

HOUSE BILL REPORT

HB 1161

As Reported by House Committee On:
Government Accountability & Oversight
Finance

Title: An act relating to sales for resale by retail licensees of liquor.

Brief Description: Concerning sales for resale by retail licensees of liquor.

Sponsors: Representatives Hunter, Alexander, Hurst, Condotta, Ryu, Takko, Hayes, Short, Harris, Manweller, Schmick and Springer.

Brief History:

Committee Activity:

Government Accountability & Oversight: 1/24/13, 2/21/13 [DPS];
Finance: 2/26/13, 2/28/13 [DP2S(w/o sub OVER)].

Brief Summary of Second Substitute Bill

- Provides that beginning on the effective date of the bill, the 17 percent spirits retail license issuance fee does not apply to spirits sales to bars and restaurants from retail licensees that were former contract or state liquor store managers.
- Provides that beginning January 1, 2014, all other retail licensees are exempt from the 17 percent license issuance fee with respect to spirits sales to bars and restaurants.
- Specifies that if no distributor license fee has been paid on sales from a retail licensee to a bar or restaurant, the retail licensee must pay the distributor license fee to the Liquor Control Board.

HOUSE COMMITTEE ON GOVERNMENT ACCOUNTABILITY & OVERSIGHT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Hurst, Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Moscoso and Shea.

Minority Report: Do not pass. Signed by 1 member: Representative Smith.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Trudes Tango (786-7384).

Background:

Initiative 1183 (I-1183), which the voters passed in November 2011, transferred the responsibility for the distribution and retail sale of liquor to the private sector.

Spirits Retail Licensees.

Under I-1183, a spirits retail licensee may: (1) sell spirits to consumers for off-premises consumption and to permit-holders; (2) sell spirits in original containers for resale to retailers licensed to sell spirits for on-premises consumption (often called "on-premises" or "on-sale" retailers, which are typically bars and restaurants); and (3) export spirits. The I-1183 provides that a sale by a spirits retailer is a retail sale only if not for resale.

Generally, there are specific premises size requirements for a retailer to be eligible for a spirits retail license. However, the Liquor Control Board (LCB) may not deny a license to a former contract liquor store at its contract location or to the holder of the operating rights of a former state liquor store because of the location, nature, or size of the premises. In addition, the premises size requirement does not apply if there is no retail spirits license holder in the trade area and the applicant meets other criteria.

The initiative requires each spirits retail licensee (except craft distilleries) to pay to the LCB a license issuance fee equivalent to 17 percent of all spirit sales revenues under the license. This fee is in addition to any taxes collected on the sales of the spirits. The fees are deposited into the Liquor Revolving Fund (Fund). Moneys in the Fund are used for LCB expenses and "excess funds" are distributed to the state general fund and to cities, towns, and counties.

Spirits Distributor Licensees.

The I-1183 also created a license for spirits distributors to: (1) sell spirits purchased from manufacturers, distillers, and suppliers to spirits retailers, special license holders, and other distributors; and (2) export spirits. The initiative requires that a spirits distributor pay a license issuance fee of 10 percent of total revenue in each of the first two years of the distributor's licensure and then 5 percent of total revenue in subsequent years. The first distributor receiving the spirits from the distiller pays the fee. A retail licensee selling spirits for resale must pay a distributor license fee if a distributor license fee has not been paid.

Article II, Section 41.

Article II, section 41, of the Washington Constitution provides that an initiative passed by the voters may not be amended within the first two years following enactment, except by two-thirds vote of both houses and the signature of the Governor, or by a direct vote of the people. A legislative act may be considered amendatory if it changes the prior act in purpose, scope, or effect. A legislative act that is considered supplemental does not require a two-thirds vote.

Summary of Substitute Bill:

Legislative findings are made recognizing the need for more fairness in the market for former contract liquor store owners and the need for phased-in uniformity in the market.

Beginning on the effective date of the bill, the 17 percent spirits retail license issuance fee does not apply to retail licensees that were contract liquor store managers with respect to sales of spirits in original containers to retailers licensed to resell spirits for on-premise consumption.

Beginning January 1, 2014, all other retail licensees are exempt from the 17 percent license issuance fee with respect to sales of spirits in original containers to retailers licensed to resell spirits for on-premise consumption.

If no distributor license fee has been paid on sales from a retail licensee to a retailer licensed to resell spirits for on-premise consumption, the retail licensee must pay the distributor license fee to the LCB.

Substitute Bill Compared to Original Bill:

The original bill created a definition of "single sales," which addressed the one single sale per day limit on sales to bars and restaurants, and a definition of "spirits sales revenue under the license," which addressed the 17 percent spirits retail license issuance fee on sales to bars and restaurants from all retail licensees.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The bill addresses concerns related to how tax policy is set. The bill is an attempt to avoid a pyramid of taxes. Consistency in tax treatment is the issue rather than the amount of the tax. The bill also addresses a practical concern for small restaurants that might need to buy more liquor unexpectedly if they run out of a particular brand of liquor on a certain night. There are distribution issues in rural communities. When buying from a distributor, there are minimum amounts that must be ordered. Bars and restaurants want to be able to develop relationships with local stores and buy from them, but the taxes and the limits on how much can be bought impedes the ability to develop these relationships. Restaurants want options on where to purchase liquor. The restaurant business is very competitive. Large restaurants have an advantage over small restaurants. It is frustrating that the LCB decided to put a per day limit on sales when that was not discussed in the drafting of I-1183. Distributors cannot always deliver certain specialty liquors, so restaurants must look elsewhere and end up paying a 17 percent surcharge. This increased cost will be passed on to the consumer or must be absorbed by the business. The I-1183 should be restored to the way

it was meant to be. Former contract liquor store owners were told that the 17 percent would not apply to them, but now that the additional fee applies, they are having a difficult time staying in business. Former contract liquor stores cannot compete with distributors.

