

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #66 (“Sales and Delivery of Alcohol Beverages”)</p> <p>Petitioners: Christopher Fine</p> <p>v.</p> <p>Respondents: Steven Ward and Levi Mendyk</p> <p>and</p> <p>Title Board: Teresa Conley, David Powell, and Jeremiah Barry</p>	
<p>Attorneys for Petitioner:</p> <p>Mark G. Grueskin, #14621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com</p>	<p>Case Number:</p>
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #66 (“SALES AND DELIVERY OF ALCOHOL BEVERAGES”)</p>	

Christopher Fine (“Petitioner”), registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2021-2022 #66 (“Sales and Delivery of Alcohol Beverages”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2021-2022 #66.

Steven Ward and Levi Mendyk (hereafter “Proponents”) proposed Initiative 2021-2022 #66 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or her designee is a member.

A Title Board hearing was held on March 16, 2022, at which time titles were set for 2021-2022 #66. On March 23, 2022, Petitioner Christopher Fine filed a Motion for Rehearing, alleging that Initiative #66 contained multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5), and that the Title Board set titles which are misleading and incomplete as they do not fairly communicate the true intent and meaning of the measure and will mislead voters. The rehearing was held on

April 6, 2022, at which time the Title Board granted in part and denied in part the Motion for Rehearing with one member of the Board dissenting.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within seven days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. The matter is properly before this Court.

GROUND FOR APPEAL

The titles set by the Title Board violate the legal requirements imposed on the Board because the Initiative contains multiple subjects, in violation of Colo. Const. art. V, sec. 1(5.5), and the title set by the Board violate the “clear ballot

title” requirement by omitting critical elements of the measure and will mislead voters. The following is an advisory list of issues to be addressed in Petitioner’s brief:

1. Whether Initiative #66 violated the constitutional single subject requirement by addressing separate and distinct purposes including:
 - a. Allowing the sale of a single type of alcohol beverage (wine) at a single category of retail sellers (food stores) which now sell only beer; and
 - b. Authorizing licensed sellers of alcohol beverages, including but also other than food stores, to deliver all types of alcohol beverages (including wine, beer, and spirits), including through third party delivery services, as a privilege that is separate from retail sales.
2. Whether the Board violated the “clear ballot title” requirement because:
 - a. The titles’ current statement of single subject (“the expansion of retail sale of alcohol beverages”) is inaccurate as “delivery” of alcohol is a not a “retail sale” of alcohol and can be accomplished, under this initiative, by unrelated third parties who are not licensed or in any way engaged in retail sales;

- b. The titles fail to state this initiative expands alcohol delivery for alcohol beverages that are sold for off-premises consumption as well as for alcoholic drinks that are sold for on-premises consumption; and
- c. The expanded form of retail license, allowing wine sales at food stores, may be granted to current licensed food stores without any public hearing or investigation by the local licensing authority.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the titles are legally flawed, and direct the Title Board to return the initiative to the designated representative for lack of jurisdiction, due to violation of the constitutional single subject requirement, or, in the alternative, to correct the title to address the deficiencies outlined in Petitioner's briefs.

Respectfully submitted this 13th day of April, 2022.

s/ Mark G. Grueskin

Mark G. Grueskin, #14621
RECHT KORNFELD, P.C.
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Facsimile: 303-446-9400
mark@rklawpc.com

ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #66 (“SALES AND DELIVERY OF ALCOHOL BEVERAGES”)** was sent electronically via Colorado Courts E-Filing this day, April 13, 2022, to the following:

Counsel for the Title Board:
Michael Kotlarczyk
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Counsel for Proponents:
Suzanne Taheri
Maven Law Group
1800 Glenarm Place
Suite 950
Denver, CO 80202

And via United States Mail to Proponents:

Steven Ward
4620 S Delaware St
Englewood, CO 80110

Levi Mendyk
300 17th Avenue, Apt 1012
Denver, CO 80203

/s Erin Holweger



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2021-2022 #66 'Sales and Delivery of Alcohol Beverages'"

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 6th day of April, 2022.

Jena Griswold

SECRETARY OF STATE



Be it enacted by the People of the State of Colorado:

SECTION 1: Declaration

The People of the State of Colorado hereby find and declare that article 3 of this title 44, known as the “Colorado Liquor Code,” shall be amended to allow, beginning March 1, 2023, the sale of wine in grocery and convenience stores that are licensed to sell beer; and permit home delivery of alcohol sales made by licensed retailers through third-party home delivery service providers.

SECTION 2: In Colorado Revised Statutes, **add 44-3-410.5** as follows:

44-3-410.5. BEER AND WINE OFF-PREMISES RETAILER LICENSE.

(1) NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS ARTICLE 3, A BEER AND WINE OFF-PREMISES RETAILER LICENSE MAY BE ISSUED TO BEER AND WINE OFF-PREMISES RETAILERS SELLING MALT AND VINOUS LIQUORS IN SEALED CONTAINERS NOT TO BE CONSUMED AT THE PLACE WHERE THE MALT AND VINOUS LIQUORS ARE SOLD.

(2) EVERY BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER THIS SECTION TO SELL MALT AND VINOUS LIQUORS SHALL PURCHASE SUCH MALT AND VINOUS LIQUORS ONLY FROM A WHOLESALER LICENSED PURSUANT TO THIS ARTICLE 3.

(3) IT IS UNLAWFUL FOR ANY OWNER, PART-OWNER, SHAREHOLDER, OR PERSON INTERESTED DIRECTLY OR INDIRECTLY IN A BEER AND WINE OFF-PREMISES RETAILER LICENSE TO CONDUCT, OWN EITHER IN WHOLE OR IN PART, OR BE DIRECTLY OR INDIRECTLY INTERESTED IN ANY MANUFACTURER OR WHOLESALER LICENSED PURSUANT TO THIS ARTICLE 3.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE 3, A LICENSEE UNDER SECTION 44-4-107(1)(a) WITH A VALID LICENSE FOR THE SALE OF FERMENTED MALT BEVERAGES FOR OFF-PREMISES CONSUMPTION IN EFFECT ON MARCH 1, 2023, MAY APPLY TO A LOCAL LICENSING AUTHORITY TO CONVERT ITS EXISTING LICENSE INTO A BEER AND WINE OFF-PREMISES RETAILER LICENSE ISSUED UNDER THE PROVISIONS OF THIS SECTION IF IT OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION. IN MAKING A DETERMINATION ON THE APPLICATION UNDER THIS SUBSECTION (4), THE LOCAL LICENSING AUTHORITY MAY CONSIDER THE SATISFACTORY NATURE OF THE CHARACTER, RECORD, AND REPUTATION OF THE APPLICANT. IN CONSIDERING ANY APPLICATION UNDER THIS SUBSECTION (4), THE LOCAL LICENSING AUTHORITY MAY ADMINISTRATIVELY APPROVE THE APPLICATION WITHOUT A PUBLIC HEARING OR INVESTIGATION OR MAY CONSIDER THE REASONABLE REQUIREMENTS OF THE NEIGHBORHOOD AND THE DESIRES OF ITS ADULT INHABITANTS, AND ALL OTHER REASONABLE RESTRICTIONS THAT ARE OR MAY BE PLACED UPON THE NEIGHBORHOOD BY THE LOCAL LICENSING AUTHORITY, PURSUANT TO SECTION 44-3-301. THE PROVISIONS IN SECTION 44-3-301 (12) SHALL NOT APPLY TO APPLICATIONS UNDER THIS SUBSECTION (4).

