



Summary of Initiative 1100

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

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BRIEF SUMMARY

- Closes state liquor stores operated by the Liquor Control Board (Board), and requires the Board to terminate contracts with contract liquor stores.
- Creates licenses allowing the sale, distribution, and importation of spirits by private entities. Allows contract liquor stores to receive licenses allowing the sale of spirits.
- Repeals certain pricing and delivery restrictions (e.g., the prohibition on quantity discounts) for beer and wine suppliers and distributors.
- Repeals the spirits markup.
- Makes other changes in liquor laws.

BACKGROUND

Initiative 1100

Initiative 1100 was certified for the ballot on July 12, 2010. The ballot title and summary prepared by the Attorney General, and amended by court order on May 20, 2010, are as follows:

Ballot Title

Statement of Subject: Initiative Measure No. 1100 concerns liquor (beer, wine and spirits).

Concise Description: This measure would close state liquor stores; authorize sale, distribution, and importation of spirits by private parties; and repeal certain requirements that govern the business operations of beer and wine distributors and producers.

Should this measure be enacted into law? Yes [] No []

Ballot Measure Summary

This measure would direct the liquor control board to close all state liquor stores; terminate contracts with private stores selling liquor; and authorize the state to issue licenses that allow spirits (hard liquor) to be sold, distributed, and imported by private parties. It would repeal uniform pricing and certain other requirements governing business operations for distributors and producers of beer and wine. Stores that held contracts to sell spirits could convert to liquor retailer licenses.

Distribution and Sale of Spirits

Washington is one of 18 liquor "control" states, in which the state has a monopoly over some aspect of the distribution and sale of liquor, which includes beer, wine, and spirits. In Washington, spirits in the original package (including spirits sold by restaurants and other licensees) may only be purchased from state liquor stores operated by the Liquor Control Board (Board) or private liquor stores under contract with the Board. (An exception allows a craft distillery to sell a limited quantity of spirits in the original package that it produced.) "Spirits" is any beverage containing alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding 24 percent of alcohol by volume.

There are approximately 160 state liquor stores and 155 contract liquor stores in the state. The Board also operates a distribution center in Seattle. Distribution of spirits to state and contract liquor stores is performed by trucking companies under contract with the Board. (State and contract liquor stores also may sell beer and wine.)

The selling price charged for spirits by state and contract liquor stores is made up of the distillery price plus a markup. Certain licensees that sell spirits, including restaurants, receive a 15 percent discount on the selling price. Purchasers of spirits also pay federal and state taxes.

Distribution and Sale of Beer and Wine

The distribution and sale of beer and wine to licensees takes place under what is known as the "three-tier" system, in which manufacturers generally sell their products to distributors who then sell to retailers. In contrast to spirits, beer and wine are distributed by private distributors licensed by the Board. A number of exceptions to the three-tier system have been enacted. For example, a domestic winery may distribute and sell at retail wine it produces. With a direct shipping endorsement, a winery certificate of approval holder (out-of state winery) may distribute wine it produces.

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Laws also govern pricing and delivery by beer and wine suppliers (manufacturers and other suppliers) and distributors. Suppliers and distributors must maintain specified price lists. Uniform pricing is required, and quantity discounts and sales below cost are prohibited. (Quantity discounts by retailers are permitted.) Distributors must deliver beer and wine to a retailer's licensed premises or a retailer may accept delivery at the distributor's premises. In 2008 the U.S. Court of Appeals for the Ninth Circuit in *Costco v. Hoen*, among other rulings, upheld the uniform pricing, quantity discount, and delivery laws.

Liquor Control Board

The Board is responsible for the purchase, distribution, and sale of liquor in its business enterprise division and is responsible for the regulation and enforcement of liquor laws in its licensing and regulation division.

The Board has rule-making authority to adopt rules not inconsistent with the spirit of the liquor title as are deemed necessary and advisable. The Board has specific rule-making authority regarding its stores, the sale of liquor by licensees, the conditions for obtaining licenses to sell beer and wine, ingredient standards, and other matters.

Liquor Licenses/Permits/Approvals

The Board issues various liquor licenses, which allow the exercise of specific privileges. Off-premise retail licenses include grocery store and beer and/or wine specialty shop licenses. On-premise retail licenses include restaurant and nightclub licenses. (Some on-premise licenses also allow off-premise sales with an endorsement.) The Board also issues non-retail licenses. These include domestic winery, domestic brewery, distiller, beer distributor, wine distributor, wine importer, beer importer, and liquor importer licenses. Out-of-state wineries and breweries obtain a certificate of approval to ship their products into the state. The Board also issues special permits, including permits for licensees to serve liquor at various events.

