

HOUSE BILL REPORT

ESB 5834

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to licensing of bonded spirits warehouses.

Brief Description: Concerning the licensing of bonded spirits warehouses.

Sponsors: Senator Baumgartner.

Brief History:

Committee Activity:

Commerce & Gaming: 3/13/17, 3/20/17 [DPA].

Brief Summary of Engrossed Bill
(As Amended by Committee)

- Establishes a license for spirits warehouses for the storage and handling of spirits, off the premises of a distillery, subject to limitations.
- Requires physical separation in the licensed spirits warehouse of bonded and nonbonded spirits.
- Authorizes the Liquor and Cannabis Board (LCB) to establish a permit that allows for unlimited transfers of spirits to and from licensed spirits warehouses.
- Establishes the circumstances in which spirits may be removed from a licensed spirits warehouse.
- Requires the LCB to adopt rules regarding licensed spirits warehouses.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass as amended. Signed by 11 members: Representatives Sawyer, Chair; Kloba, Vice Chair; Condotta, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Barkis, Blake, Farrell, Jenkin, Kirby, Ryu and Young.

Staff: Peter Clodfelter (786-7127).

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:

A distiller may act as a retailer of spirits of the distiller's own production, and may act as a distributor of spirits of the distiller's own production to retailers selling for consumption on or off the licensed premises. Additionally, any manufacturer, importer, or bottler of spirits holding a certificate of approval may act as a distributor of spirits it is entitled to import into the state. By rule, the Liquor and Cannabis Board (LCB) provides for issuance of certificates of approval to spirits suppliers.

An industry member operating as a distributor or retailer must comply with the applicable laws and rules relating to distributors or retailers, except that an industry member operating as a distributor may maintain a warehouse off the distillery premises for the distribution of spirits of its own production to spirits retailers within the state, if the warehouse is within the United States and has been approved by the LCB.

Under federal law applicable to spirits, a bond is a formal guarantee for payment of monies due to the federal Alcohol and Tobacco Tax and Trade Bureau up to an amount specified by the bond. The bond secures payment of applicable federal taxes related to the spirits that have not yet been determined.

Summary of Amended Bill:

A license for bonded and nonbonded spirits warehouses is established. The license, issued by the Liquor and Cannabis Board (LCB), authorizes the storage and handling of bonded bulk spirits and, to the extent authorized under federal law and under rules adopted by the LCB, bottled spirits and the storage of tax-paid spirits not in bond. The license fee is \$100 per year. A license holder may maintain a warehouse for the storage of spirits off the premises of a distillery or entity otherwise licensed and permitted in the state.

A licensee must designate clearly in its application the sections of the warehouse that are bonded and nonbonded with a physical separation between the spaces. Only spirits in bond may be stored in the bonded sections of the warehouse, and only spirits that have been removed from bond tax-paid may be stored in nonbonded sections of the warehouse. The proprietor of the warehouse must maintain a plan for tracking spirits being stored in the warehouses to ensure compliance with relevant bonding and tax obligations.

The LCB must adopt similar qualifications for a bonded spirits warehouse license as is required for obtaining a distiller, craft distillery, or manufacturer's license. To qualify for a license, an applicant must be a sole proprietor, partnership, limited liability company, corporation, port authority, city, county, or any other public entity or subdivision of the state that elects to license a bonded spirits warehouse as an agricultural or economic development activity. One or more domestic distilleries or manufacturers may operate as a partnership, corporation, business co-op, cotenant, or agricultural co-op for the purposes of obtaining a bonded spirits warehouse license or storing spirits in the facility under a common management and oversight agreement free of charge or for a fee. A spirits warehouse may be

owned and operated by a person or entity acting in a commercial warehouse management position on behalf of an authorized licensee.

Spirits in bond may be removed from a bonded spirits warehouse for purposes of being exported from the state, returned to a distillery or licensed spirits warehouse, or transferred to a distillery, licensed spirits warehouse, or bottling or packaging facility. Bottled spirits that are being removed from a spirits warehouse tax-paid may be transferred back to the distillery that produced them, shipped to a licensed Washington spirits distributor, shipped to a licensed Washington spirits retailer, exported from the state, or removed for direct shipping to a consumer by a distillery.

