

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>DATE FILED: May 6, 2022 3:57 PM</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 #120 (“Sales 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>▲ COURT USE ONLY ▲</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>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #120 (“SALES OF ALCOHOL BEVERAGES”)</p>	

Christopher Fine (“Petitioner”), registered elector of the County of Larimer and 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 #120 (“Sales of Alcohol Beverages”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2021-2022 #120.

Steven Ward and Levi Mendyk (hereafter “Proponents”) proposed Initiative 2021-2022 #120 (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 April 20, 2022, at which time titles were set for 2021-2022 #120. On April 27, 2022, Petitioner Christopher Fine filed a Motion for Rehearing, alleging that Initiative #120 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 29, 2022, at which time the Title Board granted the Motion for Rehearing only to the extent that the Board made changes to the titles.

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 the Title Board lacked jurisdiction over Initiative #120 because, under existing Colorado statute, the regulation of beer at the retail level is “separate and distinct” from regulation of wine at the retail level, meaning this measure contains “separate and distinct” purposes and therefore violates the constitutional requirement that initiatives be comprised of only one subject.

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 6th day of May, 2022.

s/ Mark G. Grueskin
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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 #120 (“SALES OF ALCOHOL BEVERAGES”)** was sent electronically via Colorado Courts E-Filing this day, May 6, 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

/s Erin Holweger _____



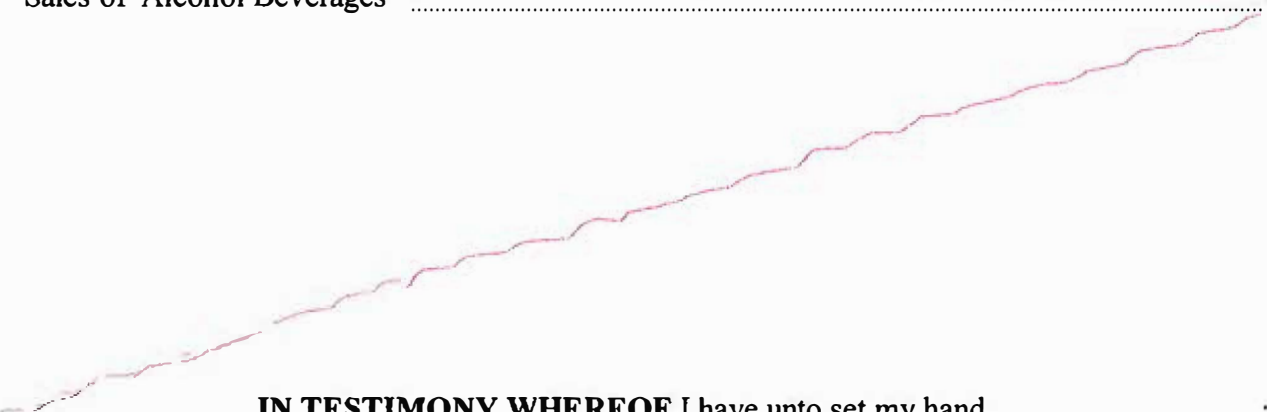
STATE OF COLORADO

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 #120 ‘Sales 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 3rd day of May, 2022.

Jena Griswold

SECRETARY OF STATE



2021-2022 #120 - Final

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 4 of Title 44, Colorado Revised Statutes, known as the “Colorado Beer 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.

SECTION 2. In Colorado Revised Statutes, 44-3-103, add (18.5), (32.5), and (60.5) as follows: 44-3-103. Definitions.

As used in this article 3 and article 4 of this title 44, unless the context otherwise requires:

(18.5) “FERMENTED MALT BEVERAGE AND WINE RETAILER” MEANS A RETAILER LICENSED UNDER ARTICLE 4 OF THIS TITLE 44 TO SELL FERMENTED MALT BEVERAGES AND WINE, BUT NOT SPIRITUOUS LIQUORS, IN ORIGINAL SEALED CONTAINERS FOR CONSUMPTION OFF THE LICENSED PREMISES.

(32.5) “OFF-PREMISES RETAILER” MEANS ANY RETAILER LICENSED 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.

(60.5) “WINE” MEANS VINOUS LIQUORS.

