



SUMMARY OF INITIATIVE 1100 TO THE PEOPLE

Concerning liquor (beer, wine and spirits).

*This information has been prepared in response to specific questions about the provisions and effects of Initiative 1100 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 the 2010 Legislative Ethics Manual or contact Senate Counsel for further guidance on when and how comment on ballot measures is appropriate.*

BRIEF SUMMARY

Initiative 1100 (I-1100) amends state laws regarding the manufacture, distribution, and sale of liquor¹ in Washington. There are two main components to the initiative. The first component changes the way the state regulates the distribution and sale of beer and wine. Washington has a three-tiered system of beer and wine regulation: a manufacturing tier, a distribution tier, and a retail tier. Beer and wine must generally move through each tier before it can be purchased by a consumer. A number of laws regulating the relationships and business transactions between and among the tiers are repealed by I-1100, including uniform pricing requirements and restrictions on financial interest, quantity discounts, and moneys' worth.

The second component changes the way spirits, also known as hard liquor, are sold in Washington. Washington is a control state, meaning the state has exclusive control over the distribution and retail sale of spirits in the original package. I-1100 eliminates the state's exclusivity and privatizes the distribution and sale of spirits.

BACKGROUND

The Washington State Liquor Control Board (LCB) regulates the manufacture, distribution, and sale of liquor in the state. Any entity seeking to participate in any capacity in the manufacture, distribution, or sale of liquor must obtain the appropriate license to do so from the LCB, and is then limited to participating in the manner authorized by the license. The extent of the regulation varies based on the type of liquor manufactured, distributed, or sold.

Sale and distribution of beer and wine

Washington has a three-tiered system, meaning that, historically, an entity can either manufacture, distribute, or sell beer and wine but was prohibited from operating in more than one tier. A number of licenses grant the holder the ability to participate in multiple tiers. For

¹ As used in this document, liquor refers to wine, beer, and spirits.

instance, licensed in-state wineries and breweries are authorized to manufacture, distribute, and sell their own products. The separation of tiers was enforced through the "tied-house" law, which prevented an entity from having a direct or indirect financial interest in an entity that operates in a different tier. Washington's tied-house prohibition was repealed by the Legislature in 2009, and direct and indirect financial interests between and among industry members and retailers are now permitted so long as the financial interest does not result in undue influence or have an adverse impact on public health and safety. Undue influence means the ability of one retailer or industry member to directly or indirectly influence the purchasing, marketing, or sales decisions of another retailer or industry member by any agreement or other business practice. Adverse impact on public health and safety means a result that is more likely than not to result in alcohol being made significantly more attractive or available to minors, or is more likely to result in overconsumption, consumption by minors, or other harmful or abusive forms of consumption.

State law also regulates the financial relationships and business transactions between tiers. The state's "moneys' worth" law prohibits industry members from advancing, and retailers from receiving, moneys or moneys' worth under an agreement or other business practice. The moneys' worth statute has been interpreted by the LCB to prohibit industry members from giving gifts, discounts, loans, rebates, fixtures, equipment, and supplies to retailers. A number of exceptions to the moneys' worth prohibition have been created, including legislation enacted in 2009 allowing industry members to provide retailers with branded promotional items of nominal value. Branded promotional items must be used exclusively by the retailer and bear advertising of only the member providing the item, and cannot be provided by or through retailers to retail customers or be targeted or appeal principally to youth.

Licensed distributors are also statutorily required to deliver beer and wine sold by the distributor either to the retailer's licensed premise or directly to the retailer at the distributor's licensed premise.

Beer and wine manufacturers, distributors, and retailers are also subject to a number of pricing controls. Manufacturers and distributors must maintain a price list showing the prices at which beer and wine will be sold (price posting), and are prohibited from selling at a price differing from the price shown on the list (uniform pricing). Quantity discounts are prohibited, and manufacturers and distributors cannot sell at a price below acquisition/production cost.

Sale and distribution of spirits

As a control state, the LCB is the only entity that can distribute spirits and sell spirits in original packaging.² Restaurants and bars authorized to sell spirits must buy their spirits from the LCB.

