
Commerce & Gaming Committee

HB 2831

Brief Description: Assisting small businesses licensed to sell liquor in Washington state.

Sponsors: Representative Hurst.

Brief Summary of Bill

- Entitles a qualifying former state-owned liquor store or a former contract liquor store to a "business loss fee credit" in the event that it suffers specified financial losses as the result of the payment of the spirits retail license issuance fee.
- Creates a "wine retailer reseller endorsement" that is available to qualifying beer and/or wine specialty shop licensees.
- Authorizes a retailer licensed to sell both wine and spirits for off-premises consumption to use or operate a warehouse facility, where it may accept deliveries and store and distribute wine, spirits, and nonliquor items.
- Prohibits spirits retailers from selling spirits at below the original acquisition cost.
- Prohibits a liquor distributor from engaging in discriminatory practices regarding the selling price offered to any purchaser for resale in the state of Washington.
- Requires the waiver of any penalty imposed on a licensee for failure to pay spirits retail license issuance fees owed prior to July 31, 2015.

Hearing Date: 1/26/16

Staff: Thamas Osborn (786-7129).

Background:

Spirits Retail Licensees.

Businesses licensed by the Liquor and Cannabis Board (LCB) to sell spirits at the retail level are designated as "spirits retail licensees." Such licensees generally fall into two categories: (1) grocery stores and other large retail establishments encompassing at least 10,000 feet of retail

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space; and (2) smaller liquor stores that are either former state-owned liquor stores or former contract liquor stores that sold liquor on behalf of the state pursuant to contracts with the LCB prior to the passage of Initiative Measure No. 1183 in 2011.

Spirits Retail License Issuance Fee.

All spirits retail licensees are required to pay an annual license issuance fee to the LCB. Large spirits retail licensees, with retail space exceeding 10,000 square feet, must pay a license issuance fee equivalent to 17 percent of all spirit sales revenues. Beginning June 30, 2013, former state liquor stores and former contract liquor stores were granted a limited exemption from the payment of the 17 percent license issuance fee for specified types of spirits sales. Specifically, such stores are exempt from payment of the 17 percent fee with respect to spirits sales to those retailers licensed to sell spirits for consumption on the premises (i.e., bars and restaurants).

If a licensee subject to license issuance fee requirements fails to submit its quarterly reports or payment to the LCB, the board may assess a penalty at a rate no higher than 1 percent per month on the balance of unpaid license issuance fees.

Spirits Delivery Locations.

A spirits retail licensee is authorized to accept delivery of spirits shipments either at its licensed premises or at one or more warehouse facilities that have been registered with the LCB.

Distributor Acquisition Costs.

A distributor, or other liquor licensee acting as a distributor, is prohibited from selling spirits at a price below its acquisition cost, unless the item being sold below cost has been in the seller's inventory for at least six months.

Beer and/or Wine Retailer Specialty Shop License.

There is a beer and/or wine specialty shop license that allows the licensee to sell beer and wine at retail for off-premises consumption. Qualifying licensees may obtain a written endorsement from the LCB that expands the license so as to allow the sale of malt liquor in kegs or other containers capable of holding 4 gallons or more of liquid.

Commercial Discrimination by Liquor Manufacturers.

It is unlawful for a manufacturer of liquor to engage in discriminatory practices regarding the selling price offered to any purchaser for resale in the state of Washington. However, price differentials for sales of spirits or wine may be allowed if based upon competitive conditions, costs of servicing a purchaser's account, efficiencies in handling goods, or other bona fide business factors.

Regulatory Fairness Act.

The stated purpose of the Regulatory Fairness Act (RFA) is to "reduce the disproportionate impact of state administrative rules on small businesses." Under various specified circumstances, the RFA requires that a state agency prepare a small business impact statement if a proposed administrative rule will impose more than minor costs on affected businesses. The RFA defines "small business" as any business entity that is owned and operated independently from all other businesses and that has no more than 50 employees.

Summary of Bill:

Business Loss Fee Credit.

A spirits retail licensee that is either a former state-owned liquor store or a former contract liquor store, and which meets the definition of "small business" under the RFA, is entitled to a one time "business loss fee credit" in the event that it suffers specified financial losses as the result of the payment of the spirits retail license issuance fee. The business loss fee credit is subject to the following requirements and conditions:

- To qualify for the credit, the licensee must incur an accumulated net loss of at least \$50,000 during the period from June 1, 2012, to December 31, 2015;
- The credit amount is limited to an amount equal to the portion of the accumulated net loss greater than \$50,000.
- The credit may be applied only towards future spirits license issuance fee payments or previously accrued fee obligations that remain unpaid.

Beer and/or Wine Specialty Shop License: Wine Retailer Reseller Endorsement.

The bill creates a "wine retailer reseller endorsement" that is available to qualifying beer and/or wine specialty shop licensees. A licensee with the endorsement is authorized to sell wine at retail in original containers to other retailers licensed to sell wine for consumption on the premises (i.e., bars and restaurants). However, no single sale may exceed 24 liters, unless the sale is made by a licensee that was formerly a contract liquor store. A sale by a beer and/or wine specialty shop licensee with a reseller endorsement is a retail sale only if not for resale. Accordingly, sales made under the reseller endorsement are not classified as retail sales for taxation purposes. The annual fee for the wine retailer reseller endorsement is \$110 for each store.

A licensee with a wine retailer reseller endorsement is authorized to operate a warehouse facility, where it may accept deliveries and store and distribute wine and other nonliquor items in accordance with the terms of the license. Two or more licensees may jointly own and operate such warehouse facilities.

Warehousing of Wine and Spirits by a Licensed Wine and Spirits Retailer.

A retailer authorized to sell both wine and spirits for off-premises consumption may use or operate a warehouse facility, where it may accept deliveries, store, and distribute wine, spirits, and non-liquor items in accordance with the terms of the license. Two or more licensees may jointly operate such warehouse facilities, provided at least one of the licensees is licensed to sell both wine and spirits.

For purposes of negotiating volume discounts, a group of retailers licensed to sell both wine and spirits for off-premises consumption may accept delivery of wine and spirits at their individual licensed premises, or at any one of the other licensee's premises, or at a warehouse facility registered with the LCB.

Acquisition Cost Restriction for Liquor Retailers.

Spirits retail licensees are prohibited from selling spirits at below their original acquisition cost. And the spirits retail license issuance fee must be included in the calculation of the "acquisition cost."

Commercial Discrimination by Liquor Manufacturers or Distributors.

It is unlawful for a liquor distributor to engage in discriminatory practices regarding the selling price offered to any purchaser for resale in the state of Washington. However, price differentials for sales of spirits or wine may be allowed if based upon competitive conditions, costs of servicing a purchaser's account, efficiencies in handling goods, or other bona fide business factors.

It is unlawful for a liquor manufacturer or distributor to engage in discriminatory pricing practices in offering volume discounts to purchasers for resale if the price differential is related to the types of purchases made by the purchaser or the types of licenses held by that purchaser.

Penalties for Violating Spirits Retail License Issuance Fee Requirements.

Any penalty imposed on a licensee for failure to pay license issuance fees owed prior to July 31, 2015, must be waived. For all penalty payments made by a licensee prior to July 31, 2015, the licensee is entitled to a credit towards either any outstanding balance of unpaid license issuance fees or towards future payments of license issuance fees.

Appropriation: None.

Fiscal Note: Requested on January 22, 2016.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.