SECTION 3. In Colorado Revised Statutes, 44-3-301, amend 9(a)(I)(B), (10)(b), 10(c)(I)(A), 10(c)(XII), 10(d), 10(e), and (12)(a.5)(I), (12)(c), and add (12)(c)(II) and (12)(c)(III) as follows: 44-3-301. Licensing in general.

(9)(a)(I)(B) The state and local licensing authorities shall not grant permission under this subsection (9)(a)(I) to a fermented malt beverage AND WINE retailer licensed under section 44-4-107 (1)(a) to move its permanent location if the new location is: Within one thousand five hundred feet of a retail liquor store licensed under section 44-3-409; for a premises located in a municipality with a population of ten thousand or fewer, within three thousand feet of a retail liquor store licensed under section 44-3-409; or, for a premises located in a municipality with a population of ten thousand or fewer that is contiguous to the city and county of Denver, within one thousand five hundred feet of a retail liquor store licensed under section 44-3-409.

(10)(b) A retail liquor store, ~~or~~ liquor-licensed drugstore, OR FERMENTED MALT BEVERAGE AND WINE 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.

(c) Tastings are subject to the following limitations:

(I) Tastings shall be conducted only:

(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 FERMENTED MALT BEVERAGE AND WINE RETAILER licensee, an employee of a retail liquor store, ~~or~~ liquor-licensed drugstore, OR FERMENTED MALT BEVERAGE AND WINE RETAILER 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

(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 FERMENTED MALT BEVERAGE AND WINE RETAILER licensee bears the financial and all other responsibility for a tasting conducted on its licensed premises.

(d) A violation of a limitation specified in this subsection (10) by a retail liquor store, ~~or~~ liquor-licensed drugstore, OR FERMENTED MALT BEVERAGE AND WINE 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 FERMENTED MALT BEVERAGE AND WINE RETAILER licensee that conducted the tasting.

(e) A retail liquor store, ~~or~~ liquor-licensed drugstore, OR FERMENTED MALT BEVERAGE AND WINE 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)(I) Notwithstanding any other provision of ~~this article 3~~, SUBSECTION 12(a) OF THIS SECTION, on and after ~~June 4, 2018~~, March 1, 2023, the state and local licensing authorities shall not issue a new fermented malt beverage AND WINE retailer's license under article 4 of this title 44 authorizing the sale at retail of fermented malt beverages AND WINE 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.

(c)(I) For purposes of determining whether the distance requirements specified in subsections (12)(a) and (12)(a.5) of this section are satisfied, the distance shall be determined by a radius measurement that begins at the principal doorway of the premises for which the application is made and ends at the principal doorway of the other retail licensed premises.

(II) THIS SUBSECTION (12) DOES NOT APPLY TO THE CONVERSION OF A LICENSE UNDER SECTION 44-4-107(1)(a)(II).

(III) 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 ARTICLE 3 OF THIS TITLE 44 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 FERMENTED MALT BEVERAGE AND WINE RETAILER LICENSED UNDER SECTION 44-4-107.

SECTION 4. In Colorado Revised Statutes, 44-3-313, **amend** (1)(e)(I), (1)(e)(II), (1)(e)(IV), and (1)(e)(V) as follows:

44-3-313. Restrictions for applications for new license.

(1) An application for the issuance of any license specified in section 44-3-309 (1) or 44-4-107 (1) shall not be received or acted upon:

(e)(I) If the building in which the fermented malt beverages AND WINE are to be sold pursuant to a license under section 44-4-107 (1)(a) is located within five hundred feet of any public or parochial school or the principal campus of any college, university, or seminary; except that this subsection (1)(e)(I) does not apply to:

(A) Licensed premises located or to be located on land owned by a municipality;

(B) An existing licensed premises on land owned by the state;

(C) A fermented malt beverage AND WINE retailer that held a valid license and was actively doing business before the principal campus was constructed;

(D) A club located within the principal campus of any college, university, or seminary that limits its membership to the faculty or staff of the institution; or

(E) A campus liquor complex.

(II) The distances referred to in subsection (1)(e)(I) of this section are to be computed by direct measurement from the nearest property line of the land used for school purposes to the nearest portion of the building in which fermented malt beverages AND WINE are to be sold, using a route of direct pedestrian access.