Tied House Laws

Tied house laws generally prohibit certain relationships between the tiers of the liquor industry. One aspect of the tied house laws is the financial interest piece, which addresses ownership in multiple tiers. In 2009 the Legislature repealed a general prohibition on financial interests between tiers and permitted financial interests in multiple tiers under certain conditions.

Another aspect of the tied house laws is the "moneys' worth" piece, which prohibits a manufacturer or distributor from providing money or moneys' worth to a retailer. For example, sales on credit are prohibited. A number of exceptions have been enacted, including an exception allowing manufacturers and distributors to give retailers branded promotional items, such as napkins, coasters, and shirts, that may not be targeted to or appeal principally to youth,

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are not provided to customers, and meet other requirements. A complaint process is established for any person to complain to the Board that branded promotional items are unlawful.

Liquor Revenue

State liquor revenue includes the markup on spirits sales, sales and liter taxes, and license fees.

Markup. The markup is deposited into the Liquor Revolving Fund. Moneys in this fund are used for Board expenses and "excess funds" are distributed to the State General Fund and cities and counties.

State spirits taxes. For purchasers other than restaurants, the basic spirits retail sales tax is 15 percent, which is imposed on all retail sales. Restaurants pay a basic 10 percent tax, which tax is limited to their purchases from state and contract liquor stores. A liter tax of \$1.72 is also imposed on all retail sales. A 14 percent surtax is imposed on the basic 10 or 15 percent sales tax and the \$1.72 liter tax. Additional sales and liter taxes are also imposed on spirits sales. Sales taxes are distributed to the State General Fund and cities and counties, and liter taxes are deposited into the State General Fund.

License fees. License fees vary depending on the license type. A grocery store annual license fee, for example, is \$150, plus a 10.5 percent surcharge which is in effect until July 1, 2011.

License fees are deposited into the Liquor Revolving Fund and distributed for various purposes depending on the license type. For grocery store licenses, for example, 20 percent of the fee is distributed to the Department of Social and Health Services for purposes of prevention and treatment of alcoholism and drug addiction. Moneys remaining after specific distributions are distributed in the same manner as the markup - for Board expenses, the State General Fund, and cities and counties. (The fee surcharge is not subject to this distribution and must be used only for the administration and enforcement of the license.)

SUMMARY

Intent

Intent is stated that the Liquor Control Board (Board) focus on its core mission of education and enforcement to protect the health, welfare, and safety of its citizens. The state will stop selling liquor and will license the sale of spirits to strictly regulated vendors already proven to be responsible sellers of beer and wine. Intent is stated that the initiative will improve regulations to prevent abusive and underage drinking, enforce licensing regulations, and collect taxes for the state's General Fund.

State Distribution and Sale of Liquor

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Within 90 days of the effective date of the Initiative, the Board must have formulated and begun implementing a plan to terminate the state liquor store and distribution system and dispose of the Board's unneeded assets, such as the distribution center.

State liquor stores may not sell liquor after December 31, 2011. Any inventory of unsold liquor must be returned to the supplier or sold at auction. The Board may not renew or extend contract liquor store contracts beyond December 31, 2011, and must use all lawful means for terminating existing contracts.

Liquor Control Board

The Board has power to adopt rules to implement the liquor laws. The Board's rule-making authority is to enforce the licensing requirements, collection of taxes, prevention of underage drinking of liquor and alcohol abuse, and managing the Board and its employees. Advertising rules must be solely for the purpose of and have a demonstrable effect of reducing underage or abusive consumption. Specific rule-making authority related to state stores, licenses, and other matters is deleted.

The Board's powers related to state and contract liquor stores, including distribution of liquor, are repealed.

