
Commerce & Gaming Committee

HB 1062

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

Sponsors: Representatives Kirby, Vick, Corry and Ryu.

Brief Summary of Bill

- Creates a new retail liquor license called a limited spirits retail license, which is available to 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.
- Authorizes local government bans and moratoria on the issuance of limited spirits retail licenses in their jurisdiction.
- Dedicates spirits fees paid by spirits distributors as mitigation fees on sales to limited spirits retail licensees, and establishes a 5 percent mitigation fee on spirits sales by distilleries and craft distilleries to limited spirits retail licensees.
- Specifies how mitigation fees may be 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.

Hearing Date: 1/21/21

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 part of the legislation nor does it constitute a statement of legislative intent.

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 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 more than one 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.

The 5 percent fee spirits distributors owe on sales of spirits to a limited spirits retail licensee are designated as mitigation fees and must be separately reported quarterly. Distillers and craft distilleries selling spirits to a limited spirits retail license must pay a mitigation fee equivalent to 5 percent of total revenues on such sales, which must be separately reported quarterly.

On or before January 31 of each year, the LCB will determine the total amount of mitigation fees paid during the preceding year and disburse the money 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 for disbursement to countywide community mobilization programs through an existing grant program that provides incentives for and support for communities to develop targeted and coordinated strategies to reduce the incidence and impact of alcohol, tobacco, or other drug abuse, or violence.
- To the extent sufficient funds were collected, \$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.
- To the extent sufficient funds were collected, \$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 the Department of Commerce for distribution to countywide community mobilization programs through the 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, 2020, 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.

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 must establish procedures for processing the applications and for appealing any determinations made by the LCB as to an applicant's eligibility for reimbursement or the amounts to be reimbursed to the applicant.

As soon as reasonably practicable after beginning to process the applications, the LCB must notify each applicant as to whether the applicant is eligible for reimbursement and, if so, for the amount. The LCB's determination will be binding upon an applicant unless the applicant challenges the determination, in accordance with LCB rules, within 45 days after the applicant learns of the determination.

When the LCB determines there is sufficient money in the repayment fund, the LCB must stop moving moneys into the repayment fund and will promptly reimburse each eligible applicant in the appropriate amount. Any person electing to receive reimbursement from the repayment fund may continue to operate under their spirits retail license before and after receiving reimbursement. There is no requirement that a spirits retail license be relinquished in order to qualify for or receive reimbursement through the repayment fund.

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 the Department of Commerce for distribution to countywide community mobilization programs through the 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.

Appropriation: None.

Fiscal Note: Available.

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