

- EXPEDITE
- No hearing set
- Hearing is set

Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Judge/Calendar: \_\_\_\_\_

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THURSTON COUNTY

WASHINGTON RESTAURANT  
ASSOCIATION, a Washington non-profit  
organization; NORTHWEST GROCERY  
ASSOCIATION, a non-profit organization;  
and COSTCO WHOLESALE  
CORPORATION, a Washington  
corporation;

Petitioners,

v.

WASHINGTON STATE LIQUOR  
CONTROL BOARD, a state agency;  
CHRIS MARR, SHARON FOSTER, and  
RUTHANN KUROSE, in their official  
capacities as members of the Washington  
State Liquor Control Board;

Respondents.

No.

**PETITION FOR JUDICIAL REVIEW  
AND DECLARATORY JUDGMENT**

**I. INTRODUCTION**

1. Nearly 60 percent of Washington voters enacted Initiative 1183,  
fundamentally altering state liquor laws to "modernize both wholesale distribution and retail

1 sales of liquor and remove outdated restrictions on the wholesale distribution of wine."

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3 Laws of 2012, ch. 2, § 1 (I-1183, § 101(1)). The Initiative ended state liquor stores;  
4 removed many barriers to competition among private licensees, particularly distributors; and  
5 adjusted the rulemaking authority of Respondent Liquor Control Board, directing its focus to  
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7 controlling abuse of liquor rather than adjusting the field of competition among licensees.  
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10 The primary financial opponents of the Initiative were large out-of-state distributors, but the  
11 Board did not favor the Initiative and had opposed prior attempts at privatization and  
12 increased competition. The Board now seeks to circumvent the Initiative through rules that  
13 still "arbitrarily restrict the wholesale distribution and pricing of wine" and spirits, *id.*,  
14 undermining the Initiative, and protecting those distributors from competition. The Board's  
15 actions are increasing prices paid by consumers—yet the Board blames voters for prices not  
16 being lower. The Board has ignored the costs of its actions, and the challenged rules are  
17 outside of its authority, arbitrary and capricious, and contrary to I-1183 and requirements of  
18 the United States and Washington Constitutions.  
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29 2. Petitioners challenge both the manner in which the Board adopted the rules  
30 and the substance of six rules. By failing to properly evaluate the impact on small  
31 businesses, such as thousands of restaurants, the Board disregarded its statutory duty to  
32 stakeholders and the public. Beyond that procedural failure, the Board refuses to  
33 acknowledge the purpose of the Initiative and its circumscription of the Board's regulatory  
34 authority. Acting under pressure from distributors, the Board belatedly introduced a daily  
35 limit on the amount of wine or spirits that a retailer may sell to another retailer, although the  
36 Initiative imposes only a single-sale limit and there are no health or safety implications  
37 warranting additional these limitations. The Board's rule restricts competition, to the private  
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1 benefit of distributors, and hampers the business options available to local businesses that  
2 sell liquor for consumption on their premises, such as restaurants, bars, and nightclubs.

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4 3. Similarly, the Board has imposed a geographic limitation on a type of  
5 licensee, a "certificate holder," that wishes to import and sell spirits, refusing this business  
6 opportunity to foreign entities. The Initiative does not impose this limitation, and its text  
7 and purpose make clear that it did not intend to handicap foreign spirits suppliers, whose  
8 products are very popular in Washington. Indeed, representatives from the Association of  
9 Canadian Distillers and the Scotch Whiskey Association commented on this exclusion of  
10 foreign distillers and the conflict with international trade agreements, but the Board did not  
11 respond to these concerns.  
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14 4. Furthermore, the regulations addressing the rights of spirits importers and  
15 out-of-state certificate holders arbitrarily deny these licensees the right to sell and ship  
16 directly to retailers (pursuant to a direct shipping endorsement) despite the fact that I-1183  
17 specifically confers this privilege. The Board is also imposing the ten percent license fees  
18 applicable to distributors to these certificate holders, again contrary to the text and purpose  
19 of the Initiative, and this action drives up prices for the consumer.  
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22 5. Finally, the Board, without reason or explanation, limited the locations from  
23 which spirits distributors may sell and deliver product, again without basis in the text or  
24 purpose of the Initiative.  
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27 6. The Board does not even contend, much less rely upon evidence, that the  
28 regulations promote public health and safety, or otherwise protect communities from abuse  
29 of liquor. Instead, the Board explicitly acknowledges that its purpose is to manipulate the  
30 marketplace to favor the financial interests of distributors, at the expense of Petitioners and  
31 consumers. Such actions exceed the Board's statutory authority, and the process constitutes  
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1 arbitrary and capricious rulemaking. The regulations independently violate the State and the  
2 United States Constitutions by, among other things, discriminating against foreign and out-  
3 of-state businesses.  
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## 6 7 **II. PARTIES**

8  
9 7. Petitioner Washington Restaurant Association ("WRA") is a non-profit trade  
10 association that represents over 5,000 restaurants and other hospitality businesses in the  
11 state. It is located at 510 Plum St. S.E., Suite 200, Olympia, Washington 98501.  
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14 8. Petitioner Northwest Grocery Association ("NGA") is a non-profit trade  
15 association that represents grocery retailers and other grocery industry interests in  
16 Washington, Oregon, and Idaho. Its headquarters are located at 8565 SW Salish Lane, Suite  
17 100, Wilsonville, Oregon, and it maintains an office in Olympia, Washington, with a  
18 mailing address of P.O. Box 1414, Olympia, Washington 98507.  
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22 9. Petitioner Costco Wholesale Corporation is a Washington corporation doing  
23 business in Washington. Its principal place of business is located at 999 Lake Drive,  
24 Issaquah, Washington 98027.  
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27 10. Petitioners and members of NGA and WRA are substantially prejudiced by  
28 the challenged rules, and such prejudice will be substantially eliminated by judgment in  
29 Petitioners' favor. Petitioner and their members have interests among those that the agency  
30 was required to consider.  
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33 11. Respondent Board has its headquarters at 3000 Pacific Avenue S.E.,  
34 Olympia, Washington 98501. Its mailing address is P.O. Box 43080, Olympia, Washington  
35 98504. The Board is an agency of the State of Washington, RCW 66.08.020, and  
36 promulgated the emergency and permanent rules that purport to implement Initiative 1183  
37 and that are challenged in this action.  
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1 in liquor legislation and has historically served as the basis for the Board's independent  
2 regulatory power.  
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#### 4 **The Board's Rulemaking Process**

