

SENATE BILL REPORT

SB 5660

As of February 16, 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: Senators Hobbs, Honeyford and Angel.

Brief History:

Committee Activity: Commerce & Labor: 2/13/15.

SENATE COMMITTEE ON COMMERCE & LABOR

Staff: Richard Rodger (786-7461)

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 LCB prior to the passage of Initiative Measure No. 1183 in 2011.

License Issuance Fee. With one exception, all spirits retail licensees must pay an annual license issuance fee to LCB in the amount of 17 percent of all spirit sales revenue. In 2013 the former state liquor stores and former contract liquor stores were granted a limited exemption from the 17 percent fee for spirits sales to 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 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.

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.

Prohibition on Price Discrimination. It is unlawful for a manufacturer of spirits, wine, or malt beverages, or their representative, to discriminate in price in selling to any purchaser for resale. Price differentials are allowed if based on competitive conditions, costs of servicing an account, efficiencies in handling goods, or other bona fide business factors. A pricing practice is discriminatory if the product is not offered to all retailers in the local market on the same terms. The term local market is not defined.

Summary of Bill: License Issuance Fee. Spirits retail licensees that are either former state-owned liquor stores or former contract liquor stores, and which have monthly gross receipts of \$300,000 or less, are subject to a reduced license issuance fee of 7 percent on the first \$50,000 of their monthly retail spirits sales revenues. Such licensees must pay the full 17 percent fee on revenues above the \$50,000 threshold. Licensees with monthly gross receipts of more than \$300,000 must pay the full 17 percent fee on the total amount of their monthly retail spirits sales revenues.

Sanctions for Failing to Timely Pay the License Issuance Fee. LCB cannot assess a monetary penalty exceeding 0.5 percent of the balance due against a licensee that fails to pay the license issuance fee in a timely manner.

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 is sufficient grounds for LCB to suspend or revoke the license.

Distributor Acquisition Costs. Liquor distributors, licensees acting as a distributor, and retailers are prohibited from selling spirits or wine at a price below their acquisition cost, unless the item being sold below cost has been in the seller's inventory for at least six months. Acquisition cost includes applicable license issuance fees.

Spirits Delivery Locations. Spirits retail licensees are authorized to receive spirits deliveries at the licensed premises of another such licensee.

Prohibition on Price Discrimination. A manufacturer's authorized distributor is also prohibited from price discrimination. It is also unlawful to offer price or volume discounts if it discriminates against one group of purchasers over another group based on the type of purchasers or type of license. Price differential may not be based on other bona fide business factors. Local market is defined as a geographic region within the state where a product is available for purchase by a retailer from two or fewer industry members.

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: PRO: This bill is a proactive step necessary to keep small businesses alive. The former state-owned and contract liquor stores cannot survive with the current tax structure. Half of the 360 stores have already gone out of business. The changes to the late penalty provisions will allow some of the closed stores to reopen.

CON: This bill gives another tax advantage to our competitors and creates an anomaly in the payment of the 17 percent license issuance fee. We run high-volume, low-margin businesses and will be harmed by the reinstatement of the uniform pricing policy contained in the bill. LCB is currently in rulemaking concerning discriminatory practices and those provisions in the bill should be handled through the rulemaking process.

Persons Testifying: PRO: Biniam Habte, University Liquor Store; Brad Tower, David Cho, WA Liquor Store Assn.; Tillman Carr, Kristen Clark, citizens.

CON: Julia Gorton, WA Restaurant Assn.; Amy Brackenbury, WA Food Industry Assn.; Holly Chisa, NW Grocery Assn.