(5) A BEER AND WINE OFF-PREMISES RETAILER MAY DELIVER MALT AND VINOUS LIQUORS PURSUANT TO SECTION 44-3-911.5.

(6) A BEER AND WINE OFF-PREMISES RETAILER MAY ALLOW TASTINGS OF MALT AND VINOUS LIQUORS TO BE CONDUCTED ON THE LICENSED PREMISES IF THE LICENSEE HAS RECEIVED AUTHORIZATION TO CONDUCT TASTINGS PURSUANT TO SECTION 44-3-301.

(7) A BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER THIS SECTION:

(a)(I) SHALL NOT SELL MALT OR VINOUS LIQUORS TO CONSUMERS AT A PRICE THAT IS BELOW THE RETAILER'S COST, AS LISTED ON THE INVOICE, TO PURCHASE THE MALT AND VINOUS LIQUORS, UNLESS THE SALE IS OF DISCONTINUED OR CLOSE-OUT MALT OR VINOUS LIQUORS.

(II) THIS SUBSECTION (7)(a) DOES NOT PROHIBIT A BEER AND WINE OFF-PREMISES RETAILER FROM OPERATING A BONA FIDE LOYALTY OR REWARDS PROGRAM FOR MALT AND VINOUS LIQUORS SO LONG AS THE PRICE FOR THE PRODUCT IS NOT BELOW THE RETAILER'S COST AS LISTED ON THE INVOICE.

(b) SHALL NOT ALLOW CONSUMERS TO PURCHASE MALT OR VINOUS LIQUORS AT A SELF-CHECKOUT OR OTHER MECHANISM THAT ALLOWS THE CONSUMER TO COMPLETE THE MALT OR VINOUS LIQUORS PURCHASE WITHOUT ASSISTANCE FROM AND COMPLETION OF THE ENTIRE TRANSACTION BY AN EMPLOYEE OF THE BEER AND WINE OFF-PREMISES RETAILER.

(8) A PERSON LICENSED UNDER SUBSECTION (1) OF THIS SECTION THAT HOLDS MULTIPLE BEER AND WINE OFF-PREMISES RETAILER LICENSES FOR MULTIPLE LICENSED PREMISES MAY OPERATE UNDER A SINGLE OR CONSOLIDATED CORPORATE ENTITY BUT SHALL NOT COMMINGLE PURCHASES OF OR CREDIT EXTENSIONS FOR PURCHASES OF MALT OR VINOUS LIQUORS FROM A WHOLESALER LICENSED UNDER THIS ARTICLE 3 FOR MORE THAN ONE LICENSED PREMISES. A WHOLESALER LICENSED UNDER THIS ARTICLE 3 SHALL NOT BASE THE PRICE FOR THE MALT OR VINOUS LIQUORS IT SELLS TO A BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER SUBSECTION (1) OF THIS SECTION ON THE TOTAL VOLUME OF MALT OR VINOUS LIQUORS THAT THE LICENSEE PURCHASES FOR MULTIPLE LICENSED PREMISES.

(9) THE STATE LICENSING AUTHORITY SHALL MAKE GENERAL RULES AND REGULATIONS AND SPECIAL RULINGS AND FINDINGS AS NECESSARY FOR THE PROPER REGULATION AND IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION.

SECTION 3: In Colorado Revised Statutes, 44-3-103 **add** (4.5), (11.8), and (32.5) as follows:
44-3-103. Definitions. As used in this article 3 and article 4 of this title 44, unless the context otherwise requires:

(4.5)(a) "BEER AND WINE OFF-PREMISES RETAILER" MEANS AN ESTABLISHMENT THAT SELLS MALT AND VINOUS LIQUORS FOR OFF-PREMISES CONSUMPTION AND THAT SHALL DERIVE AT LEAST TWENTY PERCENT OF ITS GROSS ANNUAL REVENUES FROM TOTAL SALES FROM THE SALE OF FOOD ITEMS FOR CONSUMPTION OFF THE PREMISES.

(b) FOR PURPOSES OF CALCULATING GROSS ANNUAL REVENUES FROM TOTAL SALES, REVENUES DERIVED FROM THE SALE OF THE FOLLOWING PRODUCTS ARE EXCLUDED:

(I) FUEL PRODUCTS, AS DEFINED IN SECTION 8-20-201 (2);

(II) CIGARETTES, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS, AS DEFINED IN SECTION 18-13-121

(5); AND,

(III) LOTTERY PRODUCTS.

(c) AS USED IN THIS SUBSECTION (4.5), “FOOD ITEMS” MEANS ANY RAW, COOKED, OR PROCESSED EDIBLE SUBSTANCE, ICE, OR BEVERAGE, OTHER THAN A BEVERAGE CONTAINING ALCOHOL, THAT IS INTENDED FOR USE OR FOR SALE, IN WHOLE OR IN PART, FOR HUMAN CONSUMPTION.

(11.8) “DELIVERY SERVICE PERMITTEE” MEANS ANY INDIVIDUAL, LIMITED LIABILITY COMPANY, CORPORATION, OR PARTNERSHIP THAT HOLDS A PERMIT TO DELIVER ALCOHOL UNDER SECTION 44-3-911.5.

(32.5) “OFF PREMISES RETAILER” MEANS ANY LICENSEE UNDER THIS ARTICLE 3 OR ARTICLE 4 OF THIS TITLE 44 THAT IS ALLOWED TO SELL ALCOHOL BEVERAGES AT RETAIL FOR CONSUMPTION OFF THE LICENSED PREMISES.

SECTION 4. In Colorado Revised Statutes, 44-3-301, **amend** (10)(b), 10(c)(I)(A), 10(c)(XII), 10(d), and 10(e); and **add** (12)(a.5)(III) and (12)(a.5)(IV) as follows:

44-3-301. Licensing in general.

