HOUSE BILL REPORT
ESHB 2155

As Passed House:
February 17, 2014

Title: An act relating to preventing theft of alcoholic spirits from licensed retailers.

Brief Description: Preventing theft of alcoholic spirits from licensed retailers.

Sponsors: House Committee on Government Accountability & Oversight (originally sponsored by Representatives Dahlquist, Hurst, S. Hunt, Morrell and Moscoso).

Brief History:
Committee Activity:
Government Accountability & Oversight: 1/13/14, 2/5/14 [DPS].
Floor Activity:
Passed House: 2/17/14, 93-4.

Brief Summary of Engrossed Substitute Bill

- Authorizes the Liquor Control Board (LCB) and law enforcement agencies to regulate spirits retail licensees for the purpose of reducing the theft of spirits from the premises of such licensees.
- Authorizes the LCB to impose remedial requirements upon spirits retail licensees who are experiencing unacceptable rates of spirits theft from their premises.
- Requires that the LCB follow specified procedures before imposing either remedial measures or sanctions on spirits retail licensees who are experiencing unacceptable theft rates.
- Provides the LCB with a general grant of authority to monitor and regulate the practices of licensees as necessary in order to prevent the theft and illegal trafficking of liquor.

HOUSE COMMITTEE ON GOVERNMENT ACCOUNTABILITY & OVERSIGHT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking

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Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Moscoso, Shea and Vick.

Staff: Thamas Osborn (786-7129).

Background:

Marketing of Spirits Prior to the Passage of Initiative 1183.
Initiative Measure 1183 (I-1183), passed by the voters in November 2011, transferred the responsibility for distribution and sale of spirits (i.e., hard liquor) to the private sector. Prior to the passage and implementation of I-1183, the distribution and sale of spirits was handled exclusively by the state through a network of stores that were either state owned or created by contracts with private sector store owners. As of November 2011, there were a total of 330 state and contract liquor stores licensed in Washington state.

These state and contract liquor stores were generally quite small in size and had limited inventories of spirits. Furthermore, liquor theft issues were inconsequential due to the size and layout of the businesses and the ability of the Liquor Control Board (LCB) to closely monitor their operations.

Marketing of Spirits Following the Passage of Initiative 1183.
The passage of I-1183 resulted in dramatic changes to both the liquor industry itself and the marketing of spirits to the public. The number and physical size of licensed spirits retailers increased substantially, as did the total volume of spirits being offered for sale to, and purchased by, the public. While spirits were previously sold through a relatively small number of local retail shops of very modest size, the passage of the initiative created a spirits market dominated by large numbers of retail stores with square footage of at least 10,000 square feet of fully enclosed space. Since the implementation of I-1183 in 2012, the LCB has licensed 1,150 of these large retail spirits stores, as well as 264 smaller stores that were formally state-owned or licensed under contract. Accordingly, whereas in 2011 this state had a total of approximately 330 spirits retailers operating as small businesses, it now has a total of approximately 1,414 licensed spirits retailers whose numbers are dominated by large businesses, primarily grocery stores.

Following the privatization and concomitant expansion of the retail spirits market from 2011 through the present, considerable, albeit anecdotal, evidence emerged suggesting that such privatization has resulted in notable increases in spirits thefts from retailers, in conjunction with increases in the rates of unlawful drinking and alcohol possession among underage persons.

Summary of Engrossed Substitute Bill:

The LCB and law enforcement agencies are explicitly authorized to regulate spirits retail licensees (licensees) for the purpose of reducing the theft of spirits from the premises of such licensees.

Law enforcement agencies ("agencies" or "agency") are granted discretionary authority to make initial contact and consult with a licensee if the agency obtains information indicating that the licensee is experiencing an unacceptable rate of spirits theft. If the agency voluntarily opts to initiate and participate in this investigative and consultative process, the agency must complete this process as required under the Act before it notifies the LCB of the alleged theft problem. The LCB may not become involved in the investigative process until such time as the agency has had an opportunity to consult with the licensee and endeavor to resolve the theft issue.

"Unacceptable rate of spirits theft" is defined as two or more thefts of spirits from a licensee within a six-month period and that result in a minor unlawfully using or gaining possession of spirits, or that involves, or results in, adults unlawfully providing spirits to minors, and where such thefts result in an incident report being generated by a law enforcement agency..

The regulatory authority granted to the LCB allows it to impose one or more of the following remedial requirements upon licensees who are experiencing unacceptable rates of spirits theft:

- participation in consultations with the LCB and the pertinent law enforcement agencies;
- implementation of recordkeeping systems designed to reveal and track spirits theft issues;
- structural modification or relocation of areas where spirits are displayed or stored;
- installation of adequate store security systems; and
- employment of sufficient numbers of trained staff to adequately monitor theft prone areas.