Licenses/Approvals

Several new licenses are created:

License	Authority	Fees	Fees for existing entities
General liquor retailer	Sell spirits, beer, and wine for off-premises consumption.	\$1,000 annual fee \$1,000 application fee	Existing grocery store and specialty shop licensees in good standing may receive a license with payment of the application fee, valid until their renewal date. In exchange for relinquishing any contract rights, contract stores may receive a license valid through December 31, 2012, without payment of any fee and are exempt from the application fee on renewal.*
General liquor distributor	Sell spirits, beer, and wine to retailers and other distributors, and for export.	\$2,000 annual fee \$2,000 application fee	Distributors in good standing may receive a general liquor distributor license with payment of the application fee.
Spirits distributor	Distribute only spirits to retailers and other distributors, and for export.	\$1,000 annual fee	

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License	Authority	Fees	Fees for existing entities
Spirits importer license	Import spirits and sell to distributors and retailers and export.	\$160 annual fee	
Certificate of approval (out of state)	Ship spirits into the state to distributors, importers, and retailers. Distribute own products with endorsement.	Board sets	Any supplier of spirits to the Board and their authorized representative may receive a certificate of approval on payment of \$200.

*Contract store operators have 90 days after the effective date of the initiative to elect to receive a license.

All distillers (instead of only craft distillers) may sell at retail and offer samples of their own products. The quantity limit on retail distiller sales is removed. Distillers may also distribute their own products.

Hotels may provide complementary bottles of spirits, in addition to beer and wine, at check-in. Hotels may cater events on any liquor manufacturer premises, not limited to wineries.

Spirits importers, any person manufacturing spirits in the state, and holders of spirits certificates of approval must make certain reports to the Board on the quantity of spirits sold.

Licensees may not sell spirits below cost except for "close-out" items.

Distribution and Sale of Beer and Wine

The laws regulating pricing and delivery by beer and wine suppliers and distributors are repealed. Quantity discounts and sales below cost by suppliers and distributors of beer and wine are no longer prohibited and uniform pricing is no longer required. Distributors are no longer required to deliver beer and wine to the retailer's licensed premises. Price list requirements are eliminated.

Tied House Laws

The tied house laws regulating certain business relationships between tiers of the liquor industry are repealed. A new "moneys' worth" provision prohibits manufacturers and distributors from providing, and retailers from receiving, branded promotional items which are targeted to or appeal principally to youth. (Other branded promotional requirements in current law are not imposed.) An intent section recognizing the three-tier system as a valuable system for the distribution of beer and wine is repealed.

Liquor Revenue

The spirits markup is repealed.

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Most existing taxes continue to apply. The 10 percent sales tax restaurants pay on their purchases from state and contract liquor stores is imposed on purchases by restaurants from spirits retailers and distributors. The additional 14 percent surcharge does not apply to restaurants.

License fees from the new licenses may be expended only for the administration and enforcement of liquor licenses and reducing underage or abusive consumption.

Spirits purchased for various special permits may be purchased from a licensee.

Other

Nothing in the initiative is intended to restrict the authority of cities and counties to enact or enforce land use regulations governing where liquor may be sold.

Provisions allowing persons to bring specified amounts of alcohol into the state for personal and household use tax free and additional amounts upon payment of tax are modified to remove the Board's discretion over the additional amounts and delete authorization for a private club license within 10 miles of the Canadian border.

A limitation on the authority of accredited representatives of spirits distillers, manufacturers, importers and distributors to contact retail licensees is removed.

The list of acceptable cards of identification for liquor purchases is repealed.

References to purchases of spirits at state and contract liquor stores are changed to include licensees. Provisions relating to state and contract liquor stores are repealed.

Timeline Summary

December 2, 2010	<ul style="list-style-type: none">• Changes related to sale and distribution of beer and wine and tied house laws take effect.• Board must notify contract liquor stores of choice to receive general liquor retailer license.• Spirits distributor and importer licenses take effect.
January 1, 2011	<ul style="list-style-type: none">• General distributor license takes effect.• Existing suppliers to the Board may receive certificate of approval.

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March 2, 2011	<ul style="list-style-type: none"> • Board must have formulated and begun implementing plan to close state stores, end state distribution, and dispose of assets. • Contract liquor store operators must notify Board of choice to receive general liquor retailer license.
June 1, 2011	<ul style="list-style-type: none"> • General liquor retailer license takes effect.
December 31, 2011	<ul style="list-style-type: none"> • End of sales by state liquor stores. • Contract liquor store agreements may not be renewed or extended beyond this date. • Board's authority related to state and contract liquor stores and other matters ends. • Spirits markup ends.

Effective Date:

The initiative takes effect 30 days after the election, except for Sections 10 and 36, relating to bringing alcohol into the state for personal or household use, which take effect June 1, 2011, and sections 2, 4 through 8, and 37, relating to the Liquor Control Board's authority and repeal of the markup, which take effect December 31, 2011.

Staff: Joan Elgee (786-7106)

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