(IV) In addition to the requirements of section 44-3-312 (2), the local licensing authority shall consider the evidence and make a specific finding of fact as to whether the building in which the fermented malt beverages AND WINE are to be sold is located within any distance restriction established by or pursuant to this subsection (1)(e). The finding is subject to judicial review pursuant to section 44-3-802.

(V) This subsection (1)(e) applies to:

(A) Applications for new fermented malt beverage AND WINE retailer's licenses under section 44-4-107 (1)(a) submitted on or after ~~June 4, 2018~~ MARCH 1, 2023; and

(B) Applications submitted on or after ~~June 4, 2018~~ MARCH 1, 2023, under section 44-3-301 (9) by fermented malt beverage AND WINE retailers licensed under section 44-4-107 (1)(a) to change the permanent location of the fermented malt beverage AND WINE retailer's licensed premises.

SECTION 5. In Colorado Revised Statutes, 44-3-901, **amend** (1)(g), (1)(i)(III), (6)(i)(II), (6)(k)(I), (6)(k)(II)(B), (6)(k)(IV), (6)(k)(V), and (6)(p)(III), and (8)(b) as follows:

44-3-901. Unlawful acts - exceptions - definitions.

(1) Except as provided in section 18-13-122, it is unlawful for any person:

(g) To sell at retail 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, or to sell at retail any fermented malt beverages in sealed containers without holding a fermented malt beverage retailer's license under section 44-4-104 (1)(c) OR TO SELL AT RETAIL ANY FERMENTED MALT BEVERAGES AND WINE IN SEALED CONTAINERS WITHOUT HOLDING A FERMENTED MALT BEVERAGE AND WINE RETAILER'S LICENSE UNDER SECTION 44-4-107 (1)(a).

(i)(III)(A) Notwithstanding subsection (1)(i)(I) of this section, it shall not be unlawful for adult patrons of a retail liquor store or liquor-licensed drugstore 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.

(i)(III)(B) NOTWITHSTANDING SUBSECTION (1)(i)(I) OF THIS SECTION, IT SHALL NOT BE UNLAWFUL FOR ADULT PATRONS OF A FERMENTED MALT BEVERAGE AND WINE RETAILER LICENSEE TO CONSUME MALT OR VINOUS 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) It is unlawful for any person licensed to sell at retail pursuant to this article 3 or article 4 of this title 44:

(i)(II) Notwithstanding subsection (6)(i)(I) of this section, it shall not be unlawful for a retail liquor store, liquor-licensed drugstore, or FERMENTED MALT BEVERAGE AND WINE 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.

(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 premises, if licensed as a retail liquor store, liquor licensed drugstore, fermented malt beverage retailer, OR FERMENTED MALT BEVERAGE AND WINE 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;

(II)(B) A person holding a fermented malt beverage AND WINE retailer's license under section 44-4-107 (1)(a) may have upon the licensed premises fermented malt beverages AND WINE in open containers when the open containers were brought onto the licensed premises by and remain solely in the possession of the sales personnel of a person licensed to sell at wholesale pursuant

to article 4 of this title 44 for the purpose of sampling fermented malt beverages AND WINE by the fermented malt beverage AND WINE retailer licensee only.

(IV) It is not unlawful for a retail liquor store, liquor-licensed drugstore, or FERMENTED MALT BEVERAGE AND WINE 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.

(V) A person holding a retail liquor store or liquor-licensed drugstore license under this article 3 or a fermented malt beverage AND WINE 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.

(p)(III) If licensed as a retail liquor store under section 44-3-409, a liquor-licensed drugstore under section 44-3-410, or a fermented malt beverage AND WINE retailer under section 44-4-107 (1)(a), to permit an employee OR ANY OTHER PERSON 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, or fermented malt beverage AND WINE retailer.

(8)(b) Notwithstanding subsection (8)(a) of this section, it shall not be unlawful for a retail liquor store, liquor-licensed drugstore, or FERMENTED MALT BEVERAGE AND WINE 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.

SECTION 6. In Colorado Revised Statutes, **amend** 44-4-101 as follows:

44-4-101. Short title.

The short title of this article 4 is the "Colorado Beer AND WINE Code".

SECTION 7. In Colorado Revised Statutes, **amend** 44-4-102 as follows:

44-4-102. Legislative declaration.