(In support with concerns) The 17 percent should be removed but the 24 liter limit should remain. The exemption from the 24 liter limit for former contract liquor stores should be honored. There is a reason they were exempted and the voters approved that exemption.

(Neutral) The LCB received input from its Assistant Attorney General and concluded that the intent of I-1183 was to limit retail-to-retail sales. Because contract stores were specifically exempted from the limit in I-1183, the thought was that if multiple 24 liter transactions were allowed, there would be no real restriction. Contract liquor stores would not have the advantage that was intended by I-1183.

(With concerns) The bill creates an unnecessary fourth tier in the system and is challenging for suppliers. The bill does not go far enough in addressing the heavy tax burdens on consumers.

(Opposed) There are no pyramid issues raised under current law. The bill is trying to get around amending I-1183. If the parties actually intended to exempt themselves from the 17 percent tax, they could have written that into I-1183, but they did not. Distributors have put significant capital investments into their distribution network. Much of their business is with bars and restaurants. Distributors have created hundreds of union jobs and the role of the distributor is invaluable. Distributors take thousands of items and bring them to the market. Distributors serve all licensees and provide quantity discounts. Distributors are required to pay a large amount of money to the LCB, and yet this bill allows Costco to act like a distributor without having to pay the same fees that distributors pay. This bill would result in the layoff of many workers currently employed with distributors. The 24 liter limit should not be removed. The initiative was written to allow large retailers to buy in volume and to re-distribute, but the same provision was not given to grocery stores. The bill will put some retailers at a competitive disadvantage with big box stores. Removing the 24 liter limit would allow large warehousing retailers to serve as primary distributors. The bill would allow unlimited purchasing by licensees. The bill's definitions alter I-1183 and would require a two-thirds vote of the Legislature.

Persons Testifying: (In support) Representative Hunter, prime sponsor; Steve Simmons, Country Gentleman Restaurant; Monique Trudnowslie, Adriadic Grill; Roxanne Shelby, Shelbys Restaurant; Travis Rosenthal, Tango Restaurant; Trent House; John Martin, Martin Bruni Liquor; Julie Ganas; Steve McVicars; Holly Chisa, Northwest Grocery Association; Katherine Meade; and Bruce Beckett, Washington Restaurant Association.

(In support with concerns) Jas Sahngha and Solomon Seyoum, Washington Liquor Stores Association.

(Neutral) Mike Kashmar, Liquor Control Board.

(With concerns) Michael Cho, Premium Retail Group; and Adam Smith, Distilled Spirits Council.

(Opposed) John Klein and Franklin Nyomlori, Southern Wine and Spirits; Harold McGovern, Youngs Market; Michael Gonzales, Teamsters Local 174; Ron Main, Washington Association of Wine and Spirits; Amy Brackenbury and Jan Gee, Washington Food Industry Association; and Michael Transue, Washington Beer and Wine Distributors Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON FINANCE

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Government Accountability & Oversight. Signed by 12 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Fitzgibbon, Hansen, Lytton, Reykdal, Springer, Vick and Wilcox.

Minority Report: Do not pass. Signed by 1 member: Representative Pollet.

Staff: Jeff Olsen (786-7175).

Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Government Accountability & Oversight:

The substitute bill exempts former state liquor stores from paying the 17 percent license issuance fee on sales to bars and restaurants beginning on the effective date of this bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill would correct what was intended in Initiative 1183, not to apply the 17 percent fee to wholesale transactions. Many former contract stores will be out of business by the end of the year if the fee is not addressed. Many small business owners paid over \$200,000 for the opportunity to sell spirits with the understanding that they would be able to service restaurants and bars, and the 17 percent fee would not apply. It is difficult to compete with the big box stores, and many small liquor stores are failing.

(Opposed) Distributors have invested millions in new facilities and have hired staff based on the rules as written. Distributors are currently being assessed \$40 million to \$70 million in fees as a privilege tax. This bill would erode distributor's market share.

Persons Testifying: (In support) Trent House, Clearview Spirits and Wine; Jas Sangha, Washington Liquor Store Association; Julia Clarke, Washington State Restaurant Association; Holly Chisa, Northwest Grocery Association; and Amy Brackenbury, Washington Food Industry.

(Opposed) Jim Richards, Teamsters Joint Council 28; Darren Smith, Washington Liquor Store Association; Jim Halstrom, Southern Wine and Spirits Company; Joe Daniels, Youngs Market; and Ron Main, Association of Washington Wine and Spirits.

Persons Signed In To Testify But Not Testifying: None.