



SUMMARY OF INITIATIVE 1183 TO THE PEOPLE

(Concerning liquor: beer, wine, and spirits [hard liquor])

*This information has been prepared in response to specific questions about the provisions and effects of Initiative 1183 and is provided for legislative purposes only; it is **not** provided as an expression for or against the ballot measure. Please remember that it is inappropriate to use public resources to support or oppose a ballot measure. Please refer to pages 8-9 of the 2010-11 Legislative Ethics Manual or contact Senate Counsel for further guidance on when and how comment on ballot measures is appropriate.*

BRIEF SUMMARY

Initiative 1183 (I-1183) permits the sale of spirits by private retailers and provides for the closure of state operated liquor stores beginning June 1, 2012. Licenses are created and requirements established for spirits retailers and distributors. Spirits retail premises must comprise at least 10,000 square feet with some exceptions. Spirits distributors must pay to the state 10 percent of spirits sales revenue for the first two years and 5 percent thereafter, and spirits retailers must pay 17 percent of spirits sales revenue to the state. It repeals ESSB 5942 which provides for a competitive process for the lease of the state's spirits warehousing and distribution system and to contract for the exclusive right to distribute spirits.

BACKGROUND

The Washington State Liquor Control Board (Board) regulates the manufacture, distribution and sale of liquor in the state. The term "liquor" includes beer, wine, and spirits (also known as hard liquor). Washington is one of 18 liquor control states in which the state has sole authority over some aspects of the distribution and sale of liquor.

The Board operates a liquor distribution center from which liquor is distributed to state-operated and contract liquor stores.

Entities which intend to manufacture, distribute, and/or sell liquor in Washington State must obtain a specific license from the Board to do so. Examples of non-retail licenses are those issued for wineries, breweries, distilleries, distributors of wine or beer, and importers. Some examples of retail sales licenses are those issued for grocery stores, hotels, and nightclubs, taverns, and sports entertainment facilities. Retail licensees may pay additional fees for specific endorsements which change the normal circumstances under which alcohol may be sold and served. License fees range up to \$2,000 and are renewed annually. License fees are deposited into the Liquor Revolving Fund. Licensees are subject to penalties for violations. Penalties can include fines, or license suspensions.

State liquor revenue includes a uniform markup on spirits, beer and wine, state sales and liter taxes, and state and local general retail sales taxes. Purchasers pay both a sales tax and a liter tax. Sales taxes go into the state General Fund and to cities and counties. Liter taxes are deposited into the state General Fund.

Spirits

Currently, spirits may be sold only in state liquor stores and contract liquor stores with an exception which allows for limited sales of spirits by craft distilleries. Licensees such as restaurants and bars must purchase spirits from state liquor stores and contract liquor stores. The Board establishes prices charged for spirits which include the distillery price and a markup, state liquor and liter tax. Spirits purchasers pay federal and state taxes.

ESSB 5942 enacted during the 2011 First Special Session, became effective June 15, 2011. It requires the Office of Financial Management (OFM) to conduct a competitive process for the selection of a private sector entity to lease and modernize the state's spirits warehousing and distribution facilities and related operations. Proposals must demonstrate a positive financial benefit to the state, local government, and interested stakeholders. After consulting with the Board and the Spirits Distribution Advisory Committee, OFM is authorized to recommend to the Board the proposal that best meets the criteria and the best interests of the state. In the event that no proposals meet the best interest of the state, OFM will notify the Board to not accept the proposal.

Beer and Wine

State statute governs beer and wine supplier and distributor pricing and delivery. Uniform pricing is required and quantity discounts or sales at below cost (with some exceptions) are prohibited. Delivery of beer or wine by the distributor must be to the retail licensee's licensed premises. A retail licensee may also accept delivery at the distributor's premises. Beer and wine are distributed by private distributors licensed by the Board. Retail licensees are generally not permitted to sell liquor to each other.

Washington State operates under a three-tier or "tied house" system. The functions of manufacturing, distributing, and retailing are defined and separate. Business and financial interaction between beer and wine industry members performing these functions were historically prohibited. In recent years this prohibition has been deemed "unduly restrictive" and some formerly restricted interests between industry members have been permitted. This ease on restrictions has been justified because these changes do not impermissibly interfere with the goals of orderly marketing, encouraging moderation in consumption, protecting the public interest and advancing public safety by preventing the abuse of alcohol and consumption by minors.

SUMMARY OF INITIATIVE 1183

The state of Washington must auction off its existing state liquor distribution and state liquor store facilities and equipment. All duties of the Liquor Control Board (Board) which relate to conducting the business of distribution, warehousing, purchase, or sales of spirits are eliminated.

The Board retains the authority to regulate and enforce liquor laws, including the licensing of spirits, beer and wine retailers and distributors. Liquor is no longer purchased through the Board, but must be purchased through a liquor or spirits retailer or distributor licensed by the Board. The uniform markup for spirits is replaced by spirits license issuance fees for distributors and retailers.

The transition from the state operated system to the private licensee system must be completed by June 1, 2012. This transition includes closing all state operated liquor stores.