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6 16. I-1183 requires the Board to promulgate rules to implement certain of its  
7 provisions. This action challenges five of the emergency and parallel permanent rules that  
8 the Board adopted under I-1183 (collectively, the "I-1183 rules"). The emergency I-1183  
9 rules are in effect now, and the permanent I-1183 rules become effective on July 6, 2012.  
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11  
12 17. By I-1183's effective date, December 8, 2011, the Board had adopted  
13 emergency rules and had issued pre-proposal notices to stakeholders of permanent  
14 rulemaking. WSR 11-24-101. The emergency rules expired April 8, 2012. Although the  
15 Board identified all of the rules as implementing I-1183, not all of them were in response to  
16 provisions of the new law, as shown below, and there was no emergency as to the  
17 challenged rules.  
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19  
20 18. On February 20, 2012, the Board circulated a revised set of emergency rules.  
21 One revision, which had been sought by distributors, imposed a daily volume limit (24 liters  
22 per customer) on wholesale sales by off-premises retailers. The Initiative imposed no such  
23 limit and authorized no such rulemaking. Instead, it imposed a limit (also 24 liters) on  
24 single sales. Thus, the new rules prohibited single sales allowed by the Initiative if such  
25 sales would bring the daily total to greater than 24 liters—or if a customer wished to make  
26 more than a single purchase in a day, regardless of the quantity purchased.  
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29 19. On February 22, the Board heard testimony on the proposed per-day limit.  
30 The testimony identified the negative impact the new limitation would have on small  
31 businesses, such as restaurants, bars, and nightclubs, and on competition, and addressed the  
32 intent of the Initiative's drafters. Although licensees had operated under the Initiative's per-  
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1 single sale limit on wine for over three months, and former contract stores were exempted  
2 from the new rule, the testimony identified no problems related to abuse of alcohol. The  
3 only identified negative consequence of the Initiative's limit was that distributors faced  
4 somewhat greater competition from off-premises retailers. Petitioners' representatives and  
5 members of NGA and WRA testified at this hearing. Costco Wholesale also submitted a  
6 transcript and recording of this meeting to the Board as part of its written comments on the  
7 final proposed rules.  
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15 20. On March 14, the Board filed proposed permanent rules to implement I-1183  
16 based largely on the existing emergency rules. WSR 12-07-040. The Board proposed 16  
17 new rules "needed to implement new laws created by the initiative" and six amendments to  
18 current rules "needed to clarify new license types created by the initiative." *Id.* The Board  
19 filed a new CR-102 for the same permanent rules, updated to reflect allegedly minor  
20 revisions, on April 18. WSR 12-09-088. One of these revisions, added without comment  
21 or explanation, included an entirely new subsection with a restriction on delivery locations  
22 for spirits distributors.  
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31 21. On April 4, four days before the existing emergency rules were to expire, the  
32 Board adopted new emergency rules, pending its adoption of permanent rules. WSR 12-08-  
33 067. The Board did not explain why it had revised the original emergency rules; did not  
34 identify any problems that had arisen under the prior emergency rules; and did not respond  
35 to the comments submitted on these rules. It did change its basis for claiming an emergency  
36 that allows such expedited rulemaking, although neither circumstances nor rules changed  
37 substantially. The new emergency rules will expire on August 8.  
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45 22. As required by law, the Board held a public hearing to accept testimony  
46 regarding the proposed permanent I-1183 rules on May 24. Petitioners' representatives and  
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1 numerous members of WRA and NGA attended the hearing, testified, and submitted written  
2 comments. During the meeting, Board members specifically made reference to testimony  
3 given at the February 22 meeting. The Board's Rules Coordinator also accepted almost 300  
4 written comments.  
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9 23. Only three business days later, on May 30, the Board officially adopted the  
10 permanent I-1183 rules without a single change. On June 5, the agency filed a CR-103 with  
11 the Code Reviser, including the statutorily required Concise Explanatory Statement that  
12 summarized some of the comments submitted to the Board and offered the Board's  
13 explanation of why it chose to adopt the rules as proposed. WSR 12-12-065; Ex. A.  
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19 24. The permanent I-1183 rules go into effect on July 6, replacing the emergency  
20 rules.  
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### 22 **Impact of the Challenged Rules**

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24 25. Petitioners challenge the following permanent rules and, to the extent  
25 necessary, their emergency counterparts:  
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29 a) WAC 314-02-103(2), which adds a daily 24-liter limit on wine sales to  
30 retailers by off-premises retailers other than former contract stores and  
31 limits such sales to one per day, regardless of quantity purchased, and  
32 subsection (4), which lists the permissible delivery locations for wine  
33 retailers;  
34  
35 b) WAC 314-02-106(1)(c), which adds a daily 24-liter limit on spirits sales  
36 to retailers by off-premises retailers other than former contract stores and  
37 limits such sales to one per day, regardless of quantity purchased;  
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39 c) WAC 314-23-020(2), which imposes a restriction on the delivery  
40 locations for spirits distributors;  
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- 1 d) WAC 314-23-001, which prohibits spirits being sold below acquisition  
2 cost;  
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4 e) WAC 314-23-030, which sets out regulations regarding spirits certificate  
5 of approval holders, a new category of licensees created under the  
6 Initiative; and  
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10 f) WAC 314-23-050, which sets out regulations regarding spirits importers,  
11 also a new license created by I-1183.  
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14 26. Petitioners and members of NGA and WRA opposed the challenged rules and  
15 are substantially prejudiced by the denial of business opportunities in both selling and  
16 purchasing product, increased cost of product, greater inconvenience, and unnecessary  
17 administrative and compliance costs. Consumer members and customers of Petitioners are  
18 encountering unnecessarily increased prices and fewer product choices as a result of the  
19 challenged rules.  
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22 27. Petitioner WRA represents thousands of businesses throughout the State,  
23 many of which are licensed to sell spirits, and/or beer and wine for on-premises  
24 consumption. The challenged rules limit the ability of these member restaurants, bars,  
25 nightclubs, and other hospitality licensees to procure their wine and spirits at lower prices  
26 and with greater convenience by denying them the benefits of the competition by off-  
27 premises retailers and foreign producers that the Initiative envisioned. WRA members are  
28 often located very close to members of NGA, and it can be very convenient to be able to  
29 acquire some needed wine or spirits from an NGA member even if the WRA member has to  
30 make more than one purchase during a day. This is especially true in the less populated  
31 areas of our state.  
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1 failure to consider all of the comments submitted to the Board regarding the I-1183 rules,  
2 including all testimony given during the February 22 meeting.  
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5 32. The Board also failed to substantially comply with the Administrative  
6 Procedures Act when promulgating the emergency rules adopted in April, as it failed to give  
7 a reasoned explanation for why such emergency rules were needed. What little explanation  
8 was offered contradicted the reasons given just a few months before, despite the fact that the  
9 rules were mainly repetitive of the prior rule set.  
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15 33. Petitioners request the Court to declare all of these permanent rules and the  
16 emergency rules invalid and unenforceable.  
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## 18 **SECOND CAUSE OF ACTION**

### 19 **ACTION BEYOND AND CONTRARY TO STATUTORY AUTHORITY**

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21  
22 34. Petitioners reallege and incorporate by reference, as if fully set forth in this  
23 paragraph, the allegations in paragraphs 1 through 33 above.  
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26  
27 35. The Board promulgated rules where the Initiative did not contemplate the  
28 authority for rules, and these rules contradict the statutory purpose:  
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30 a) In WAC 314-02-103(2) and 314-02-106(1)(c), the Board exceeded  
31 the scope of its specified rulemaking authority by adding an  
32 additional limitation and thus prohibits sales that were made legal by  
33 I-1183 (sales of 24 liters or less, regardless of daily total, and multiple  
34 sales in a day totaling less than 24 liters), and it did so on a rationale  
35 in excess of its authority under I-1183—to alter competition as such  
36 and not as needed to control abuse.  
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38 b) In WAC 314-23-020(2), the Board exceeded its authority under I-  
39 1183 and relied exclusively on some general separate authority to  
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create, contrary to the purpose of I-1183, a new limitation on the physical locations from which spirits distributors may ship their product. This rule is not needed to implement the Initiative, as evidenced by the fact that it appeared in neither set of emergency rules nor in the first version of the proposed permanent rules.

