# <u>Advertising and i-502</u>

In regards to the recent implementation of Washington States i-502 implementation there have been some adopted rules put in place in regards to advertising that in our research we have for to be unconstitutional at both the state and federal levels.

Yes we said it, ***<u>unconstitutional at the state and federal levels</u>***.

The State of Washington would go so far as to literally try take away your First Amendment rights and your state granted Freedom of Speech rights.

This however can not be done due to a clause in our United States Constitution called **<u>Federal Preemption</u>**.

Our federal rights as United States Citizens can not be overridden by state laws. This is why it is still *<u>federally</u>* illegal to sell marijuana and other marijuana products because and the states have no control over that *<u>federal</u>* law.

In regards to **commercial advertising,** it is protected under federal law via the First Amendment, as you will see in our research below. Even in the Washington State Constitution, under Section 5, you have been granted “Freedom of Speech” which protects your right to advertise.

You will also see how other states have tried similar tactics with other industries and the ruling was **in favor of the businesses**, not the states, because of the protection of the First Amendment.

We have started below with the current wording used by the Washington State Liquor Control Board (WSLCB) in regards to advertising an i-502 business. We have also included links to each of our findings so you may read each full article online. This is not every reference that is available, but we found these to be a good starting point for anyone interested in doing some additional research.

It is our goal to make sure your rights as an United States Citizen, a Washington State resident, and entrepreneur in this country and state get an equal and fair chance as every other business, whether big or small, to succeed.

We look forward to doing any additional research for you and answering any questions you may have.

Thank you for taking the time to read this.

Darran Bruce
President/Creator
iAM, i Alternative Media/Cannadvertising.com
206-203-1623
<u>www.ialternativemedia.com</u>
<u>www.cannadvertising.com</u>
FB /iamedia
TW /iamedia007
FB /cannadvertising
TW /cannadvertising

# Initiative 502 Adopted Rules

### WAC 314-55-155

WAC 314-55-155 Advertising.
(1) Advertising by retail licensees.
The board limits each retail licensed premises to one sign identifying the retail outlet by the licensee's business name or trade name that is affixed or hanging in the windows or on the outside of the premises that is visible to the general public from the public right of way. The size of the sign is limited to sixteen hundred square inches.

(3) No licensed marijuana producer, processor, or retailer shall place or maintain, or cause to be placed or maintained, an advertisement of marijuana, usable marijuana, or a marijuana-infused product in any form or through any medium whatsoever:
(a) Within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older;
(b) On or in a public transit vehicle or public transit shelter;
or
(c) On or in a publicly owned or operated property.

For more information click on the link below

### https://lcb.app.box.com/adopted-rules

# FAQs on I-502

**Q: Are there any restrictions on advertising?**
**A:** Retailers are limited to one 1,600 square inch sign bearing their business/trade name. They cannot put products on display to the general public such as through window fronts. No licensee can advertise marijuana/infused product in any form or through any medium whatsoever within 1,000 ft. of school grounds, playgrounds, child care, public parks, libraries, or game arcades that allows minors to enter. Also, you can’t advertise on public transit vehicles/shelters or on any publicly owned or operated property.

**Q: Since marijuana is legal in Washington can the federal government still prosecute me?**
**A:** Yes. **I-502 does not preempt federal law**. Presently Washington State residents involved in marijuana production /retailing could still be subject to prosecution if the federal government chooses to do so.

For more information click on the link below

### http://liq.wa.gov/marijuana/faqs_i-502

# FIRST AMENDMENT to the U.S. Constitution

**Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.**

# Washington State Constitution

### ARTICLE I
### DECLARATION OF RIGHTS

**SECTION 2 SUPREME LAW OF THE LAND.** The Constitution of the United States is the supreme law of the land.

**SECTION 5 FREEDOM OF SPEECH.** Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

For more information click on the link below

**http://www.leg.wa.gov/LAWSANDAGENCYRULES/Pages/constitution.aspx**

## Federal preemption

**Federal preemption** refers to the invalidation of a US state law when it conflicts with Federal law.

According to the Supremacy Clause (Article VI, clause 2) of the United States Constitution,

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, **shall be the supreme law of the land**; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

As the Supreme Court stated in *Altria Group v. Good*, 555 U.S. 70 (2008), a federal law that conflicts with a state law will trump, or "preempt", that state law:

Consistent with that command, we have long recognized that state laws that conflict with federal law are “without effect.” *Maryland v. Louisiana*, 451 U. S. 725, 746 (1981)

For more information click on the link below

**http://en.wikipedia.org/wiki/Federal_preemption**

# Federal Preemption Now a Barrier to Local Tobacco Ordinances

Until recently, tobacco control advocates were mostly concerned about preemption in the context of state laws that prevent local jurisdictions from enacting laws more stringent than state law mandates. The recent U.S. Supreme Court decision in *Lorillard v. Reilly*, 121 S. Ct. 2404 (2001) shifts the focus to federal preemption.

