

# SENATE BILL REPORT

## SB 6104

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As of January 15, 2020

**Title:** An act relating to the creation of a limited spirits retail license.

**Brief Description:** Concerning the creation of a limited spirits retail license.

**Sponsors:** Senators King, Rivers, Rolfes, Mullet, Saldaña and Lovelett.

**Brief History:**

**Committee Activity:** Labor & Commerce: 1/14/20.

**Brief Summary of Bill**

- Creates a new limited spirits retail license for certain grocery store licensees.
- Establishes a new license issuance fee and a new mitigation fee.
- Provides a prioritized list for disbursing the mitigation fees.
- Creates a repayment fund allowing reimbursement to individuals who purchased the former state liquor store operating rights at auction.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Staff:** Richard Rodger (786-7461)

**Background:** The Liquor and Cannabis Board (LCB) issues a combination spirits, beer, and wine retail license:

- for premises comprising at least 10,000 square feet of fully enclosed retail space within a single structure;
- for premises of a former contract liquor store;
- to holders of former state liquor store operating rights sold at auction;
- to specialty shops; and
- for premises with less than 10,000 square feet when (1) there is no spirits retail license holder in the trade area, (2) the applicants meet the LCB's operational requirements established in rule, and (3) the licensee has not committed more than one public safety violation within the three years.

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*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.*

The licensees holding a combination spirits, beer, and wine license must maintain either (1) a minimum \$3,000 inventory of food products for human consumption, not including pop, beer, strong beer, wine, or spirits; or (2) a minimum \$3,000 wholesale inventory of beer, strong beer, and/or wine. The licensees must also maintain appropriate systems for inventory management, employee training, employee supervision, and physical security of the product.

Sales of spirits by spirits retail licensees are subject to a license issuance fee equivalent to 17 percent of all spirits sales revenues. An exception is provided for sales of spirits by former contract liquor stores and former-state-store auction buyers, when sales are made to other retailers who sell spirits for on-premises consumption. For these sales, the 17 percent fee does not apply.

Initiative 1183, passed by the voters in November 2011, required the state of Washington to auction off its existing state liquor store facilities and equipment. Owners of these stores are referred to as the holders of the former state liquor store operating rights sold at auction.

**Summary of Bill:** Limited Spirits License. A new limited spirits retail license is created allowing certain grocery store licensees, who hold a license for off-premises sales of beer and/or wine, to sell and export spirits. The spirits must be in the original container and may be sold to consumers for consumption off the premises and to authorized permit holders. To be eligible for the new license a grocery store may not: (1) hold endorsement to be a wine retailer reseller, sell malt liquor in kegs or containers holding less than 5.5 gallons of liquid, sell beer and cider in growlers, or sell beer, strong beer, or wine for export internationally; or (2) have a restricted license prohibiting the sale of strong beer or fortified wine. The applicant must meet other requirements, including enhanced employee training. Any spirits sold must be purchased from a licensed spirits distributor.

Local governments, the public, churches, schools, and public institutions have the right to object or prevent the license issuance. The LCB may deny a license: (1) for public safety violations by an applicant with another grocery store license, if it would result in an excessive number of locations in the community selling spirits; (2) if it poses an unacceptable risk to the community; or (3) if it exceeds any limits imposed by the Legislature on the number of licenses permitted to be active in the state.

License Issuance Fees. Each limited spirits retail licensee must pay the LCB a license issuance fee equivalent to 17 percent of all spirits sales revenues and a annual license renewal fee of \$166. The license renewal fee must be reviewed and adjusted by the LCB to keep it comparable to other spirits retail licenses. The maximum penalties relating to fines and suspensions are doubled for violations relating to the sale of spirits by limited spirits retail licensees. Licensees who comply with all employee training and education requirements are not subject to the doubling of penalties for a single violation within 12 months.

Mitigation Fees. Each spirits distributor selling spirits to a limited spirits retail licensee must pay a mitigation fee equivalent to 5 percent of the amount paid for the spirits by the limited spirits retail licensee. Each distiller or craft distiller selling spirits to a limited spirits retail licensee must also pay the 5 percent mitigation fee.

A limited spirits retail licensee must pay a mitigation fee equivalent to 5 percent of all spirits sales revenues, on resales of spirits the licensee has purchased, when no other distributor license fee has been paid.

Disbursement. Each year the LCB must determine the total amount of mitigation fees paid during the preceding year and retain the first \$300,000 for general enforcement purposes. The remainder will be disbursed in the following order:

- \$1,500,000 to school-based or community-based prevention and treatment programs designated by the LCB;
- \$2,000,000 to a repayment fund, described below; and
- \$500,000 to the Washington Association of Sheriffs and Police Chiefs or LCB designated law enforcement group, for use in enforcement activities related to alcohol sales or consumption.