- c) There are three separate instances in WAC 314-23-030 in which the Board exceeded its statutory authority:
- i. In WAC 314-23-030(1), the Board exceeded its authority by imposing geographic limitations on spirits certificate of approval holders even though such limitations and obligations are not found in the Initiative and contrary to its purpose. Such certificates are denied entirely to spirits manufacturers located outside of the United States.
  - ii. WAC 314-23-030(2) discriminates against the out-of-state spirits manufacturers because it fails to grant them the ability to obtain a direct shipping endorsement, which would allow them to sell directly to retailers—a right that their in-state counterparts enjoy. The Initiative specifically contemplated that both Washington and non-Washington certificate holders would enjoy this right. Moreover, the statute could not have granted the Board authority to discriminate against interstate and foreign commerce under federal and international law.
  - iii. WAC 314-23-030(3)(b) & (c) impose the ten percent license fee based on sales imposed on distributors on spirits certificate

1 holders, contrary to the plain text of the Initiative. The Board  
2 exceeded its authority in extending the license fees to this  
3 license group.  
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7 d) In WAC 314-23-050, the Board exceeded its authority by eliminating  
8 a spirits importers' right to sell directly to retailers, pursuant to a  
9 direct shipping endorsement, contrary to clear statutory language that  
10 grants a spirits importer this right.  
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13 e) In WAC 314-02-103(4) and 314-23-001, the Board omitted rights  
14 granted by the statute without any authority to limit those rights.  
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17 36. Petitioners request the Court to declare these challenged sections of the  
18 permanent rules and their identical emergency counterparts invalid and unenforceable.  
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### 21 **THIRD CAUSE OF ACTION**

#### 22 **ARBITRARY AND CAPRICIOUS RULEMAKING**

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24 37. Petitioners reallege and incorporate by reference, as if fully set forth in this  
25 paragraph, the allegations in paragraphs 1 through 36 above.  
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28 38. The Board, in promulgating the I-1183 rules, acted in an arbitrary and  
29 capricious manner. It purported to implement I-1183 but ignored the plain language and  
30 intent and purposes of I-1183, and it acted to fulfill some concept of economic fairness that  
31 is contrary to the Initiative's provisions and its changes to state policy.  
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35 39. Petitioners request the Court to declare these permanent rules invalid and  
36 unenforceable.  
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**FOURTH CAUSE OF ACTION**  
**VIOLATION OF SUPREMACY CLAUSE**

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5           40.     Petitioners reallege and incorporate by reference, as if fully set forth in this  
6 paragraph, the allegations in paragraphs 1 through 39 above.

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8           41.     WAC 314-23-030(1), by discriminating against foreign spirits certificate of  
9 approval holders, violates the Supremacy Clause of the United States Constitution, which  
10 reserves to the federal government the right to determine foreign policy. Articles 301, 1201,  
11 and 1210 of NAFTA and similar provisions of other international trade agreements by the  
12 United States prohibit such discrimination in goods and self-distribution services.  
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18           42.     Petitioners request the Court to declare this section of the rule and its  
19 identical emergency counterpart invalid and unenforceable.  
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**FIFTH CAUSE OF ACTION**  
**VIOLATION OF COMMERCE CLAUSE**

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25           43.     Petitioners reallege and incorporate by reference, as if fully set forth in this  
26 paragraph, the allegations in paragraphs 1 through 42 above.  
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29           44.     WAC 314-23-030(2) violates the Commerce Clause of the United States  
30 Constitution because it discriminates intentionally and without basis between Washington  
31 licensees and out-of-state spirits certificate holders. While in-state spirits licensees have the  
32 right to sell directly to retailers (pursuant to proper Board licensure), the same privilege is  
33 prohibited to spirits certificate holders located out of state.  
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39           45.     Petitioners request the Court to declare this section of the rule and its  
40 identical emergency counterpart invalid and unenforceable.  
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**SIXTH CAUSE OF ACTION**  
**VIOLATIONS OF STATE CONSTITUTION**

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5       46.     Petitioners reallege and incorporate by reference, as if fully set forth in this  
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7 paragraph, the allegations in paragraphs 1 through 45 above.

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9       47.     The challenged rules violate Article I, Section 12, and Article XII, Section  
10  
11 22, of the Washington Constitution by granting special privileges and immunities and by  
12  
13 limiting competition in and regulating the transportation of products, and by doing so for  
14  
15 private financial interests.

16  
17       48.     To the extent the Board relies on some general authority delegated by the  
18  
19 Legislature, the rules also violate Article II, Section 1(c), of the Washington Constitution by  
20  
21 amending an Initiative enacted by the People within two years of its adoption.

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23       49.     Petitioners request the Court to declare these rules and their identical  
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25 emergency counterparts invalid and unenforceable.

**V.     PRAYER FOR RELIEF**

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28       Accordingly, Petitioners respectfully request that the Court:

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30       50.     Enter judgment in Petitioners' favor on its Petition for Review;

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32       51.     Grant attorneys' fees, costs, and such further relief as deemed just and proper  
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34 by the Court.  
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2 DATED: June 21, 2012  
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**PERKINS COIE LLP**

5  
6 By: 

7 David J. Burman, WSBA No. 10611  
8 DBurman@perkinscoie.com  
9 Ulrike B. Connelly, WSBA No. 42478  
10 UConnolly@perkinscoie.com  
11 1201 Third Avenue, Suite 4900  
12 Seattle, WA 98101-3099  
13 Telephone: 206.359.8000  
14 Facsimile: 206.359.9000

15  
16 Attorneys for Petitioners  
17  
18  
19  
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# **EXHIBIT**

**A**



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
(Implements RCW 34.05.360)

**Agency:** Washington State Liquor Control Board

**Permanent Rule Only**

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**Purpose:** New permanent rules are needed to implement Initiative 1183 that passed on November 8, 2011. Parts of the initiative became effective on December 8, 2011. New license types were created and the state of Washington changed from a controlled liquor system to a privatized liquor system. Emergency rules were adopted on December 7, 2011, and on April 4, 2012, to clarify the language in the new laws created in Initiative 1183. Permanent rules are needed to replace the emergency rules and further clarify the new laws.

