HOUSE BILL REPORT
E2SHB 1807

As Passed House:
March 10, 2015

Title: An act relating to assisting small businesses licensed to sell spirits in Washington state.

Brief Description: Assisting small businesses licensed to sell spirits in Washington state.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Condotta and Hurst).

Brief History:
Committee Activity:
Commerce & Gaming: 2/9/15, 2/16/15 [DPS];
Appropriations: 2/25/15, 2/27/15 [DP2S(w/o sub COG)].
Floor Activity:
Passed House: 3/10/15, 98-0.

Brief Summary of Engrossed Second Substitute Bill

- Revises and lessens the sanctions that may be imposed upon a spirits retail licensee for failing to timely pay license issuance fees.
- Establishes that, for the purpose of negotiating volume discounts, a group of spirits retail licensees may accept delivery of spirits at their individual licensed premises, or at any one of the individual licensees premises, or at a warehouse facility registered with the Liquor Control Board.

HOUSE COMMITTEE ON COMMERCE & GAMING

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

Staff: Thamas Osborn (786-7129).

HOUSE COMMITTEE ON APPROPRIATIONS

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.

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Gaming. Signed by 31 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Condotta, Dent, Dunshee, Fagan, Haler, Hansen, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Tharinger, Van Werven and Walkinshaw.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Melissa Palmer (786-7388).

Background:

Spirits Retail Licensees.
Businesses licensed by the Liquor Control Board (LCB) to sell spirits at the retail level are designated as "spirits retail licensees." Such licensees generally fall into two categories: (1) grocery stores and other large retail establishments encompassing at least 10,000 feet of retail space; and (2) smaller liquor stores that are either former state-owned liquor stores or former "contract liquor stores" that sold liquor on behalf of the state pursuant to contracts with the LCB prior to the passage of Initiative Measure No. 1183 in 2011.

License Issuance Fee.
All spirits retail licensees are required to pay an annual license issuance fee to the LCB. Large spirits retail licensees, with retail space exceeding 10,000 square feet, must pay a license issuance fee equivalent to 17 percent of all spirit sales revenues. Beginning on June 30, 2013, former state liquor stores and former contract liquor stores were granted a limited exemption from the payment of the 17 percent license issuance fee for specified types of spirits sales. Specifically, such stores are exempt from payment of the 17 percent fee with respect to spirits sales to those retailers licensed to sell spirits for consumption on the premises (i.e., bars and restaurants).

Spirits Delivery Locations.
A spirits retail licensee is authorized to accept delivery of spirits shipments either at its licensed premises or at one or more warehouse facilities that have been registered with the LCB.

Distributor Acquisition Costs.
A distributor or other liquor licensee acting as a distributor is prohibited from selling spirits at a price below its acquisition cost, unless the item being sold below cost has been in the seller's inventory for at least six months.

Summary of Engrossed Second Substitute Bill:

Sanctions for Failing to Timely Pay the License Issuance Fee.
The LCB cannot assess a monetary penalty exceeding 1 percent of the balance due against a licensee that fails to timely pay the license issuance fee.

The LCB must waive any penalty against a licensee accruing before the effective date of this act as the result of the failure to pay the license issuance fee. All penalty payments made by a licensee prior to the effective date of this act must be credited toward either the outstanding balance or future license fee payments.

During the 24 months following the effective date of this act, an operator of a former contract liquor store or former state liquor store having an outstanding balance of unpaid license issuance fees accrued prior to the effective date of this act cannot be prohibited from either: (1) reopening a closed store; (2) moving a store to a new location; or (3) transferring its licensing rights to a new licensee. Upon the expiration of the 24-month period following the effective date of this act, failure to pay the license issuance fee will be sufficient grounds for the LCB to suspend or revoke the license.

<u>Volume Discounts and Spirits Delivery Locations</u>.
For the purpose of negotiating volume discounts, a group of spirits retail licensees may accept delivery of spirits at their individual licensed premises, or at any one of the individual licensees premises, or at a warehouse facility registered with the Liquor Control Board.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Commerce & Gaming):

(In support) The small liquor stores still need some assistance, and this bill would provide them with additional help in coping with difficult market conditions. Some provisions of the bill have merit, whereas others may be questionable. Many stores are in arrears and need relief from regulatory penalties for late payment of licensing fees. Prohibiting large retailers from selling at prices below "acquisition cost" would prevent unfair competition. Many of the larger stores sell below cost by not including the license issuance fee in the retail markup, and the smaller stores simply don't have that option. Providing the small stores with additional relief from the license issuance fee would be very helpful. The bill provisions allowing the small stores to make group purchases for delivery to a single location would be a great help and enable them to obtain wholesale purchase prices that are more competitive. Allowing group deliveries to a single location would be a big advantage for the small stores. Such group deliveries can result in quantity discounts that will enable more competitive retail prices. Half of the small stores are now at risk of going out of business and this bill would at least give them a chance of survival.

(Opposed) This bill is unfair to the grocery stores because it further increases the licensing fee exemption already enjoyed by only the former state-owned and contract liquor stores. The original exemption was unfair, and this just makes things worse. This bill further tilts the playing field in favor of the small stores and against the large stores. The large retailers do not sell below cost, and representations to the contrary are not true.

Staff Summary of Public Testimony (Appropriations):

(In support) Small liquor stores received a raw deal because the 17 percent discount they expected for restaurants was taken away from them. Many of these businesses got behind on fees and penalties. In the end, about one-half of the businesses closed. Although prior legislative action gave the 17 percent discount back to the small liquor stores, many stores are still failing. This does not change the underlying liquor fees, but waives the penalty on the underlying fees. It allows these stores to make the volume purchases and get a discount. The goal is to give small liquor businesses a fresh start. These changes are just enough to keep them in business.

After privatization, the market changed dramatically. Small liquor stores inherited business structures that did not align with the new market conditions. The penalty is a monthly penalty, and therefore it compounds. By alleviating the penalty interest, more retailers will be able to make payment on the underlying fees. It is unlikely that the full amount of the assessed tax and penalties are actually collectable because businesses close. The sole purpose of this legislation is to help small spirit retailers remain in business. It is a positive change because it will keep stores in business and allow them to continue to pay the liquor fees.

(Opposed) None.

Persons Testifying (Commerce & Gaming): (In support) Representative Condotta, prime sponsor; Brad Tower and David Cho, Washington Liquor Store Association; Jon Martin, Martin Bruni Liquor; and Ron Main, Washington Spirits and Wine Distributors Association.

(Opposed) Holly Chisa, Northwest Grocery Association; and Zack Lindahl, Washington Food Industry.

Persons Testifying (Appropriations): Representative Condotta, prime sponsor; and Brad Tower and David Cho, Washington Liquor Store Association.

Persons Signed In To Testify But Not Testifying (Commerce & Gaming): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.