
Ways & Means Committee

HB 2846

Brief Description: Concerning contract liquor stores.

Sponsors: Representatives Alexander, Dammeier, Haler, Rodne, Angel, Schmick and Ross.

Brief Summary of Bill

- Directs the closure of 25 state liquor stores between July 1 and December 1, 2011, and provides for the Liquor Control Board (Board) to locate a contract liquor store in the area served by the closing state liquor store.
- Allows a contract liquor store manager to hold a grocery store liquor license if the grocery store is headquartered in Washington.
- Creates a Task Force on the Contracting Out of Liquor to assist the Board in determining which stores to close and the criteria for awarding contract liquor store agreements.
- Directs the Joint Legislative Audit and Review Committee to study the impacts of further contracting out the retail sale of liquor and include an analysis of allowing all qualified grocery stores based in Washington to become contract liquor stores.
- Requires wine purchased by the Board to be delivered to state and contract liquor stores by licensed wine distributors.
- Requires at least 90 percent of the shelf space in a state liquor store and contract liquor store, other than a grocery store or specialty shop, to be devoted to the sale of spirits.

Hearing Date: 2/17/10

Staff: Joan Elgee (786-7106).

Background:

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.

Washington is one of 18 liquor "control" states, in which the state has a monopoly over the distribution and sale of specified types of liquor. In Washington, spirits may be sold only in state liquor stores and contract liquor stores. The Liquor Control Board (Board) determines the localities where state liquor stores are established and the number of stores within each locality. The Board must also appoint contract liquor stores in cities and towns and other communities where no state liquor store is located. There are approximately 160 state liquor stores and 155 contract liquor stores in the state.

For contract liquor stores, the Board enters contracts with contract store managers (managers) which govern such matters as the duties and responsibilities of the managers, delivery of liquor to stores, hours of operation, and prices at which liquor must be sold. Managers receive commissions which by law are established by the Board after approval by the Director of the Office of Financial Management.

State liquor stores and contract liquor stores may sell wine and beer in addition to spirits. To sell beer, a contract store obtains a beer/wine specialty shop license.

Beer and wine is also sold by various retail licensees of the Board. Grocery stores, for example, may sell beer and wine for off-premises consumption. The distribution and sale of beer and wine to licensees occurs under what is known as the "three tier" system, in which manufacturers are generally separated from retailers by distributors. With some exceptions, a winery, for example, must use a licensed distributor to deliver its wine to a retailer such as a grocery store. Distribution of wine and spirits to state liquor stores and contract liquor stores does not occur through the traditional three tier system but is performed by trucking companies under contract with the Board. Distribution of beer to contract stores, however, is by licensed distributors.

In December 2009, the State Auditor's Office issued a report, "Opportunities for Washington", which analyzed six alternatives to the current model of wholesale and retail liquor sales, including converting state liquor stores to contract liquor stores.

Summary of Bill:

Intent. Intent is stated that further contracting out of the state's retail liquor sales will result in a system that is more efficient than public sector retailing and that changing the distribution and sale of wine in the state and contract liquor stores will result in a system that is more equitable to private retailers. Therefore, the Legislature intends to contract out a portion of state retail liquor store operations and monitor the impact of the store closures. The Legislature also intends to require the state and contract liquor stores to focus on the sale of spirits and follow the same rules as private retailers for the distribution of wine.

Closure of state liquor stores. The Liquor Control Board (Board) must close 25 state liquor stores between July 1, 2011, and December 1, 2011. A state liquor store may not be closed unless a contract liquor store exists in the area served or unless the Board determines reasonable alternative access is available to persons who previously purchased products at the closing store.

Contract liquor stores. The Board may locate one contract liquor store within the area served by a closing liquor store. The total inventory granted to a contract liquor store is not more than the total volume that would have been granted to the closing state liquor store. The Board may add,

relocate, or close contract liquor stores and when making such decisions, the Board must use the same decision process and criteria as used for state liquor stores.

Contract store agreements.

Award of contract store agreements. The Board must advertise the opportunity for a contract store agreement (agreement), which is a contract between the Board and a contract liquor store manager (manager). After the application deadline, a screening committee of Board staff must screen applications and recommend finalists to the Board. In determining locations, the Board must take into account input from local jurisdictions, schools, and churches.

Contract store managers. The Board may adopt rules regarding the criteria for awarding agreements to managers. Areas the Board must evaluate in selecting managers are set forth. These include experience selling liquor in state liquor stores, retail business experience, customer service skills, the applicant's criminal conviction record, and the applicant's financial ability to purchase or lease and equip the contact liquor store. A manager may also hold or apply for a grocery store license if the grocery store is headquartered in Washington. Prohibitions include that an applicant may not have a financial interest in a distillery whose products are sold in Washington.

