

# HOUSE BILL REPORT

## ESSB 5145

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### As Reported by House Committee On: Commerce & Gaming

**Title:** An act relating to equalizing differences between the liquor industries regarding certain sales of alcohol carrying a private label.

**Brief Description:** Equalizing differences between the liquor industries regarding certain sales of alcohol carrying a private label.

**Sponsors:** Senate Committee on Commerce, Labor & Sports (originally sponsored by Senators Lias and Walsh).

#### **Brief History:**

##### **Committee Activity:**

Commerce & Gaming: 3/20/17, 3/21/17 [DP].

#### **Brief Summary of Engrossed Substitute Bill**

- Establishes that, consistent with the tiedhouse laws, distillers, craft distilleries, and manufacturers of spirits may identify the producers on private labels, to the same extent as authorized for wineries, breweries, microbreweries, certificate of approval holders, and retail licensees.
- Establishes that beer, wine, or spirits private label items may be produced, distributed, or sold by any person to the same extent that person is otherwise properly licensed to produce, distribute, or sell beer, wine, or spirits generally.
- Provides that a beer, wine, or spirits distributor must, to the extent it is reasonably practicable for the distributor to do so, make any product the distributor acquires for resale available to any person legally entitled to purchase such product.

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### HOUSE COMMITTEE ON COMMERCE & GAMING

**Majority Report:** Do pass. Signed by 8 members: Representatives Sawyer, Chair; Kloba, Vice Chair; Condotta, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Barkis, Blake, Farrell and Kirby.

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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.*

**Minority Report:** Do not pass. Signed by 2 members: Representatives Jenkin and Ryu.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Young.

**Staff:** Peter Clodfelter (786-7127).

**Background:**

Washington's "tied house" laws regulate the relationship between liquor manufacturers, distributors, and retailers. In general, tied house laws are meant to regulate how liquor is marketed and prevent the vertical integration of the three tiers of the liquor industry. The general rule is that no industry member may advance, and no retailer may receive, monies or monies' worth under an agreement or by means of any other business practice or arrangement.

An exception exists for the wine and beer industry that authorizes wineries, breweries, certificate of approval holders, and retail licensees to identify the producers on certain private-label beer and wine. Generally speaking, a private label is where the label on a bottle of alcohol carries the brand name of the liquor retailer selling the alcohol, such as a restaurant or grocery store, but is produced by an alcohol producer such as a winery or brewery.

The Liquor and Cannabis Board (LCB) licenses various types of liquor manufacturers, including the following: distillers; craft distilleries; manufacturers of liquor; domestic wineries; domestic breweries; microbreweries; and out-of-state breweries, wineries, and distillers.

The LCB licenses spirits distributors, wine distributors, and beer distributors. Additionally, alcohol manufacturers may generally self-distribute alcohol of their own production and act as a retailer of alcohol of their own production.

The LCB licenses alcohol retailers that may sell alcohol to consumers either in drinks by the glass for on-premises consumption, or in bottles or containers for off-premises consumption. Retailers of alcohol licensed by the LCB include the following: beer and wine restaurants; spirits, beer, and wine restaurants; private clubs; spirits retail licensees (includes large establishments such as grocery stores and beer and wine specialty shops encompassing at least 10,000 square feet of retail space as well as former state-owned liquor stores and former contract liquor stores); snack bars; grocery stores; beer and wine specialty shops; beer and wine private clubs; nonprofit arts organizations; growers of grapes or other agricultural products; motels; sports entertainment facilities; public houses; spirits, beer, and wine nightclubs; VIP airport lounge operators; taverns; theaters; senior centers; caterers; and special occasion events.

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**Summary of Bill:**

Consistent with the tiedhouse laws, distillers, craft distilleries, and manufacturers of spirits may identify the producers private labels, to the same extent as authorized for wineries, breweries, microbreweries, certificate of approval holders, and retail licensees.

It is established that beer, wine, or spirits private label items may be produced, distributed, or sold by any person to the same extent that person is otherwise properly licensed to produce, distribute, or sell beer, wine, or spirits generally.

A beer, wine, or spirits distributor must, to the extent it is reasonably practicable for the distributor to do so, make any product the distributor acquires for resale available to any person legally entitled to purchase such product.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This started as a small proposal to assist craft distilleries that want to collaborate with a restaurant or private club to make a private label spirit, but has since expanded to address ambiguity about the legality of private label alcohol generally. Private labeling is successfully done with the wine and beer industries, and the same marketing opportunities should be extended to the spirits industry. Private labels are a great way for a retailer and supplier to market their products and to give customers what they want. Recently, small retailers asked the Liquor and Cannabis Board (LCB) about what types of private label marketing opportunities are available related to spirits. These small retailers were told there is not explicit authorization for any private label spirits, like there is for wine and beer, and that the small retailers could not engage in private label marketing related to spirits with a craft distillery. However, some large retailers have sold private label spirits since the passage of Initiative 1183 (2011), and no enforcement action has been taken against them. Initiative 1183 did not address private labeling regarding spirits, so this is another area that should be addressed by the Legislature to align the privileges of the beer, wine, and spirits industries. This will benefit distilleries of all sizes and consumers. It will not require any additional enforcement efforts by the LCB. The proposal also maintains the integrity of the three-tier liquor system. Distributors are required to make all products available, whether private label or not, to all purchasers on equal terms. The fact that many large retailers have sold private label spirits for years and no complaints have been raised counters the concerns raised about private labels obtaining any type of unfair advantage regarding priority shelf space. Generally, private label products are displayed on the bottom shelf and are not offered as a premium product. The market should determine which products sell. Within the property rights associated with a private label, which is a trademark, is the right to control how that product is marketed, and some stakeholders believe that a retailer's exclusive right to sell that private label product should be respected.

(Opposed) Although beer distributors did not oppose this bill, or its companion House Bill 1119 as originally introduced, which were modest proposals, this proposal has grown substantially larger and is not good policy. This bill effectively allows any entity involved in the liquor industry to establish a private label and negotiate to secure an exclusive arrangement for the sale of that private label. This is contrary to the fundamental basis of liquor regulation, which is that suppliers should not control retailers, retailers should not control suppliers, and that distributors should seek to serve all retail licensees equally. A private label is a brand for a supplier that produces a product for one particular retailer. A retailer with a private label will give guaranteed and priority shelf space to that label. Other nonprivate label products will not have the opportunity to sell. Although many national brands have support through national branding campaigns, it is harder to secure shelf space for craft products. These craft products will be the loser if there is widespread authorization for private labels. Currently there are limited private labels, and this would dramatically expand private labeling and its consequences.

(Other) The LCB understands frustration raised over the lack of enforcement regarding retailers currently selling private label spirits. Enforcement actions by the LCB are generally complaint driven, and the LCB has not received any complaints about existing sales of spirits under a private label. The LCB was not aware of the extent to which private label spirits are currently sold. This issue raises interpretive questions about the law following the enactment of Initiative 1183, and the LCB supports clarifying the law regarding private labels and the passage of this bill.

**Persons Testifying:** (In support) Senator Liias, prime sponsor; Carolyn Logue, Washington Retail Association; Ron Main, Association of Washington Spirits and Wine Distributors; Jim Hedrick, Washington Distillers Guild; Holly Chisa, Northwest Grocery Association; Holli Johnson, Washington Food Industry Association; and Justin Stiefel, Heritage Distilling Co.

(Opposed) Scott Hazelgrove, Washington Beer & Wine Distributors Association.

(Other) James Paribello, Liquor and Cannabis Board.

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