

# SENATE BILL REPORT

## SB 5049

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As Reported by Senate Committee On:  
Labor, Commerce & Tribal Affairs, February 15, 2021

**Title:** An act relating to taxation of low-proof beverages.

**Brief Description:** Concerning taxation of low-proof beverages.

**Sponsors:** Senators King, Billig, Mullet, Rivers, Schoesler and Wilson, C..

**Brief History:**

**Committee Activity:** Labor, Commerce & Tribal Affairs: 1/27/21, 2/15/21 [DPS-WM, DNP, w/oRec].

**Brief Summary of First Substitute Bill**

- Defines low-proof beverage to mean any beverage that is 16 ounces or less and contains more than 0.5 percent and less than 7 percent alcohol by volume, but does not include wine, malt beverages, or malt liquor.
- Establishes a \$0.99 per gallon tax on the distribution and sale of low-proof beverages.
- Removes the sale of low-proof beverages from the spirits retailer and spirits distributor license issuance fees.
- Provides that low-proof beverages are subject to certain retail sales taxes.

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### SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

**Majority Report:** That Substitute Senate Bill No. 5049 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; King, Ranking Member; Braun, Saldaña and Schoesler.

**Minority Report:** Do not pass.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senators Stanford, Vice Chair, Commerce & Tribal Affairs; Honeyford.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Conway, Vice Chair, Labor; Robinson.

**Staff:** Matt Shepard-Koningsor (786-7627)

**Background:** State law regulates the manufacture, distribution, and retail sale of liquor including spirits, wine, and malt liquor. The Washington State Liquor and Cannabis Board (LCB) oversees issuance of spirits retail licenses and related matters. The Washington State Department of Revenue (DOR) collects taxes related to sales of spirits in the state.

Definitions. Spirits are defined as any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding 24 percent of alcohol by volume. Wine is defined as any alcoholic beverage obtained by fermentation of fruits, such as grapes, berries, or apples, or other agricultural product containing sugar, to which any saccharine substances may have been added before, during, or after fermentation, and containing not more than 24 percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding 24 percent of alcohol by volume and not less than 0.5 percent of alcohol by volume. Malt beverage or malt liquor is defined as any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barely malt or other wholesome grain or cereal in pure water containing not more than 8 percent of alcohol by weight, and not less than 0.5 percent alcohol by volume.

Licenses and Fees. A spirits retail license allows a licensee to:

- sell spirits in original containers for consumption off the licensed premises and to permit holders;
- sell spirits in original containers to licensed retailers for consumption on the premises or for resale at their licensed premises, but may not exceed 24 liters; and
- export spirits.

Each spirits retail licensee must pay a 17 percent spirits retail license issuance fee on all spirits sales. This fee does not apply to craft distilleries selling its own production, and former state store auction buyers and former contract liquor store managers if selling to retailers licensed to sell spirits for consumption on the premises for resale at their licensed premises. Fees are collected by the LCB and deposited into the liquor revolving fund.

A spirits distributor license allows a licensee to sell spirits purchased from certain spirits manufacturers, distillers, or suppliers to spirits retail licensees, other specified licensees, other spirits distributors, and to export the same from the state. Each spirits distributor licensee must pay a statutorily-calculated fee to be deposited into the liquor revolving fund.

Taxes. There are two types of spirits taxes: (1) a spirits sales tax (SST), based on the selling price of spirits in their original package; and (2) a spirits liter tax (SLT), based on the volume of spirits being sold in the original package. The SST is applied in the following manner:

- SST tax rate paid by the general public equals 20.5 percent; and
- SST tax rate paid by on-premises retailers on purchases from distributors, distillers, and so forth equals 13.7 percent.

The SLT is applied in the following manner:

- SLT tax rate paid by the general public equals \$3.7708 per liter; and
- SLT tax rate paid by on-premises retailers on purchases from distributors, distillers, and so forth equals \$2.4408 per liter.

Business and occupation taxes also apply to the manufacture and sale of spirits. The general retail sales tax of 6.5 percent does not apply to sales of spirits in the original package.

**Summary of Bill (First Substitute):** Definitions. Low-proof beverage means any beverage that is 16 ounces or less and contains more than 0.5 percent alcohol by volume and less than 7 percent alcohol by volume, but does not include wine, malt beverages, or malt liquor.

Licenses and Fees. The sale of low-proof beverages are exempt from the 17 percent spirits retailer license issuance fees and the spirits distributor license issuance fees.

Taxes. A \$0.99 tax per gallon is established on the distribution and sale of low-proof beverages. This tax must be paid by distilleries and craft distilleries self-distributing low-proof beverages to retailers and when selling directly to consumers, spirits distributors on sales of low-proof beverages to spirits retailers, and holders of spirits out-of-state certificates with a direct shipment endorsement that self-distribute under the terms of the license. Low-proof beverages sold by on-premises licensees are subject to the general retail sales tax of 6.5 percent and any applicable local sales tax.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE & TRIBAL AFFAIRS COMMITTEE (First Substitute):**

- Requires spirits distributors to pay the \$0.99 low-proof beverage tax on sales to spirits retailers.
- Requires spirits out-of-state certificates holders with a direct shipment endorsement that self-distribute to pay the \$0.99 low-proof beverage tax on sales to spirits retailers.
- Exempts the sale of low-proof beverages from the spirits distributor license issuance fee.
- Provides that low-proof beverages are subject to certain retail sales taxes.

**Appropriation:** None.

**Fiscal Note:** Available.

**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 on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Spirits taxes in the state of Washington are the highest in the nation and they create real problems for the development of the industry. This tax level creates the opportunity for distillers in Washington to develop new products and product lines. Currently, canned cocktails are taxed the same as spirits. This tax would raise revenue for the state and increase jobs. The bill would encourage economic growth from industries that previously avoided the area due to high taxation. This is a bipartisan bill and this is a way to bring the taxation level of low-proof beverages to a reasonable level. The vast majority of products in this category are not being sold in the state currently and a tax preference would assist. These beverages are a popular choice because of low alcohol and in some cases, low calorie. Canned cocktails do not have parity with wine and beer-based peers and these beverages are often the difference between the business staying open or not.

CON: Beer distributors do not think the tax rate needs to be lowered on canned cocktails to make them successful in the marketplace. Sales of canned cocktails are up 240 percent over last year. Reports indicate consumers purchase canned cocktails based on convenience not price. The margins on canned cocktails are adjustable to make the product competitive in the marketplace. This tax cut could reduce revenues rather than increase them because consumers will shift from purchasing spirits to canned cocktails. Why make a change when these products are doing so well in the marketplace?

OTHER: Would like to make this tax more competitive with other states and bring that revenue into Washington. As written, the bill benefits large companies over small. This bill would allow smaller in-state craft distilleries to survive. There are technical revisions needed. The way the bill is drafted does not effectively accomplish the bill's objectives.

**Persons Testifying:** PRO: Senator Curtis King, Prime Sponsor; Vicki Christophersen, Association of Washington Spirits and Wine Distributors; Bonnie Erickson; Terry Nichols, Dry Fly Distilling, Inc.; Charlie Brown, Diageo.

CON: Scott Hazlegrove, Washington Beer and Wine Distributors Association.

OTHER: Jim Hedrick, Washington Distillers Guild; Chris Thompson, Liquor and Cannabis Board.

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