(10)(b) A retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER licensee who wishes to conduct tastings may submit an application or application renewal to the local licensing authority. The local licensing authority may reject the application if the applicant fails to establish that he or she is able to conduct tastings without violating the provisions of this section or creating a public safety risk to the neighborhood. A local licensing authority may establish its own application procedure and may charge a reasonable application fee.

10(c)(I)(A) By a person who: Has completed a server training program that meets the standards established by the liquor enforcement division in the department and is a retail liquor store, ~~or~~ liquor-licensed drugstore, OR BEER AND WINE OFF-PREMISES RETAILER licensee, an employee of a retail liquor store or liquor-licensed drugstore licensee, or a representative, employee, or agent of the licensed wholesaler, brew pub, distillery pub, manufacturer, limited winery, importer, or vintner's restaurant promoting the alcohol beverages for the tasting; and

10(c)(XII) No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The retail liquor store, ~~or~~ liquor-licensed drugstore, OR BEER AND WINE OFF-PREMISES RETAILER licensee bears the financial and all other responsibility for a tasting conducted on its licensed premises.

10(d) A violation of a limitation specified in this subsection (10) by a retail liquor store, ~~or~~ liquor-licensed drugstore, OR BEER AND WINE OFF-PREMISES RETAILER licensee, whether by the licensee's employees, agents, or otherwise or by a representative, employee, or agent of the licensed wholesaler, brew pub, distillery pub, manufacturer, limited winery, importer, or vintner's restaurant that promoted the alcohol beverages for the tasting, is the responsibility of, and section 44-3-801 applies to, the retail liquor store, ~~or~~ liquor-licensed drugstore, OR BEER AND WINE OFF-PREMISES RETAILER licensee that conducted the tasting.

10(e) A retail liquor store, ~~or~~ liquor-licensed drugstore, OR BEER AND WINE OFF-PREMISES RETAILER licensee conducting a tasting shall be subject to the same revocation, suspension, and enforcement provisions as otherwise apply to the licensee.

12(a.5)(III)(A) NOTWITHSTANDING ANY OTHER PROVISION OF SUBSECTION 12(a) OF THIS SECTION, THE STATE AND LOCAL LICENSING AUTHORITIES SHALL NOT ISSUE A NEW BEER AND WINE OFF-PREMISES RETAILER LICENSE UNDER THIS ARTICLE 3 AUTHORIZING THE SALE AT RETAIL OF MALT AND VINOUS LIQUORS IN SEALED CONTAINERS FOR CONSUMPTION OFF THE LICENSED PREMISES IF THE PREMISES FOR WHICH THE RETAIL LICENSE IS SOUGHT IS LOCATED WITHIN FIVE HUNDRED FEET OF A RETAIL LIQUOR STORE LICENSED UNDER SECTION 44-3-409.

(B) THIS SUBSECTION (12)(a.5)(III) DOES NOT APPLY TO AN APPLICATION AS PERMITTED PURSUANT TO SECTION 44-3-410.5(4).

12(a.5)(IV) NOTWITHSTANDING ANY OTHER PROVISION OF SUBSECTION 12(a) OF THIS SECTION, THE STATE AND LOCAL LICENSING AUTHORITIES SHALL NOT ISSUE A NEW RETAIL LIQUOR STORE LICENSE UNDER THIS ARTICLE 3 AUTHORIZING THE SALE AT RETAIL OF MALT, VINOUS, OR SPIRITUOUS LIQUORS IN SEALED CONTAINERS FOR CONSUMPTION OFF THE LICENSED PREMISES IF THE PREMISES FOR WHICH THE RETAIL LICENSE IS SOUGHT IS LOCATED WITHIN FIVE HUNDRED FEET OF A BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER SECTION 44-3-410.5.

SECTION 5. In Colorado Revised Statutes, 44-3-309, **add** (1)(o) as follows:
44-3-309. Local licensing authority - applications - optional premises licenses.

(o) BEER AND WINE OFF-PREMISES RETAILER LICENSE.

SECTION 6: In Colorado Revised Statutes, 44-3-401(1), **add** (y) as follows:
44-3-401. Classes of licenses and permits - rules.

(y) BEER AND WINE OFF-PREMISES RETAILER LICENSE.

SECTION 7. In Colorado Revised Statutes, 44-3-409, **add** (4)(b)(V) as follows:
44-3-409. Retail liquor store license - rules.

(V) A BEER AND WINE OFF-PREMISES RETAILER LICENSE GRANTED UNDER THIS ARTICLE 3.

SECTION 8. In Colorado Revised Statutes, 44-3-410, **add** (4)(b)(VI) as follows:
44-3-410. Liquor-licensed drugstore license - multiple licenses permitted - requirements - rules.

(VI) A BEER AND WINE OFF-PREMISES RETAILER LICENSE GRANTED UNDER THIS ARTICLE 3.

SECTION 9. In Colorado Revised Statutes, 44-3-501, **amend** (3)(a)(XVIII) and (XIX); and **add** (1)(f.5) and (3)(a)(XX) as follows:
44-3-501. State fees - rules - one-time fee waiver - repeal.

(1)(f.5) FOR EACH BEER AND WINE OFF-PREMISES RETAILER LICENSE, ONE HUNDRED DOLLARS.

(3)(a)(XVIII) APPLICATIONS FOR THE RENEWAL OF A LICENSE OR PERMIT ISSUED IN ACCORDANCE WITH THIS ARTICLE 3; ~~AND~~

(3)(a)(XIX) APPLICATIONS FOR A PERMIT FOR OR ATTACHMENT TO A COMMUNAL OUTDOOR DINING AREA OR FOR MODIFICATION OF A LICENSED PREMISES TO INCLUDE A COMMUNAL OUTDOOR DINING AREA; ~~AND~~

(3)(a)(XX) APPLICATIONS TO CONVERT A FERMENTED MALT BEVERAGE RETAILER'S LICENSE TO A BEER AND WINE OFF-PREMISES RETAILER LICENSE PURSUANT TO SECTION 44-3-410.5 AND RULES ADOPTED PURSUANT TO THAT SECTION.

SECTION 10. In Colorado Revised Statutes, 44-3-505, **add** (1)(b.5) and (4)(a)(VI) as follows:
44-3-505. Local license fees.

(1)(b.5)(I) FOR EACH BEER AND WINE OFF-PREMISES RETAILER LICENSE FOR PREMISES LOCATED WITHIN ANY MUNICIPALITY OR CITY AND COUNTY, ONE HUNDRED FIFTY DOLLARS;

(II) FOR EACH BEER AND WINE OFF-PREMISES RETAILER LICENSE FOR PREMISES LOCATED OUTSIDE THE MUNICIPAL LIMITS OF ANY MUNICIPALITY OR CITY AND COUNTY, TWO HUNDRED FIFTY DOLLARS.