**Citation of existing rules affected by this order:**

Repealed:

Amended: 314-28-010, 314-28-050, 314-28-060, 314-28-070, 314-28-080, 314-28-090

**Statutory authority for adoption:** RCW 66.08.030, RCW 66.24.055, RCW 66.24.160, RCW 66.24.630, RCW 66.24.640

**Other authority :**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 12-09-088 on April 18, 2012 (date).

Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
e-mail \_\_\_\_\_

**Date adopted:**

May 30, 2012

**NAME (TYPE OR PRINT)**

Sharon Foster

**SIGNATURE**

**TITLE**

Chairman

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: June 05, 2012**

**TIME: 12:49 PM**

**WSR 12-12-065**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	<u>16</u>	Amended	6	Repealed	<u>0</u>

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	16	Amended	<u>6</u>	Repealed	<u>0</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>16</u>	Amended	<u>6</u>	Repealed	<u>0</u>
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____

NEW SECTION

**WAC 314-02-103 What is a wine retailer reseller endorsement?**

(1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license to allow the sale of wine at retail to on-premises liquor licensees.

(2) No single sale to an on-premises liquor licensee may exceed twenty-four liters. Single sales to an on-premises licensee are limited to one per day.

(3) A grocery store licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

(4) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

(5) The annual fee for the wine retailer reseller endorsement is one hundred sixty-six dollars.

NEW SECTION

**WAC 314-02-104 Central warehousing.** (1) Each retail liquor licensee having a warehouse facility where they intend to receive wine and/or spirits must register their warehouse facility with the board and include the following information:

(a) Documentation that shows the licensee has a right to the warehouse property;

(b) If a warehouse facility is to be shared by more than one licensee, each licensee must demonstrate to the board that a recordkeeping system is utilized that will account for all wine and/or spirits entering and leaving the warehouse for each license holder. The system must also account for product loss;

(c) Licensees in a shared warehouse may consolidate their commitment for the amount of product they plan to order, but their orders must be placed separately and paid for by each licensee; and

(d) Alternatively, if the warehouse does not have a

recordkeeping system that provides the required information, wine and/or spirits for each licensee in a shared warehouse must be separated by a physical barrier. Where physical separation is utilized, a sketch of the interior of the warehouse facility must be submitted indicating the designated area the licensee will be storing product. (Example: If ABC Grocery and My Grocery, each licensed to a different ownership entity, both lease space in a warehouse facility, the wine and/or spirits must be in separate areas separated by a physical barrier.)

(2) Upon the request of the board, the licensee must provide any of the required records for review. Retail liquor licensees must keep the following records for three years:

(a) Purchase invoices and supporting documents for wine and/or spirits purchased;

(b) Invoices showing incoming and outgoing wine and/or spirits (product transfers);

(c) Documentation of the recordkeeping system in a shared warehouse as referenced in subsection (1)(b) of this section; and

(d) A copy of records for liquor stored in the shared warehouse.

(3) Each licensee must allow the board access to the warehouse for audit and review of records.

(4) If the wine and/or spirits for each licensee in a shared warehouse is not kept separate, and a violation is found, each licensee that has registered the warehouse with the board may be held accountable for the violation.

#### NEW SECTION

**WAC 314-02-106 What is a spirits retailer license?** (1) A spirits retailer licensee may not sell spirits under this license until June 1, 2012. A spirits retailer is a retail license. The holder of a spirits retailer license is allowed to:

(a) Sell spirits in original containers to consumers for off-premises consumption;

(b) Sell spirits in original containers to permit holders (see chapter 66.20 RCW);

(c) Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although no single sale may exceed twenty-four liters, and single sales to an on-premises licensee are limited to one per day; and

(d) Export spirits in original containers.

(2) A spirits retailer licensee that intends to sell to another retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the spirits retailer licensee plans to sell to another retailer.

(3) A sale by a spirits retailer licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a spirits retail licensee must abide by RCW 66.24.630.

(4) A spirits retail licensee must pay to the board seventeen percent of all spirits sales. The first payment is due to the board October 1, 2012, for sales from June 1, 2012, to June 30, 2012 (see WAC 314-02-109 for quarterly reporting requirements).

Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.

(5) The annual fee for a spirits retail license is one hundred sixty-six dollars.

#### NEW SECTION

**WAC 314-02-107 What are the requirements for a spirits retail license?** (1) The requirements for a spirits retail license are as follows:

(a) Submit a signed acknowledgment form indicating the square footage of the premises. The premises must be at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior areas. This does not include any area encumbered by a lease or rental agreement (floor plans one-eighth inch to one foot scale may be required by the board); and

(b) Submit a signed acknowledgment form indicating the licensee has a security plan which addresses:

(i) Inventory management;

(ii) Employee training and supervision; and

(iii) Physical security of spirits product with respect to preventing sales to underage or apparently intoxicated persons and theft of product.

(2) A grocery store licensee or a specialty shop licensee may add a spirits retail liquor license to their current license if they meet the requirements for the spirits retail license.

(3) The board may not deny a spirits retail license to qualified applicants where the premises is less than ten thousand square feet if:

(a) The application is for a former contract liquor store location;

(b) The application is for the holder of a former state liquor store operating rights sold at auction; or

(c) There is no spirits retail license holder in the trade area that the applicant proposes to serve; and

(i) The applicant meets the operational requirements in WAC 314-02-107 (1)(b); and

(ii) If a current liquor licensee, has not committed more than one public safety violation within the last three years.

NEW SECTION

**WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retailer license?** (1) A **spirits retailer** must submit quarterly reports and payments to the board.

The required reports must be:

- (a) On a form furnished by the board;
- (b) Filed every quarter, including quarters with no activity or payment due;
- (c) Submitted, with payment due, to the board on or before the twenty-fifth day following the tax quarter (e.g., Quarter 1 (Jan., Feb., Mar.) report is due April 25th). When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

- (d) Filed separately for each liquor license held.

(2) **What if a spirits retailer licensee fails to report or pay, or reports or pays late?** If a spirits retailer licensee does not submit its quarterly reports and payment to the board as required in subsection (1) of this section, the licensee is subject to penalties.

A penalty of two percent per month will be assessed on any payments postmarked after the twenty-fifth day quarterly report is due. When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day.

Chapter 314-23 WAC

**SPIRITS DISTRIBUTORS, SPIRITS CERTIFICATE OF APPROVAL LICENSES,  
AND SPIRITS IMPORTERS**

NEW SECTION

**WAC 314-23-001 What does a spirits distributor license allow?**

(1) A spirits distributor licensee may not commence sales until March 1, 2012. A spirits distributor licensee is allowed to:

- (a) Sell spirits purchased from manufacturers, distillers, importers, or spirits certificate of approval holders;
- (b) Sell spirits to any liquor licensee allowed to sell spirits;
- (c) Sell spirits to other spirits distributors; and
- (d) Export spirits from the state of Washington.

(2) The price of spirits sold to retailers may not be below acquisition cost.

