

SENATE BILL REPORT

SB 5301

As Reported by Senate Committee On:
Commerce & Labor, January 30, 2015
Ways & Means, March 18, 2015

Title: An act relating to spirits retailers when selling for resale.

Brief Description: Concerning spirits retailers when selling for resale.

Sponsors: Senators Braun and Mullet.

Brief History:

Committee Activity: Commerce & Labor: 1/28/15, 1/30/15 [DP-WM, DNP].
Ways & Means: 2/16/15, 2/26/15, 3/18/15 [DPS, DNP].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Baumgartner, Chair; Braun, Vice Chair; King and Warnick.

Minority Report: Do not pass.
Signed by Senators Hasegawa, Ranking Minority Member; Conway and Keiser.

Staff: Richard Rodger (786-7461)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5301 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Brown, O'Ban, Padden, Parlette, Schoesler and Warnick.

Minority Report: Do not pass.
Signed by Senators Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Billig, Conway, Fraser, Hasegawa, Hatfield, Kohl-Welles and Rolfes.

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: Prior to the passage of Initiative 1183 (I-1183), spirits sales were permitted only at state-operated liquor stores. Upon passage of I-1183 in November 2011, the sale and distribution of spirits became privatized. The Liquor Control Board (LCB) was authorized to issue spirits retail sales licenses only for premises comprising at least 10,000 square feet and which met other requirements. Some exceptions to the square footage requirement included licensing an otherwise qualified contract liquor store at its contract location or to the holder of former state liquor store operating rights sold at auction. I-1183 required spirits retail licensees to pay a license issuance fee of 17 percent of all spirits sales revenue under the license to LCB for deposit into the liquor revolving fund. This is in addition to other liquor liter and sales taxes. The initiative permitted a spirits retail licensee to sell spirits to retailers licensed to sell spirits for on-premises consumption, meaning bars and restaurants.

ESSB 5644 which took effect on June 30, 2013, provided that 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.

Summary of Bill (Recommended Substitute): The spirits retail license issuance fee does not apply to a spirits retail licensee for sales to a spirits retailer licensed to sell spirits for consumption on the premises, meaning sales of spirits to bars and restaurants.

A spirits retail licensee may only sell a maximum of 60 liters of spirits per day to a retailer licensed for on-premise consumption. Until July 1, 2017, such sales must be made at the location of the spirits retail licensee and may not be delivered. However, former state stores and contract stores may still deliver sales to restaurants and bars.

The 10 percent distribution license fee must be paid by the spirits distributor or other licensee that is the first to possess spirits in the state.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute): The 10 percent license fee must be paid by the spirits distributor or other licensee that is the first to possess spirits in the state. The two-year restriction on deliveries by retailers selling to restaurants and bars does not apply to former contract stores or state liquor stores.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Commerce & Labor): PRO: LCB imposed the 17 percent retail fee, by rule, on sales by grocery stores for resale, but not on any other supplier. The competitive market place envisioned in the initiative has not been realized. The intent of the bill is to restore the competition to the marketplace and correct an

error that resulted in an unfair competitive advantage. There are many business practices going on that are harmful to our businesses. Many of the business customers who would benefit from this bill are open on nights and weekends when they can't obtain the products they need for their operations. Allowing additional businesses to sell the products without the additional fee would allow us to better serve our partners. Grocery stores cannot obtain a distributor's license because of the laws prohibiting financial interests and ownership across the three-tier system. A more appropriate, narrow allowance is a better approach than amending those laws. We want to provide supplemental services to our customers and create parity within the system. The current grocery sales limit is 24 liters per transaction, where the bill provides a limit of 60 liters per day, preserving the ability to serve our customers.

CON: This bill expands retail to retail sales and mirrors exactly what a distributor does. Retailers who want to do distribution should just go get a distribution license. The statutes allow them to be distributors if they establish a separate entity. This is not a compromise bill as the opponents have not agreed with any of the changes in the bill. The bill also allows deliveries after 2017. The 60 liter per day limit on retail to retail sales is not a limit as only 7 percent of our current customers buy that much per week. The distributors paid \$150 million for the privilege to be distributors; the proponents of this bill would not pay anything. The bill will put hundreds of jobs and millions of dollars of state revenue at risk. A holistic approach to the state's taxes on liquor needs to be undertaken. We are supporters of the three-tier system, but this bill creates a fourth tier.

Persons Testifying (Commerce & Labor): PRO: Amy Brackenbury, WA Food Industry Assn.; Julia Gorton, WA Restaurant Assn.; Holly Chisa, NW Grocery Assn.

CON: Michael Gonzales, Teamsters Local Union 174; John Landry, Southern Wine and Spirits; Ron Main, Assn. of WA Wine and Spirits Distributors; Joe Daniels, Youngs Market Company; David Ducharme, Distilled Spirits Council of the United States.

Persons Signed in to Testify But Not Testifying: No one.

Staff Summary of Public Testimony on Original Bill (Ways & Means): PRO: It doesn't make sense that the tax applies on one sale and not on another. Our sales normally don't have a fee on wholesale sales. There shouldn't be a different fee depending on who you buy from. LCB originally said the 17 percent fee only applies to retail sales and not sales for resale. The state is collecting more now than they did under the previous system.

CON: This would allow retailers to avoid the fee established by their own initiative. It creates a disadvantage to distributors that have played by the rules. Retailers could just get a distributor's license if they want to do this. Sixty liters is not a limit. Most deliveries are not this high. The fiscal note is a snapshot in time. Stores will greatly expand their sales to restaurants with private label spirits. This would give the stores a big tax advantage over distributors. The fiscal note doesn't account for the shifts in business. This would result in job losses to distributors. We paid \$60 million to become a distributor.

OTHER: We can currently deliver to restaurants and so we ask we be exempted on the prohibition of delivery to restaurants.

Persons Testifying (Ways & Means): PRO: Julia Gorton, WA Restaurant Assn.; Amy Brackenbury, WA Food Industry Assn.; Holly Chisa, NW Grocery Assn.

CON: Vicki Christophersen, Ron Main, Assn. of WA Spirits and Wine Distributors; Jim Halstrom, Southern Wine and Spirits Company; Majken Ryherd, Joint Council of Teamsters 28; David Ducharme, Distilled Spirits Council of the U.S.; Joe Daniels, Youngs Market Company.

OTHER: Brad Tower, WA Liquor Store Assn.

Persons Signed in to Testify But Not Testifying: No one.