

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>DATE FILED: May 6, 2022 4:16 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 #123 (“Third-Party Delivery of Alcohol Beverages”)</p> <p><b>Petitioners:</b> Christopher Fine</p> <p>v.</p> <p><b>Respondents:</b> Steven Ward and Levi Mendyk</p> <p><b>and</b></p> <p><b>Title Board:</b> Teresa Conley, David Powell, and Julie Pelegrin</p>	<p><b>▲ COURT USE ONLY ▲</b></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) <a href="mailto:mark@rklawpc.com">mark@rklawpc.com</a></p>	<p>Case Number:</p>
<p><b>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #123 (“THIRD-PARTY DELIVERY OF ALCOHOL BEVERAGES”)</b></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 #123 (“Third-Party Delivery of Alcohol Beverages”).

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative 2021-2022 #123.**

Steven Ward and Levi Mendyk (hereafter “Proponents”) proposed Initiative 2021-2022 #123 (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 #123. On April 27, 2022, Petitioner Christopher Fine filed a Motion for Rehearing, alleging that Initiative #123 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 #123 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.

2. Whether the Title Board erred by failing to state in the titles that technology services companies can play a central role in third-party delivery of alcohol beverages but are expressly exempt from having to obtain any state or local permit or license for their role in transferring such alcohol beverages to consumers.

### **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 #123 (“THIRD-PARTY DELIVERY 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* \_\_\_\_\_

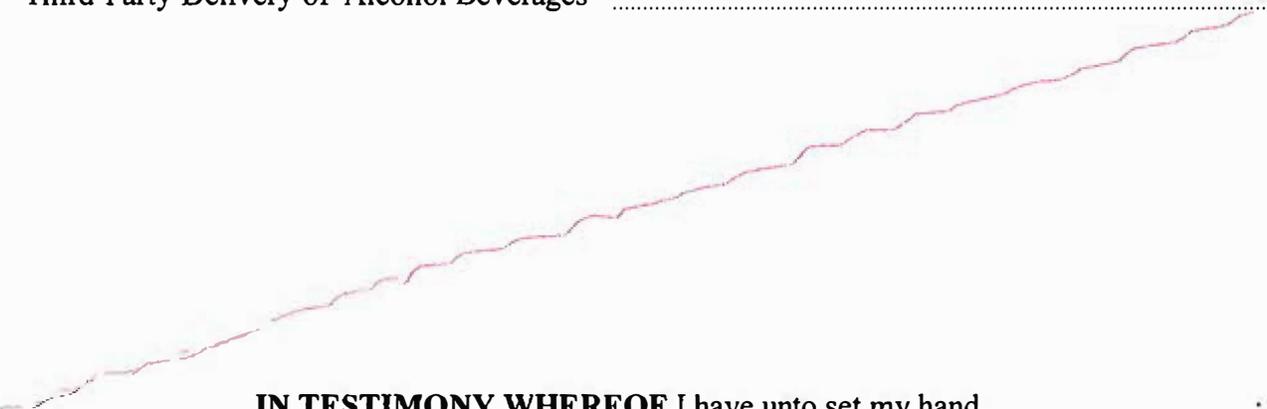


# STATE OF COLORADO

## 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 #123 ‘Third-Party 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 3<sup>rd</sup> day of May, 2022.

*Jena Griswold*

SECRETARY OF STATE



2021-2022 #123 - 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 3 of Title 44, Colorado Revised Statutes, known as the “Colorado Liquor Code,” shall be amended to permit, beginning March 1, 2023, the home delivery of alcohol sales made by licensed retailers through third-party home delivery service providers.