NEW SECTION

**WAC 314-23-005 What are the fees for a spirits distributor license?** (1) The holder of a spirits distributor license must pay to the board a monthly license fee as follows:

(a) Ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure; and

(b) Five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

(c) The license fee is only calculated on sales of items which the licensee was the first spirits distributor in the state to have received:

(i) In the case of spirits manufactured in the state, from the distiller; or

(ii) In the case of spirits manufactured outside the state, from a spirits certificate of approval holder.

(d) Reporting of sales and payment must be submitted on forms provided by the board.



(2) The annual fee for a spirits distributor license is one thousand three hundred twenty dollars.

NEW SECTION

**WAC 314-23-020 What are the requirements for a spirits distributor license?** (1) In addition to any application requirements in chapter 314-07 WAC, applicants applying for a spirits distributor license must submit:

- (a) A copy of all permits required by the federal government;
  - (b) Documentation showing the applicant has the right to the property;
  - (c) An acknowledgment form certifying the applicant has a security plan which addresses:
    - (i) Inventory management; and
    - (ii) Physical security of spirits product with respect to preventing theft.
- (2) Spirits distributors must sell and deliver product from their licensed premises.

NEW SECTION

**WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license?** (1) A **spirits distributor** must submit monthly reports and payments to the board.

- (2) The required monthly reports must be:
  - (a) On a form furnished by the board;
  - (b) Filed every month, including months with no activity or payment due;
  - (c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and
  - (d) Filed separately for each liquor license held.

NEW SECTION

**WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late?** (1) If a spirits distributor licensee does not submit its monthly reports and payment to the board as required in WAC 314-23-021(1), the licensee is subject to penalties.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

NEW SECTION

**WAC 314-23-030 What does a spirits certificate of approval license allow?** (1) A spirits certificate of approval licensee may not commence sales until March 1, 2012. A spirits certificate of approval license may be issued to spirits manufacturers located outside of the state of Washington but within the United States.

(2) A holder of a spirits certificate of approval may act as a distributor of spirits they are entitled to import into the state by selling directly to distributors or importers licensed in Washington state. The fee for a certificate of approval is two hundred dollars per year.

(3) A certificate of approval holder must obtain an endorsement to the certificate of approval that allows the shipment of spirits the holder is entitled to import into the state directly to licensed liquor retailers. The fee for this endorsement is one hundred dollars per year and is in addition to the fee for the certificate of approval license. The holder of a certificate of approval license that sells directly to licensed liquor retailers must:

(a) Report to the board monthly, on forms provided by the board, the amount of all sales of spirits to licensed retailers.

(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.

(c) Pay to the board five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

(4) An authorized representative out-of-state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain an authorized representative certificate of approval license which allows the holder to ship spirits to spirits distributors, or spirits importers located in

Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.

(5) An authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States may ship spirits to licensed spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.

#### NEW SECTION

**WAC 314-23-040 What are the requirements for a certificate of approval license?** The following documents are required to obtain a certificate of approval license:

- (1) Copies of all permits required by the federal government;
- (2) Copies of all state licenses and permits required by the state in which your operation is located; and
- (3) Licensing documents as determined by the board.

#### NEW SECTION

**WAC 314-23-041 What are the monthly reporting and payment requirements for a spirits certificate of approval licensee?** (1) A spirits certificate of approval licensee must submit monthly reports and payments to the board.

- (2) The required monthly reports must be:
  - (a) On a form furnished by the board;
  - (b) Filed every month, including months with no activity or payment due;
  - (c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and
  - (d) Filed separately for each liquor license held.

NEW SECTION

**WAC 314-23-042 What if a certificate of approval licensee fails to report or pay, or reports or pays late?** (1) If a spirits certificate of approval licensee does not submit its monthly reports and payment to the board as required by this subsection (1), the licensee is subject to penalties.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

NEW SECTION

**WAC 314-23-050 What does a spirits importer license allow?**

(1) A spirits importer license is issued to an in-state spirits importer. A spirits importer is allowed to:

- (a) Import spirits into the state of Washington;
- (b) Store spirits in the state of Washington;
- (c) Sell spirits to spirits distributors; and
- (d) Export spirits in original containers.

(2) An out-of-state spirits importer is required to obtain an authorized representative certificate of approval license as referenced in WAC 314-23-030.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-010 Records.** (1) All distilleries licensed under RCW 66.24.140 and 66.24.145, including craft, fruit, and laboratory distillers must:

(a) (~~Must~~) Keep records (~~(concerning)~~) regarding any spirits, whether produced or purchased, for three years after each sale. A distiller (~~(may be)~~) is required to report on forms approved by the board;

(b) (~~Must,~~) In the case of spirits exported or sold, preserve all bills of lading and other evidence of shipment; (~~and~~)

(c) (~~Must~~) Submit duplicate copies of transcripts, notices, or other data that (~~(are)~~) is required by the federal government to the board if requested, within thirty days of the notice of such request. A distiller shall also furnish copies of the bills of lading, covering all shipments of the products of the licensee, to the board within thirty days of notice of such request;

(d) Preserve all sales records to spirits retail licensees, sales to spirits distributors, and exports from the state; and

(e) Submit copies of its monthly records to the board upon request.

(2) In addition to the above, a craft distiller must:

(a) Preserve all sales records(~~(, in the case)~~) of retail sales to consumers; and

(b) Submit (~~(duplicate copies of)~~) its monthly (~~(returns)~~) records to the board upon request.

#### NEW SECTION

**WAC 314-28-030 Changes to the distiller and craft distiller license.** (1) Beginning March 1, 2012, all distilleries licensed under RCW 66.24.140 and 66.24.145 may sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington.

(2) Beginning June 1, 2012, a distiller may sell spirits of its own production to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present at the licensed premises.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-050 What does a craft distillery license allow?**

(1) A craft distillery license allows a licensee to:

(a) Produce sixty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A licensee may sell no more than two liters per customer per day. A craft distiller may not sell liquor products of someone else's production;

~~(c) ((Sell spirits of its own production to the board provided that the product is "listed" by the board, or is special-ordered by an individual Washington state liquor store))~~ For sales on or after March 1, 2012, sell spirits of its own production to a licensed spirits distributor;

(d) For sales on or after March 1, 2012, sell spirits of its own production to a licensed spirits retailer in the state of Washington;

~~((d))~~ (e) Sell to out-of-state entities;

~~((e))~~ (f) Provide, free of charge, samples of spirits of its own production to persons on the distillery premises. Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day. Samples must be unaltered, and anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit. Samples must be in compliance with RCW 66.28.040;

~~((f))~~ (g) Provide, free of charge, samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;

~~((g))~~ (h) Contract ~~((produced))~~ produce spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may not sell directly to in-state retailers or in-state distributors until March 1, 2012.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-060 What are the general requirements for a craft distillery license?** Per RCW 66.24.140 and 66.24.145, a craft distillery licensee is required to:

(1) Submit copies of all permits required by the federal government;

(2) Submit other licensing documents as determined by the

board;

(3) Ensure a minimum of fifty percent of all raw materials (including any neutral grain spirits and the raw materials that go into making mash, wort or wash) used in the production of the spirits product are grown in the state of Washington. Water is not considered a raw material grown in the state of Washington((7

~~(4) Purchase any spirits sold at the distillery premises for off-premises consumption from the board, at the price set by the board;~~

~~(5) Purchase any spirits used for sampling at the distillery premises from the board; and~~

~~(6) Purchase any spirits used for samples provided to retailers from the board)).~~

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-070 What are the monthly reporting and payment requirements for a distillery and craft distillery license?** (1) A distiller or craft distiller must submit monthly reports and payments to the board.