(4)(a)(VI) FOR CONVERSION PURSUANT TO 44-3-410.5, NOT TO EXCEED ONE THOUSAND DOLLARS.

SECTION 11. In Colorado Revised Statutes, 44-3-901, **amend** (1)(g), (1)(i)(III), (6)(i)(II), (6)(k)(I), (6)(k)(II)(A), (6)(k)(IV), (6)(k)(V), (6)(p)(I)(B), (6)(p)(III), (8)(b) and (11)(c) as follows:
44-3-901. Unlawful acts - exceptions - definitions.

(1)(g) To sell at retail:

(I) Any malt, vinous, or spirituous liquors in sealed containers without holding a retail liquor store or liquor-licensed drugstore license, except as permitted by section 44-3-107 (2) or 44-3-301 (6)(b) or any other provision of this article 3;

(II) ANY MALT OR VINOUS LIQUORS IN SEALED CONTAINERS WITHOUT HOLDING A BEER AND WINE OFF-PREMISES RETAILER LICENSE; or

(III) Any fermented malt beverages in sealed containers without holding a fermented malt beverage retailer's license under sections 44-4-104 (1)(c) and 44-4-107 (1)(a);

(1)(i)(III) Notwithstanding subsection (1)(i)(I) of this section, it shall not be unlawful for adult patrons of a retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER licensee to consume malt, vinous, or spirituous liquors on the licensed premises when the consumption is conducted within the limitations of the licensee's license and is part of a tasting if authorization for the tasting has been granted pursuant to section 44-3-301.

(6)(i)(II) Notwithstanding subsection (6)(i)(I) of this section, it shall not be unlawful for a retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER licensee to allow

tastings to be conducted on his or her licensed premises if authorization for the tastings has been granted pursuant to section 44-3-301.

(6)(k)(I) Except as provided in subsections (6)(k)(II), (6)(k)(IV), and (6)(k)(V) of this section, to have on the licensed premise, if licensed as a retail liquor store, liquor-licensed drugstore, BEER AND WINE OFF-PREMISES RETAILER, or fermented malt beverage retailer, any container that shows evidence of having once been opened or that contains a volume of liquor less than that specified on the label of the container.

(6)(k)(II)(A) A person holding a retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER license under this article 3 may have upon the licensed premises malt, vinous, or spirituous liquors in open containers when the open containers were brought on the licensed premises by and remain solely in the possession of the sales personnel of a person licensed to sell at wholesale pursuant to this article 3 for the purpose of sampling malt, vinous, or spirituous liquors by the retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER licensee only.

(6)(k)(IV) It is not unlawful for a retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER licensee to allow tastings to be conducted on the licensed premises if authorized for the tastings has been granted pursuant to section 44-3-301.

(6)(k)(V) A person holding a retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER license under this article 3 or a fermented malt beverage retailer's license under section 44-4-107(1)(a) may have upon the licensed premises an open container of an alcohol beverage product that the licensee discovers to be damaged or defective so long as the licensee marks the product as damaged or for return and stores the open container outside the sales area of the licensed premises until the licensee is able to return the product to the wholesaler from whom the product was purchased.

(6)(p)(I)(B) Except as provided in subsection (6)(p)(II) of this section, to employ a person who is at least eighteen years of age but under twenty-one years of age to sell or dispense malt, vinous, or spirituous liquors unless the employee is supervised by another person who is on the licensed premises and is at least twenty-one years of age; except that this subsection (6)(p)(I)(B) does not apply to a retail liquor store licensed under section 44-3-409, ~~or~~ a liquor-licensed drugstore licensed under section 44-3-410, OR A BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER 44-3-410.5;

(6)(p)(III) If licensed as a retail liquor store under section 44-3-409, a liquor-licensed drugstore under section 44-3-410, A BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER 44-3-410.5, or a fermented malt beverage retailer under section 44-4-107 (1)(a), to permit an employee who is under twenty-one years of age to deliver malt, vinous, or spirituous liquors or fermented malt beverages offered for sale on, or sold and removed from, the licensed premises of the retail liquor store, liquor-licensed drugstore, BEER AND WINE OFF-PREMISES RETAILER, or fermented malt beverage retailer.

(8)(b) Notwithstanding subsection (8)(a) of this section, it shall not be unlawful for a retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER licensee to allow tasting to be conducted on his or her licensed premises if authorization for the tastings has been granted pursuant to section 44-3-301.

(11)(c) As used in this subsection (11), “retail licensee” means a person licensed under section 44-3-409, 44-3-410, ~~44-3-410.5~~, 44-4-104(1)(c), or 44-4-107(1)(a).

SECTION 12: In Colorado Revised Statutes, Title 44, Article 3, **add** 911.5 as follows:

44-3-911.5. THIRD-PARTY DELIVERY OF ALCOHOL BEVERAGES

(1) NOTWITHSTANDING ANY LAW OR RULE TO THE CONTRARY, A DELIVERY SERVICE PERMITTEE, OR AN EMPLOYEE OR INDEPENDENT CONTRACTOR OF A DELIVERY SERVICE PERMITTEE IN COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE 3 OR ARTICLE 4 OF THIS TITLE 44, MAY TRANSPORT AND DELIVER ALCOHOL BEVERAGES FROM AN OFF-PREMISES RETAILER LICENSED PURSUANT TO THIS ARTICLE 3 OR ARTICLE 4 OF THIS TITLE 44, OR FROM A LICENSEE LICENSED FOR ON PREMISES CONSUMPTION PURSUANT TO THIS ARTICLE 3, TO A PERSON IN THE STATE WHO IS AT LEAST 21 YEARS OF AGE. THE HOLDER OF A LICENSE LISTED IN THIS SUBSECTION (1) SHALL BE AUTHORIZED TO APPLY FOR AND TO HOLD A DELIVERY SERVICE PERMIT AS A PRIVILEGE SEPARATE FROM ITS EXISTING LICENSE.

(2) ANY INDIVIDUAL, LIMITED LIABILITY COMPANY, CORPORATION, OR PARTNERSHIP THAT IS REGISTERED TO DO BUSINESS IN THIS STATE, REGARDLESS OF THE RESIDENCY OR DOMICILE OF THE INDIVIDUAL, ENTITY, OR OWNERS OF THE ENTITY, MAY APPLY FOR AND BE ISSUED A DELIVERY SERVICE PERMIT THAT AUTHORIZES THE PERMITTEE TO DELIVER ALCOHOL BEVERAGES FROM A LICENSEE PERMITTED FOR DELIVERY BY 44-3-911.5(1), TO A PERSON IN THE STATE WHO IS AT LEAST 21 YEARS OF AGE.

