

# HOUSE BILL REPORT

## HB 2562

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**As Passed House:**  
February 8, 2006

**Title:** An act relating to flavored malt beverage.

**Brief Description:** Regulating flavored malt beverage.

**Sponsors:** By Representatives Wood, Conway, Fromhold and Condotta; by request of Liquor Control Board.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 1/18/06, 1/23/06 [DP].

**Floor Activity:**

Passed House: 2/8/06, 96-1.

**Brief Summary of Bill**

- Allows "flavored malt beverages" to be marketed, distributed, sold, and taxed as beer, not as spirits.
- Defines "flavored malt beverage" in a manner similar to a new federal standard.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Holmquist, Hudgins, Kenney and McCoy.

**Staff:** Elisabeth Frost (786-5793) and Jill Reinmuth (786-7134).

**Background:**

Many flavored malt beverages (FMBs) contain added flavoring derived from distilled spirits. According to the Liquor Control Board, FMBs have been on the market since 1996. According to beverage industry reports from 2001 to 2003, flavored malt beverages account for 2.5 percent to 2.7 percent of the national beer market.

Federal Standards: The former Alcohol, Tobacco and Firearms Bureau (ATFB), now the Alcohol and Tobacco Tax and Trade Bureau (TTB), is the federal agency that regulates alcohol manufacturers. Beer and spirits are subject to different taxes, and breweries are

limited as to the types of products they may produce; specifically, breweries may generally only produce beer and malt beverage products.

In 1996 the ATF issued a ruling that acknowledged that some FMBs contain significant amounts of distilled spirits, and stated that these and similar beverages could continue to be produced and marketed as beer products. At the time, the agency stated that it would pursue additional regulation of FMBs in the future.

In January 2005 the TTB adopted a federal standard that limits the percentage of flavorings containing alcohol that a malt beverage may contain in order for the beverage to be considered a malt beverage, as opposed to a spirit. According to the TTB, this standard was adopted in part at the request of state authorities concerned about varying state standards.

The new TTB standard requires that FMBs fall into one of the following two categories in order to continue to be taxed and treated as a beer or brewed beverage product:

- malt beverages that contain no more than 6 percent alcohol by volume: may derive no more than 49 percent of their alcohol content from flavorings and other non-beverage ingredients; or
- malt beverages that contain more than 6 percent alcohol by volume: not more than 1.5 percent of the volume of the finished product may consist of alcohol derived from flavors and other non-beverage ingredients containing alcohol.

States are not required to follow the TTB standard, and may take a different view concerning the classification and taxation of FMBs under state law.

State Law: Current law defines "spirits" as any beverage which contains alcohol obtained by distillation. Under this definition, some FMBs are "spirits," not beer.

State law regulates and taxes beer and spirits differently:

#### Beer

- Beer may be sold for off-premises consumption at grocery stores, convenience stores, and beer and wine specialty shops.
- Beer brewers and wholesalers are subject to an excise tax, which currently equals \$8.08 per 31 gallon barrel, with a lower rate imposed on sales of less than 60,000 barrels. Beer is also subject to local sales tax.
- In FY 2005, the state revenue from the beer excise tax was \$29,085,900.

#### Spirits

- Spirits may be sold for off-premises consumption only through liquor stores.
- All spirits sold are subject to a \$2.44 per liter tax plus a sales tax of 20.5 percent for sales to consumers or 13.7 percent for sales to restaurant licensees.
- In FY 2005, the state revenue from the liquor liter tax was \$77,124,000. Revenue from the state liquor sales tax was \$74,102,000.

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**Summary of Bill:**

State law is amended to incorporate definitions similar to the standard adopted by the Alcohol and Tobacco Tax and Trade Bureau.

The definition of "beer" includes a "flavored malt beverage" which meets one of the following criteria:

- Contains no more than 6 percent alcohol by volume and derives no more than 49 percent of its alcohol content from distilled spirits contained in flavorings and other non-beverage materials; or
- Contains more than 6 percent alcohol by volume and derives no more than 1.5 percent of the beverage's overall alcohol content from distilled spirits contained in flavorings and other non-beverage materials.

The definition of "spirits" expressly excludes flavored malt beverages.

**Rules Authority:** The bill does not contain provisions addressing the rule-making powers of an agency.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** In this state, if a beverage has any trace of distilled spirits it is considered a spirit and sold in state liquor stores. There has been a controversy about whether or not these products include actual spirits or just flavorings of spirits. These products have been sold in state grocery and convenience stores for the last ten years. Once this state and other states became aware that these products did in fact contain spirits, then they were waiting for the federal government to issue regulations. The bill brings the state in conformity with the recently promulgated federal regulations. This bill would allow beverages that have less than 6 percent alcohol content with the majority of the content being beer to be taxed and sold as beer. If the majority of the content is spirit, then the beverage will be taxed and sold in state liquor stores.

This bill maintains the status quo. It does not introduce new products or allow new products. The bill just allows these kinds of products (e.g. Mike's Hard Lemonade) to continue to be sold in grocery and convenience stores as they have been.

**Testimony Against:** None.

**Persons Testifying:** Rick Garza, Liquor Control Board; and Phil Wayt, Washington Beer and Wine Wholesalers Association

**Persons Signed In To Testify But Not Testifying:** None.