The required monthly reports must be:

~~(a) On a form furnished by the board ((or in a format approved by the board));~~

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) For reporting purposes, production is the distillation of spirits from mash, wort, wash or any other distilling material. After the production process is completed, a production gauge shall be made to establish the quantity and proof of the spirits produced. The designation as to the kind of spirits shall also be made at the time of the production gauge. A record of the production gauge shall be maintained by the distiller. The completion of the production process is when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

~~(3) ((Payments to the board. A distillery must pay the difference between the cost of the alcohol purchased by the board and the sale of alcohol at the established retail price, less the established commission rate during the preceding calendar month,~~

~~including samples at no charge.))~~ On sales on or after March 1, 2012, a distillery or craft distillery must pay ten percent of their gross spirits revenue to the board on sales to a licensee allowed to sell spirits for on- or off-premises consumption during the first two years of licensure and five percent of their gross spirits revenues to the board in year three and thereafter.

~~(a) ((Any on-premises sale or sample provided to a customer is considered a sale reportable to the board.))~~ On sales after June 1, 2012, a distillery or craft distillery must pay seventeen percent of their gross spirits revenue to the board on sales to customers for off-premises consumption.

~~(b) ((Samples provided to retailers are considered sales reportable to the board.~~

~~(c))~~ Payments must be submitted, with monthly reports, to the board on or before the twentieth day of each month, for the previous month. (For example, payment for a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be postmarked by the U.S. postal service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

**WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?** If a distillery or craft distiller ~~((fails to))~~ does not submit its monthly reports ~~((or))~~ and payment to the board ~~((, or submits late, then))~~ as required in WAC 314-28-070(1), the licensee is subject to penalties ~~((and surety bonds)).~~

~~((1))~~ Penalties. A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day.

~~((2) Surety bonds. A "surety bond" is a type of insurance policy that guarantees payment to the state, and is executed by a surety company authorized to do business in the state of Washington. Surety bond requirements are as follows:~~

~~(a) Must be on a surety bond form and in an amount acceptable to the board;~~

~~(b) Payable to the "Washington state liquor control board"; and~~

~~(c) Conditioned that the licensee will pay the taxes and penalties levied by RCW 66.28.040 and by all applicable WACs.~~

~~(3) The board may require a craft distillery to obtain a surety bond or assignment of savings account, within twenty-one~~



~~days after a notification by mail, if any of the following occur:~~

~~(a) A report or payment is missing more than thirty days past the required filing date, for two or more consecutive months;~~

~~(b) A report or payment is missing more than thirty days past the required filing date, for two or more times within a two-year period; or~~

~~(c) Return of payment for nonsufficient funds.~~

~~(4) As an option to obtaining a surety bond, a licensee may create an assignment of savings account for the board in the same amount as required for a surety bond. Requests for this option must be submitted in writing to the board's financial division.~~

~~(5) The amount of a surety bond or savings account required by this chapter must be either three thousand dollars, or the total of the highest four months' worth of liability for the previous twelve month period, whichever is greater. The licensee must maintain the bond for at least two years.~~

~~(6) Surety bond and savings account amounts may be reviewed annually and compared to the last twelve months' tax liability of the licensee. If the current bond or savings account amount does not meet the requirements outlined in this section, the licensee will be required to increase the bond amount or amount on deposit within twenty-one days.~~

~~(7) If a licensee holds a surety bond or savings account, the board will immediately start the process to collect overdue payments from the surety company or assigned account. If the exact amount of payment due is not known because of missing reports, the board will estimate the payment due based on previous production, receipts, and/or sales.)~~

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-090 Distilleries or craft distilleries (~~---Selling in-state, retail pricing and product listing~~)~~---Selling out-of-state (---Special orders)~~). ((+1) ~~What steps must a craft distillery licensee take to sell a spirits product in the state of Washington?~~)**

~~(a) There are two ways to sell a spirits product at a state liquor store:~~

~~(i) Through the special order process; and~~

~~(ii) Through product listing.~~

~~(b) If a craft distillery licensee wants the board to regularly stock its product on the shelf at a state liquor store, a licensee must request the board to list its product. If the board agrees to list the product, a licensee must then sell its product to the board and transport its product to the board's distribution center.~~

~~(c) Before a craft distillery licensee may sell its product to~~

~~a customer (twenty-one years old or older) at its distillery premises, a licensee must;~~

~~(i) Obtain a retail price from the board;~~

~~(ii) Sell its product to the board; and~~

~~(iii) Purchase its product back from the board. Product that a licensee produces and sells at its distillery premises is not transported to the board's distribution center.~~

~~(d) Listing a product. A craft distillery licensee must submit a formal request to the board to have the board regularly stock its product at a state liquor store. The board's purchasing division administers the listing process.~~

~~(i) A licensee must submit the following documents and information: A completed standard price quotation form, a listing request profile, bottle dimensions, an electronic color photograph of the product, a copy of the federal certificate of label approval, and a signed "tied house" statement.~~

~~(ii) The purchasing division shall apply the same consideration to all listing requests.~~

~~(iii) A craft distillery licensee is not required to submit a formal request for product listing if a licensee sells its product in-state only by special order (see chapter 314-74 WAC).~~

~~(e) Obtaining a retail price. A craft distillery licensee must submit a pricing quote to the board forty-five days prior to the first day of the effective pricing month. A pricing quote submittal includes a completed standard price quotation form, and the product's federal certificate of label approval. The board will then set the retail price.~~

~~(i) Pricing may not be changed within a calendar month.~~

~~(ii) A craft distillery licensee is required to sell to its on-premises customers at the same retail price as set by the board. If and when the board offers a temporary price reduction for a period of time, a licensee may also sell its product at the reduced price, but only during that same period of time.~~

~~(2))~~ **What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?**

~~((a))~~ **(1)** A distillery or craft distillery licensee shall include, in its monthly report to the board, information on the product it produces in-state and sells out-of-state. Information includes, but is not limited to, the amount of proof gallons sold, and for a craft distillery, the composition of raw materials used in production of the product.

~~((b))~~ **(2)** Product produced in-state and sold out-of-state counts toward a craft distillery licensee's sixty thousand proof gallons per calendar year production limit (see WAC 314-28-050).

~~((c))~~ **(3)** Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement for a craft distillery.

~~((d))~~ Product sold out-of-state is not subject to retail pricing by the board.