**SECTION 2: In Colorado Revised Statutes, add 44-3-911.5 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 RETAILER LICENSEE LICENSED FOR ON PREMISES CONSUMPTION PURSUANT TO THIS ARTICLE 3, TO A PERSON IN THE STATE WHO IS AT LEAST TWENTY-ONE YEARS OF AGE. THE HOLDER OF A LICENSE LISTED IN THIS SUBSECTION (1) MUST APPLY FOR AND TO HOLD A DELIVERY SERVICE PERMIT AS A PRIVILEGE SEPARATE FROM ITS EXISTING LICENSE IN ORDER TO USE INDEPENDENT CONTRACTORS FOR DELIVERY. AN OFF-PREMISES RETAILER LICENSED PURSUANT TO THIS ARTICLE 3 OR ARTICLE 4 OF THIS TITLE 44 IS NOT REQUIRED TO OBTAIN A DELIVERY SERVICE PERMIT IF THE DELIVERY IS MADE BY AN EMPLOYEE OF THE LICENSEE 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. A RETAILER LICENSEE LICENSED FOR ON PREMISES CONSUMPTION PURSUANT TO THIS ARTICLE 3 IS NOT REQUIRED TO OBTAIN A DELIVERY SERVICE PERMIT IF THE DELIVERY IS MADE BY AN EMPLOYEE OF THE LICENSEE WHO IS AT LEAST TWENTY-ONE YEARS OF AGE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 44-3-911.

(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 TO THE STATE LICENSING AUTHORITY FOR AND BE ISSUED A DELIVERY SERVICE PERMIT THAT AUTHORIZES THE PERMITTEE TO DELIVER ALCOHOL BEVERAGES FROM A LICENSEE PERMITTED FOR DELIVERY BY SECTION (1) OF THIS SECTION, TO A PERSON IN THE STATE WHO IS AT LEAST TWENTY-ONE 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, 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) SUBMIT 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 (1) OF THIS SECTION, FOR THE PURPOSE OF DELIVERING ALCOHOL BEVERAGES.

(b) MAY, THROUGH ITS EMPLOYEES OR INDEPENDENT CONTRACTORS, DELIVER ALCOHOL BEVERAGES FOR ANY LICENSEE LICENSED FOR ON PREMISES CONSUMPTION PURSUANT TO THIS ARTICLE 3, WHICH MAY INCLUDE ALCOHOL BEVERAGES BY THE DRINK. SUCH DELIVERIES SHALL BE MADE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 44-3-911, EXCEPT 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, IF 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 TO A MINOR.

(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.

(a) 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 LICENSE AND DELIVERY SERVICE PERMIT TO DISCIPLINARY ACTION FOR THE VIOLATION. DELIVERY TO A MINOR SHALL BE TREATED AS SELLING 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.

**SECTION 3:** In Colorado Revised Statutes, 44-3-409, **repeal** (3)(a)(II) and (3)(a)(IV) as follows:

**44-3-409. Retail liquor store license - rules.**

(3)(a) A person licensed to sell at retail who complies with this subsection (3) and rules promulgated pursuant to this subsection (3) may deliver malt, vinous, and spirituous

liquors to a person of legal age if:

~~(3)(a)(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;~~

~~(3)(a)(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 4:** In Colorado Revised Statutes, 44-3-410, **repeal** (3)(a)(II) and (3)(a)(IV) as follows:

**44-3-410. Liquor-licensed drugstore license - multiple licenses permitted -requirements - rules.**

(3)(a) A liquor-licensed drugstore licensee who complies with this subsection (3) and rules promulgated pursuant to this subsection (3) may deliver malt, vinous, and spirituous liquors to a person of legal age if:

~~(3)(a)(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;~~

~~(3)(a)(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 5:** 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.**

(2) To sell and deliver an alcohol beverage or to allow a customer to remove an alcohol beverage from the licensed premises as either is authorized under subsection (1) of this section, the licensee must:

~~(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 6:** 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.**

(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 in sealed containers to a person of legal age if:

~~(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 7.** Effective date. This act takes effect March 1, 2023.

## **Ballot Title Setting Board**

### **Proposed Initiative 2021-2022 #123<sup>1</sup>**

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

A change to the Colorado Revised Statutes concerning authorization for the third-party delivery of alcohol beverages, and, in connection therewith, allowing retail establishments licensed to sell alcohol beverages for on-site or off-site consumption to deliver all types of alcohol beverages to a person twenty-one years of age or older through a third-party delivery service that obtains a delivery service permit; prohibiting the delivery of alcohol beverages to a person who is under 21 years of age, is intoxicated, or fails to provide proof of identification; removing the limit on the percentage of gross sales revenues a licensee may receive from alcohol beverage deliveries; and allowing a technology services company, without obtaining a third-party delivery service permit, to provide software or a digital network application that connects consumers and licensed retailers for the delivery of alcohol beverages.