Distribution of Spirits

I-1183 creates several new licenses in addition to the licenses that currently exist. By January 1, 2012, the Board must begin issuing spirits distributor licenses to applicants who meet specific requirements set by the Board, unless the Board determines that issuance of a license to an applicant is not in the public interest. Each spirits distributor licensee must pay an annual license issuance fee based on a percentage of the total revenue from all the licensee's sales of spirits. For the first two years, the licensing fee is 10 percent of gross annual receipts and thereafter the licensing fee is 5 percent of the gross annual receipts from the licensee's sales of spirits. These license issuance fees are calculated only on sales of items which the licensee was the first spirits distributor in the state to have received from the in-state distiller or from an authorized out-of-state supplier.

By March 31, 2013, all spirits distributor licensees must have paid collectively \$150 million or more in spirits distributor license fees. In the event spirits distributor license fees paid by spirits distributors do not reach \$150 million, the difference between \$150 million and the actual receipts will be allocated among spirits distributor licensees for additional payment. In the event that such payments exceed \$150 million (by March 31, 2013) the excess amount must be credited to future license issuance fee obligations of spirits distributor licensees. Spirits distributor licensees must pay an additional annual renewal fee of \$1,320 for each licensed location.

Spirits distributor licensees are required to physically secure the product in a way that is substantially as effective as the currently operated distribution facilities to prevent theft. Spirits can be delivered to the retailer's licensed premises, another location approved by the Board, or to a carrier. There is no minimum facility capacity or size required to receive a spirits distributor license. There is no limit on the number of spirits distributor licenses that can be issued to qualified applicants. Distillers can distribute their own product.

Retail Sales of Spirits

With some exceptions spirits retail licenses can only be issued for premises of at least 10,000 square feet of fully enclosed retail space. Exceptions include: a qualified contract liquor store at its contract location or the holder of former state liquor store operating rights. An otherwise qualified applicant is not subject to the premise square footage requirement when the board determines that there is no retail spirits license holder in the trade area that the applicant proposes to serve, the applicant meets or will meet the operations requirements established by the board, and the licensee has not committed more than one public safety violation within the three years preceding application.

Retail spirits licensees must pay a license issuance fee of 17 percent of all gross annual spirits sales under the license on a quarterly basis according to rules established by the Board. An additional annual license renewal fee of \$166 is required.

Distributors cannot sell spirits below cost unless the item has been stocked for six months. The seller cannot restock the same item for one year following the date the spirits were sold below cost.

A licensed spirits retailer can accept delivery of spirits at its licensed premises or at warehouse facilities registered with the board.

A restaurant retailer authorized to sell spirits may accept delivery of spirits at its licensed premises or warehouse facilities registered with the Board.

Grocery store and specialty shop licensees must have at least two adults, twenty-one years of age or older on duty supervising the sale of spirits at the licensed premises.

Retail Sale of Spirits - Staff Training

Before selling spirits, retail spirits licensees are required to provide training to staff selling spirits. Training must include compliance with liquor regulations, including prohibitions against selling spirits to underage or visibly intoxicated individuals. Such training must be renewed every five years. Licensees must keep a record of the nature and frequency of the training provided. An employee training program is presumed to be sufficient if it incorporates a "responsible vendor program" promulgated by the Board. At a minimum, the responsible vendor program requires licensees to: provide on-going training to employees; accept only certain forms of identification for alcohol sales; adopt policies on alcohol sales and checking identification; post specific signs in the business; and keep records verifying compliance with the program's requirements.

Maximum penalties currently prescribed by the Board for fines and suspensions are doubled for violations relating to the sale of spirits by retail spirits licensees. However, licensees who participate in and are compliant with the responsible vendor program are not subject to the doubling of penalties for a single violation in any 12-calendar-month period.

Other Provisions

Grocery store licensees (which are permitted to sell wine and/or beer) can obtain a wine retailer reseller endorsement to sell wine to other retailers licensed to sell wine for on-premises consumption. The annual fee for the wine retailer reseller endorsement is \$166 for each store.

A grocery store licensee with a wine retailer reseller endorsement may accept delivery of wine at its licensed premises or its registered warehouse facilities from which it can deliver to its own licensed premises and with some limitation, to other licensed premises.

Wine distributors and wineries are permitted to give volume discounts on the wholesale price of wine to retail stores and restaurants and retail stores and restaurants are permitted to distribute wine to their own stores from a central warehouse.

Price differentials for spirits or wine based on bona fide business factors are permitted as long as they are lawful.

Wine retailers may accept delivery of wine at the licensed premises or warehouse facilities registered with the Board.

ESSB 5942, providing for a competitive process for the selection of a private sector entity to lease the state's spirits warehousing and distribution operations, is repealed.

Distribution of spirits license fees paid through the liquor revolving fund to counties and cities in border areas must provide that each category of recipient receive no less that it received during comparable periods prior to the effective date of this law. An additional \$10 million per year from the spirits license fees must be provided to counties and cities in border areas, through the liquor revolving fund to enhance public safety programs.

The Department of Revenue must establish rules to address claims of contract impairment with the state and include a means for reasonable compensation of claims it finds valid, funded first from revenues based on spirits licensing and sales under this act.

For information on assumptions, see the OFM statement of fiscal impacts (given only in total dollars) at the following website: <http://www.ofm.wa.gov/initiatives/default.asp>.

For further information please contact:
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Labor, Commerce & Consumer Protection Committee

This summary should not be considered legislative history for purposes of interpreting Initiative 1183.