



POLICY BRIEF

Citizens' Guide to Initiatives 1100 and 1105 *To End the State Monopoly on Liquor Sales*

by Jason Mercier
October 2010



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Key Findings

1. Both I-1100 and I-1105 would effectively end the state's 77-year old monopoly on liquor sales.
2. Research indicates that rates of underage drinking and underage binge drinking are virtually identical in license and control states.
3. Evidence suggests that control of alcohol markets does not imply control of alcohol consumption.
4. New revenue received by the state and local governments in the form of higher B&O taxes would offset some of the revenue loss presented by the OFM's fiscal note estimates for I-1100 and I-1105.
5. If voters approve both initiatives a court ruling, legislative action, or some combination of the two will resolve the differences between the two measures.
6. Ending WA's liquor monopoly would alleviate the state from the expense of running a business.
7. I-1100 offers a better solution to ending the state's antiquated liquor monopoly while allowing the Liquor Control Board to focus solely on its enforcement and public education responsibilities.

Citizens' Guide to Initiatives 1100 and 1105

To End the State Monopoly on Liquor Sales

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Introduction

In November the people of Washington will vote on Initiatives 1100 and 1105. There are important differences between the two, but both measures would end the state's prohibition-era monopoly on the sale of hard liquor. Washington Policy Center has long recommended ending the state's liquor business and refocusing efforts on enforcement and public education.

Washington is one of 18 states which operate an official monopoly over sales of hard liquor. Washingtonians last considered privatizing liquor sales in 1972, when they voted on Initiative 261. That measure was defeated.

The official ballot measure summary for Initiative 1100 reads:

“This measure would direct the liquor control board to close all state liquor stores; terminate contracts with private stores selling liquor; and authorize the state to issue licenses that allow spirits (hard liquor) to be sold, distributed, and imported by private parties. It would repeal uniform pricing and certain other requirements governing business operations for distributors and producers of beer and wine. Stores that held contracts to sell spirits could convert to liquor retailer licenses.”¹

The official ballot measure summary for Initiative 1105 reads:

“This measure would direct the liquor control board to close all state liquor stores and to license qualified private parties as spirits (hard liquor) retailers or distributors. It would require licensees to pay the state a percentage of their first five years of gross spirits sales; repeal certain taxes on retail spirits sales; direct the board to recommend to the legislature a tax to be paid by spirits distributors; and revise other laws concerning spirits.”²

The major difference between the two measures is their treatment of how liquor would be distributed and taxed. These differences will be discussed in a later section. Both initiatives would effectively end the state's 77-year old monopoly on liquor sales.

¹ “Proposed Initiatives to the People – 2010,” Washington Secretary of State's Office, at <http://www.sos.wa.gov/elections/initiatives/people.aspx>

² Ibid.

Liquor Monopoly States

There are 18 liquor monopoly states across the country including Washington.³ These are states that maintain some level of monopoly control over the sale of liquor. Washington is one of 12 states that employ a monopoly over both retail and wholesale liquor sales. Here is a breakdown of the liquor monopoly states:

| State Control of Retail and Wholesale Sales (12) | State Control of Wholesale Only (6) |
|--|-------------------------------------|
| Alabama | Iowa |
| Idaho | Michigan |
| Maine | Mississippi |
| New Hampshire | Montana |
| North Carolina | West Virginia |
| Ohio | Wyoming |
| Oregon | |
| Pennsylvania | |
| Utah | |
| Vermont | |
| Virginia | |
| Washington | |

Proponents of government control over liquor sales argue a state monopoly serves numerous social goals, such as reducing underage drinking and improving road safety. The National Alcohol Beverage Control Association argues that privatization would likely have adverse impacts on these social goals:

“There would likely be more underage sales, leading to increased alcohol problems among youth including violence and accidents. There would be higher consumption of alcohol and especially of spirits among the adult population as well, likely resulting in more alcohol-related deaths, accidents and alcohol dependent cases needing treatment.”⁴

A 2009 study comparing national per-capita alcohol consumption questioned the supposed link between state control and achieving social goals. The study examined rates of underage drinking, underage binge drinking, alcohol related road fatalities and DUI arrests. It found:

“Evidence from 48 states over time shows no link between market controls and these social goals. While alcohol consumption in license states is slightly higher than in controlled states, among controlled states, greater levels of control are actually associated with *increased* consumption rates. Rates of underage drinking and underage binge drinking are virtually identical in license and control states.