(1) The general assembly hereby declares that it is in the public interest that fermented malt beverages AND WINE FOR CONSUMPTION OFF THE PREMISES OF THE LICENSEE, FERMENTED MALT BEVERAGES FOR CONSUMPTION ON THE PREMISES OF THE LICENSEE, AND FERMENTED MALT BEVERAGES FOR CONSUMPTION BOTH ON AND OFF THE PREMISES OF THE LICENSEE shall be sold at retail only by persons licensed as provided in this ~~article 4~~ TITLE 44. The general assembly further declares that it is lawful to sell fermented malt beverages AND WINE at retail subject to this article 4 and applicable provisions of articles 3 and 5 of this title 44.

(2) The general assembly further recognizes that fermented malt beverages and malt liquors are separate and distinct from, and have a unique regulatory history in relation to, vinous and spirituous liquors; however, maintaining a separate regulatory framework and licensing structure for fermented malt beverages AND FERMENTED MALT BEVERAGES AND WINE under this article 4 is

no longer necessary except at the retail level. Furthermore, to aid administrative efficiency, article 3 of this title 44 applies to the regulation of fermented malt beverages AND FERMENTED MALT BEVERAGES AND WINE, except when otherwise expressly provided for in this article 4.

SECTION 8. In Colorado Revised Statutes, 44-4-103, **amend** (2) and (3); and **add** (7) as follows:

44-4-103. Definitions.

Definitions applicable to this article 4 also appear in article 3 of this title 44. As used in this article 4, unless the context otherwise requires:

(2) "License" means a grant to a licensee to sell fermented malt beverages OR FERMENTED MALT BEVERAGES AND WINE at retail as provided by this article 4.

(3) "Licensed premises" means the premises specified in an application for a license under this article 4 that are owned or in possession of the licensee and within which the licensee is authorized to sell, dispense, or serve fermented malt beverages OR FERMENTED MALT BEVERAGES AND WINE in accordance with the provisions of this article 4.

(7) "WINE" MEANS VINOUS LIQUORS AS DEFINED IN SECTION 44-3-103(59), WHEN PURCHASED BY A FERMENTED MALT BEVERAGE AND WINE RETAILER FROM A WHOLESALER LICENSED PURSUANT TO ARTICLE 3 OF THIS TITLE 44.

SECTION 9. In Colorado Revised Statutes, 44-4-104, **amend** (1), (1)(c)(I)(A), and (1)(c)(I)(B) as follows:

44-4-104. Licenses - state license fees – requirements – definition.

(1) The licenses to be granted and issued by the state licensing authority pursuant to this article 4 for the retail sale of fermented malt beverages OR FERMENTED MALT BEVERAGES AND WINE are as follows:

(c)(I)(A) A retailer's license shall be granted and issued to any person, partnership, association, organization, or corporation qualifying under section 44-3-301 and not prohibited from licensure under section 44- 3-307 to sell at retail fermented malt beverages AND WINE either for consumption off the licensed premises, OR FERMENTED MALT BEVERAGES for consumption on the licensed premises or, subject to subsection (1)(c)(III) of this section, FERMENTED MALT BEVERAGES for consumption on and off the licensed premises, upon paying an annual license fee of seventy-five dollars to the state licensing authority.

(B) A person licensed pursuant to this subsection (1)(c) to sell fermented malt beverages OR FERMENTED MALT BEVERAGES AND WINE at retail shall purchase the fermented malt beverages OR FERMENTED MALT BEVERAGES AND WINE only from a wholesaler licensed pursuant to article 3 of this title 44.

SECTION 10. In Colorado Revised Statutes, 44-4-105, **amend** (1)(a)(I)(A) as follows:

44-4-105. Fees and taxes - allocation.

(1)(a)(I)(A) Applications for new fermented malt beverage AND NEW FERMENTED MALT BEVERAGE AND WINE RETAILER licenses pursuant to section 44-3-301 and rules thereunder;

SECTION 11. In Colorado Revised Statutes, 44-4-106, **amend** (1) introductory portion, (1)(a), and (1)(b) as follows:

44-4-106. Lawful acts.