There are approximately 161 state liquor stores and 155 contract liquor stores³ throughout the state, and one distribution center that supplies all the state and contract liquor stores as well as the restaurants and bars licensed to sell spirits.

² Licensed in-state distilleries are authorized to sell their own spirits at retail in original packaging; however, the distilleries are required to buy any spirits they sell at retail (or sample) from the LCB.

³ A contract liquor store is a private store authorized to sell liquor under contract with the LCB.

The state currently levies and collects a liter tax and a sales tax on spirits, the rate varying depending on whether the spirits are purchased by a consumer or a restaurant licensee. Restaurant licensees currently pay a 10 percent sales tax, a 1.4 percent sales tax, and a 2.3 percent sales tax on spirits purchases for a combined rate of 13.7 percent. Revenue from the sales taxes is deposited in the state general fund and distributed to local governments.

The state also collects a "mark-up" on spirits sales. "Mark-up" refers to the difference between the price the LCB pays for a bottle of spirits and the price for which the LCB sells the bottle. The mark-up is deposited into the liquor revolving fund and is used to fund LCB activities. Excess funds in the liquor revolving fund are distributed to the state general fund and to local governments.

State law directs the LCB to set aside in a separate account a certain amount of its revenue from gross sales of liquor to restaurant and similar licensees for deposit in the state general fund and distribution to local governments.

SUMMARY OF INITIATIVE 1100

Sale and distribution of beer and wine

Effective December 2, 2010, the following restrictions on financial relationships and business transactions between beer and wine manufacturers, distributors, and retailers are eliminated: the prohibitions on direct or indirect financial interest between and among manufacturers, distributors, and retailers; the prohibition on the advancement of moneys or moneys' worth; price posting and uniform price requirements; the requirement that beer and wine sold by a distributor be delivered to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises; and the ban on quantity discounts and selling beer and wine below the cost of acquisition.

Statutory language restricting the use of branded promotional items is eliminated and replaced with language prohibiting only branded promotional items which are targeted to or appeal principally to youth.

Sale and distribution of spirits

By mid-March 2011, the LCB must formulate and begin implementation of a plan to terminate the system of state liquor stores and liquor distribution, and dispose of assets no longer useful to the LCB's mission. The LCB's power and rulemaking authority are modified to reflect the elimination of the ability to sell liquor.

Effective December 31, 2011, statutory language authorizing the LCB to establish and maintain liquor stores is repealed, state liquor stores may not sell liquor, and the state liquor distribution unit may not purchase liquor or accept it for bailment. As the LCB stops selling spirits, it will also stop collecting the mark-up and two of the existing three sales taxes paid by restaurant licensees on spirits. As a result, the LCB will stop collecting 11.4 percent of the current 13.7 percent sales tax collections. Any inventory of unsold liquor remaining after December 31, 2011, must be returned to the supplier or sold at auction.

Starting December 2, 2010, the LCB cannot renew or extend contracts with existing contract liquor stores beyond December 31, 2011. The LCB must use all lawful means for terminating existing contracts with contract stores. Contract liquor store operators in good standing may choose to receive a general liquor retail license valid through December 31, 2012, without fee in exchange for relinquishing contract rights. The LCB must inform contract liquor store operators of the choice available by January 2, 2011, and operators must make a decision by March 2, 2011.

On December 31, 2011, the requirement that the LCB place an amount equal to 10 percent of its gross sales of liquor to certain licensees into a separate account in the liquor revolving fund for distribution to the state, counties, and cities is repealed. The LCB construction and maintenance account is eliminated effective December 31, 2011.

Starting December 2, 2010, a sales tax is levied on the sale of spirits by spirits retailer and distributor licensees to spirits, beer, and wine restaurant licensees at a rate of 10 percent. However, the current sales tax of 2.3 percent will continue to be collected, resulting in a total tax rate of 12.3 percent on sales of spirits to restaurant licensees by spirits retailers and distributors. Taxes collected will be deposited and remitted in the same manner as the existing tax on spirits sales by liquor stores. The initiative does not change provisions relating to the liter taxes and the liquor sales taxes paid by consumers.