“Similarly, there is no difference in alcohol-related traffic deaths in license versus control states. However, among control states, states with the most controls also exhibit the highest rates of alcohol-related traffic deaths – even after adjusting for differences

³ “The Control States,” National Alcohol Beverage Control Association, at <http://www.nabca.org/States/States.aspx>.

⁴ “The Effects of Privatization of Alcohol Control Systems,” National Alcohol Beverage Control Association Brochure.

in enforcement of DUI laws. In short, evidence suggests that control of alcohol markets does not imply control of alcohol consumption.”⁵

Along with Washington, a liquor privatization effort is also currently being debated in another control state, Virginia. The Virginia proposal is being advocated by Governor Bob McDonnell. According to Governor McDonnell, the goal of liquor privatization is to:

- “End an outdated government monopoly for distilled spirits sales and distribution, and create a free-market and private-sector delivery of a service, which is not a core-function of state government.”
- “Treat distilled spirits on a level playing field with wine and beer, which have been sold in private outlets for 76 years.”
- “Stimulate private sector investment, entrepreneurship and job creation – ensuring businesses of all sizes have an opportunity to participate.”⁶

These are similar to the arguments of Initiative 1100 and 1105 supporters.

History of State’s Liquor Initiatives

Following the repeal of Prohibition in 1933, state officials created the Washington State Liquor Control Board (WSLCB) to regulate and control the sale and distribution of alcohol in the state.

State voters have been asked four times to change aspects of the state’s liquor control system via initiatives that have qualified for the ballot since 1933.⁷ One of the initiatives sought to expand the powers of the WSLCB, while the other three sought to loosen state restrictions. Except for a 1948 initiative that allowed restaurants and cocktail lounges to sell liquor by the drink, all these measures were rejected, and Washington liquor control systems remains essentially what it was in the 1930s.⁸

Since many of the same arguments offered for and against past initiatives are being made in the debate over Initiatives 1100 and 1105, it will be interesting to see if voters’ attitudes about ending the state’s liquor monopoly have changed over the last four decades.

Comparison of Initiative 1100 and Initiative 1105

There are important differences in how the two initiatives would treat private liquor sales. The following table compares the provisions of the two proposals.

⁵ “Government-Run Liquor Stores,” John Pulito & Antony Davies, Common Wealth Foundation, October 2009, at http://www.commonwealthfoundation.org/docLib/20091029_StateStores%28Pulito%29.pdf.

⁶ “Proposed ABC Privatization Model,” Office of Virginia Governor Bob McDonnell, September 8, 2010 at <http://www.reform.virginia.gov/Presentations/docs/ProposedABCPrivatizationModel196.pdf>

⁷ “Initiatives to the People - 1914 through 2009,” Washington Secretary of State’s Office, at http://www.sos.wa.gov/elections/initiatives/statistics_initiatives.aspx.

⁸ The proposed initiatives were Initiative 13 (1948), Initiative 171 (1948), Initiative 205 (1960), and Initiative 261 (1972). Of these, only Initiative 13, “Providing for liquor by the drink with certain restrictions,” passed.