(1) It is lawful for a person under eighteen years of age who is under the supervision of a person on the premises eighteen years of age or older to be employed in a place of business where fermented malt beverages OR WINE are sold at retail in containers for off-premises consumption. During the normal course of such employment, any person under twenty-one years of age may handle and otherwise act with respect to fermented malt beverages OR WINE in the same manner as that person does with other items sold at retail; except that:

(a) A person under eighteen years of age shall not sell or dispense fermented malt beverages OR WINE, check age identification, or make deliveries beyond the customary parking area for the customers of the retail outlet; and

(b) A person who is under twenty-one years of age shall not deliver fermented malt beverages OR WINE in sealed containers to customers.

SECTION 12. In Colorado Revised Statutes, 44-4-107, **amend** (1) introductory portion, (1)(a), (1)(b), (1)(c)(I), (4), (5), and (6); and **add** (1)(a)(II), and (7) as follows:

44-4-107. Local licensing authority - application – fees –definition – rules.

(1) The local licensing authority shall issue only the following classes of ~~fermented malt beverage~~ licenses:

(a)(I) Sales OF FERMENTED MALT BEVERAGES AND WINE for consumption off the premises of the licensee;

(II) A LICENSE ISSUED BY THE LOCAL AND STATE LICENSING AUTHORITIES UNDER THIS SUBSECTION (1)(a) OF THIS SECTION IN EFFECT ON MARCH 1, 2023, SHALL IMMEDIATELY CONVERT FROM A LICENSE TO SELL FERMENTED MALT BEVERAGE FOR CONSUMPTION OFF THE PREMISES TO A FERMENTED MALT BEVERAGES AND WINE RETAILER LICENSE, ON MARCH 1, 2023, WITHOUT ANY FURTHER ACTION BY THE STATE OR LOCAL LICENSING AUTHORITY OR THE LICENSEE.

(b) Sales OF FERMENTED MALT BEVERAGES for consumption on the premises of the licensee;

(c)(I) Subject to subsections (1)(c)(II) and (1)(c)(III) of this section, sales OF FERMENTED MALT BEVERAGES for consumption both on and off the premises of the licensee.

(4) On or after ~~January 1, 2019~~ MARCH 1, 2023, a fermented malt beverage AND WINE retailer licensed under subsection (1)(a) of this section:

(a)(I) Shall not sell fermented malt beverages OR WINE to consumers at a price that is below the retailer's cost, as listed on the invoice, to purchase the fermented malt beverages OR WINE, unless the sale is of discontinued or close-out fermented malt beverages OR WINE.

(II) This subsection (4)(a) does not prohibit a fermented malt beverage AND WINE retailer from operating a bona fide loyalty or rewards program for fermented malt beverages OR WINE so long as the price for the product is not below the retailer's costs as listed on the invoice. The state licensing authority may adopt rules to implement this subsection (4)(a).

(b) Shall not allow consumers to purchase fermented malt beverages OR WINE at a self-checkout or other mechanism that allows the consumer to complete the fermented malt beverages OR WINE purchase without assistance from and completion of the entire transaction by an employee of the fermented malt beverage AND WINE retailer.

(5) A person licensed under subsection (1)(a) of this section that holds multiple fermented malt beverage AND WINE retailer's 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 alcohol beverage product from a wholesaler licensed under article 3 of this title 44 for more than one licensed premises. A wholesaler licensed under article 3 of this title 44 shall not base the price for the alcohol beverage product it sells to a fermented malt beverage AND WINE retailer licensed under subsection (1)(a) of this section on the total volume of alcohol beverage product that the retailer purchases for multiple licensed premises.

(6)(a) A person licensed under subsection (1)(a) of this section who complies with this subsection (6) and rules promulgated under this subsection (6) may deliver fermented malt beverages AND WINE in sealed containers to a person of legal age if:

(I) The person receiving the delivery of fermented malt beverages OR WINE is located at a place that is not licensed pursuant to this section;

(II) The delivery is made by an employee of the fermented malt beverage AND WINE 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;

(III) The person making the delivery verifies, in accordance with section 44-3-901 (11), that the person receiving the delivery of fermented malt beverages OR WINE is at least twenty-one years of age; and

(IV) The fermented malt beverage AND WINE 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 AND WINE that the fermented malt beverage AND WINE retailer delivers.

(b) The state licensing authority shall promulgate rules as necessary for the proper delivery of fermented malt beverages pursuant to this subsection (6) and may issue a permit to any person who is licensed pursuant to and delivers fermented malt beverages OR WINE under subsection

(1)(a) of this section. A permit issued under this subsection (6) is subject to the same suspension and revocation provisions as are set forth in section 44-3-601 for other licenses granted pursuant to article 3 of this title 44.