The initiative creates several new licenses, to be issued by the LCB, to sell and distribute spirits. Fees from the licenses can only be used for the administration and enforcement of liquor licenses and reducing underage or abusive consumption.

- General liquor retailer's license: This license allows the licensee to sell spirits, beer, and wine at retail in original containers, for off-premise consumption. This license will be available June 1, 2011, at an annual fee of \$1,000 and a one-time refundable application fee of \$1,000. As of June 1, 2011, holders of a beer and/or wine grocery store or specialty store license who are in good standing and who are not restricted from selling strong beer or fortified wine will be granted an upgrade of their license to a general liquor retailer's license upon payment of a \$1,000 application fee, valid until the next renewal date for the existing license.
- General liquor distributor's license: This license allows the licensee to sell spirits, beer, and wine purchased from a licensed manufacturer to licensed retailers, other licensed distributors, and to export out of the state. This license will be available January 1, 2011, at an annual fee of \$2,000 and a one-time refundable application fee of \$2,000. As of January 1, 2011, holders of a current license to distribute liquor who are in good standing will be granted a general liquor distributor's license upon payment of a \$2,000 application fee, valid until the next renewal date for the existing license.
- Spirits distributor's license: This license allows the licensee to purchase spirits from licensed distilleries, certificate of approval holders, licensed importers, or suppliers of foreign spirits, and sell the spirits to licensed spirits retailers and other spirits distributors and to export out of the state. This license will be available December 2, 2010, at an annual fee of \$1,000.

- Spirits importer's license: This license allows the licensee to import spirits purchased from certificate of approval holders and foreign suppliers into Washington and sell the spirits to licensed spirits distributors and retailers or export spirits from the state. Spirits importers must establish and maintain a principal office in Washington and provide the LCB with a monthly report detailing the quantity of spirits sold or delivered to each licensed spirits distributor. Spirits imported by the licensee must conform to labeling requirements. This license will be available December 2, 2010, at an annual fee of \$160.
- Spirits certificate of approval (COA): This certificate allows an out-of-state distiller or spirits manufacturer to sell and ship spirits to licensed in-state spirits distributors, importers, or retailers. COA holders with a direct shipping endorsement can distribute spirits of their own production. Similarly, the authorized representative of an out-of-state distiller or spirits manufacturer must obtain a COA in order to sell and ship spirits to licensed in-state distributors or importers. COA holders must provide the LCB with monthly reports detailing the quantity of spirits sold or delivered to each licensed entity, and holders are deemed to have consented to the jurisdiction of Washington concerning enforcement of laws and rules related to the sale and shipment of spirits. COAs are available December 2, 2010, at an annual fee to be fixed by the LCB. Existing suppliers of spirits to the LCB and their authorized representatives shall be granted a COA upon payment of a \$200 fee.

Licensed in-state distilleries can distribute and/or sell spirits of their own production without any further application or fee, and must comply with applicable laws relating to distributors and retailers.

Liquor cannot be kept or had by any person in the state unless the package in which the liquor was contained had been sealed with the official LCB seal, except for liquor manufactured in-state for export; lawfully purchased beer; wine or beer produced for home use; or other liquor as permitted by the LCB.

Starting December 2, 2010, licensees are prohibited from selling spirits below the cost of acquisition, except in the case of a "close-out", and any licensee authorized to sell spirits must post notices in conspicuous places warning of the dangers of alcohol consumption shortly before or during pregnancy.

An individual may bring liquor that is permitted to enter the U.S. duty free under federal law into the state free of tax for personal use. Liquor brought into the state in excess of two liters of spirits or wine or 288 ounces of beer per month will be taxed as would be applicable to the purchase of the same or similar liquor within the state.

The initiative provides that language in the initiative is not intended to restrict the authority of cities and counties to enact or enforce land use regulations governing where liquor may be sold.

For further information please contact:
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