



## Notice of Permanent Rules to Implement I-1183 – Revisions to Current WACs Explanatory Statement

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of rules to clarify the \$150 million assessment to be paid by persons holding a spirits distributor license created in Initiative 1183 (RCW 66.24.055).**

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 November 15, 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?**

By March 31, 2013, Initiative 1183 (RCW 66.24.055) directs all persons holding spirits distributor licenses on or before March 31, 2013, to pay to the board \$150 million (or more) in spirits distributor license fees. The license fees are derived from the ten percent of the total revenue for all the licensee's sales of spirits made during the first year. If the collective payment totals less than \$150 million, the board must collect by May 31, 2013 as additional license fees the difference between \$150 million and the actual receipts.

### **What changes are being made?**

**New Section. WAC 314-23-025 Collection of shortfall of spirits distributor license fees from spirits distributor license holders.** Created language to clarify RCW 66.24.055 explaining how the \$150 million assessment will be calculated and collected.

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

Two written comments in opposition to the proposed rule were received. Two comments in opposition to the proposed rule were received at the public hearing held on October 3, 2012.

### Comments from Public Hearing and written comments:

#### **WAC 314-23-025: The following people commented in opposition on the language for the collection of shortfall of spirits distributor license fees from spirits distributor license holders.**

- Jim Halstrom – Southern Wine & Spirits
- Ron Main – Washington Beer and Wine Distributors Association (WBWDA)
- John Guadnola – Washington Beer & Wine Distributor Association
- Karen F.R. Moore – Wine & spirits Wholesalers of America

**Comment:** We believe an inequity arises as a result of excluding direct-shipping distillers and imposing the shortfall assessment only on licensed spirits distributors. Furthermore we believe the proposal is inconsistent with applicable statutory provisions.

**LCB response:** The language in RCW 66.24.055 (3)(c) states, "By March 31, 2013, all persons holding spirits distributor licenses on or before March 31, 2013, must have paid collectively one hundred fifty million dollars or more in spirits distributor license fees." The law is specific that only persons holding the spirits distributor license are responsible for the \$150 million assessment. This statute does not include distillers operating as a distributor be included in the \$150 million assessment. They are included in the ten percent license fee but they are not included in the assessment.

RCW 66.24.640 states in part, "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, except that an industry member operating as a distributor under this section may maintain a warehouse off the distillery premises for the distribution of spirits of its own production to spirits retailers within the state, if the warehouse is within the United States and has been approved by the board." This language, "operating as a distributor", is not the same as "persons holding a spirits distributor license".

RCW 66.28.330 (4) states, "A distiller holding a license or certificate of compliance as a distiller under this title may act as distributor in the state of spirits of its own production

or of foreign-produced spirits it is entitled to import. The distiller must, to the extent consistent with the purposes of chapter 2, Laws of 2012, comply with all provisions of and regulations under this title applicable to wholesale distributors selling spirits to retailers.” This statute is specific to “selling spirits to retailers”. It does not refer to rules relating to the shortfall.

**Comment:** Double “taxation” (license fees) occurs when, under the provisions of the proposed rule, the assessment is imposed on total spirits sales by all spirits distributors – even when that distributor is a sub-distributor and their sales are not subject to the ten percent tax (license fee) because they are not making the “first sale” and the fee has already been paid.

**LCB response:** RCW 66.24.055 clearly state the ten percent fee is calculated only on sales of items which the licensee was the first spirits distributor in the state to have received. The Washington Spirit Distributor Sales Summary Fee Report requires distributors to subtract from their total sales product sold that was purchased from a Washington distributor. The ten percent license fee is only paid on sales of product where the distributor was the first spirits distributor in the state to receive the product. There is no way double fees would be paid on any sales. If all the spirits a sub-distributor sold were purchased from another distributor, the sub-distributor would not owe a license fee and would not be subject to the shortfall.