The handling of bottled spirits that have been removed from bond tax-paid, and that reside in the spirits warehouse, includes the following: packaging and repackaging services; bottle labeling services; creating baskets or variety packs that may or may not include nonspirits products; and picking, packing, and shipping spirits orders on behalf of a licensed distillery direct to consumers. A distillery contracting with the operator of a spirits warehouse licensed under this section for handling bottled spirits must comply with all applicable state and federal laws and is responsible for financial transactions when spirits are shipped directly to consumers.

The LCB must adopt rules requiring a spirits warehouse to be physically secure, zoned for the intended use, and physically separated from any other use. The operator or licensee operating a spirits warehouse must submit to the LCB a monthly report of movement of spirits to and from a spirits warehouse in a form prescribed by the LCB. The LCB may adopt other necessary procedures by which spirits warehouses are licensed and regulated. The LCB may require an annual permit of each licensee or entity warehousing spirits in a spirits warehouse that allows for unlimited transfers to and from the warehouse. The permit fee is \$100 per year.

It is specified that: (1) the spirits that may currently be maintained at a warehouse off a distillery premises by an industry member acting as a distributor of spirits of its own production to spirits retailers within the state are bottled spirits; and (2) the warehouse that an industry member operating as a distributor and/or retailer may currently maintain off a distillery premises for the distribution of spirits of its own production also may be used for the distribution of bottled foreign-made spirits that the distillery is entitled to distribute.

Amended Bill Compared to Engrossed Bill:

The license is changed to a bonded and nonbonded spirits warehouse license and, to the extent authorized under federal law and LCB rules, bottled spirits may also be stored at the spirits warehouse. The following requirements are added:

- A licensee must designate clearly in its application the sections of the warehouse that are bonded and nonbonded with a physical separation between the spaces.
- Only spirits in bond may be stored in the bonded sections of the warehouse, and only spirits that have been removed from bond tax-paid may be stored in nonbonded sections of the warehouse.
- The proprietor of the warehouse must maintain a plan for tracking spirits being stored in the warehouses to ensure compliance with relevant bonding and tax obligations.

It is provided that the spirits that may be removed from a spirits warehouse for the purpose of being exported from the state, returned to a distillery or licensed spirits warehouse, or transferred to a distillery, licensed spirits warehouse, or a licensed bottling or packaging facility are spirits in bond. It is established that bottled spirits that are being removed from a spirits warehouse tax-paid may be transferred back to the distillery that produced the spirits, shipped to a licensed Washington spirits distributor, shipped to a licensed Washington spirits retailer, exported from the state, or removed for direct shipping to a consumer by a distillery.

It is specified that the authorized handling of bottled spirits that have been removed from bond tax-paid and that reside in the spirits warehouse includes the following: packaging and repackaging services; bottle labeling services; creating baskets or variety packs that may or may not include nonspirits products; and picking, packing, and shipping spirits orders on behalf of a licensed distillery direct to consumers. A distillery contracting with the operator of a spirits warehouse for handling bottled spirits must comply with all applicable state and federal laws and is responsible for financial transactions in direct to consumer shipping activities.

It is specified that the warehouse that an industry member operating as a distributor and/or retailer may currently maintain off a distillery premises for the distribution of spirits of its own production also may be used for the distribution of bottled foreign-made spirits that the distillery may distribute under its license.

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) This will allow the distillery industry to continue to grow. Recently, the Liquor and Cannabis Board (LCB) took an enforcement action against a licensed distillery related to storing finished barreled product in a bonded warehouse regulated by the federal Alcohol and Tobacco Tax and Trade Bureau. There is no state license to authorize this activity allowed under federal law. When the distillery license was created, distilleries did not have product that is aging in barrels as distilleries currently do. Now, distilleries that are six, seven, or eight years old have several hundred or several thousand barrels of aging product. Without the ability to age product in warehouses in the state, distilleries are forced to either ship product out of state to age, or stop production. Distilleries do not want to ship product out of state because many distilleries are developing Washington-specific brands. Stakeholders have worked with the LCB on developing the proposal and have an amendment to make several clarifications and align the new spirits warehouse license with the existing bonded wine warehouse license. Under the amendment, one side of the warehouse may be used for bonded product in barrels, and another side of the warehouse may be used for storing

nonbonded finished product in bottles. Distillery industry members could co-locate a warehouse under the bill, which will benefit the industry.

(Opposed) None.

Persons Testifying: Justin Stiefel, Heritage Distilling Company; and Jim Hedrick, Washington Distillers Guild.

Persons Signed In To Testify But Not Testifying: None.