| Provision | Initiative 1100 | Initiative 1105 |
|---|---|--|
| Private Sales Begin | June 1, 2011 | November 1, 2011 |
| State Sales End | December 31, 2011 | April 1, 2012 |
| Liquor Distribution | Allows retailers to purchase hard liquor directly from manufactures, without going through a distributor. | Requires retailers to purchase hard liquor through distributors, by retaining the current ban on direct purchases. |
| Quantity Discounts | Allows retailers to receive quantity discounts from manufacturers of liquor, beer and wine. | Allows retailers to receive quantity discounts for liquor only. The current ban on quantity discounts for beer and wine would continue. |
| Taxes | Retains current taxes on the sale of liquor. | Repeals existing liquor taxes. Asks the Liquor Control Board to recommend new liquor taxes by January 1, 2011 that would raise an additional \$100 million over 5 years. |
| Retail License Fees | Requires retailers to pay a \$1,000 state liquor fee every year. | Requires retailers to pay a fee of 6% of gross sales over five years, plus any “reasonable” fee added by the Liquor Control Board. |
| Distributor License Fees | Requires distributors to pay a \$1,000 state liquor fee every year. To distribute liquor, beer and wine, the yearly fee would be \$2,000. | Require distributors to pay a fee of 1% of gross sales over five years, plus any “reasonable” fee added by the Liquor Control Board. |
| Restrictions on Local Liquor Sales | Authorizes local governments to restrict liquors sales within their borders. | Retains current Liquor Control Board authority in awarding liquor licenses. |

Impact on State and Local Revenue

Office of Financial Management (OFM) fiscal statements do not include all the financial effects of the two initiatives, but they estimate both would lead to a decrease in state government revenues. The decrease is primarily due to both measures eliminating the state monopoly’s 51.9% markup. Initiative 1105 shows a larger fiscal impact due to its elimination of existing liquor taxes though this is a point of contention as supporters argue the intent of their measure is for a new tax structure to be created that would generate at least \$100 million more than the current system. The legislature, however, is not required to enact a new liquor tax structure.

Initiative 1100 – An estimated \$76 million to \$85 million less in state revenue. An estimated \$180 million to \$192 million less in local revenue, both over five years.

Initiative 1105 – An estimated \$486 million to \$520 million less in state revenue. An estimated \$205 million to \$210 million less in local revenue, both over five fiscal years.

These revenue estimates should be viewed with caution, however. OFM qualifies its estimates by saying, “Fiscal impact cannot be precisely estimated because the private market will determine spirits bottle cost and markup.”

Some of the estimated revenue loss would be offset by new B&O taxes that are not paid under the current monopoly system. OFM does not include this revenue increase, saying it is impossible to know what new taxes private liquor retailers would pay.

Does the State Try to Maximize Liquor Sales?

One of the arguments made by supporters of Initiatives 1100 and 1105 is the current monopoly on liquor sales distracts the WSLCB from its other duties and encourages state officials to maximize liquor sales to generate revenue for the state treasury.

Documents from the WSLCB appear to confirm the agency’s efforts to increase profits from its sales. A 2009 liquor marketing strategy called for opening four temporary liquor stores in Western Washington shopping malls during the Christmas season. According to the Liquor Board’s press release:

“The WSLCB is running this pilot program for two reasons.

1. To generate \$3.8 million in additional revenue during the 2009 and 2010 holiday seasons to help offset the state budget deficit; and
2. To determine customer interest in shopping at these gift locations during the holidays.

The holiday gift stores will carry spirit gift packages and a limited selection of spirits, wine, and spirits-based chocolates and eggnogs. The stores will be open seven days a week. Store hours will vary by location.”⁹

An accompanying WSLCB handout noted:

“The holiday gift stores are part of a series of new revenue projects that will fund essential state and local services. Other projects include:

- 15 new stores (5 state, 10 contract)
- Opening nine additional stores on Sundays
- Expanding Lottery sales in stores
- Opening most state stores on seven holidays”¹⁰

This effort to increase liquor sales and revenue is a continuation of a 2005 directive by the state legislature for the WSLCB to “implement a retail business plan to improve efficiency and increase revenue.”

⁹ “Liquor Control Board to pilot holiday gift stores in four shopping malls,” Washington Liquor Control Board, October 16, 2009 at <http://www.liq.wa.gov/releases/pr091015-mall.asp>.

