Initiative Measure No. 1105

FILED
MAY 17 2010
SECRETARY OF STATE
STATE OF WASHINGTON

1 AN ACT Relating to privatizing the sale of spirits; amending RCW
2 66.08.050, 66.24.310, 66.28.030, 66.28.070, 66.28.180, 66.28.170,
3 66.28.190, 66.08.020, 66.08.026, 66.08.030, 66.24.145, 66.24.160,
4 66.28.060, and 66.44.120; reenacting and amending RCW 66.04.010; adding
5 new sections to chapter 66.24 RCW; adding a new section to chapter
6 66.28 RCW; creating new sections; repealing RCW 66.08.070, 66.08.075,
7 66.08.160, 66.08.165, 66.08.166, 66.08.167, 66.08.220, 66.08.235,
8 66.16.010, 66.16.040, 66.16.041, 66.16.050, 66.16.060, 66.16.070,
9 66.16.100, 66.16.110, 66.16.120, 66.28.045, and 82.08.150; and
10 providing an effective date.

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

12 **PART I**
13 **RETAIL SALE OF SPIRITS**

14 NEW SECTION. **Sec. 101.** (1) The people of the state of Washington
15 intend for privatization of spirits retail and distribution to result
16 in a system that is more efficient than public sector retail and
17 distribution of spirits. The people intend, therefore, that the
18 privatization of spirits retail and distribution not result in revenue

losses to state or local governments. The people further intend to provide for an orderly transition from the current state control system to a privatized system of spirits retail and distribution.

(2) Persons holding a spirits distributor license may commence sale of spirits on October 1, 2011. Persons holding a spirits retailer license may commence sale of spirits on November 1, 2011. The state of Washington must cease operation of all state liquor stores no later than April 1, 2012. The liquor control board must make a good faith effort to sell all inventory and assets of state liquor stores and distribution centers to buyers no later than April 1, 2012. The liquor control board is directed to take all necessary measures to effect an orderly transition from the current state control system to a privatized system of spirits retail and distribution by April 1, 2012, including, if necessary, a report to the legislature on further necessary legislation, which may include provision for the retraining of any state worker displaced by the privatization of spirits retail or distribution. The liquor control board is further directed to issue a rule, in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW, to govern the sale of spirits to tribes on terms consistent with and no less favorable to tribes than those reflected in WAC 314-37-010.

(3) The people direct the liquor control board to present a report to the legislature by January 1, 2011, on a recommended rate of taxation, to be calculated at a per-liter basis and to be paid by spirits distributors, on all spirits sold to spirits distributors within the state. The liquor control board is directed to recommend a rate of taxation that, along with other spirits-related revenue sources, would project to generate at least the same annual revenue for the state and local jurisdictions as under the current state control system, as well as at least an additional one hundred million dollars in projected revenue net of expenses of operating the business over the entire course of the five-year period commencing November 1, 2011. In recommending a proposed rate of taxation, the liquor control board must consider that there will be other spirits-related revenue including, without limitation: Anticipated business and occupation tax revenue under chapter 82.04 RCW, generated by privatized spirits retail and distribution; the increased taxable spirits inventory base generated by

taxing spirits at the distributor level; proceeds from the issuance of spirits retailer licenses and spirits distributor licenses under sections 102 and 103 of this act; and annual spirits license fees.

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

(1) There is a spirits retailer license to sell spirits at retail in original containers, not to be consumed on the premises where sold.

(2) The people of the state of Washington desire to have greater availability of spirits and a more convenient shopping experience than is currently available to them through the present control system. The people also desire to retain a high degree of security and public safety in the handling and sale of all alcoholic beverages.

(a) The liquor control board is hereby directed to develop criteria for the issuance of spirits retailer licenses to applicants who can demonstrate the ability to provide the same level of security and safety as that which the citizens of this state have come to expect from their state-operated retail stores. In considering applicants, emphasis should be placed on inventory management systems, employee training, employee supervision, and physical security of the product.

(b) Notwithstanding (a) of this subsection, the liquor control board is encouraged to, in the exercise of its discretion, make spirits retailer licenses available to existing contract liquor stores who desire to privatize their businesses.

(3) No later than July 1, 2011, the liquor control board is directed to notify all qualifying license applicants so that they may make the necessary preparations to begin sales on or after November 1, 2011.

(4) Each licensee obtaining a spirits retailer license from the liquor control board must agree to pay to the liquor control board, for deposit into the state general fund, an amount equivalent of six percent of the licensee's gross annual spirits sales for a five-year period commencing on the date of the licensee's first sale of spirits. The liquor control board shall establish rules setting forth the frequency and timing of such payments and reporting of sales volume by the licensee.