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 authorization for the third-party delivery of alcohol beverages, and, in connection therewith, allowing retail establishments licensed to sell alcohol beverages for on-site or off-site consumption to deliver all types of alcohol beverages to a person twenty-one years of age or older through a third-party delivery service that obtains a delivery service permit; prohibiting the delivery of alcohol beverages to a person who is under 21 years of age, is intoxicated, or fails to provide proof of identification; removing the limit on the percentage of gross sales revenues a licensee may receive from alcohol beverage deliveries; and allowing a technology services company, without obtaining a third-party delivery service permit, to provide software or a digital network application that connects consumers and licensed retailers for the delivery of alcohol beverages?

*Hearing April 20, 2022:*

*Single subject approved; staff draft amended; title set.*

*Board members: Theresa Conley, Julie Pelegrin, Eric Meyer*

*Hearing adjourned: 1:39 P.M.*

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<sup>1</sup> Unofficially captioned “**Third-Party Delivery of Alcohol Beverages**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

*Rehearing April 29, 2022:*

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

*Board members: Theresa Conley, Julie Pelegrin, David Powell*

*Hearing adjourned: 10:22 A.M.*

## **Ballot Title Setting Board**

### **Proposed Initiative 2021-2022 #123<sup>1</sup>**

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

A change to the Colorado Revised Statutes concerning authorization for the third-party delivery of alcohol beverages, and, in connection therewith, allowing retail establishments licensed to sell alcohol beverages to deliver all types of alcohol beverages to a person twenty-one years of age or older through a third-party delivery service that obtains a delivery service permit; prohibiting the delivery of alcohol beverages to a person who is under 21 years of age, is intoxicated, or fails to provide proof of identification; and removing the limit on the percentage of gross sales revenues a licensee may receive from alcohol beverage deliveries.

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 authorization for the third-party delivery of alcohol beverages, and, in connection therewith, allowing retail establishments licensed to sell alcohol beverages to deliver all types of alcohol beverages to a person twenty-one years of age or older through a third-party delivery service that obtains a delivery service permit; prohibiting the delivery of alcohol beverages to a person who is under 21 years of age, is intoxicated, or fails to provide proof of identification; and removing the limit on the percentage of gross sales revenues a licensee may receive from alcohol beverage deliveries?

*Hearing April 20, 2022:*

*Single subject approved; staff draft amended; title set.*

*Board members: Theresa Conley, Julie Pelegrin, Eric Meyer*

*Hearing adjourned: 1:39 P.M.*

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<sup>1</sup> Unofficially captioned “**Third-Party Delivery 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

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Christopher Fine, Objector,

vs.

Steven Ward and Levi Mendyk, Proponents.

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**MOTION FOR REHEARING ON INITIATIVE 2021-2022 #123**

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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 #123, and states:

The Board set a title for Initiative 2021-2022 #123 on April 20, 2022. The Board designated and fixed the following ballot title and submission clause:

*Shall there be a change to the Colorado Revised Statutes concerning authorization for the third-party delivery of alcohol beverages, and, in connection therewith, allowing retail establishments licensed to sell alcohol beverages to deliver all types of alcohol beverages to a person twenty-one years of age or older through a third-party delivery service that obtains a delivery service permit; prohibiting the delivery of alcohol beverages to a person who is under 21 years of age, is intoxicated, or fails to provide proof of identification; and removing the limit on the percentage of gross sales revenues a licensee may receive from alcohol beverage deliveries?*

**I. Initiative #123 violates the constitutional single subject requirement.**

Recognizing their single-subject vulnerability on measures that combine delivery and sales, Proponents purport to make Initiative #123 about only one aspect: delivery. But this Initiative is *not* limited to delivery. Hidden in its folds, Proponents have buried their other subject: alcohol sales. Delivery and sales are separate subjects and, by combining them here, they have violated the single subject rule. Further, by including sales in this Initiative, Proponents have interjected another fatal single subject problem into their Initiative by bundling together beer and wine sales which are, under the law, “separate and distinct” regulatory subjects.

Proponents slip sales into this Initiative through proposed C.R.S. § 44-3-911.5(4)(d), which provides that:

A delivery service permittee:

...

(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

C.R.S. § 44-3-911.5(4)(d) (emphasis added). This authorization to “facilitate” a sale is a broad authority for permittees, as it empowers them to “help people deal with a process... without getting directly involved.” Cambridge Business English Dictionary, last visited April 27, 2022 (defining “facilitate”), <https://dictionary.cambridge.org/us/dictionary/english/facilitate>.