¹⁰ “Liquor and Wine Holiday Gift Stores,” Washington Liquor Control Board at http://www.liq.wa.gov/releases/pr091015-mal_Holiday-gift-stores-in-malls2.pdf.

The WSLCB also increased its per bottle markup from 39.2 percent to 51.9 percent last year “to generate approximately \$80 million in revenue during the next two-year budget cycle.”¹¹

The original purpose of the WSLCB was not to be a revenue generator for state and local government but to restrict access to liquor. This point was illustrated by Governor Clarence Martin on January 23, 1934 welcoming the new Liquor Board:

“The importance of the Washington State Liquor Act is that it is supposed to be conducive to temperance . . . Unlike other businesses, you are not expected to promote sales. Instead of promoting the sale of liquor, your function is only to make good liquor available to people under proper conditions.”¹²

It has become clear, however, that the goal of increasing sales and revenue is very much a priority of the WSLCB.

Supporters of Initiatives 1100 and 1105 argue that there is nothing inherently governmental about the business operations of the WSLCB and it should instead focus on its regulatory and enforcement activities.

This is a position shared by State Auditor Brian Sonntag who earlier this year told KING TV News: “Is it a core function of the state to be selling alcohol? I don’t think so.”¹³

State Auditor’s Report on Liquor Reforms

In December 2009 State Auditor Brian Sonntag issued a report called “Opportunities for Washington,” which discussed six ways the state could change its liquor sales system. Though none of those options directly relate to the policies proposed by Initiatives 1100 and 1105, according to the State Auditor’s Office, “Option 6” is the closest comparison.

From the State Auditor’s report:

“Option 6: Change from monopoly to license state

Result: From 2012 to 2016, the state would receive \$86.8 million more than under the current operating structure. This includes one-time revenue.

This option would completely privatize the sale of liquor in Washington. The distribution center would be sold and companies would be able to bid for the right to distribute liquor in the state. The distributors would purchase liquor directly from manufacturers. Based on other states’ experience, we anticipate one to three distributors would compete for business statewide.

The duties of the Liquor Control Board would be limited to licensing and enforcement of liquor and tobacco laws. The appropriation for Liquor Control Board operations under this option would be \$26.5 million per year. This would result in a reduction of 932 employee positions.

Under this model, a flat tax would be applied at the distributor level and, using DISCUS assumptions, the distributors would apply a 20 percent

¹¹ “Liquor Control Board votes to increase markup on liquor,” Washington Liquor Control Board, May 6, 2009 at <http://www.liq.wa.gov/releases/pr090506-markup.asp>

¹² “The Dry Years: Prohibition and Social Change in Washington,” Norman Clark, University of Washington Press, 1988, page 243.

¹³ “Should state be selling booze? Auditor thinks not,” Drew Mikkelsen, KING 5 TV, January 8, 2010 at <http://www.king5.com/home/Should-state-be-selling-booze-Auditor-thinks-not-81044617.html>

markup on cost and tax and retailers would apply a 25 percent markup. The number of retail outlets would grow to as high as 3,357 outlets if most grocery stores, convenience stores, drug stores and club retailers decide to purchase licenses. Licenses would be sold at a cost of \$1,578 per outlet, the average cost of a retail license nationwide.”¹⁴

The major difference between this scenario modeled by the State Auditor’s Office and Initiatives 1100 and 1105 is the assumption of a new flat tax. The Auditor’s Office included this new tax so there would be no revenue loss to the state. One of the policy goals of Initiative 1105 is for the WSLCB to recommend to the legislature a new tax structure to generate an additional \$100 million in revenues for the state. The legislature, however, is not required to act on the WSLCB’s recommendations.

Further clouding the potential revenue impact of liquor privatization is the inability to model new state and local Business and Occupation (B&O) taxes from private liquor outlets. The State Auditor’s Office found that “retail operations previously run by the state would be subject to state and local business and occupation taxes.” This means the Auditor’s Office did not try to quantify the new state and local B&O tax revenues for governments from liquor sales.