(5) In addition to the payment set forth in subsection (4) of this section, each licensee must pay an annual license fee. The liquor

control board must fix a reasonable annual license fee for the spirits retailer license issued pursuant to the provisions of this title. The liquor control board may, from time to time, make a reasonable adjustment to the annual fee for the spirits retailer license. Any such revision to the annual fee must be fixed by rule by the liquor control board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

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

(1) There is a license for spirits distributors to sell spirits, purchased from manufacturers, distillers, or suppliers, including licensed Washington distilleries, licensed spirits importers, or suppliers of foreign spirits located outside of the United States, to any person holding a license to sell spirits under this chapter including: Spirits retailer license holders; special occasion license holders; interstate common carrier license holders; spirits, beer, and wine restaurant license holders; spirits, beer, and wine private club license holders; hotel license holders; sports entertainment facility license holders; spirits, beer, and wine nightclub license holders; and other spirits distributors and to export the same from the state.

(2) No later than July 1, 2011, the liquor control board is directed to make spirits distributor licenses available to all applicants who have an appointment by or are agents of a spirits manufacturer, spirits distiller, or spirits supplier to distribute products in the state, unless the liquor control board determines that issuance of a license to such applicant is not in the public interest.

(3) Each licensee obtaining a spirits distributor license from the liquor control board must agree to pay to the liquor control board, for deposit into the state general fund, an amount equivalent of one percent of the licensee's gross annual spirits sales for a five-year period commencing on the date of the licensee's first sale of spirits. The liquor control board must establish rules setting forth the frequency and timing of such payments and reporting of sales volume by the licensee.

(4) In addition to the payment set forth in subsection (3) of this section, each licensee must pay an annual license fee. The liquor control board must fix a reasonable annual license fee for the spirits

distributor license issued pursuant to the provisions of this title. The liquor control board may, from time to time, make a reasonable adjustment to the annual fee for the spirits distributor license. Any such revision to the annual fee must be fixed by rule by the liquor control board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

(5) The provisions of RCW 19.126.030, 19.126.040, 19.126.050, and 19.126.060 govern the relationship between spirits distributors and suppliers.

(6) Nothing in this section may be construed to allow a distiller subject to licensing under RCW 66.24.140 to obtain a certificate of approval with a direct shipment endorsement or to otherwise act as distributor of its own production.

Sec. 104. RCW 66.08.050 and 2005 c 151 s 3 are each amended to read as follows:

The board, subject to the provisions of this title and the rules, shall:

(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;~~

~~(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 cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

((~~(11)~~)) (7) Negotiate agreements at the request of any federally recognized Indian tribe located in the state to replace any liquor tax compact existing on the effective date of this section with an agreement to share amounts equivalent to liquor taxes collected by the state on sales within the reservation for that federally recognized tribe at percentages comparable to the compacts entered into pursuant to RCW 82.36.450;

(8) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have 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 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.

Sec. 105. RCW 66.24.310 and 1997 c 321 s 17 are each amended to read as follows:

(1) No person shall 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 applied for and received a representative's license((~~: PROVIDED, HOWEVER, That~~)). However, the provisions of this section shall not apply to drivers who deliver spirits, beer, or wine;

(2) Every representative's license issued under this title shall be 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, liquor importer, or spirits distributor ((~~of spirituous liquor~~)), or foreign produced beer or wine, as the rules and regulations of the board shall require;

(4) The fee for a representative's license shall be 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. 106. 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 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. 107. 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 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 spirits, beer, or wine retailer licensee may purchase spirits, beer, or wine from a government agency which has lawfully seized spirits, beer, or wine from a licensed spirits, beer, or wine retailer, or from a board-authorized retailer, or 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. Spirits, beer, and wine purchased under this subsection shall meet the quality standards set by its manufacturer.

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

(1) Spirits, beer, and wine distributors.

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

(b) Each price list shall set forth:

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

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

(c) No spirits, beer, and/or wine distributor may sell or offer to sell any package or container of spirits, 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) With the exception of quantity discounts on spirits, quantity discounts are prohibited. No price may be below acquisition cost.

(e) Distributor prices on a "close-out" item shall be 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 not restock the item for a period of one year following the first effective date of such close-out price.

(f) Any spirits, beer, and/or wine distributor or employee authorized by the distributor-employer may sell spirits, 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 of a special permit issued by the board to such licensee.

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

(h) Spirits, beer, and wine sold as provided in this section shall 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 its own production, a licensed retailer may contract with a common carrier to obtain the product 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 be the same at both such places of delivery.

(2) Spirits, beer, and wine suppliers' contracts and memoranda.