(7) A FERMENTED MALT BEVERAGE AND WINE RETAILER MAY ALLOW TASTINGS OF FERMENTED MALT BEVERAGES OR WINE TO BE CONDUCTED ON THE LICENSED PREMISES IF THE LICENSEE HAS RECEIVED AUTHORIZATION TO CONDUCT TASTINGS PURSUANT TO SECTION 44-3-301.

SECTION 13. Effective date:

This act takes effect on March 1, 2023.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #120¹

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 fermented malt beverage and wine retailer license for off-site consumption to allow grocery stores, convenience stores, and other business establishments licensed to sell fermented malt beverages, such as beer, for off-site consumption to also sell wine; automatically converting such a fermented malt beverage retailer license to the new license; and allowing fermented malt beverage and wine retailer licensees to conduct tastings if approved by the local 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 fermented malt beverage and wine retailer license for off-site consumption to allow grocery stores, convenience stores, and other business establishments licensed to sell fermented malt beverages, such as beer, for off-site consumption to also sell wine; automatically converting such a fermented malt beverage retailer license to the new license; and allowing fermented malt beverage and wine retailer licensees to conduct tastings if approved by the local licensing authority?

Hearing April 20, 2022:

Single subject approved; staff draft amended; title set.

Board members: Theresa Conley, Jeremiah Barry, Eric Olson

Hearing adjourned: 11:51 A.M.

Rehearing April 29, 2022:

Motion for Rehearing granted only to the extent that the Board made changes to the titles.

Board members: Theresa Conley, Jeremiah Barry, David Powell

Hearing adjourned: 1:02 P.M.

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

Ballot Title Setting Board

Proposed Initiative 2021-2022 #120¹

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 fermented malt beverage and wine retailer license to allow grocery stores, convenience stores, and other business establishments licensed to sell fermented malt beverages, such as beer, for off-site consumption to also sell wine for off-site consumption; automatically converting such a fermented malt beverage retailer license that was in effect on March 1, 2023, to the new fermented malt beverage and wine retailer license; reducing the distance between a new or relocated licensed retail liquor store from 1500 feet to 500 feet from an existing fermented malt beverage and wine licensed retailer; and allowing fermented malt beverage and wine retailer licensees to conduct tastings if approved by the local 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 fermented malt beverage and wine retailer license to allow grocery stores, convenience stores, and other business establishments licensed to sell fermented malt beverages, such as beer, for off-site consumption to also sell wine for off-site consumption; automatically converting such a fermented malt beverage retailer license that was in effect on March 1, 2023, to the new fermented malt beverage and wine retailer license; reducing the distance between a new or relocated licensed retail liquor store from 1500 feet to 500 feet from an existing fermented malt beverage and wine licensed retailer; and allowing fermented malt beverage and wine retailer licensees to conduct tastings if approved by the local licensing authority?

Hearing April 20, 2022:

Single subject approved; staff draft amended; title set.

Board members: Theresa Conley, Jeremiah Barry, Eric Olson

Hearing adjourned: 11:51 A.M.

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

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Christopher Fine, Objector,

vs.

Steven Ward and Levi Mendyk, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2021-2022 #120

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 #120.

The Board set a title for Initiative 2021-2022 #120 on April 20, 2022.¹ The Board designated and erroneously fixed titles for this measure.

I. This measure violates the constitutional single subject requirement.

The single-subject requirement in Article V, sec. 1(5.5) is summarized as a direct test of the underpinnings of an initiative.

An initiative violates the single subject requirement when it has at least two **distinct and separate** purposes which are not dependent upon or connected with each other.... Where two provisions advance **separate and distinct** purposes, the fact that they both relate to a broad concept or subject is insufficient to satisfy the single subject requirement.

In re Title, Ballot Title & Submission Clause, and Summary for 1997-1998 #64, 960 P.2d 1192 (Colo. 1998).