New revenue received by the state and local governments in the form of higher B&O taxes would offset some of the revenue loss presented by the OFM’s fiscal note estimates for Initiative 1100 and 1105.

Concerning the impact of liquor privatization on the enforcement capabilities of the WSLCB, the Auditor’s Office concluded:

“The Board has 115 enforcement officers who routinely check grocery stores, convenience stores, restaurants, taverns and lounges to determine if they are selling alcohol to underage customers or to customers who are inebriated. Our options anticipate increases only in the number of retail outlets. If state stores are converted to contract stores, the number of outlets would not increase. If privatization were to occur at the retail level, many stores that sell beer and wine would add liquor. We would not expect the options discussed here to substantially increase the number of liquor outlets already being monitored by the Board.”¹⁵

This means privatization would not put undue strain on the existing enforcement capabilities of the WSLCB, allowing it to effectively continue this important public service.

What if Both Initiatives Pass?

If voters approve both initiatives a court ruling, legislative action, or some combination of the two will resolve the differences between the two measures.

One argument holds that the initiative that receives the most votes would be enacted in its entirety with the one receiving the fewer votes disregarded. Those taking this position draw on the state’s constitutional treatment of ballot measures referred to the people by the legislature with conflicting provisions.

According to Article II, Section 1(a) of the state constitution:

“When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X)

¹⁴ “Opportunities for Washington,” Washington State Auditor’s Office, December 17, 2009 at <http://www.sao.wa.gov/auditreports/auditreportfiles/ar1002726.pdf>.

¹⁵ Ibid.

for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.”

In response to a question on how the differences between two conflicting spending limit initiatives would be treated (Initiatives 601 and 602), a 1993 Attorney General Opinion speculated:

“The court could choose the initiative that receives the greatest number of votes.

There is no direct authority for our court to apply such a rule. Unlike some states, such as California, Washington does not have a general constitutional provision that requires the initiative with the highest number of votes to prevail in the event of a conflict. The only provision dealing with competing initiatives in Washington is in article 2, section 1(a) . . .

This provision in article 2, section 1(a) does not directly address two competing initiatives to the people. Rather, it applies when both an initiative to the Legislature and an alternative measure passed by the Legislature appear on the ballot.

Despite the fact that article 2, section 1(a) does not apply directly, we have discovered authority from other states that have applied this rule, despite the absence of a constitutional provision directly on point.”¹⁶

The courts may, however, defer to the legislature to harmonize the conflicting measures which would require a two-thirds vote of lawmakers to make changes or repeal one, perhaps the one that receives the fewest votes.

Conclusion

Since its original mission has long since disappeared, the state should end its liquor business and allow the Washington State Liquor Control Board to focus on enforcement and public education. The state would no longer have the conflicting goal of policing alcohol sales while at the same time trying to profit from its sale. Ending Washington’s liquor monopoly would also alleviate the state from the expense of running a business.

While both measures effectively end the state’s liquor monopoly, Initiative 1100 offers more market freedom because it would end the prohibition-era distribution requirements and quantity discount restrictions for retailers. This has the potential to lead to fierce competition in the marketplace to the benefit of consumers. Existing taxes on liquor sales would continue to be collected under Initiative 1100. Though Initiative 1105 also ends the state’s liquor monopoly, it retains the prohibition-era market restrictions. Initiative 1105 also repeals existing liquor taxes while recommending that the legislature enact a new tax structure that would increase taxes by an additional \$100 million over five years.

Initiative 1100 offers a better solution to ending the state’s antiquated liquor monopoly while allowing the WSLCB to focus solely on its enforcement and public education responsibilities.

¹⁶ “Interpretation of provisions of Initiatives 601 and 602 that deal with the same subject in different ways,” Washington Attorney General’s Office, AGO 1993 No. 16 - October 11, 1993 at back <http://www.atg.wa.gov/AGOOpinions/opinion.aspx?section=archive&id=9206>.

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