HOUSE BILL REPORT
HB 2204

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to the creation of a limited spirits retail license.

Brief Description: Concerning the creation of a limited spirits retail license.

Sponsors: Representatives Kirby, Vick, Walen, Corry, Jenkin, Hoff, Fey, Chapman and Wylie.

Brief History:
Committee Activity:
Commerce & Gaming: 1/14/20, 2/6/20 [DPS].

Brief Summary of Substitute Bill

- Creates a limited spirits retail license for eligible grocery stores, authorizing the licensee to sell spirits in original containers to consumers for off-premises consumption, to sell spirits to permit holders, and to export spirits.
- Imposes a 5 percent mitigation fee on spirits distributors and distilleries when they sell spirits to a limited spirits retail licensee.
- Specifies how money from the mitigation fee is used, including for Liquor and Cannabis Board enforcement, for the Department of Commerce for distribution to countywide community mobilization programs, for law enforcement, and for the creation of a repayment fund.
- Establishes a repayment fund to enable purchasers of state liquor store operating rights from the 2012 auction to seek reimbursement with interest, and makes additional changes to liquor statutes.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Peterson, Chair; Kloba, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Morgan, Vick and Young.

Minority Report: Do not pass. Signed by 1 member: Representative Ramel.

Staff: Peter Clodfelter (786-7127).

Background:

Spirits Retail License.
In privatizing spirits sales in 2011, Initiative Measure No. 1183 (Initiative) created a spirits retail license, issued by the Liquor and Cannabis Board (LCB), to qualified applicants. The license authorizes the retail sale of spirits in original containers to consumers for off-premises consumption, to permit holders, and to retailers for resale for on-premises consumption. A licensee may also export spirits.

When selling spirits in original containers to other retailers for resale for on-premises consumption, no single sale may exceed 24 liters, unless the sale is by a licensee that was a contract liquor store manager of a contract liquor store. Generally, only larger stores with at least 10,000 square feet of fully enclosed retail space within a single structure are eligible for a spirits retail license. However, there are two exceptions to this requirement.

One exception enables otherwise qualified contract liquor stores, at their contract location, and holders of former state liquor store operating rights sold at auction, to qualify for a spirits retail license despite being smaller than 10,000 square feet in size. The second exception enables other applicants who are smaller than 10,000 square feet in size, but otherwise qualified, to obtain a spirits retail license if the following requirements are met:

- there is not another spirits retail licensee in the trade area the applicant would serve;
- the applicant meets, or upon licensure will meet, the operational requirements established under the LCB's rules; and
- the applicant has not committed, as a licensee, more than one public safety violation within the three years preceding the application.

Sales of spirits by spirits retail licensees are subject to a license issuance fee equivalent to 17 percent of all spirits sales revenues, paid by each licensee into the Liquor Revolving Fund. However, an exception is provided for sales of spirits by former contract liquor stores and former-state-store auction buyers when sales are made to other retailers who sell spirits for on-premises consumption. For these sales, the 17 percent fee does not apply. An additional annual license renewal fee of $166 applies to all spirits retail licenses.

Grocery Store License.
A grocery store liquor license is available for stores meeting certain qualifications, such as having a minimum of $3,000 inventory of food products, not including pop, beer, strong beer, or wine. A grocery store licensee may sell beer and wine to customers for off-premises consumption. The LCB issues a restricted grocery store license authorizing the licensee to sell beer and only table wine if the LCB finds that the sale of strong beer or fortified wine would be against the public interest. A grocery store licensee who sells spirits must also hold a spirits retail license. However, there is also a combination spirits, beer, and wine license that provides the same privileges.

License endorsements available to a grocery store liquor licensee include the following:

- endorsement to sell wine at retail in original containers to other retailers licensed to sell wine for on-premises consumption, subject to restrictions;

- endorsement to sell malt liquor in kegs or other containers capable of holding less than 5.5 gallons of liquid;
- endorsement to sell beer and cider in a sanitary container brought to the premises by the purchaser, or provided by the licensee or manufacturer, and filled at the tap by the licensee at the time of sale; and
- endorsement to permit the international export of beer, strong beer, and wine.

Spirits Distributors.
The Initiative also created the spirits distributor license. The license authorizes the sale of spirits purchased from manufacturers, distillers, importers, other spirits distributors, and other lawful suppliers, to spirits retailers. In each of the first 27 months of licensure, a spirits distributor must pay a fee of 10 percent of the total revenue from all the licensee's sales of spirits. In later months, a spirits distributor must pay a fee of 5 percent of the total revenue from all the licensee's sales of spirits. In addition to this fee, spirits distributors also pay an annual license renewal fee of $1,320 for each licensed location.