For more information click on the link below

**http://www.law.uh.edu/healthlaw/perspectives/PublicHealth/010817Federal.html**

# Federal Preemption Bars NYC Smoking Scare Tactics

New York City can't scare smokers away from tobacco by ordering anti-smoking signs next to cigarette displays; that's the federal government's job.

Tuesday, the Second Circuit Court of Appeals struck down a 2009 city Board of Health resolution requiring tobacco retailers to display signs bearing graphic images showing the negative health effects of smoking, reports The Associated Press.

For more information click on the link below

**http://blogs.findlaw.com/second_circuit/2012/07/federal-preemption-bars-nyc-smoking-scare-tactics.html**

# Commercial Speech

**Commercial speech** is speech done on behalf of a company or individual for the intent of making a profit. It is economic in nature and usually has the intent of convincing the audience to partake in a particular action, often purchasing a specific product. Generally, the United States Supreme Court defines commercial speech as speech that "proposes a commercial transaction." Additionally, the Court developed a three factor inquiry in determining whether speech is commercial in *Bolger v. Youngs Drug Products*; however, those factors have yet to be utilized in any other Supreme Court case dealing with commercial speech.

The idea of "Commercial Speech" was first introduced by the Supreme Court when it upheld *Valentine v. Chrestensen* (1942). In upholding the regulation, the Supreme Court said, "We are … clear that the Constitution imposes … no restraint on government as respects purely commercial advertising."

In a 1978 decision, *Ohralik v. Ohio State Bar Ass'n*, the Court offered this defense:

We have not discarded the "common-sense" distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech. To require a parity of constitutional protection for commercial and noncommercial speech alike could invite dilution, simply by a leveling process, of the force of the Amendment's guarantee with respect to the latter kind of speech. Rather than subject the First Amendment to such a devitalization, we instead have afforded commercial speech a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, while allowing modes of regulation that might be impermissible in the realm of noncommercial expression.

There are those on the Supreme Court that disagree with this "common-sense" distinction, though. Justice Clarence Thomas replied, in *44 Liquormart, Inc. v. Rhode Island* (1996), that "I do not see a philosophical or historical basis for asserting that 'commercial' speech is of 'lower value' than 'noncommercial' speech."

For more information click on the link below

**http://en.wikipedia.org/wiki/Commercial_speech**

## Government Regulation of Commercial Speech

The Supreme Court for many years took the view that commercial speech--speech that proposes an economic transaction--was not protected by the First Amendment. The Court reasoned that the broad powers of government to regulate commerce must reasonably include the power to regulate speech concerning articles of commerce.

This view changed in the 1970s in a series of cases invalidating state regulations affecting services such as abortion providers and products such drugs. In *Virginia State Board of Pharmacy* (1976), for example, the Court struck down a law prohibiting the advertising of prices for prescription drugs. The Court noted that price information was very important to consumers, and suggested that the First Amendment protects the "right to receive information" as well as the right to speak. Given the free speech interests at stake, the Court said, the state regulation must support a substantial interest.

For more information click on the link below

**http://law2.umkc.edu/faculty/projects/ftrials/conlaw/commercial.htm**

## Advertising Is Protected by the First Amendment

The question is often asked: Does the First Amendment protect advertisements? Advertising is indeed protected by the First Amendment of the U.S. Constitution. However, advertising or "commercial speech" enjoys somewhat less First Amendment protection from governmental encroachment than other types of speech. The Federal Trade Commission (FTC), for example, may regulate speech that is found to be "deceptive." And the FTC keeps stepping up the types of commercial speech it regulates.

For more information click on the link below

**http://www.lawpublish.com/amend1.html**

The Washington State Liquor Control Board must recognize your rights as an individual and as a business owner. They can not enact legislation that takes away your federally protected United States Citizen and your Washington State Constitutional Freedom of Speech rights.

We hope that this document serves to make you feel comfortable about some of the concerns you may have regarding the advertising of your newly approved i-502 business. As always we will be here to help you along the way. Please contact with any questions you may have.

Darran Bruce
President/Creator
iAM, i Alternative Media/Cannadvertising.com
206-203-1623
www.ialternativemedia.com
www.cannadvertising.com