~~((e))~~ **(4)** A distillery or craft distillery licensee is not subject to Washington state liquor taxes on any product the

licensee sells out-of-state.



## **Notice of Permanent Rules to Implement I-1183 – Explanatory Statement**

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of rules to implement Initiative 1183.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Liquor Control Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately July 6, 2012).

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Karen McCall, Rules Coordinator, at (360) 664-1631 or e-mail at [rules@liq.wa.gov](mailto:rules@liq.wa.gov).

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### **What are the agency's reasons for adopting these rules?**

Initiative 1183 was passed by the voters on November 8, 2011. New license types were created and additional privileges are allowed for current license types. Rules are needed to implement and clarify changes made by Initiative 1183.

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### **Summary of all public comments received on this rule proposal.**

The Liquor Control Board received eighteen comments on the proposed permanent rules at the public hearing on May 24, 2012, and received two hundred ninety-four written comments during the comment period that ended May 30, 2012.

## Comments from Public Hearing:

**WAC 314-02-106 (4):** The following people commented on the 17% license issuance fee that spirits retail licensees must pay on all spirits sales. The commenters stated that former contract liquor stores and successful bidders of former state liquor stores should not be required to pay the 17% license issuance fee on retail-to-retail sales. There was also comment that no spirits retailer licensee should pay 17% license issuance fees on retail-to-retail sales.

- Rob Kauffman – CLS owner and member of the Lincoln County Board of Commissioners.
- Trent House – Representing former CLS, Clear View Spirits & Wine.
- Jerry McAlpine – CLS owner.
- Anthony Thieland – successful bidder of former state liquor store.
- Ian Murphy – Small restaurant owner.
- Katherine Degorty – CLS in Port Hadlock.
- Julia Clark – Washington Restaurant Association.
- Natalie Murphy – CLS in Greenacres.
- Julian Mark – CLS 147, Lake Chelan.
- Mike Thieland – successful bidder of former state liquor store.
- Bonnie Ralston – CLS owner
- Jeannie Weston – CLS 639.

**LCB response:** The language in RCW 66.24.630 (4) states, "Each spirits retail licensee must pay to the board, for deposit into the liquor revolving fund, a license issuance fee equivalent to seventeen percent of all spirits sales revenues under the license, exclusive of taxes collected by the licensee and of sales of items on which a license fee payable under this section has otherwise been incurred. The board must establish rules setting forth the timing of such payments and reporting of sales dollar volume by the licensee, with payments required quarterly in arrears. The first payment is due October 1, 2012. The language does not include any basis for the board to exempt any retail-to-retail-sales from the 17% license issuance fee required by the law.

**WAC 314-02-103 (2) and WAC 314-02-106 (1) (c):** The following people commented on the 24 liter limit per sale per on-premises licensee per day rules for wine and spirits. Numerous written comments were also received on this rule.

- Lynne Omlie – DISCUS. Supported the per day limit.
- Andy Thieland – Successful bidder of former state liquor store. Opposes the per day limit.
- Holly Chisa – NWGA – Opposes the per day limit.

- Julia Clark – WRA. Opposes the per day limit.
- Bruce Beckett – WRA. Opposes the per day limit.
- John Guadnola – WBWWA – Supports the per day limit.

**LCB response:** The emergency rules adopted by the board simply repeated the language of the initiative that included the 24 liter limitation. In response to the emergency rules, the board received comments that suggested the rule should be more specific, such as limiting the retail-to-retail sales to one every twenty-four hours, or other limitation, such as requiring each sale to be completed and the product removed from the store before another transaction could be made.

The board set this matter for a work session at the February 22, 2012, board meeting and received numerous comments. Some of the comments asserted that the board has no authority to impose a limitation and that the "twenty-four liters per sale" language is clear.

Testimony at the board work session certainly supports the view that a limitation of some kind was intended, and that the inclusion of a limit on the amount of spirits and wine that may be sold in a retail-to-retail transaction was intended to be a meaningful limitation. Although I-1183 amends the powers of the Liquor Control Board, the board clearly has authority to do rulemaking that affects how licensees may sell liquor:

***RCW 66.08.030*** "The power of the board to make regulations under chapter 34.05 RCW extends to:

- *(6) Regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;*
- *(12) Prescribing the conditions, accommodations, and qualifications requisite for the obtaining of licenses to sell beer, wines, and spirits, and regulating the sale of beer, wines, and spirits thereunder;*

Together these sections referenced above clearly show that the board has the authority to adopt rules governing the sale of liquor by licensees, including a clarification or further limitation on sales.

**WAC 314-23-030. The following people commented on the restriction that an authorized representative US spirits COA and an authorized representative foreign spirits COA are not allowed to sell directly to a sprits retail licensee in Washington State.**

- Lynne Omlie – DISCUS. Opposes the rule that does not allow authorized representative spirits COAs from selling directly to Washington retailers.
- C.J.Healy – Spirits Canada. Opposes the rule that does not allow authorized representative spirits COAs from selling directly to Washington retailers. This

rule may be inconsistent with Washington State's international trade obligations under NAFTA.

**LCB response:** RCW 66.24.640 (section 206 of the initiative), states in part, "The board must by rule provide for issuance of certificates of approval to spirits suppliers." Rules were created for three types of spirits COA licenses based on the language in the new law. These new COA licenses are consistent with the authority provided to beer and wine COA licenses. Only an actual spirits manufacturer licensed as a Spirits COA with a direct sale to retail endorsement is allowed to sell directly to spirits retailers in the State of Washington.

**WAC 314-02-106 (3). One person commented on the requirement in RCW 66.24.630 (2) that on-premises spirits licensees that purchase spirits from a spirits retail licensee are required to submit a quarterly report should include providing the report to all spirits suppliers, not just distributors and distillers acting as a distiller:**

**The board must establish by rule an obligation of on-sale spirits retailers to:**

**(a) Maintain a schedule by stock-keeping unit of all their purchases of spirits from spirits retail licensees, indicating the identity of the seller and the quantities purchased; and**

**(b) Provide, not more frequently than quarterly, a report for each scheduled item containing the identity of the purchasing on-premise licensee and the quantities of that scheduled item purchased since any preceding report to:**

**(i) A distributor authorized by the distiller to distribute a scheduled item in the on-sale licensee's geographic area; or**

**(ii) A distiller acting as distributor of the scheduled item in the area.**

- Lynne Omilie – DISCUS.

**LCB response.** The law is clear and requires no language to clarify.

**General comment. We thought the initiative was intended to create a competitive marketplace. My prices for product are going up, not down.**

- Max Mesmer – Alderbrook resort.

**LCB response.** The initiative did create a competitive marketplace. Retailers are allowed to purchase spirits and wine directly from manufacturers, distributors, and off-

premises retailers holding the required licenses or endorsements. Uniform prices were repealed and quantity discounts are allowed for spirits and wine.