Closure and Auction of Former State Liquor Stores.
The Initiative required the LCB to close all state liquor stores by June 1, 2012, and to auction off its existing state liquor distribution and state liquor store facilities and equipment, obtaining the maximum reasonable value for all asset sales. At a public auction in 2012, the LCB sold the right at each state-owned store location (167 total) for a spirits retail licensee to operate a liquor store. Acquisition of the operating rights was a precondition to, but did not establish eligibility for, a spirits retail license at the location of a state store.

Successful bidders had the exclusive right to apply for a spirits retail license at the current location within its current footprint. However, if successful bidders were unable to secure a lease at the state store's location, the LCB provided that they could resell their right or request an alternative location within a 1-mile radius of the existing location. The total sum of all bids at the auction was $30.75 million, with 121 individual successful bidders. The lowest winning bid for a store was $49,600, and the highest winning bid for a store was $750,100. All sales proceeds, net of direct sales expenses and other authorized transition costs, were deposited into the Liquor Revolving Fund.

Summary of Substitute Bill:

Creation of a Limited Spirits Retail License.
A limited spirits retail license is established as a new retail liquor license issued by the Liquor and Cannabis Board (LCB). A limited spirits retail license authorizes the holder to sell spirits in original containers to consumers for off-premises consumption, to sell spirits to permit holders, and to export spirits. There are no square footage requirements for a limited spirits retail license like there generally are for the existing spirits retail license.

Holders of a grocery store liquor license who do not hold specific license endorsements, who do not have a restricted license, who have not committed a safety violation within the preceding three years, and who are not located within a 1-mile radius of a spirits retail licensee who obtained their spirits retail license for the location through rights purchased at the 2012 state liquor store auction may be eligible for a limited spirits retail license. However, the LCB must stop using the 1-mile radius restriction as a basis for denying a limited spirits retail license to an otherwise qualified applicant three years after the bill's effective date.

An applicant must satisfy reasonable requirements imposed by law or rule for issuance of a retail liquor license, including enhanced employee training requirements. Additionally, a license may be issued only if the LCB determines the applicant will maintain systems for inventory management, employee training, employee supervision, and physical security of the product substantially as effective with respect to preventing sales to, or pilferage by, underage or inebriated persons as the systems used by stores holding the existing spirits retail license. Further, license issuances and renewals are subject to the generally applicable notice and objection process for liquor licenses, and the public, churches, schools, and public institutions may object to license issuance. Additionally, it is provided that nothing prevents a local government from adopting an ordinance or resolution that institutes a ban or moratorium on the issuance of limited spirits retail licenses within its jurisdiction.

The LCB may deny a limited spirits retail license to an otherwise qualified applicant if any of the following circumstances apply:
- The LCB reasonably determines that issuance of the license would not be in the best interest of the community to be served by the applicant because it would result in an excessive number of locations where spirits could be purchased in the community.
- The LCB reasonably determines that issuance of the license would otherwise pose an unacceptable risk to the health and welfare of the community to be served.
- Issuance of the limited spirits retail license would cause the total number of liquor licenses for the sale of alcohol for off-premises consumption to exceed any limits imposed by the Legislature on the number of licenses permitted to be active in the state or any defined portion of the state.

Holders of a limited spirits retail license must pay to the LCB, for deposit into the Liquor Revolving Fund, a license issuance fee equivalent to 17 percent of all spirits sales revenues under the license, exclusive of taxes collected by the licensee. Additionally, holders of a limited spirits retail license must pay an annual license renewal fee of $166. The LCB must periodically review and adjust the renewal fee so it is comparable to the annual license renewal fee for a spirits retail license and a combination spirits, beer, and wine license.

As a condition of receiving and renewing a limited spirits retail license, the licensee must train all individuals who sell spirits or manage others who sell spirits regarding compliance with applicable laws and rules. The training must be provided before the individual first engages in the sale of spirits and must be renewed at least every five years. The licensee must maintain records documenting the nature and frequency of the training. The maximum penalties prescribed by the LCB's rules relating to fines and suspensions are doubled for violations relating to the sale of spirits by limited spirits retail licensees. However, licensees who comply with all employee training and education requirements established by the LCB are not subject to the doubling of penalties for a single violation in any 12-month period.

Mitigation Fee.