The LCB may not impose these theft reduction measures upon a licensee unless specified procedural requirements are met. These requirements include the following:

1. Following a complaint by a law enforcement agency to the LCB that a licensee is experiencing an unacceptable rate of spirits theft, the LCB must notify the licensee of the alleged theft problem.
2. The LCB may demand that the licensee participate in a theft reduction consultation process involving the licensee, the LCB, and the pertinent law enforcement agency.
3. During the consultation process, the LCB and/or the law enforcement agency must provide the licensee with any evidence or information pertinent to the theft allegations being made by the law enforcement agency.
4. The consultation process must provide the licensee with a reasonable opportunity to respond to the theft allegations and to present evidence.
5. If, at the conclusion of the consultation process, the LCB finds that the licensee has an unacceptably high rate of spirits theft, then the LCB may implement a "remedial action plan" outlining the remedial measures that must be taken by the licensee.
6. In designing the remedial action plan, the LCB must strive to obtain the voluntary agreement of the licensee regarding the elements of the plan. However, if the licensee is uncooperative, the LCB is authorized to develop and enforce the plan.
7. Following the implementation of the plan, the LCB must schedule one or more follow-up consultations with the licensee in order to monitor the licensees performance. After such follow-up consultations, the LCB may revise the plan as necessary.

8. If the LCB finds the licensee to be non-compliant with the plan, it may either demand that the licensee take additional remedial action or, if the LCB finds the licensee's noncompliance to be willful, it may suspend the licensee's retail spirits license.
9. Consistent noncompliance with the remedial action plan for a period of a least nine months can result in the either license suspension or revocation.

The LCB is granted the rule-making authority necessary to implement and enforce the provisions of the Act.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Since the passage of I-1183, spirits theft has become a very large problem in this state, especially with respect to the large retailers such as grocery stores. Law enforcement agencies have become aware of greatly increasing theft rates. The big stores present the biggest problems due to understaffing and a lack of staff training. Night shifts are particularly troublesome because there are simply too few employees to keep an a eye on the doors and liquor display areas. Also, the big retailers have significant problems with organized theft rings who come in at night and steal large quantities of spirits from storage areas. Retailers should be required to disclose their liquor loss rates. Cities need more tax money to deal with this problem insofar as law enforcement resources are currently inadequate to deal with these spirits theft issues. However, the bill needs some refinement, especially regarding the definition of "unacceptable loss rate." The LCB has no means of determining loss rates or coming up with a workable definition. The LCB needs a better, more precise triggering mechanism for determining when it should intervene.

(With concerns) Although there are certainly big problems with spirits theft, the bill is premature since currently there is a lack of reliable information regarding the theft problem. The issue needs a formal legislative study in order to come up with a list of best practices that retailers could voluntarily implement. Also, there is good reason to question whether the LCB currently has the resources necessary to implement the requirements of the bill. Some are concerned that the magnitude of the spirits theft problem is much bigger than some might think and that the bill does not go far enough to effectively deal with current spirits theft issues. Walla Walla and other cities have experienced massive increases in spirits theft since the passage of I-1183. It has become very easy to steal spirits from the large stores and this has led to large, organized theft rings that steal spirits in quantity. Current law makes it certain that such thefts will increase dramatically which, in turn, will have a very negative impact on alcohol abuse by young people. Retailers are not sharing theft information. They should be made responsible for preventing theft and properly securing their liquor.

A bill such as this should not be considered until we have more and better data so as to fully understand the extent and causes of the theft problem. Also, retailers should be given more time to work on their own solutions and make remedial changes on a voluntary basis. Retailers should not be punished. Many retailers are implementing voluntary measures that are working well. Much more funding is needed for law enforcement and the LCB to deal with the spirits theft issue. Law enforcement response to liquor theft is often inadequate. Organized crime is clearly involved and is a major part of the problem. Liquor theft should be treated more harshly than other types of retail theft.

(Opposed) None.

Persons Testifying: (In support) Representative Dahlquist, prime sponsor; Sharon Ness, United Food and Commercial Workers; Don Pierce, Washington Association of Sheriffs and Police Chiefs; and Candice Bock, Association of Washington Cities.

(With concerns) Joe Mizrahi, United Food and Commercial Workers; James Parabello and Justin Nordhorn, Liquor Control Board; Tim Bennett, Walla Walla Police Department and Washington Council of Police and Sheriffs; Majken Ryherd, Teamsters Council; Amy Brackenbury, Washington Food Industry Association; Holly Chisa, Northwest Grocery Association; and Mark Johnson, Washington Retail Association.

Persons Signed In To Testify But Not Testifying: None.