Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Government Accountability & Oversight Committee

HB 2019

Brief Description: Concerning the sales and distribution of spirits by distributors, restaurants, former contract liquor stores, and former state store auction buyers.

Sponsors: Representatives Tharinger, Haler, Hunt, Pollet, Morrell, Goodman, Sells, Appleton, Green, McCoy and Moscoso.

Brief Summary of Bill

- Provides that the 17 percent license issuance fee does not apply to spirits sales to bars and restaurants from former contract liquor stores and former state liquor stores bought at auction.
- Makes permanent the requirement that distributors pay to the Liquor Control Board 10 percent of the total revenue from all sprits sales.
- Requires distributors licensed after March 31, 2013, to pay a surcharge of 100 percent of all spirits sales for the first two years of licensure, in addition to the 10 percent requirement.
- Lowers the liter tax on spirits sales to restaurants from \$2.4408 per liter to \$1.22 per liter.
- Allows two or more retail licensees of the same type to use a designated agent to conduct group purchases of wine or spirits.

Hearing Date: 4/2/13

Staff: Trudes Tango (786-7384).

Background:

Initiative 1183 (I-1183), which the voters passed in November 2011, transferred the responsibility for the distribution and retail sale of liquor to the private sector.

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.

Spirits Retail Licensees.
Under I-1183, a spirits retail licensee may sell spirits to consumers for off-premises consumption and sell spirits in original containers to retailers licensed to sell spirits for on-premises consumption (often called "on-premises" or "on-sale" retailers, which are typically bars and restaurants).

To be eligible for a spirits retail license, a retailer's premise generally must meet certain size requirements. However, regardless of the size of the store, the Liquor Control Board (LCB) must issue retail licenses to former contract liquor store managers at their contract locations and to those who purchased the operating rights of former state liquor stores at auction.

The initiative requires each spirits retail licensee (except craft distilleries) to pay to the LCB a license issuance fee equivalent to 17 percent of all spirit sales revenues under the license. The fees are deposited into the Liquor Revolving Fund (Fund). Moneys in the Fund are used for LCB expenses and "excess funds" are distributed to the state general fund and to cities, towns, and counties.

Spirits Distributor Licensees.
The initiative also created a license for spirits distributors to sell spirits purchased from manufacturers, distillers, and suppliers to spirits retailers, special license holders, and other distributors. A spirits distributor must pay a license issuance fee of 10 percent of total revenue in each of the first two years of the distributor's licensure and then 5 percent of total revenue in subsequent years.

By March 31, 2013, all persons holding spirits distributor licenses as of that date must have paid collectively $150 million dollars or more in license issuance fees. If the collective payment is less than $150 million dollars, the LCB must collect from the distributors, by May 31, 2013, the difference between $150 million dollars and the actual receipts of license issuance fees, allocated among the distributors according to their spirits sales made during 2012.

Sprits Taxes.
Separate from any license issuance fees, there are also two types of spirits taxes: a sprits sales tax and a spirits liter tax. The liter tax is based on the volume of spirits being sold in the original package. The per liter tax rate is determined by a complex formula in statute and is different depending on whether the sale is a retail sale to a customer or a sale to restaurants. The total liter tax for spirits sales to restaurants is $2.4408 per liter.

Summary of Bill:

Spirits Retail Licensees.
Beginning on the effective date of the act, the 17 percent license issuance fee does not apply to retail licensees that were contract liquor store managers or former state store auction buyers with respect to spirits sales to retailers licensed to resell spirits for on-premise consumption (bars and restaurants).

The exemption attaches to any successor, by purchase or otherwise, to the spirits retail license, except that it does not attach to any successor that owns, directly or indirectly, any interest in a spirits retail licensee that is not derived directly from a former contract liquor store manager or former state store auction buyer.

Spirits Distributor Licensees.
The requirement that a spirits distributor pay 10 percent of its total revenue from all the licensee's spirits sales is made permanent (as opposed to only applying for the first two years of the distributor being licensed). The requirement that a spirits distributor pay 5 percent of its total revenue from all the licensee's sales in the third and subsequent years of being licensed is removed.

Distributors licensed after March 31, 2013, must pay 10 percent of its total revenue from all the licensee's spirits sales, plus a surcharge equal to 100 percent of the total revenue from all the licensee's spirits sales. The surcharge expires two years from the date the licensee received its distributor's license.

Spirits Taxes.
The tax for spirits sold in its original package by a spirits distributor or other licensee acting as a distributor to a restaurant is reduced. The total liter tax to restaurants would be $1.22 per liter, as opposed to the current rate of $2.4408 per liter.

Group Purchasing.
Two or more retail licensees of the same type may agree to group purchase wine or spirits from a licensed distributor, distiller, rectifier, importer, or certificate of approval holder. The purchasing group must use a designated agent to conduct its purchases using a master purchase order and must submit the name of the designated agent to the LCB.

The designated agent must: (1) have a retail license of the same type as the group purchasers; (2) be operating a retail business under that license; and (3) not act as an agent for more than one purchasing group. Likewise, a purchasing group may not have more than one designated agent to conduct its group purchases.

Each retail licensee of the purchasing group must provide the designated agent with a signed order setting forth the retail licensee's order. Each retail licensee's order must be attached to or made a part of the master order that the designated agent submits to the seller.

Each retail licensee is responsible for full payment of its own order and is responsible for accounting for any of its own product loss that might occur. If a retail licensee member of the purchasing group is unable or unwilling to tender payment in full for its order, the other members of the group are responsible for the shortage in payment, in proportion to their participation in the order, unless the seller agrees to terminate the entire transaction.

Wine or spirits purchased by the purchasing group must be delivered to and stored in a single warehouse facility or single licensed premises owned and operated by one of the retail licensee members of the group. Alternatively, the purchasing group may arrange for a common carrier approved for such purpose by the LCB to pick up the wine or spirits at the seller's premises.

Payment in full for the entire group purchase must be tendered to the seller by the designated agent at or before the time of delivery. If the group elects to arrange for pickup of the product at the seller's premises, delivery is deemed to occur at the time of pickup and payment in full for the order must be tendered to the seller at or before such time. The purchasing group is responsible for all costs of pickup and subsequent delivery.

Appropriation: None.

Fiscal Note: Requested on March 29, 2013.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 3 (relating to the spirits liter tax for restaurant sales), which takes effect January 1, 2014.