In addition to existing spirits distributor license fees, each spirits distributor selling spirits to a limited spirits retail licensee must pay to the LCB, for deposit into the Liquor Revolving Fund, a mitigation fee equivalent to 5 percent of the amount paid for the spirits by the limited spirits retail licensee, exclusive of taxes and fees. If no mitigation fee has been paid on spirits resold by a limited spirits retail licensee to another liquor licensee, then the limited spirits retail licensee is responsible for paying the 5 percent mitigation fee. Craft distilleries and distilleries are also subject to the 5 percent mitigation fee on sales of spirits to holders of a limited spirits retail license.

Annually, the LCB will determine the total amount of mitigation fees paid into the Liquor Revolving Fund during the preceding year and, to the extent funds are available, disburse those moneys in the following priority:

- The LCB retains the first $300,000 to use for general enforcement purposes.
- $1.5 million is distributed to the Department of Commerce (Commerce) for disbursement to countywide community mobilization programs through an existing grant program.
- $2 million is transferred to a repayment fund, as described below, to enable certain former state liquor store auction buyers to be reimbursed for the amount they paid at auction together with interest.
- $500,000 is distributed to the Washington Association of Sheriffs and Police Chiefs (WASPC), or another law enforcement group or agency designated by the LCB, for use in enforcement activities related to alcohol sales or consumption.
- To the extent funds remain, 40 percent is distributed to Commerce for distribution to countywide community mobilization programs through an existing grant program, 50 percent is distributed to the repayment fund described below, and 10 percent is distributed to the WASPC, or another law enforcement group or agency designated by the LCB, for use in enforcement activities related to alcohol sales or consumption.

Repayment Fund.
A repayment fund is established to enable purchasers of former state liquor store operating rights to seek reimbursement of the full amount paid at auction, together with interest. To qualify, an auction buyer must operate, as of December 31, 2019, a spirits retail store under the license purchased through rights from the auction, and must submit to the LCB, within 60 days after the bill's effective date, written notice of intent to seek reimbursement through the repayment fund.

The LCB has 90 days after the bill takes effect to develop the form for auction buyers to apply for repayment. After the form is available, an auction buyer has 60 days to apply to the LCB for reimbursement. The LCB's determination of whether an applicant is entitled to repayment, and in what amount, is binding on the applicant unless challenged within 45 days. There is no requirement that a spirits retail license be relinquished in order to be eligible for reimbursement.

After reimbursement to all eligible applicants, the LCB will annually disburse funds from the mitigation fees as follows (which replaces the initial distribution formula set out above): 70 percent to Commerce for distribution to countywide community mobilization programs through an existing grant program; and 30 percent is retained in the Liquor Revolving Fund and used by the LCB solely for enforcement of liquor and cannabis laws.

Miscellaneous Changes.
Statutory provisions from Initiative Measure No. 1183 (2011) that were applicable only in the first several years after enactment are stricken. Additionally, spirits distributor licensees must pay a fee of 5 percent of the total revenue from the licensee's spirits sales in all months of licensure, instead of being required to pay a 10 percent fee for the first 27 months of licensure and then a 5 percent fee thereafter. Language is stricken that provides that existing distributor premises licensed to sell beer and/or wine are deemed to be premises "now licensed" for purposes of processing applications for spirits distributor licenses, in the context of the requirement that the LCB may not issue a liquor license covering any premises "not now licensed" if the premises are within 500 feet of any tax-supported public elementary or secondary school.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:
- An additional mandatory qualification for the new limited spirits retail license is added so that an applicant may not have committed more than one safety violation within the three years preceding filing the application.
- Another mandatory qualification for the new limited spirits retail license is added so that an applicant may not be located or proposed to be located within a 1-mile radius of a spirits retail licensee who obtained their spirits retail license for the location through rights purchased at the 2012 auction. However, this 1-mile radius restriction is effective for only the first three years following enactment.
- The local notice requirements are modified to provide that license issuances and renewals are subject to the generally applicable local notice provisions in current law, including, without limitation, rights of the public, churches, schools, and public institutions to object to local liquor licenses.
- It is provided that nothing prevents a city, town, or county legislative authority from adopting an ordinance or resolution that institutes a ban or moratorium on the issuance of a limited spirits retail license within its jurisdiction.
- Licensed distilleries and craft distilleries are added as an authorized source of spirits sold to limited spirits retail licensees (and they must also pay a 5 percent mitigation fee, like spirits distributors, when selling spirits to a limited spirits retail licensee).
- The mitigation fee distributions that would go, pursuant to the original bill, to school-based or community-based education or treatment programs designated by the Liquor and Cannabis Board are instead directed to the Department of Commerce. The Department of Commerce must distribute the money to countywide community mobilization programs through a grant process in existing law.
- The requirement is eliminated that a person must relinquish their spirits retail license in order to be eligible to receive reimbursement of the full amount paid at the state liquor store auction, together with interest.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute 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) Proponents of this policy have addressed previous feedback by building the mitigation fee and repayment program into this bill. The mitigation fee will create funds to address and mitigate concerns associated with expanding the eligibility for spirits retail licenses. The bill includes a way for people who purchased state liquor store rights at the 2012 auction to choose to receive reimbursement from the state. Perhaps the state conducted the auction in a way that allowed purchasers to overpay for the rights sold through the auction. This bill would provide spirits retailers who were auction buyers with the option to be reimbursed in exchange for giving up their spirits license. Washington is the only state that generally limits eligibility for a spirits retail license to stores that are at least 10,000 square feet in size. This is unfair for small operators. Although the bill would allow for additional stores to qualify to sell packaged spirits for off-premises consumption, these stores who would qualify are already licensed to sell beer and wine, so this is only an expansion with respect to existing liquor licensees. These existing licensees who could qualify for a limited spirits retail license through the bill are small businesses and good community stewards. This would be a positive change for the whole industry and would help level the playing field for all small businesses. This will provide more choices to consumers.

