

SENATE BILL REPORT

ESSB 5644

As Passed Senate, June 29, 2013

Title: An act relating to sales for resale by retail licensees of liquor.

Brief Description: Concerning sales for resale by retail licensees of liquor.

Sponsors: Senate Committee on Commerce & Labor (originally sponsored by Senators Schoesler and Murray).

Brief History:

Committee Activity: Commerce & Labor: 2/15/13, 2/22/13 [DPS].

Ways & Means: 2/28/13, 3/01/13 [DPS(CL), DNP, w/oRec].

Second Special Session: Passed Senate: 6/29/13, 41-5.

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 5644 be substituted therefor, and the substitute bill do pass.

Signed by Senators Holmquist Newbry, Chair; Braun, Vice Chair; Conway, Ranking Member; Hewitt, Keiser and King.

Staff: Edith Rice (786-7444)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5644 as recommended by Committee on Commerce & Labor be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Nelson, Assistant Ranking Member; Bailey, Braun, Conway, Fraser, Hatfield, Keiser, Kohl-Welles, Murray, Parlette, Ranker, Rivers, Schoesler and Tom.

Minority Report: Do not pass.

Signed by Senators Hargrove, Ranking Member; Padden.

Minority Report: That it be referred without recommendation.

Signed by Senators Becker, Dammeier and Hewitt.

Staff: Dean Carlson (786-7305)

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.

Background: Single Sale. When I-1183 was approved by the voters in November 2011, the sale and distribution of spirits became privatized. A spirits retail licensee can sell spirits to retailers licensed to sell spirits for on-premises consumption such as bars or restaurants. The initiative states that for sales to retailers licensed to sell spirits for on-premises consumption, no single sale may exceed 24 liters, unless it is a sale by a former contract liquor store.

The Liquor Control Board (LCB) adopted regulations that limited the single sale to one per day, for sales to bars or restaurants – retailers licensed to sell spirits for on-premises consumption. Since the initiative already limited single sales to 24 liters, this limited a retail licensee, to sales of 24 liters per day to bars and restaurants. The same limitation applies to grocery store licensees authorized to sell wine to bars and restaurants.

Spirit Sales Revenues Under the License. I-1183 requires each spirits retail licensee to pay a license issuance fee of 17 percent of all spirits sales revenues under the license to LCB for deposit into the liquor revolving fund. This is in addition to other liquor liter and sales taxes.

Article II, section 41 of the Washington State Constitution provides that an initiative passed by the people may not be amended within the first two years following enactment, except by a two-thirds vote of both the House of Representatives and the Senate.

Summary of Engrossed Substitute Bill: Spirits distributors are required to pay the distributor licensing fee of 10 percent for 3 additional months (for a total of 27 months).

The license issuance fee of 17 percent does not apply to a licensee or their successor that was a contract liquor store manager, for sales of spirits to bars and restaurants. Nor does the 17 percent license issuance fee apply to a licensee or their successor that was a former state store auction buyer, for sales of spirits to bars and restaurants. These provisions take effect immediately.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony (Commerce & Labor): PRO: Language in this bill restores the original intent of the people. LCB missed the mark and rules they developed negatively affect operators. I-1183 was intended to create competition. Our profit margins are too small. The contract liquor store market may disappear. Because LCB changed its interpretation, we lost 16 out of 18 restaurant accounts. Stores have gone out of business. This levels the playing field and will restore the original intent of the initiative. The rule regarding the 24-liter limit is unenforceable. This bill has a limited scope and benefits bars and restaurants. This is a step in the right direction.

CON: We oppose removal of the 24-liter limit. We provide ready access to the product. The market will change again when the distributor fee goes down. Big-box stores have a huge

advantage because of the inventory they carry. This alters the law approved by the voters. We would be the only state with retail-to-retail sales. This is fundamentally unfair and benefits the big-box stores. Rules developed were approved by the Attorney General. Even if this bill passed small retailers would still suffer. This bill is not fair to small business owners. The number of spirits retail stores has grown by a factor of five, and this makes it easier to get alcohol.

OTHER: This measure will further our demise. LCB had six months to implement the law and we relied on the clear language of the initiative to develop the rules.

Persons Testifying (Commerce & Labor): PRO: Bruce Beckett, WA Restaurant Assn., Monique Trudnowski, Adriatic Grill; Adam Chumas, Tom Douglas Restaurants; Jim Rowe, Consolidated Restaurants; Holly Chisa, NW Grocery Assn.; Greg Hanon, Costco; David La Claire, Wine World and Spirits; Trent House, Clearview Spirits; Julie Ganas, Leavenworth Spirits; Darren Smith, Tumwater Liquor and Wine; David Cho, Westgate Liquor.

CON: Jim Halstrom, Southern Wine and Spirits; John Guadnola, Ron Main, Assn. of Spirits & Wine Distributors of WA; Tom Kappenman, Joe Daniels, Young's Market Company; Jan Gee WA Food Industry; Tammy Bailey Bailey's IGA; Bob Broderick NW Grocers; Michael Gonzales, Joint Council of Teamsters #28; Michael Transue, WA Beer and Wine Distributors Assn.; Seth Dawson, WA Assn. for Substance Abuse and Violence Prevention.

Other: Jas Sangha, JusLiquor LLC; Rick Garza, LCB.

Staff Summary of Public Testimony on Recommended Substitute (Ways & Means): PRO: We are the innocent bystanders in this and have been left holding the bag. We are reliant on the wholesale business and we were told the 17 percent would not apply. Contract stores are exactly who you want selling the spirits. We were hurt by the reversal of LCB's opinion. The 110 contract stores will likely be out of business by the end of the year without passage of this bill. We support the bill as it is a step forward. The state is collecting \$50 million more than it did. We would like to include all 1500 retail stores in it as well. This constitutes a change to the rules. We have a proposed alternative to address the problems of the restaurants that will generate money.

OTHER: We oppose the retail to retail sales. There is another proposal that makes permanent the 10 percent fee at wholesale. That will shift more costs to the consumer. The grocery stores would like to be a part of this bill. These are sales for resale and should not be charged the 17 percent fee. We were not supporters of I-1183. This partially corrects what we believe is a misinterpretation. We would like to include grocers in this bill.

Persons Testifying (Ways & Means): PRO: Trent House, Clearview Spirits; Ron Main, WA Wine and Spirit Wholesalers Assn.; Jim Halstrom, Southern Wine and Spirits; Joe Daniels, Young's Market, Columbia Distributors; Julia Clark, WA Restaurants Assn.; Jas Sangha, WA Liquor Store Assn.;

OTHER: Holly Chisa, NW Grocery Assn.; David Ducharme, Distilled Spirits Council of the United States; Amy Brackenbury, WA Food Industry Assn.