(3) IN ORDER TO RECEIVE A DELIVERY SERVICE PERMIT, AN APPLICANT SHALL:

(a) PROVIDE TO THE STATE LICENSING AUTHORITY A SAMPLE CONTRACT THAT THE APPLICANT INTENDS TO ENTER INTO WITH A LICENSEE LISTED IN SUBSECTION (1) OF THIS SECTION FOR THE DELIVERY OF ALCOHOL BEVERAGES. COMPLIANCE WITH THIS SUBSECTION (3)(a) SHALL NOT BE REQUIRED IN THE EVENT A LICENSEE LISTED IN SUBSECTION (1) OF THIS SECTION 911.5, OR AN ENTITY UNDER COMMON OWNERSHIP WITH SUCH LICENSEE, IS THE APPLICANT FOR THE DELIVERY SERVICE PERMIT;

(b) SUBMIT TO THE STATE LICENSING AUTHORITY AN OUTLINE OF AN INTERNAL OR EXTERNAL CERTIFICATION PROGRAM FOR DELIVERY SERVICE PERSONNEL OR CONTRACTORS THAT ADDRESSES TOPICS SUCH AS IDENTIFYING UNDERAGE PERSONS, INTOXICATED PERSONS, AND FAKE OR ALTERED IDENTIFICATION; AND

(c) PROVIDE PROOF OF A GENERAL LIABILITY INSURANCE POLICY IN AN AMOUNT NO LESS THAN ONE MILLION DOLLARS (\$1,000,000) PER OCCURRENCE.

(4) A DELIVERY SERVICE PERMITTEE:

(a) MAY, THROUGH ITS EMPLOYEES OR INDEPENDENT CONTRACTORS, DELIVER ALCOHOL BEVERAGES FOR ANY OFF-PREMISES RETAILER PERMITTED FOR DELIVERY BY SUBSECTION 44-3-911.5(1), FOR THE PURPOSE OF DELIVERING ALCOHOL BEVERAGES.

(b) MAY, THROUGH ITS EMPLOYEES OR INDEPENDENT CONTRACTORS, DELIVER ALCOHOL BEVERAGES FOR LICENSEES UNDER THE PROVISIONS OF SECTION 44-3-911, WHICH MAY INCLUDE ALCOHOL BEVERAGES BY THE DRINK. THE COMPLETION OF THE CERTIFICATION PROGRAM REQUIRED BY SUBSECTION (3)(b) OF THIS SECTION SHALL SATISFY THE REQUIREMENTS FOR SUBSECTION 44-3-911(3)(d).

(c) MAY USE ITS OWN EMPLOYEES OR INDEPENDENT CONTRACTORS WHO ARE AT LEAST TWENTY-ONE YEARS OF AGE TO DELIVER SUCH ALCOHOL BEVERAGES, PROVIDED ALL DELIVERY AGENTS COMPLETE A CERTIFICATION PROGRAM THAT MEETS THE STANDARDS ESTABLISHED BY THE STATE LICENSING AUTHORITY.

(d) MAY FACILITATE ORDERS BY TELEPHONE, INTERNET, OR BY OTHER ELECTRONIC MEANS FOR THE SALE AND DELIVERY OF ALCOHOL BEVERAGES UNDER THIS SECTION. THE FULL AMOUNT OF EACH ORDER SHALL BE HANDLED IN A MANNER THAT GIVES THE LICENSEE CONTROL OVER THE ULTIMATE RECEIPT OF THE PAYMENT FROM THE CONSUMER.

(e) MAY DELIVER ALCOHOL BEVERAGES ANY TIME DURING WHICH THE LICENSEE IS LAWFULLY ALLOWED TO SELL ALCOHOL BEVERAGES.

(f) SHALL VERIFY, AT THE TIME OF DELIVERY, IN ACCORDANCE WITH SUBSECTION 44-3-901(11), THAT THE PERSON RECEIVING THE DELIVERY OF MALT, VINOUS, OR SPIRITUOUS LIQUORS IS AT LEAST TWENTY-ONE YEARS OF AGE.

(g) SHALL REFUSE TO DELIVER ALCOHOL BEVERAGES IF THE RECIPIENT IS UNDER TWENTY-ONE YEARS OF AGE, APPEARS INTOXICATED, OR FAILS TO PROVIDE PROOF OF IDENTIFICATION.

(h) MAY NOT DELIVER TO ANY LOCATION LICENSED PURSUANT TO THIS ARTICLE 3, OR ARTICLE 4, OR ARTICLE 5 OF THIS TITLE 44.

(i) SHALL BE DEEMED TO HAVE CONSENTED TO THE JURISDICTION OF THE STATE LICENSING AUTHORITY OR ANY LAW ENFORCEMENT AGENCY AND THE COLORADO COURTS CONCERNING ENFORCEMENT OF THIS SECTION AND ANY RELATED LAWS OR RULES.

(5) A DELIVERY SERVICE PERMITTEE MAY RENEW ITS PERMIT WITH THE STATE LICENSING AUTHORITY BY MAINTAINING ALL QUALIFICATIONS AND PAYING ANNUALLY A RENEWAL FEE ESTABLISHED BY THE STATE LICENSING AUTHORITY.

(6) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE A TECHNOLOGY SERVICES COMPANY TO OBTAIN A DELIVERY SERVICE PERMIT FOR PROVIDING SOFTWARE OR A DIGITAL NETWORK APPLICATION THAT CONNECTS CONSUMERS AND LICENSED RETAILERS FOR THE DELIVERY OF ALCOHOL BEVERAGES FROM THE LICENSED RETAILER BY EMPLOYEES OR OTHER DELIVERY SERVICE PROVIDERS OF THE LICENSED RETAILER. HOWEVER, THE ACT OF CONNECTING CONSUMERS TO LICENSED RETAILERS SHALL SERVE TO GRANT JURISDICTION TO THE STATE OF COLORADO.

(7) THERE SHALL BE NO LIMIT TO THE PERCENTAGE OF A LICENSEE'S GROSS ANNUAL REVENUES FROM TOTAL SALES OF ALCOHOL BEVERAGES THAT THE LICENSEE MAY DERIVE FROM ALCOHOL BEVERAGE DELIVERIES.

(8) THE STATE LICENSING AUTHORITY MAY ENFORCE THE REQUIREMENTS OF THIS SECTION BY THE SAME ADMINISTRATIVE PROCEEDINGS THAT APPLY TO ALCOHOL BEVERAGE LICENSES OR PERMITS, INCLUDING WITHOUT LIMITATION ANY DISCIPLINARY ACTION APPLICABLE TO THE SELLING LICENSEE, OR THE DELIVERY SERVICE PERMITTEE RESULTING FROM ANY UNLAWFUL SALE.