(Opposed) This bill undermines the structure of Initiative Measure No.1183 (2011), which required spirits retailers to generally be over 10,000 square feet in size in order to keep spirits out of corner stores. Currently there are over 1,400 spirits retailers, which is enough access to spirits for consumers. This is a property rights issue for spirits retailers who were purchasers at the 2012 auction. Many auction purchasers have since ceased operating as spirits retailers. Auction buyers who remain operating have sacrificed and made substantial investments into their businesses since 2012. These businesses have current valuations exceeding the price the owner paid at auction, so the reimbursement option created in the bill is not financially worth it to these owners. A better approach is to allow spirits retailers who are auction purchasers to continue operating under their license while compensating them with the mitigation fees for the lost business they will suffer due to increased competition from all the newly eligible spirits retailers. If spirits retailers who purchased auction rights knew the law could change in the future like this bill proposes, they would not have gone through with the purchase. If this bill passes, the hard work of spirits retailers who purchased rights through the auction will all be for nothing. Law enforcement opposes the bill. Law enforcement is focused on communicating the dangers of drinking and driving, which conflicts with expanding access to alcohol. The prevention efforts included in the bill are appreciated, but they do not fully mitigate the likely harms from expanding the number of spirits retail outlets. The state has experienced issues with theft of liquor by youth from spirits retail stores; if there are new spirits retailers throughout the state that problem could be compounded.

(Other) The Liquor and Cannabis Board (LCB) identified about 3,300 beer and wine retailers who would be eligible under the original bill for a limited spirits retail license, and the LCB estimates that about 2,500 of these licensees may choose to obtain the new spirits retail license. The LCB has concerns with the aspects of the bill that address the LCB denying licenses based on the best interest of the community or an excessive number of locations in the community. These requirements are too subjective to apply in practice. There is research on the topic of alcohol density, but it is not precise. The requirements around determining the effectiveness of security systems of applicants is also difficult to implement, because applicants and licensees can be reluctant to share security system information and data with regulators. The LCB is currently moving towards using a two-year window for how far back the LCB looks when considering previous violations, and this bill uses a three-year window for that purpose. The LCB would prefer if it was a two-year window for considering previous violations. Currently, the LCB lacks authority to allocate funds the way the bill describes with respect to the mitigation fees and distributions.

Persons Testifying: (In support) Representative Kirby, prime sponsor; Andrea McNeely, Association of Washington Spirits and Wine Distributors; John Klein, Southern Glazers; Sandra Englund, Korean American Grocers Association; Catherine Holm, Washington Food Industry; Scott Varner, Jackson Food Stores; and Dave Ducharme, Distilled Spirits Council of the United States.

(Opposed) Marques Warren, Downtown Spirits; PD Sandhu, Pacific Liquor–Bremerton; Navneet Kaur, Boulevard Liquor; Rajdeep Singh, Khass Liquor and Wine; Jasminder Singh, Pacific Liquor–Tacoma; Manjit Padda, JSM Liquor and Wine LLP; Seth Dawson, Washington Association for Substance Abuse Prevention; Brad Tower, Washington Liquor Store Association; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Chris Thompson, Liquor and Cannabis Board.

Persons Signed In To Testify But Not Testifying: None.