((n))~~ (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;

~~((o))~~ (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;

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

~~((v))~~ (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;

~~((x))~~ (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;

~~((y))~~ (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;

~~((z))~~ (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.

~~((11))~~ (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 [REDACTED] (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 66.24 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.

NO. 87188-41

RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON ASSOCIATION FOR
SUBSTANCE ABUSE AND
VIOLENCE PREVENTION, a
Washington non-profit corporation,
DAVID GRUMBOIS, an individual,

Plaintiff,

v.

The STATE OF WASHINGTON,

Respondent,

and

JOHN MCKAY, BRUCE BECKETT,
COSTCO WHOLESALE
CORPORATION, WASHINGTON
RESTAURANT ASSOCIATION, THE
YES ON 1183 COALITION, MACKAY
RESTAURANT GROUP,
NORTHWEST GROCERY
ASSOCIATION, SAFEWAY, INC.,
THE KROGER COMPANY, and
FAMILY WINERIES OF
WASHINGTON,

Respondent-Intervenors.

CERTIFICATE OF
SERVICE

I, Rain Dineen, certify that I caused a copy of **State's Response Brief** to be served via electronic mail on all parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

DATED this 30th day of April 2012, at Olympia, WA.


RAIN DINEEN, Legal Assistant

OFFICE RECEPTIONIST, CLERK

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Cc: Tennyson, Mary (ATG); Turcott, Bruce (ATG); Gonick, Peter (ATG)
Subject: RE: Supreme Court No. 87188-4: State's Response Brief

Rec. 4-30-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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Cc: Tennyson, Mary (ATG); Turcott, Bruce (ATG); Gonick, Peter (ATG)
Subject: Supreme Court No. 87188-4: State's Response Brief

Attached for filing is the State's Response Brief, Appendix, and Certificate of Service in the matter of:

WASAVP v. State and Costco et. al

Supreme Court No. 87188-4

Filed for Mary M. Tennyson, Sr. AAG, WSBA# 11197 and Bruce L. Turcott, AAG WSBA# 15435

<<State's Response Brief.pdf>> <<Appendix.pdf>> <<CertofService 4-30-12.pdf>>

Filed by Rain Dineen, Legal Assistant at Raind@atg.wa.gov

Thank you.

Rain Dineen

Legal Assistant 2

Office of the Attorney General

Licensing & Administrative Law Division

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