

SENATE BILL REPORT

SB 5375

As Reported by Senate Committee On:
Labor & Commerce, February 16, 2023

Title: An act relating to taxation of low-proof beverages.

Brief Description: Concerning taxation of low-proof beverages.

Sponsors: Senators King, Mullet, Torres, Rivers, Warnick and Wilson, L..

Brief History:

Committee Activity: Labor & Commerce: 2/02/23, 2/16/23 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Defines low-proof beverage to mean any beverage 16 ounces or less that contains more than 0.5 percent and less than 7 percent alcohol by volume, but does not include wine, malt beverages, or malt liquor.
- Imposes a \$2.50 per gallon tax on the distribution and sale of low-proof beverages in lieu of certain spirits sales taxes, while still collecting certain spirits liter and retail sales taxes.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5375 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; King, Ranking Member; Braun, Robinson and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Conway, Vice Chair; Saldaña, Vice Chair; MacEwen and Stanford.

Staff: Matt Shepard-Koningsor (786-7627)

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: State law regulates the manufacture, distribution, and retail sale of liquor including spirits, wine, and malt liquor. The Washington State Liquor and Cannabis Board (LCB) oversees issuance of spirits licenses and related matters. The Washington State Department of Revenue collects taxes on sales of spirits in the state.

Definitions. Spirits means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding 24 percent of alcohol by volume (ABV). Wine means any alcoholic beverage obtained by fermentation of fruits, such as grapes, berries, or apples, or other agricultural product containing sugar, to which any saccharine substances may have been added before, during, or after fermentation, and containing no more than 24 percent ABV, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding 24 percent and not less than 0.5 percent ABV. Malt beverage or malt liquor means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barely malt or other wholesome grain or cereal in pure water containing no more than 8 percent of alcohol by weight, and no less than 0.5 percent ABV.

Licenses and Fees. A spirits retail license allows a licensee to:

- sell spirits in original containers for consumption off the licensed premises and to permit holders;
- sell spirits in original containers to licensed retailers for consumption on the premises or for resale at their licensed premises, but the sale may not exceed 24 liters in most cases; and
- export spirits.

Each spirits retail licensee must pay a 17 percent spirits retail license issuance fee on all spirits sales. The fee does not apply to certain licensees that were contract liquor store managers, former state store auction buyers, or their successors; or craft distilleries selling their own production. Fees are collected by LCB and deposited into the Liquor Revolving Fund.

A spirits distributor license allows a licensee to sell spirits purchased from certain spirits manufacturers, distillers, or suppliers to spirits retail licensees, other specified licensees, other spirits distributors, and to export the same from the state. Each spirits distributor licensee must pay a statutorily-calculated fee to be deposited into the Liquor Revolving Fund.

Taxes. There are two types of spirits taxes—a spirits sales tax (SST), based on the selling price of spirits in the original package; and a spirits liter tax (SLT), based on the volume of spirits being sold in the original package. The SST is applied in the following manner:

- the SST rate paid by the general public equals 20.5 percent; and
- the SST rate paid by on-premises retailers on purchases from distributors, distillers, and others equals 13.7 percent.

The SLT is applied in the following manner:

- the SLT rate paid by the general public equals \$3.7708 per liter; and
- the SLT rate paid by on-premises retailers on purchases from distributors, distillers, and others equals \$2.4408 per liter.

Business and occupation taxes also apply to the manufacture and sale of spirits. The general retail sales tax of 6.5 percent does not apply to sales of spirits in the original package.

Summary of Bill (First Substitute): Definitions. Low-proof beverage means any beverage that is 16 ounces or less and contains more than 0.5 percent and less than 7 percent ABV, but does not include wine, malt beverages, or malt liquor.

Licenses and Fees. The sale of low-proof beverages is subject to the 17 percent spirits retailer license issuance fee and the statutorily-calculated spirits distributor license issuance fee.

Taxes. A \$2.50 tax per gallon is imposed on the following sales of low-proof beverages:

- sales by a spirits distributor to a spirits retailer;
- sales by a distillery or craft distillery that self-distributes low-proof beverages to spirits retailers;
- sales by a distillery or craft distillery directly to consumers; and
- sales by a spirits out-of-state certificate holder with a direct shipment endorsement that self-distributes to spirits retailers.

Sales of low-proof beverages are subject to the SST, but are not subject to the SLT. Low-proof beverages sold in the original package or by on-premises licensees are subject to the general retail sales tax of 6.5 percent and any applicable local sales taxes.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Provides that sales of low-proof beverages are subject to spirits retailer and spirits distributor license issuance fees, and the SST, but are not subject to the SLT and certain retail sales taxes.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 16, 2023.

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: This bill is a matter of fairness and is a reasonable approach. Liquor laws in this state can be cumbersome. The taxes on spirits were established and set at a rate allowing the state to recapture the revenue it was previously receiving from the sale of spirits. Lower alcohol products are taxed several hundred times more than higher alcohol products. This bill's tax is still 10 times higher than our beer counterparts. Customers are returning these products when they realize how much the tax is, and some become abusive to cashiers. The tax proposed in this bill is fair. Ready-to-drink products did not exist when Initiative 1183 passed and the spirit tax structure was created. Customers are paying 50 times more for a spirit-based product compared to a malt-based product. Canned cocktails are taxed the same as bottles of Everclear. Consumers should base their choice on what they want, not on tax policy. The beer industry has about 90 percent of the market share in this space and will not be hurt too badly by this bill. IPA drinkers are not the ones buying vodka and soda in a can. Low alcohol spirits-based drinks are hard to find in my area. I do not want tax rates to drive my choice of which products to consume.

CON: Canned cocktails are not new, they have been around for 100 years, but they are selling faster now. There is no need for a special tax here, spirits should be taxed like spirits. This will open the door for more exceptions. Craft breweries struggle to find shelf space in stores and compete with the spirits industry. This bill will benefit large, out-of-state spirits producers. This bill will harm Washington businesses. There is no problem for this bill to fix. A better way to approach this issue is to study all products and determine where these products fit. This bill could put hop growers at a serious disadvantage.

OTHER: The bill gives small producers a fighting chance to survive. Dry Fly's Huckleberry Lemonade costs significantly more in Washington than it does in other states. The bill should be amended to have the tax rate on small producers be applied at the same rate as beer—\$0.26 per gallon.

Persons Testifying: PRO: Senator Curtis King, Prime Sponsor; Bob Turnage, Republic National Distributing Company; Vicki Christophersen, Association of Washington Spirits and Wine Distributors; Charlie Brown, Diageo and Fred Meyer/QFC; Justin Stiefel, Heritage Distilling Company; David Ducharme, Distilled Spirits Council of the United States; Shanan O'Driscoll; Brandon High, Southern Glazer's Wine and Spirits; John Gainza, Southern Glazer's Wine and Spirits; Scott Stocum, Southern Glazer's Wine and Spirits.

CON: Scott Hazlegrove, WA Beer & Wine Distributors Association; Daniel Olson, Washington Brewers Guild; Kevin Quinn, Bale Breaker Brewing Co.; Maggie Elliot, Hop Growers of Washington; Scott Waller, WASAVP - Prevention First! for Safe and Healthy Communities.

OTHER: Jim Hedrick, Washington Distillers Guild.

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