

# SENATE BILL REPORT

## ESSB 5145

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As Passed Senate, March 8, 2017

**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 Liias and Walsh).

**Brief History:**

**Committee Activity:** Commerce, Labor & Sports: 1/19/17, 2/15/17 [DPS, w/oRec].

**Floor Activity:**

Passed Senate: 3/08/17, 37-12.

**Brief Summary of Engrossed First Substitute Bill**

- Adds distillers, craft distillers, and manufacturer's licensees to the list of groups that may produce private labeled products.
- Provides 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.
- Establishes that spirits, wine, and beer distributors must, to the extent practicable, make any product the distributor acquires for resale available to any person legally entitled to purchase the product.

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**SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS**

**Majority Report:** That Substitute Senate Bill No. 5145 be substituted therefor, and the substitute bill do pass.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; Keiser, Ranking Minority Member; Conway, King, Saldaña and Wilson.

**Minority Report:** That it be referred without recommendation.

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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.*

Signed by Senator Hasegawa.

**Staff:** Richard Rodger (786-7461)

**Background:** The Tied House Laws and Private Labels. Washington's tied house laws regulate the relationship between liquor manufacturers, distributors (industry members), 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.

There are numerous exceptions to the tied house laws. One exception allows wineries and breweries to partner with retailers to create private-label wine and beer for restaurants, private clubs, grocery stores, and beer and/or wine specialty shops. The producers may be identified on the private labels.

Craft Distilleries. Distillers producing 150,000 gallons or less of spirits with at least half of the raw materials used in the production grown in Washington are considered craft distilleries and pay a reduced license fee. Craft distilleries may sell spirits of their own production for consumption off the premises, provided that the craft distillery complies with applicable laws and rules relating to retailers. Craft distilleries may also contract distilled spirits for, and sell contract distilled spirits to, holders of distillers or manufacturers' licenses, or for export. Craft distilleries may additionally apply for an endorsement to sell spirits of the craft distillery's own production at retail for off-premises consumption at a qualifying farmers' market, subject to restrictions.

Spirits Retail Licensees. Spirits retail licensees are authorized to sell spirits at the retail level. The 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.

A spirits retail license authorizes the sale of spirits in original containers to:

- consumers for consumption off the licensed premises and to permit holders;
- retailers licensed to sell spirits for consumption on the premises; and
- to retailers who are licensed for resale at their licensed premises.

**Summary of Engrossed First Substitute Bill:** Distillers, craft distillers, and manufacturer's licensees may produce private labeled products to the same extent currently authorized for wineries, breweries, microbreweries, certificate of approval holders, and retail licensees.

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.

Spirits, wine, and beer distributors must, to the extent practicable, make any product the distributor acquires for resale available to any person legally entitled to purchase the product.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The idea for this bill came from a small craft distiller in Edmonds that wanted to partner with a local restaurant and create a private label for them. Working with the LCB, they discovered that was not possible under the current law. Craft distillers and restaurants can take many years to become profitable. This change in the law will help both industries grow their businesses. The focus of the bill is on craft distillers, but I know the general licensed distillers would like this option too. We already allow private labels for craft breweries and wineries.

CON: We are seeing a trend of lack of parity in our industry. The bill is unclear if our business is authorized to do private labels. The statute authorizes certificate holders to do this activity and we do hold a certificate. All we want is fair treatment across the board and allow all distillers to use this provision.

OTHER: Our liquor laws are quite archaic in dealing with the different relationships. The LCB generally does not allow any activity that is not expressly authorized in statute. This bill may leave out the general distillers, and the LCB would not be opposed to adding them to the legislation. We support the underlying concept, but would like the general licensed distillers to be included too. There are 88 craft distillers in Washington and 22 general licensed distillers. We would like parity with beer, wine, and all distillers.

**Persons Testifying:** PRO: Senator Marko Liias, Prime Sponsor.

CON: Charlie Brown, DIAGEO.

OTHER: James Paribello, LCB; Chris Cearns, Distillers Way; Jim Hedrick, Washington Distillers Guild.

**Persons Signed In To Testify But Not Testifying:** No one.