

# HOUSE BILL REPORT

## E2SSB 5353

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### As Passed House - Amended:

April 14, 2015

**Title:** An act relating to marketing opportunities for spirits produced in Washington by craft and general licensed distilleries.

**Brief Description:** Concerning marketing opportunities for spirits produced in Washington by craft and general licensed distilleries.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senator Angel).

### Brief History:

#### Committee Activity:

Commerce & Gaming: 3/24/15, 3/26/15 [DPA].

#### Floor Activity:

Passed House - Amended: 4/14/15, 94-3.

### Brief Summary of Engrossed Second Substitute Bill (As Amended by House)

- Permits distilleries and craft distilleries to apply for an endorsement to sell spirits by the bottle at approved farmers markets.
- Authorizes the Liquor Control Board to issue up to 12 special permits per year to a distillery to serve and sell spirits of its own production at private events.
- Permits distilleries and craft distilleries to serve samples of spirits of their own production adulterated with nonalcoholic mixers.
- Creates a shipping and delivery permit allowing distilleries and craft distilleries to ship and deliver spirits to customers in Washington.
- Permits liquor retail licensees to sell gift cards.

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## HOUSE COMMITTEE ON COMMERCE & GAMING

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*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:** Do pass as amended. Signed by 9 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Scott, Van De Wege and Vick.

**Staff:** David Rubenstein (786-7153).

**Background:**

Distiller Licenses.

The Liquor Control Board (LCB) issues licenses to distillers and craft distillers. The annual fee for a distillery license is \$2,000, and for a craft distillery the fee is \$100. To qualify as a craft distillery, the distiller must produce no more than 150,000 gallons of spirits, with at least half of the raw materials used in the production grown in Washington. This report uses the term "distillery" to refer to both distilleries and craft distilleries, unless a distinction is required.

Distilleries may sell spirits of their own production for consumption off the premises. Distilleries may also provide samples of spirits of their own production on the distillery premises. Samples must be 0.5 ounces or less, up to a maximum of 2 ounces per day per person.

While a distillery may sell spirits of its own production from the distillery premises and may act as a distributor of its own products, it may not ship or deliver spirits to an individual customer.

Farmers Markets.

Wineries, breweries, and microbreweries may obtain an endorsement from the LCB to sell their products for off-premises consumption at qualifying farmers markets. In order to obtain an endorsement to sell beer or wine at farmers markets, the producer must provide a list every month of the dates, times, and locations of the farmers markets where the beer or wine will be sold.

Farmers markets must also meet certain criteria and receive authorization from the LCB to allow beer or wine sales. In order to obtain authorization, the farmers market must provide a map showing where the beverages will be sold and the name and contact information for the on-site manager.

Special Event Permits.

The LCB issues a variety of special permits for the service and sale of liquor. For example, special permits are issued to allow the service of liquor at international trade fairs and to allow a bed and breakfast facility to serve beer or wine without charge to overnight guests for on-premises consumption. Unless a fee is specified in statute, the fees for permits are generally established by the LCB.

Shipping Spirits.

By LCB rule, licensed spirits retailers may take orders for spirits by mail, telephone, or Internet and may ship spirits to those customers. Only the retailer may take orders; contractors may not do so except to process payments.

The packaging and delivery of spirits are subject to various requirements, including:

- packages must be labeled as containing liquor and may not be delivered to persons under 21 years old and intoxicated people;
- individual bottles must be factory sealed;
- the delivery person must verify the age of the recipient; and
- the spirits must be returned if no person over 21 years old is available to receive the spirits.

### **Summary of Amended Bill:**

#### Distilleries and Craft Distilleries – Sales and Sampling on Premises.

A licensed distiller or craft distiller may serve samples of spirits of its own production adulterated with nonalcoholic mixers, water, and ice.

#### Farmers Markets.

A distillery may apply for an endorsement from the LCB that permits the distillery to sell its own bottled spirits at retail for off-premises consumption at qualifying farmers markets. The distillery must provide a list to the LCB of the dates, times, and locations at which it will be selling its spirits ahead of time.

The distillery cannot act as a distributor at the farmers market and cannot store its product at the farmers market beyond the hours during which the spirits are for sale. Farmers markets must apply to the LCB for authorization to allow a distillery with a qualifying endorsement to sell bottled spirits at retail at the farmers market. The farmers market must provide to the LCB a map of the market showing designated areas where the craft distillery may sell bottled spirits and contact information for on-site market managers.

The distillery farmers market endorsement does not include sampling or tasting privileges.