¹

A change to the Colorado Revised Statutes concerning the expansion of retail sale of alcohol beverages, and, in connection therewith, establishing a new fermented malt beverage and wine retailer license to allow grocery stores, convenience stores, and other business establishments licensed to sell fermented malt beverages, such as beer, for off-site consumption to also sell wine for off-site consumption; automatically converting such a fermented malt beverage retailer license that was in effect on March 1, 2023, to the new fermented malt beverage and wine retailer license; reducing the distance between a new or relocated licensed retail liquor store from 1500 feet to 500 feet from an existing fermented malt beverage and wine licensed retailer; and allowing fermented malt beverage and wine retailer licensees to conduct tastings if approved by the local licensing authority.

B. The initiative's multiple purposes

Where multiple subjects are part of one measure, this Board's job would be easier if an initiative's proponents just made plain in the text of their measure that one purpose in law was "separate and distinct" from another specific purpose. This Board would also benefit from existing law where the General Assembly just states that certain matters are separate and distinct. But how often does that happen?

It happened here. This measure confesses that its combination of wine and beer for food store sales violate the principles underlying the single subject requirement. Under current law (and under this measure's changes to that law), retail beer sales and retail wine sales are "separate and distinct."

The general assembly further recognizes that **fermented malt beverages and malt liquors are *separate and distinct* from, and have a unique regulatory history in relation to, vinous and spirituous liquors**; however, maintaining a separate regulatory framework and licensing structure for fermented malt beverages (*) under this article 4 is no longer necessary **except at the retail level**. Furthermore, to aid administrative efficiency, article 3 of this title 44 applies to the regulation of fermented malt beverages (*), except when otherwise expressly provided for in this article 4.

C.R.S. 44-4-102(2) (emphasis added).

This measure does not repeal this legislative declaration. Instead, it includes it in a slightly modified form, adding the phrase, "AND FERMENTED MALT BEVERAGES AND WINE", where (*) has been placed in the above quotation. *See* Section 7 of Initiative #112.

Thus, in the proposed measure and in existing law, there is an identification of "separate and distinct" interests (the regulation of beer and wine) that nonetheless leaves them "separate and distinct... at the retail level." The measure blesses the combination of regulation of the two products while leaving intact the "separate and distinct" natures of retail sales of wine and beer, which separation is still deemed by #112 to be "necessary."

Put differently, so long as the retail level regulation of wine and beer is legally categorized as "separate and distinct," a measure that treats them in the same way and authorizes the sale of both types of alcohol from the same or adjacent shelves necessarily violates the single subject requirement. A measure cannot have a single subject if it involves two items that the law mandates are "separate and distinct." The legislature's recognition and the proponents' embrace of the "separate and distinct" character of these two products in the retail setting for this type of license must be acknowledged by the Board. And that acknowledgement is a roadblock to finding this combination to be a single subject.

- II. The Board violated the fair title requirement by misstating the measure.
- A. The measure anticipates and provides for wine sales by licensees who provide both on and off premises consumption, see, e.g, Section 7, but the title indicates that the measure reaches only to wine sold “for off-site consumption” and should be corrected.
- B. In addressing the conversion of the license, the titles should include the measure’s wording that the conversion is done “without any further action by the state or local licensing authority or licensee.”

RESPECTFULLY SUBMITTED this 27th day of April, 2022.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin

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Objector’s Address:

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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2021-2022 #120** was sent this day, April 27, 2022, via email to the proponents via their legal counsel:

Suzanne Taheri
Maven Law Group
STaheri@mavenlawgroup.com

s/ Erin Holweger



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative 120

Fiscal Summary

Date:	April 19, 2022	Fiscal Analyst:	Erin Reynolds (303-866-4146)
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LCS TITLE: SALES OF ALCOHOL BEVERAGES

Fiscal Summary of Initiative 120

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.colorado.gov/bluebook. This fiscal summary identifies the following impact.

State revenue. The bill allows fermented malt beverage (beer) licensees to also sell wine. As such, it is anticipated that any increase in fee revenue to the Department Revenue will be minimal.

State expenditures. The measure's modifications to state laws regarding alcohol sales will increase workload in the Department of Revenue to update information and conduct enforcement.

Local government impact. Similar to the state impact, local liquor licensing authorities will have an increase in workload to updated information and conduct enforcement.

Economic impacts. While Initiative 120 may shift the location of sales, the overall volume of alcohol sales is not expected to change significantly; thus, any economic impact from the measure on the state is expected to be minimal.