The fact that the initiative expressly identifies that the permittee’s role is to help with two different functions – sale and delivery – makes the point. They are separate acts, but this measure looks to cover them both. If they were all part of one customer interface, there would be no reason to add “sale and.” But they aren’t, and this provision effectively admits that the permittees will be engaged in multiple functions, thus serving multiple purposes of the initiative.

Not only does this intermingling of delivery and sales itself violate the single subject rule, it necessarily interjects yet another single subject concern into the Initiative. Under existing law, C.R.S. § 44-4-102, the General Assembly has declared that the regulation of retail sale of wine and beer 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). Proponents have not repealed this legislative declaration through Initiative #123. 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 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” as a matter of their regulatory history and, at the retail level, their current regulatory needs. But that is what Initiative #123 does. It allows a delivery permittee to facilitate the “sale” of “alcohol beverages,” which includes both beer and wine. *See* C.R.S. § 44-3-103(2)

(defining “alcohol beverages”). These are, pursuant to C.R.S. § 44-4-102(2), “separate and distinct,” and bundling them together therefore violates the single subject requirement.

**II. This measure violates the clear title requirement for initiative titles.**

The titles set by the Board are incomplete or misleading in the following ways:

(a) The single subject statement is inaccurate for the following reasons:

- a. The measure is not limited to delivery but instead allows delivery permittees to engage in sales activities; and,
- b. The measure is not limited to third-party delivery, as it allows a licensee to obtain a delivery permit or have its employees deliver alcohol beverages.

(b) The titles use of “Removing the limit” on the percentage of gross revenue sales is a double negative and confusing to voters; this phrase should read either:

- a. Allowing licensees to obtain up to all of their revenue from alcohol beverage deliveries; or
- b. Removing the restriction that alcohol beverage deliveries not exceed 50% of gross annual revenues by liquor licensed drugstores, retail liquor stores, fermented malt beverage retailers, and take-out orders from on-premises consumption licensees.

(c) The following should be added to the titles to address central elements of the Initiative:

- a. Authorizing deliveries of alcohol beverages served for on premises consumption as well as for off premises consumption; and,
- b. Specifying that technology services companies may provide network applications (which undeniably have the widest possible market penetration and thus relevance to voters) for alcohol beverage delivery without obtaining a delivery service permit.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of April, 2022.

RECHT KORNFELD, P.C.

*s/ Mark G. Grueskin*

\_\_\_\_\_  
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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 #123** was sent this day, April 27, 2022, via email to the proponents via their legal counsel:

Suzanne Taheri  
Maven Law Group  
[STaheri@mavenlawgroup.com](mailto:STaheri@mavenlawgroup.com)

*s/ Erin Holweger*



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Initiative 123

## Fiscal Summary

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<b>Date:</b>	April 19, 2022	<b>Fiscal Analyst:</b>	Erin Reynolds (303-866-4146)
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### LCS TITLE: THIRD-PARTY DELIVERY OF ALCOHOL BEVERAGES

#### Fiscal Summary of Initiative 123

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](http://www.colorado.gov/bluebook). This fiscal summary identifies the following impact.

**State revenue.** The measure creates a new delivery service permit, which will increase fee revenue to the Department of Revenue. Applicants for permits must pay initial and renewal fees. Exact revenue to the state will depend on the number of applicants and the fee schedule set by the department, and is preliminarily estimated to be about \$100,000 to cover the department's administrative and enforcement costs.

**State expenditures.** The measure's modifications to state laws regarding alcohol sales and delivery will increase costs by at least \$100,000 per year in the Department Revenue to process additional applications and conduct enforcement.

**Local government impact.** Similar to the state impact, local liquor licensing authorities will have an increase in workload to process additional applications, and an increase in fee revenue from local application and permit fees. The impact will depend on the number of applications in any individual jurisdiction.

**Economic impacts.** While Initiative 123 may shift the location of some alcohol sales, the overall volume of alcohol sales is not expected to change significantly. The measure may shift income and employment opportunities across different retailers and increase income to third-party delivery businesses. To the extent that consumers increase spending on delivery fees, spending in other areas of the economy may be reduced.