(9) THE STATE LICENSING AUTHORITY MAY ENFORCE THE REQUIREMENTS OF THIS SECTION AGAINST THE SELLING LICENSEE, DELIVERY SERVICE PERMITTEE, AND ANY EMPLOYEE OR INDEPENDENT CONTRACTOR OF SUCH, IRRESPECTIVE OF THE STATUS OF ANY DELIVERY SERVICE PERSONNEL AS AN INDEPENDENT CONTRACTOR OR EMPLOYEE. IF A LICENSEE IS ALSO A DELIVERY PERMITTEE, A VIOLATION OF THIS ARTICLE 3 OR ARTICLE 4 OR 5 OF THIS TITLE 44 BY ITS EMPLOYEE OR INDEPENDENT CONTRACTOR DURING DELIVERY WILL SUBJECT BOTH THE RETAILER'S PERMIT AND DELIVERY SERVICE PERMIT TO DISCIPLINARY ACTION FOR THE VIOLATION. DELIVERY TO A MINOR SHALL BE TREATED AS FURNISHING TO A MINOR AND SHALL RESULT IN ANY APPLICABLE DISCIPLINARY ACTION.

(10) THE STATE LICENSING AUTHORITY SHALL PROMULGATE RULES AS NECESSARY FOR THE PROPER DELIVERY OF ALCOHOL BEVERAGES AS PERMITTED BY THIS SECTION 911.5.

SECTION 13: In Colorado Revised Statutes, 44-3-409, **repeal** (3)(a)(II) and (IV) as follows:
44-3-409. Retail liquor store license - rules.

~~(II) The delivery is made by an employee of the licensed retail liquor store who is at least twenty one years of age and who is using a vehicle owned or leased by the licensee to make the delivery;~~

~~(IV) The retail liquor store derives no more than fifty percent of its gross annual revenues from total sales of malt, vinous, and spirituous liquors from the sale of malt, vinous, and spirituous liquors that the retail liquor store delivers.~~

SECTION 14: In Colorado Revised Statutes, 44-3-410, **repeal** (3)(a)(II) and (IV) as follows:
44-3-410. Liquor-licensed drugstore license - multiple licenses permitted - requirements - rules.

~~(II) The delivery is made by an employee of the liquor licensed drugstore who is at least twenty one years of age and who is using a vehicle owned or leased by the licensee to make the delivery;~~

~~(IV) The liquor licensed drugstore derives no more than fifty percent of its gross annual revenues from total sales of malt, vinous, and spirituous liquors from the sale of malt, vinous, and spirituous liquors that the liquor licensed drugstore delivers.~~

SECTION 15: In Colorado Revised Statutes, 44-3-911, **repeal** (2)(c), (3)(b), and (7) as follows:
44-3-911. Takeout and delivery of alcohol beverages - permit - on-premises consumption licenses - requirements and limitations - rules - definition - repeal.

~~(c) Derive no more than fifty percent of its gross annual revenues from total sales of food and alcohol beverages from the sale of alcohol beverages through takeout orders and that the licensee delivers; except that:~~

~~(I) This subsection (2)(c) does not apply if the governor has declared a disaster emergency under part 7 of article 33.5 of title 24; or~~

~~(II) This subsection (2)(c) does not apply to a sales room at a premises licensed under section 44-3-402 or 44-3-407; and~~

~~(3) (b) Be an employee of the licensee who is twenty-one years of age or older;~~

~~(7) This section is repealed, effective July 1, 2025.~~

SECTION 16: In Colorado Revised Statutes, 44-4-107 **repeal** (6)(a)(II) and (IV) as follows:
44-4-107. Local licensing authority - application - fees - definitions - rules.

~~(II) The delivery is made by an employee of the fermented malt beverage retailer who is at least twenty-one years of age and who is using a vehicle owned or leased by the licensee to make the delivery;~~

~~(IV) The fermented malt beverage retailer derives no more than fifty percent of its gross annual revenues from total sales of fermented malt beverages from the sale of fermented malt beverages that the fermented malt beverage retailer delivers.~~

SECTION 17. Effective date. This act takes effect March 1, 2023.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #66¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning the retail sale of alcohol beverages, and, in connection therewith, establishing a new beer and wine off-premises retailer license to allow grocery stores, convenience stores, and other business establishments that derive at least twenty percent of gross annual sales revenues from the sale of food items to sell beer and wine for consumption off the licensed premises; allowing existing fermented malt beverage retailers licensed to sell beer for off-premises consumption to apply to the local licensing authority to convert the license to the new beer and wine off-premises retailer license; allowing beer and wine off-premises retailer licensees to conduct tastings on the licensed premises if approved by the local licensing authority; and allowing retail establishments licensed to sell alcohol beverages to deliver alcohol beverages to consumers through a third-party delivery service that has obtained a delivery service permit from the state licensing authority.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning the retail sale of alcohol beverages, and, in connection therewith, establishing a new beer and wine off-premises retailer license to allow grocery stores, convenience stores, and other business establishments that derive at least twenty percent of gross annual sales revenues from the sale of food items to sell beer and wine for consumption off the licensed premises; allowing existing fermented malt beverage retailers licensed to sell beer for off-premises consumption to apply to the local licensing authority to convert the license to the new beer and wine off-premises retailer license; allowing beer and wine off-premises retailer licensees to conduct tastings on the licensed premises if approved by the local licensing authority; and allowing retail establishments licensed to sell alcohol beverages to deliver alcohol beverages to consumers through a third-party delivery service that has obtained a delivery service permit from the state licensing authority?

Hearing March 16, 2022:

Single subject approved; staff draft amended; titles set.

¹ Unofficially captioned “**Sales and Delivery of Alcohol Beverages**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Board members: Hilary Rudy, Jeremiah Barry, David Powell
Hearing adjourned 3:01 P.M.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #66¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning the expansion of retail sale of alcohol beverages, and, in connection therewith, establishing a new beer and wine off-premises retailer license to allow grocery stores, convenience stores, and other business establishments that derive at least twenty percent of gross annual sales revenues from the sale of food items to sell beer and wine for consumption off the licensed premises; allowing existing fermented malt beverage retailers licensed to sell beer for off-premises consumption to apply to the local licensing authority to convert the license to the new beer and wine off-premises retailer license; allowing beer and wine off-premises retailer licensees to conduct tastings on the licensed premises if approved by the local licensing authority; and allowing retail establishments licensed to sell alcohol beverages to deliver all types of alcohol beverages to a person 21 years of age or older through a third-party delivery service that has obtained a delivery service permit from the state licensing authority.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning the expansion of retail sale of alcohol beverages, and, in connection therewith, establishing a new beer and wine off-premises retailer license to allow grocery stores, convenience stores, and other business establishments that derive at least twenty percent of gross annual sales revenues from the sale of food items to sell beer and wine for consumption off the licensed premises; allowing existing fermented malt beverage retailers licensed to sell beer for off-premises consumption to apply to the local licensing authority to convert the license to the new beer and wine off-premises retailer license; allowing beer and wine off-premises retailer licensees to conduct tastings on the licensed premises if approved by the local licensing authority; and allowing retail establishments licensed to sell alcohol beverages to deliver all types of alcohol beverages to a person 21 years of age or older through a third-party delivery service that has obtained a delivery service permit from the state licensing authority?