Any remaining fees are distributed:

- 40 percent to school-based or community-based prevention and treatment programs designated by the LCB;
- 50 percent to the repayment fund to be disbursed with the repayment fund monies; and
- 10 percent to the Washington Association of Sheriffs and Police Chiefs, or such other law enforcement group or agency the LCB may designate, for use in enforcement activities related to alcohol sales or consumption.

Repayment Fund. LCB will adopt rules governing disbursements from the repayment fund. Any person who purchased former state liquor store operating rights at auction is eligible for reimbursement from the repayment fund of the full amount paid at the auction, together with certain interest, provided the person:

- acquired a spirits retail license to exercise the operating rights purchased at auction;
- operated a spirits retail store pursuant to the license as of December 31, 2019;
- submits within 60 days after the effective date, written notice of intent to relinquish the spirits retail license; and
- applies for reimbursement, on an LCB form within 60 days after the application form is available.

LCB will create a reimbursement application form within 90 days, establish rules for application procedures, appeals, eligibility, and reimbursement amounts. LCB's determination is binding upon an applicant unless challenged within 45 days.

When the LCB determines there is enough money in the repayment fund, it will cease moving monies into the fund and will promptly reimburse each eligible applicant in the amount approved. Any person electing to relinquish their license must do so upon full payment by the LCB. The person may continue operating under the license until such time as they receive reimbursement.

Annual Transfers. By January 31st of each year following the cessation of transfers to the repayment fund and reimbursement to all eligible applicants, the LCB will:

- disburse 70 percent of the mitigation fees to the LCB designated school-based or community-based prevention and treatment programs; and

- retain 30 percent for enforcement of liquor and cannabis laws.

**Appropriation:** None.

**Fiscal Note:** Requested on January 9, 2020.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The intent of this bill is to deal with the arbitrary line where most grocery stores must be of 10,000 square feet in order to sell spirits. We believe a more rational approach is built on safety concerns, limits on the ability to apply for the license, and establishing a mitigation fee. The 5 percent mitigation fee will be used for additional LCB and law enforcement activities, to fund prevention and treatment programs, and to fund the repurchase of licenses for the former state liquor stores that were sold at auction. The 10,000 square foot requirement was written by Costco in the 2012 initiative and is a unique standard nationwide. We believe about 40 percent of the eligible licensees would apply for the new license, so it would not be pervasive throughout the state. This is a logical step to assist small convenience store businesses and contains many safeguards to keep spirits out of the hands of children. The small stores have been hit hard by high taxes, the new minimum wage, and a slew of regulations.

CON: The owners of the 167 former state liquor stores paid \$60 million for that property right, and this bill essentially gives that value away. These owners have invested eight years of capital in their businesses. We have lost nine out of ten of the former stores, but the remaining stores will lose any remaining value if this bill passes. The purchasers of the state stores did not realize that 80 to 90 percent of their business would be gone to the big distributors. It is crazy to think that these small mini-marts are going to protect the public and keep spirits out of the hands of kids. Substance abuse prevention are opposed to the bill for some of the reasons stated, but we are not opposed to further discussions with the stakeholders and the prime sponsor. There are positive features in the bill and we appreciate the efforts of the proponents to narrow the effect of the bill and appreciate the inclusion of a prevention component. We continue to see effort to expand the access to alcohol and do not think that is in the interest of public safety.

OTHER: We project about 3,300 beer and wine retailers would become eligible, and we assume about three quarters would want to participate. We have concerns with the subjective and unworkable criteria assigned to us, including what is in the best interest of the community, what is an excessive number of locations, or what is an acceptable risk. We have technical concerns with how the financing works, as we do not serve a budgetary role. The three-year penalty window should be reduced to a two-year window.

**Persons Testifying:** PRO: Senator Curtis King, Prime Sponsor; Andrea McNeely, Association of Washington Spirits and Wine Distributors; John Klein, Southern Glazers; Sandra Englund, Washington Korean American Grocers Association; Mark Johnson, Washington Retail Association; Catherine Holm, Washington Food Industry and Legal Counsel & Legislative Director; Scott Varner, Jackson Food Stores and Category Manager.

CON: Brad Tower, Washington Liquor Store Association; Darlene Amend, Capco Beverage; Seth Dawson, Washington Association for Substance Abuse Prevention; James McMahan, Washington Association of Sheriffs & Police Chiefs.

OTHER: Chris Thompson, Liquor and Cannabis Board.

**Persons Signed In To Testify But Not Testifying:** No one.