Before authorizing a distillery to sell spirits at a qualifying farmers market, the LCB must notify the chief executive officer of the city (or county, if the market is located outside city limits) where the farmers market is located. The LCB must also consider the proximity of churches, schools, and public institutions, and may not issue an authorization if the premises are within 500 feet of a public elementary or secondary school.

A qualifying farmers market is defined as an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in Washington directly to the consumer, and must meet certain specific minimum requirements described in the act. This is the same definition of qualifying farmers market as set out in the current laws permitting sale of wine or beer at farmers markets.

#### Special Event Permit.

A licensed distillery may apply to the LCB for a permit to sell and serve spirits at an event not open to the general public. The permit costs \$10 and must be displayed during the event. The LCB may issue no more than 12 permits per year to each distillery.

#### Spirits Delivery and Shipping Permit.

A licensed distillery may deliver or ship spirits of its own production to customers within the state provided: (1) the spirits are not for resale; (2) they are shipped or delivered directly from the distillery's possession; and (3) only the distillery accepts and processes orders or payments. Spirits may be ordered in person, online, or by other similar methods, and transactions are treated as if they were conducted in the distillery's retail location.

Various other requirements apply to the delivery and shipping of spirits:

- To sell over the Internet, the distillery must have notified the LCB or requested the privilege in its application.
- Payments must be fully processed before the buyer receives the spirits.
- Deliveries must be made to a recognized postal address, except as allowed by the LCB.
- The distillery is accountable for deliveries made on its behalf.
- The person delivering the spirits must obtain the recipient's signature and verify that the recipient is at least 21 years old and does not appear intoxicated; otherwise, the spirits must be returned.
- Spirits may only be delivered between 6 a.m. and 2 a.m.
- Spirits for shipment or delivery must be factory sealed.
- The package must display language stating that the package contains liquor and that the recipient must be at least 21 years old and not intoxicated.
- Only the distillery may receive and process orders, but it may contract with a third party to process payments on the distillery's behalf.

The distillery must maintain records that include the name and address of the purchaser, the name and address of the recipient, and the time and date of delivery. When selling over the Internet, the distillery must display its trade name on all pages.

If a permit holder violates the law regarding shipping spirits, the LCB may suspend or revoke the permit.

#### Gift Cards.

Any person licensed to sell beer, wine, or spirits at retail may also sell gift certificates and gift cards for any goods or services, including liquor, sold by the licensee. The gift cards or certificates may be sold by a third-party retailer. Persons under 21 years of age may not use the gift cards to purchase alcohol.

**Appropriation:** None.

**Fiscal Note:** Available.

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

#### **Staff Summary of Public Testimony:**

(In support) There are over 100 craft distilleries in the state, and they all use Washington agricultural products, employ citizens, and drive tourism. This bill will help them generate revenue and compete with large spirits producers like Jack Daniels by providing more

opportunities for consumers to buy Washington spirits. It will also bring distillers closer to parity with beer and wine producers.

The provision allowing adulterated samples will help consumers experience the product more like they would experience it at home. Additionally, because of the addition of water or juice to bring out the flavor of the spirits, the sample size would probably be reduced to a quarter ounce.

The opportunity to ship spirits simply clarifies a provision in Initiative 1183, providing that distillers are treated as retailers or distributors.

A section permitting farmers markets to apply for a tasting endorsement was mistakenly included in the bill, and it is the proponents' intent to remove it and to limit special event permits to 12 per year. Distillers worked with the LCB to reduce the fiscal note, which is now under \$10,000.

(Neutral) The LCB worked with proponents to examine the costs of the special occasion permits. Initial estimates were based on a higher estimate than the proponents' expectations. The LCB agrees that a limitation at 12 per year would be reasonable.

(Opposed) The concern of substance abuse prevention advocates centers mostly on sampling. Pervasive availability of alcoholic samples sets a bad example for youth, making it seem like alcohol is a part of everyday activities like farmers markets. It also dims the bright line between drinking and driving, as people often drive to and from distilleries and farmers markets. Finally, the availability of Internet sales is problematic. While the language requiring age verification and placing responsibility for violations on the producer is helpful, it will not be effective against youth access since most underage minors gain access to liquor socially through older friends and family.

**Persons Testifying:** (In support) Kathryn Hedrick, Washington Distillers Guild; Josh Mayr, Wishkah River Distillery, LLC; John Bourdon, Sandstone Distillery; and Justin Stiefel, Heritage Distillery.

(Neutral) James Paribello, Liquor Control Board.

(Opposed) Seth Dawson, Washington Association for Substance Abuse Prevention.

**Persons Signed In To Testify But Not Testifying:** None.