¹ Unofficially captioned “**Sales and Delivery of Alcohol Beverages**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Hearing March 16, 2022:

Single subject approved; staff draft amended; titles set.

Board members: Hilary Rudy, Jeremiah Barry, David Powell

Hearing adjourned 3:01 P.M.

Rehearing April 6, 2022:

Motion for Rehearing: granted only to the extent that the Board made changes to the titles (2-1, J. Barry dissented).

Board Members: Theresa Conley, David Powell, Jeremiah Barry

Hearing adjourned: 12:17 A.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Christopher Fine, Objector,

vs.

Steven Ward and Levi Mendyk, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2021-2022 #66

Christopher Fine, registered elector of the County of Larimer and the State of Colorado, through his undersigned counsel, objects to the Title Board’s (the “Board”) title and ballot title and submission clause set for Initiative 2021-2022 #66, and states:

The Board set a title for Initiative 2021-2022 #66 on March 16, 2022. The Board designated and fixed the following ballot title and submission clause:

Shall there be a change to the Colorado Revised Statutes concerning the retail sale of alcohol beverages, and, in connection therewith, establishing a new beer and wine off-premises retailer license to allow grocery stores, convenience stores, and other business establishments that derive at least twenty percent of gross annual sales revenues from the sale of food items to sell beer and wine for consumption off the licensed premises; allowing existing fermented malt beverage retailers licensed to sell beer for off-premises consumption to apply to the local licensing authority to convert the license to the new beer and wine off-premises retailer license; allowing beer and wine off-premises retailer licensees to conduct tastings on the licensed premises if approved by the local licensing authority; and allowing retail establishments licensed to sell alcohol beverages to deliver alcohol beverages to consumers through a third-party delivery service that has obtained a delivery service permit from the state licensing authority?

I. The Board lacks jurisdiction over Initiative #66, as it violates the Constitution’s single subject requirement.

Initiative #66’s single subject statement is “concerning the retail sale of alcohol beverages.” This measure does change the availability of some alcohol beverages at one class of license, but it also goes far beyond that.

Initiative #66 has the following separate and distinct purposes:

- A. Authorizing one (1) new class of license (“beer and wine off-premises retailer”) to allow the sale of wine where beer is sold and certain quantities of food are also sold (at least 20% of a store’s gross annual sales revenues).
- B. Using the less rigorous standards of the so-called “Beer Code” (Article 4 of Title 44) to licensees selling much more potent alcoholic beverages under the so-called “Liquor Code” (Article 3 of Title 44).
- A. Authorizing delivery of all kinds of alcohol (wine, beer, all spirituous liquors) by all liquor licensees (those allowed to sell for on-premises consumption **and** those allowed to sell only for off-premises consumption) and **not** just the newly expanded license under Initiative #67 which allows food stores to sell wine as well as beer.
- B. Authorizing delivery of all kinds of alcohol by and through unlicensed third parties (referred to as “third-party delivery services” and “technology service companies”).

This controlling precedent here is *In the Matter of the Title, Ballot Title and Submission Clause for 2021-2022 #16*, 2021 CO 55, 489 P.3d 1217. There, the Court found multiple subjects in an initiative that changed certain standards for one species of animal (livestock) and also changed the applicability of animal cruelty laws as to all animals.

Here, Initiative #66 changes the eligible place of sale for one (1) form of alcohol (wine) to include one (1) type of retail outlet (food stores). Initiative #66 also provides for delivery by licensed and unlicensed entities – retail outlets for alcohol that allow sales for off-premises consumption only, licensees where consumption is permitted on-premises consumption, and third-party delivery services that are not licensed or actually engaged in the sale of alcohol. This last category even includes “technology services compan[ies]” that provide “a digital network application that connects consumers and licensed retailers for the delivery of alcohol beverages” without obtaining a delivery service permit.

In other words, Initiative #66 allows for the narrow expansion of one type of alcohol at one type of license-holder but would also authorize delivery of **all** types of alcohol through **multiple** types of entities and mechanisms. This is a single subject violation, given #16, *supra*.

To assess this question from the voter’s standpoint, the Board should look to the manner in which this issue is being portrayed publicly. A recent op-ed piece by a columnist who doesn’t appear to be associated with any interested party to this proceeding extolled Initiative #66’s virtues. As the author stated, “voters are likely to see a ballot initiative this November ending the restriction on wine sales at supermarkets. This vestige of Prohibition will be history.” Kafer, *The Denver Post*, “Don’t postpone repeal of the last Prohibition-style laws just to save the liquor stores,” attached, at 1 (Feb. 24, 2022).

But her other point is that the initiative will allow for technological innovation – internet facilitated delivery of alcohol – which has nothing to do with curing what she views as an historical anomaly. “The rise of internet sales has been no less revolutionary than the rise of the

supermarket and the big box store in the last century. A shopper can buy and have delivered just about anything.” *Id.* at 1. In context, then, the author’s “anything” includes alcohol.

This columnist makes the Objector’s single subject argument well. Tucked in the folds of a glossy argument about choosing to buy wine and breakfast cereal at the same store is a different, maybe more impactful change - namely, new legal authority for allowing alcohol delivery by both licensed and unlicensed entities. (The measure’s provision for a delivery “permit” is not a license, as it only needs to file a sample contract for delivery services, an outline of a certification program to be taken by delivery personnel, and proof of insurance.) There is no local or state process for assessing or making a decision on the capabilities, track record, or fitness of the permit holder in terms of the granting or renewal of that permit. It is different in nature and kind from the initiative’s provisions that deal solely with a specific, limited type of expanded in-store sales and thus violates the single subject requirement.

II. Even if the Title Board has jurisdiction, the titles set are legally flawed because the titles fail to inform voters of certain central elements of the measure and would mislead voters.