(a) Every domestic brewery, microbrewery, domestic winery, certificate of approval holder, and spirits, beer, and/or wine importer offering spirits, beer, and/or wine for sale within the state and any spirits, beer, and/or wine distributor who sells to other spirits, beer, and/or wine distributors shall maintain at its liquor licensed location a 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 spirits, beer, or wine distributor, which contracts or memoranda shall 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 also be maintained at its liquor licensed location.

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

(d) Prices of a domestic distillery, brewery, microbrewery, domestic winery, or certificate of approval holder shall be uniform prices to all distributors or retailers on a statewide basis less bona fide allowances for freight differentials. With the exception of quantity discounts on spirits, quantity discounts are prohibited. No price shall be below acquisition/production cost.

(e) A domestic distillery, brewery, microbrewery, domestic winery, certificate of approval holder, spirits, beer, or wine importer, or spirits, beer, or wine distributor acting as a supplier to another distributor must file a distributor appointment with the board that identifies each distributor who is authorized to distribute its products. The distributor appointment must list all brands that each distributor is authorized to distribute. No distributor may offer for sale any products for a supplier unless that supplier has first filed a distributor appointment with the board.

(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.

Sec. 109. 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, a manufacturer of 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, a brewery, or a domestic winery to discriminate in price in selling to any purchaser for resale in the state of Washington.

Sec. 110. RCW 66.28.190 and 2003 c 168 s 305 are each amended to read as follows:

((~~RCW 66.28.010 notwithstanding,~~)) (1) Persons licensed under RCW 66.24.200 as wine distributors ((~~and~~)), persons licensed under RCW 66.24.250 as beer distributors, and persons licensed as spirits distributors 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 be maintained on all sales of nonliquor food and food ingredients to ensure that such persons are in compliance with ((~~RCW 66.28.010~~)) any applicable laws.

(2) For the purpose of this section, "nonliquor food and food ingredients" includes all food and food ingredients for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 2004.

NEW SECTION. **Sec. 111.** A new section is added to chapter 66.28 RCW to read as follows:

Notwithstanding any other provision of law:

(1) A spirits manufacturer or distiller, whether resident or nonresident, may not possess any interest, direct or indirect, in a spirits distributor license or liquor importer's license, or in any entity that possesses a spirits distributor license or liquor importer's license; and

(2) No spirits retailer licensee may possess any interest, direct or indirect, in a spirits distributor license or liquor importer's license, or in any entity that possesses a spirits distributor license or liquor importer's license.

Sec. 112. RCW 66.04.010 and 2009 c 373 s 1 and 2009 c 271 s 2 are each reenacted and amended to read as follows:

In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel

for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of spirits, beer, or wine for transportation into and resale in the state of Washington; and which spirits, beer, or wine is produced by a distillery, brewery, or winery in the United States outside of the state of Washington; and

(d) Is appointed by the distillery, brewery, or winery referenced in (c) of this subsection as its authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such distillery, brewery, or winery pursuant to this title.

(3) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Board" means the liquor control board, constituted under this title.

(7) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Confection" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, dairy products, or flavorings, in the form of bars, drops, or pieces.

(10) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(11) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(12) "Craft distillery" means a distillery that pays the reduced licensing fee under RCW 66.24.140.

(13) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(14) "Distiller" means a person engaged in the business of distilling spirits.

(15) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(16) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(17) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(18) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(19) "Employee" means any person employed by the board.

(20) "Flavored malt beverage" means:

(a) A malt beverage containing six percent or less alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than forty-nine percent of the beverage's overall alcohol content; or

(b) A malt beverage containing more than six percent alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than one and one-half percent of the beverage's overall alcohol content.

(21) "Fund" means 'liquor revolving fund.'

(22) "Hotel" means buildings, structures, and grounds, having facilities for preparing, cooking, and serving food, that are kept, used, maintained, advertised, or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests. The buildings, structures, and grounds must be located on adjacent property either owned or leased by the same person or persons.

(23) ((~~"Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.~~

~~(24)~~)) "Imprisonment" means confinement in the county jail.

((~~(25)~~)) (24) "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; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

((~~(26)~~)) (25) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

((~~(27)~~)) (26) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

((~~(28)~~)) (27) "Nightclub" means an establishment that provides entertainment and has as its primary source of revenue (a) the sale of alcohol for consumption on the premises, (b) cover charges, or (c) both, and has an occupancy load of one hundred or more.

((~~(29)~~)) (28) "Package" means any container or receptacle used for holding liquor.

((~~(30)~~)) (29) "Passenger vessel" means any boat, ship, vessel, barge, or other floating craft of any kind carrying passengers for compensation.

((~~(31)~~)) (30) "Permit" means a permit for the purchase of liquor under this title.