Fee. The fee for an agreement is 2 percent of the average gross annual sales for the last five years at the state liquor store serving the area. If a contract liquor store was in operation in the area, the fee for purchasing a contract liquor store is 2 percent of the average gross annual sales for the last five years at the contract liquor store.

Termination of agreements. The Board may adopt rules regarding termination of agreements. A manager may terminate an agreement with 90 days' notice. The Board may terminate an agreement for good cause, which includes insolvency of the manager, violation of law, excessive shortages, and if the manager becomes physically or mentally impaired and unable to perform the manager's duties. Upon the death or incapacity of a manager, the Board may appoint a qualified family member or assignee to manage the store.

Inventory and sale. The Board must adopt rules on shipping and inventory. The Board must ship on a prepaid basis and the Board owns the liquor until it is sold. The Board must determine the types of liquor listed for sale statewide and must work with managers to ensure a choice of products for the community. Managers must request liquor items for sale each week and sell liquor at prices set by the Board. The Board must assign licensees' (e.g.; restaurants) accounts to a state liquor store or a contract liquor store and contract liquor stores must honor any discounts received by licensees. Additional manager duties are set forth, including a requirement to display liquor attractively, comply with advertising restrictions, and maintain sufficient hours of operation as determined by the Board. Managers may hold or apply for a beer and/or wine specialty shop license to sell beer.

Compensation. Managers must be paid a base rate and a tiered commission based on sales. The Board may increase commissions to attract or maintain managers and every two years, the Board must review the compensation formula. Adjustments in commissions must be approved by the Board and the Director of the Office of Financial Management.

Prohibitions. Restrictions on the sale of liquor by managers are set forth. These include a prohibition on selling or offering for sale any liquor other than from the original package or container, permitting the consumption of liquor on the premises, and selling liquor except for cash or by credit or debit cards.

Insurance. The Board is liable for loss of Board-owned property due to burglary, robbery, fire, or act of nature if the manager has implemented reasonable precautions. Otherwise, the Board assumes no liability for personal injury or other damages. The manager is responsible for insurance for the manager's portion of legal liability. A manager is an independent contractor. Claims or damages arising out of the managers's operation of a non-liquor sales business or sale of non-liquor goods are the manager's responsibility and the manager must indemnify the Board.

General. The Board must determine the procedural guidelines for contract liquor stores, including inventory, performance standards, operations, and required reporting to the Board. The Board has authority to:

- regulate the equipment and management of contract liquor stores;
- prescribe the duties and managers and their employees;
- govern the purchase of liquor by the state and the furnishing of liquor to contract liquor stores;
- determine the classes, varieties, and brands of liquor to be sold at contract liquor stores;
- determine the hours of sale;
- provide for price lists;
- provide for the Board's payment of freight charges;
- prescribe qualifications for receiving a contract liquor store agreement, including a criminal history record information check; and
- set fees for which no fee is prescribed.

A manager who violates the law, makes a false statement in submitting an application for an agreement or commits other specified acts is subject to disciplinary action by the Board, including suspension or revocation of the agreement. The action of the Board relating to revoking, suspending, or modifying a contract liquor store agreement is an adjudicative proceeding under the Administrative Procedure Act.

The provisions do not require the closing of any contract store under contract before January 1, 2010, and these stores do not pay a fee to continue to operate their stores.

Managers must receive Board approval to move a store.

Distribution of wine. Wine purchased by the Board must be delivered by a licensed wine distributor to a state liquor store or contract liquor store.

Shelf space. At least 90 percent of the shelf space in a state liquor store and at least 90 percent of the shelf space dedicated to the sale of liquor in a contract liquor store, other than a grocery store or a specialty shop, must be devoted to the sale of spirits.

Task Force. A Task Force (Task Force) on the Contracting out of Liquor is created to assist the Board in determining which state liquor stores to close and the criteria for awarding agreements. The Task Force is composed of:

- four legislators, one from each caucus of the House and Senate;
- a representative of city governments and a representative of county governments;
- a Liquor Control Board (Board) representative;
- a representative of the Governor's Council on Substance Abuse.

The Task Force expires July 1, 2013.

Joint Legislative Audit and Review Committee (JLARC) study. The JLARC is directed to study the impacts of further contracting out retail liquor sales, including:

- underage access to alcohol in state liquor stores and contract liquor stores;
- alcohol consumption rates;
- state revenue;
- traffic accidents and fatalities related to alcohol use; and
- crimes directly related to alcohol use.

The study must also include an analysis of allowing all qualified Washington-based grocery store licensees to become contract liquor stores. Findings must be delivered to the Legislature by December 31, 2012.

Appropriation: None.

Fiscal Note: Requested on February 9, 2010.

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