The title for Initiative #66 should state:

- A. Alcohol deliveries will be permitted by licensed and non-licensed entities.
- B. Alcohol deliveries will be permitted by licensees selling for on-premises as well as off-premises consumption.
- C. Non-residents of Colorado will be permitted to hold and perform, directly and indirectly, through the newly issued delivery service permits.
- D. Technology providers for alcohol delivery will not be required to first receive a license or a permit to provide this service.
- E. No hearing or investigation will be required by local or state licensing authority in order to convert an existing license to a beer and wine off-premises license.
- F. Delivery of “alcohol beverages” will include more than “beer and wine” (to which the title refers earlier in addressing the new license type) as the measure authorizes delivery of spirituous liquors as well.
- G. The less rigorous standards for regulation under Article 4 of Title 44 (the so-called “Beer Code”) will apply to licenses allowing sales of much more potent alcoholic beverages under Article 3 of Title 44 (the so-called “Liquor Code”).
- H. The radius restrictions for new fermented malt beverage and wine retailer licenses, authorized to sell wine, would be changed from 1,500 feet to 500 feet from a retail liquor store.

- I. There will be no limit on the percentage of a licensee's gross annual revenues derived from alcohol deliveries.
- J. The measure repeals the limit on the percentage of a retail liquor store's gross annual revenues derived from alcohol deliveries (currently 50%).

WHEREFORE, the titles set March 16, 2022 should be reversed, due to the single subject violations addressed herein or, if not, at least corrected to address central features of Initiative #66 identified above.

RESPECTFULLY SUBMITTED this 23rd day of March, 2022.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin
Mark G. Grueskin
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Email: mark@rklawpc.com

Objector's Address:
912 Butte Pass Dr.,
Ft. Collins, CO 80526

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2021-2022 #66** was sent this day, March 23, 2022, via email to the proponents via their legal counsel:

Suzanne Taheri
Maven Law Group
STaheri@mavenlawgroup.com

s/ Erin Holweger
Erin Holweger

Kafer: Don't postpone repeal of the last Prohibition-style laws just to save the liquor stores



Helen H. Richardson/The Denver Post

In this 2015 file photo, a new Safeway store at 181 W. Mineral ave in Littleton, gets stocked with bottles of wine. It was the first grocery store in the state to be awarded a liquor license after state law was changed to allow a limited number of stores per grocery chain to obtain licenses to sell hard alcohol and wine.

By [Krista Kafer](#) | Columnist for The Denver Post
February 24, 2022 at 6:01 a.m.

Remember 3.2 beer? From the end of Prohibition until recently that's all you could buy at the grocery stores or anywhere on Sundays when liquor stores were closed.

After the Colorado legislature repealed the Sunday closure law in 2008, the days of weak beer were numbered. Before the ink of the governor's signature could dry, grocery stores and big-box chains were clamoring to sell full-strength beer. Thanks to laws passed in 2016 and 2018, these businesses can sell real beer and up to five stores per food chain in the state can sell wine and hard alcohol.

Continuing to chip away at retail restrictions, Gov. Jared Polis signed two more laws last year. One allows restaurants to offer take-out and delivery of alcoholic beverages for the next four years. The other enables more Colorado craft wineries, distilleries, and cideries to obtain a pub license so they can sell food and alcohol in addition to their own products.

Thanks to these laws, customers can legally buy adult beverages at a variety of locations.

While 3.2 beer is a memory, and not a particularly good one, most grocery stores are still restricted to selling only the fizzy nonalcoholic grape juice you serve guests at the kiddie table on Thanksgiving. Thankfully, voters are likely to see a ballot initiative this November ending the restriction on wine sales at supermarkets. This vestige of Prohibition will be history.

Liquor stores, which for decades enjoyed a state-created near-monopoly on the sale of wine and beer, are worried that such a change to state law would spell an end to their businesses. Their fears are not unfounded. After the 2018 law allowing full-strength beer sales at supermarkets went into effect, some liquor stores reported losing 30% or more of their revenue. The loss of a wine sales monopoly could doom some to closure.

Liquor stores in neighborhoods without a grocery store won't be as affected. Liquor stores in closer proximity to grocery stores will have to make it worth customers' while to pay a visit by offering a superb selection or unique finds, lower prices, or services such as wine tastings. Now is the time to prepare because this time next year, buying wine at the grocery store will seem as normal as buying beef, bread, a custom cake, or prescription pills.

In the not-so-distant past, it was not normal to buy any of these things at the grocery store. A shopper would need to visit a butcher, a baker, a pastry shop, and a pharmacy to fill this list. Roughly a century ago, the first supermarkets opened and over time these products began to appear under one roof. Today, the independent specialty food shops that coexist with these giants do so because they offer unique products and services. They make a special trip worthwhile.

The rise of internet sales has been no less revolutionary than the rise of the supermarket and the big box store in the last century. A shopper can buy and have delivered just about anything. E-commerce accounted for 13.2% of all sales last year according to government data. The impact on brick-and-mortar shops has been considerable.

The strip mall near my childhood home had a record shop, a Radio Shack, a Hallmark store, and a Blockbuster Video. Had there been a bookstore, it, too, would be long gone. The big mall where I had my first high school job looks like it might not make another decade.

The farmers market that meets in the parking lot on summer Saturdays, however, wasn't there when I was young. It flourishes, proving the point that if you offer a great in-person buying experience, people will come.

Krista L. Kafer is a weekly Denver Post columnist. Follow her on Twitter: @kristakafer.

<https://www.denverpost.com/2022/02/24/wine-grocery-store-liquor-store-prohibition-laws/>



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative 66

Fiscal Summary

Date:	March 14, 2022	Fiscal Analyst:	Anna Gerstle (303-866-4375)
--------------	----------------	------------------------	-----------------------------

LCS TITLE: SALES AND DELIVERY OF ALCOHOL BEVERAGES

Fiscal Summary of Initiative 66

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at www.ColoradoBlueBook.com. This fiscal summary identifies the following impact.

State revenue. Initiative 66 will increase state revenue by about \$75,000 in FY 2022-23 and by about \$125,000 annually in subsequent fiscal years. The revenue will come from delivery permit fees and license conversion fees. Actual fees will be set by the Department of Revenue to cover the costs of implementing the measure.

State expenditures. By allowing wine to be sold in grocery and convenience stores and alcohol to be delivered by third parties, Initiative 66 will increase state expenditures by about \$71,000 in FY 2022-23 and by about \$120,000 annually in subsequent fiscal years. The Department of Revenue will have increased costs for licensing and enforcement of the measure, including processing permit applications and conducting compliance checks.

Local government impact. The bill may increase workload and costs for local liquor licensing authorities to process permit applications and conduct enforcement activities.

Economic impacts. Initiative 66 will increase options for customers to purchase wine in grocery and convenience stores, or have alcohol delivered by a third party. These changes may shift alcohol sales from liquor stores to grocery and convenience stores, or change the types of products purchased by consumers. To the extent that greater availability leads to increased alcohol sales, spending may shift from other areas of the economy.