((~~(32)~~)) (31) "Person" means an individual, copartnership, association, or corporation.

((~~(33)~~)) (32) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

((~~(34)~~)) (33) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

((~~(35)~~)) (34) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

((~~(36)~~)) (35) "Regulations" means regulations made by the board under the powers conferred by this title.

((~~(37)~~)) (36) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

((~~(38)~~)) (37) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315((~~: PROVIDED, That~~)), if the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

((~~(39)~~)) (38) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

((~~(40)~~)) (39) "Spirits" means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent of alcohol by volume.

((~~(41) "Store" means a state liquor store established under this title~~)) (40) "Spirits distributor" means a person who buys spirits from a domestic distiller, manufacturer, supplier, or spirits importer, or who acquires foreign produced spirits from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such distiller as agent.

(41) "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 for export.

(42) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(43)(a) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine

substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

(b) This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(44) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(45) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title.

(46) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

PART II

LIQUOR CONTROL BOARD--REMOVAL FROM RETAIL SALES--TECHNICAL CHANGES

Sec. 201. 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. 202. RCW 66.08.026 and 2008 c 67 s 1 are each amended to read as follows:

Administrative expenses of the board shall 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 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, 66.08.210 and 66.08.220. Agency commissions for contract liquor stores shall 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. 203. 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) <u>of this section</u>, it is declared that the

power of the board to make regulations in the manner set out in that subsection shall extend 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)~~)) 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)~~)) (b) Prescribing an official seal and official labels and stamps and determining the manner in which they shall 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)~~)) (c) 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 require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

((~~(j)~~)) (d) 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)~~)) (e) 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 kept and disposed of, and providing for the inspection of the same at any time at the instance of the board;

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

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

((~~(p)~~)) (j) 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)~~)) (k) 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)~~)) (l) 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)~~)) (m) Specifying and regulating the time and periods when, and the manner, methods and means by which manufacturers shall 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)~~)) (n) 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)~~)) (o) Providing for the making of returns by the wholesalers of beer whose breweries are located beyond the boundaries of the state;

((~~(v)~~)) (p) 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)~~)) (q) Providing for the giving of fidelity bonds by any or all of the employees of the board((~~: PROVIDED, That~~)). However, the premiums therefor shall be paid by the board;

((~~(x)~~)) (r) 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)~~)) (s) 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)~~)) (t) 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~~)) in this section 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. 204. 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 adopt rules to implement the alcohol server permit requirement and may adopt additional rules to implement this section.

(5) Distilling is an agricultural practice.

Sec. 205. RCW 66.24.160 and 1981 1st ex.s. c 5 s 30 are each amended to read as follows:

A liquor 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 importer's license shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board, and shall be 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. 206. RCW 66.28.060 and 2008 c 94 s 7 are each amended to read as follows:

Every distillery licensed under this title shall 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. 207. RCW 66.44.120 and 2005 c 151 s 11 are each amended to read as follows:

(1) No person other than an employee of the board shall keep or have in his or her possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a ((~~liquor store or contract liquor~~)) retail store; nor shall 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 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 one year, 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.

NEW SECTION. **Sec. 208.** 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 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 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 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 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;

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

(19) RCW 82.08.150 (Tax on certain sales of intoxicating liquors--Additional taxes for specific purposes--Collection) and 2009 c 479 s 65, 2005 c 514 s 201, 2003 c 167 s 11, 1998 c 126 s 16, 1997 c 321 s 55, 1994 sp.s. c 7 s 903, 1993 c 492 s 310, 1989 c 271 s 503, 1983 2nd ex.s. c 3 s 12, 1982 1st ex.s. c 35 s 3, 1981 1st ex.s. c 5 s 25, 1973 1st ex.s. c 204 s 1, 1971 ex.s. c 299 s 9, 1969 ex.s. c 21 s 11, 1965 ex.s. c 173 s 16, 1965 c 42 s 1, 1961 ex.s. c 24 s 2, & 1961 c 15 s 82.08.150.

PART III
MISCELLANEOUS PROVISIONS

NEW SECTION. **Sec. 301.** The office of the code reviser must prepare legislation to be introduced during the first session following the 2010 general election that removes all statutory references to the term "state liquor store." The effective date of such legislation must be April 1, 2012.

NEW SECTION. **Sec. 302.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 303.** Nothing in this act shall be construed to affect or diminish the rights of tribes or military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington with respect to the sale or purchase of spirits. The liquor control board must prepare a report to the legislature by January 1, 2011, on a recommended means to carry out the intent of this section.

NEW SECTION. **Sec. 304.** Sections 201 through 204, 207, and 208 of this act take effect April 1, 2012.

--- **END** ---