### **Written comments.**

Additional written comments address several proposed rules. They are addressed individually below:

**Wine retailer reseller endorsement. WAC 314-02-103 (2): No single sale to an on-premises liquor licensee may exceed twenty-four liters. Single sales to an on-premises licensee are limited to one per day.**

**Spirits retailer license. WAC 314-02-106 (1)(c): Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although no single sale may exceed twenty-four liters, and single sales to an on-premises licensee are limited to one per day.**

- Numerous comments were received opposing the per day limit on retail-to-retail sales of wine and spirits.

**LCB response:** The emergency rules adopted by the board simply repeated the language of the initiative that included the 24 liter limitation. In response to the emergency rules, the board received comments that suggested the rule should be more specific, such as limiting the retail-to-retail sales to one every twenty-four hours, or other limitation, such as requiring each sale to be completed and the product removed from the store before another transaction could be made.

The board set this matter for a work session at the February 22, 2012, board meeting and received numerous comments. Some of the comments asserted that the board has no authority to impose a limitation and that the "twenty-four liters per sale" language is clear.

Testimony at the board work session certainly supports the view that a limitation of some kind was intended, and that the inclusion of a limit on the amount of spirits and wine that may be sold in a retail-to-retail transaction was intended to be a meaningful limitation. Although I-1183 amends the powers of the Liquor Control Board, the board clearly has authority to do rulemaking that affects how licensees may sell liquor:

***RCW 66.08.030*** "The power of the board to make regulations under chapter 34.05 RCW extends to:



- *(6) Regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;*
- *(12) Prescribing the conditions, accommodations, and qualifications requisite for the obtaining of licenses to sell beer, wines, and spirits, and regulating the sale of beer, wines, and spirits thereunder;*

Together these sections referenced above clearly show that the board has the authority to adopt rules governing the sale of liquor by licensees, including a clarification or further limitation on sales.

**WAC 314-02-106 (4): A spirits retail licensee must pay to the board seventeen percent of all spirits sales.**

- Numerous comments were received that former contract liquor stores and successful bidders of former state liquor stores should not be required to pay the 17% license issuance fee on retail-to-retail sales. There were also comments that no spirits retailer licensee should pay 17% license issuance fees on retail-to-retail sales. There was also a comment that the word "sales" should be changed to the word "revenues" as used in the initiative.

**LCB response:** The language in RCW 66.24.630 (4) states, "Each spirits retail licensee must pay to the board, for deposit into the liquor revolving fund, a license issuance fee equivalent to seventeen percent of all spirits sales revenues under the license, exclusive of taxes collected by the licensee and of sales of items on which a license fee payable under this section has otherwise been incurred. The board must establish rules setting forth the timing of such payments and reporting of sales dollar volume by the licensee, with payments required quarterly in arrears. The first payment is due October 1, 2012." The language does not include any basis for the board to exempt retail-to-retail-sales from the 17% license issuance fee required by the law. The board feels the use of the word "sales" is appropriate.

**WAC 314-23-001 (2) The price of spirits sold to retailers may not be below acquisition cost.**

- Comment was received that the rule does not include the exception in RCW 66.24.330 (1) that states: No price for spirits sold in the state by a distributor or other licensee acting as a distributor pursuant to this title may be below acquisition cost unless the item sold below acquisition cost has been stocked by the seller for a period of at least six months. The seller may not restock the item

for a period of one year following the first effective date of such below cost price.

**LCB response:** The exception in RCW 66.24.330 is clear and does not require a rule to clarify. There are numerous exceptions in law that do not have clarification in rule. The rule does not forbid what the statute allows..

**WAC 314-23-030. What does a spirits certificate of approval license allow?**

- Several comments were received that manufacturers located outside of the US should not be excluded from obtaining a Spirits COA license. All persons holding a Spirits COA license should be allowed to obtain a direct shipment endorsement and sell directly to a retailer located in Washington state.

**LCB response:** RCW 66.24.640 states, "Any distiller licensed under this title may act as a retailer and/or distributor to retailers selling for consumption on or off the licensed premises of spirits of its own production, and any manufacturer, importer, or bottler of spirits holding a certificate of approval may act as a distributor of spirits it is entitled to import into the state under such certificate. The board must by rule provide for issuance of certificates of approval to spirits suppliers."

The language of the new law required the board to create "certificates" (plural) of approval for spirits. Since the board was directed to create certificates, to be consistent, the board created the same certificates for spirits that are currently in law for wineries and breweries.

**WAC 314-23-030 (3)(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.**

- Comments were received that distillers and spirits COA holders selling direct to retailers should not be required to pay the board 10% of the total revenue from all sales of spirits to retail licensees.

LCB response: RCW 66.24.640 states, "An industry member operating as a distributor and/or retailer under this section must comply with the applicable laws and rules relating to distributors and/or retailers." Based on the language of the new law, a distillery or spirits COA is required to pay the 10% fee on sales to retailers. A distillery is also required to pay the 17% fee on sales to retailers. ESB 6635, passed in the 2012 legislative session, exempted craft distilleries from paying the 17% fee on retail sales.

**WAC 314-23-050. What does a spirits importer license allow?**

- Comments were received that a spirits importer license should allow direct sales to retailers if they hold a direct shipment endorsement.

**LCB response.** The initiative did not change what a spirits importer was allowed to do prior to the initiative in RCW 66.24.160. The law states, "A spirits importer's license may be issued to any qualified person, firm or corporation, entitling the holder thereof to import into the state any liquor other than beer or wine; to store the same within the state, and to sell and export the same from the state." There is no allowance to sell to retailers.

**WAC 314-02-103 (4) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board.**

- Comments were received that the rule does not include the provision in the law, RCW 66.24.360 (8), which allows delivery of wine to "lawful purchasers outside the state".

**LCB response:** The law is clear and does not require a rule to clarify.

**WAC 314-02-104 (c). Licensees in a shared warehouse may consolidate their commitment for the amount of product they plan to order, but their orders must be placed separately and paid for by each licensee.**

- Comments were received stating the only limitations imposed on members of the group are the limitations applicable individually and registration. The efficiency of consolidated warehousing logically extends to consolidated ordering and payment.

**LCB response:** There is no liquor license for a "cooperation, association, or comparable group of retailers". The initiative did not create such a license either, thus a cooperative or association may not purchase liquor on behalf of the members. An entity must hold a liquor license to purchase alcohol for resale. The board worked with stakeholders to create a solution that would work for all licensees interested in central warehousing.

**WAC 314-23-020 (2). Spirits distributors must sell and deliver product from their licensed premises.**

- Comments were received that the initiative does not direct the board to promulgate rules in this area, and there is no statutory authority for this limitation.

**LCB response: *RCW 66.08.030*** "The power of the board to make regulations under chapter *34.05* RCW extends to:

- *(6) Regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;*
- *(12) Prescribing the conditions, accommodations, and qualifications requisite for the obtaining of licenses to sell beer, wines, and spirits, and regulating the sale of beer, wines, and spirits thereunder;*

Together these sections referenced above clearly show that the board has the authority to adopt rules governing the sale of liquor by licensees, including a clarification or further limitation on sales.