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A 'Truly' fair tax structure? Washington eyes lowering fees for booming canned cocktail industry

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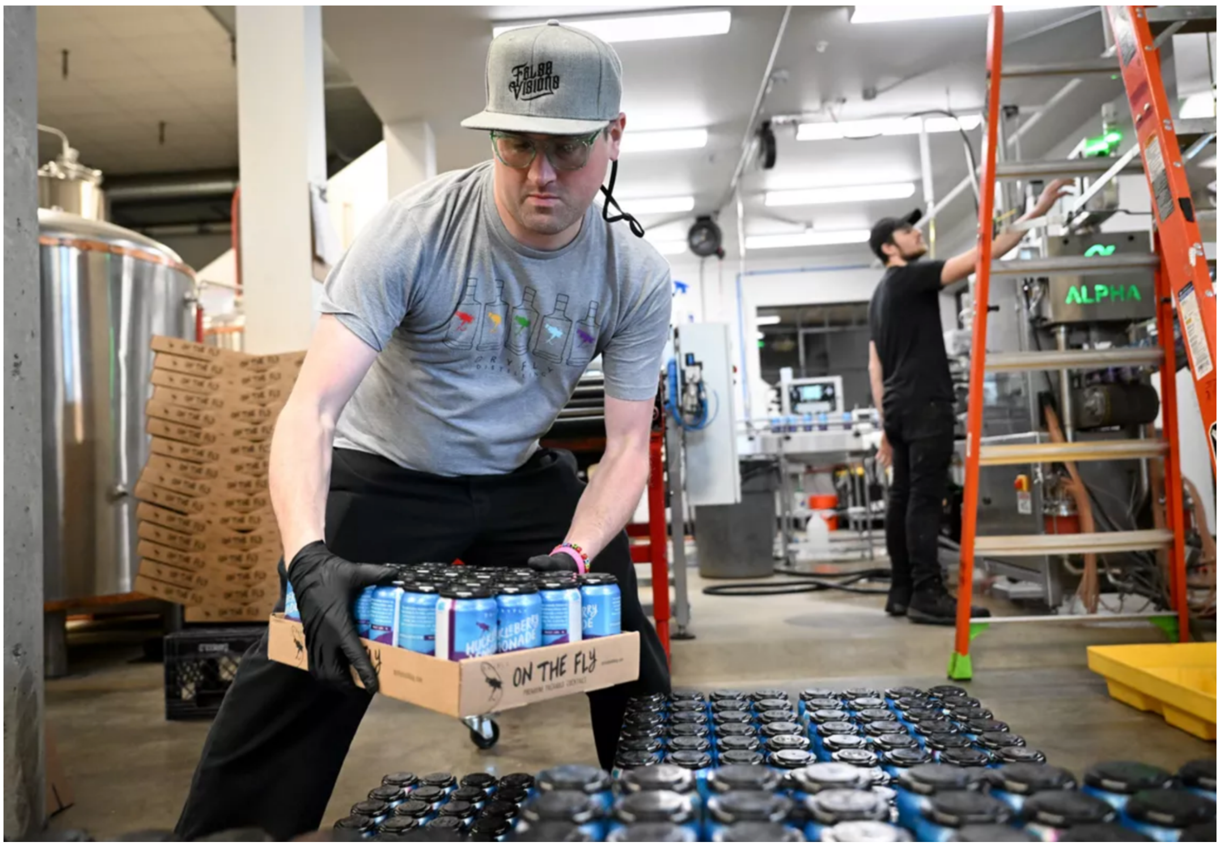

Dry Fly's Kyle Yeigh loads freshly canned Huckleberry Lemonade on the Fly onto a pallet as distiller Jack Wilson tends to Dry Fly's canning machine on Wednesday at Dry Fly Distilling in Spokane. (Tyler Tjomsland/The Spokesman-Review)

Adult beverage consumers in Washington are among the many nationwide who are paying more for what's in their can depending on how the alcohol was made.

Lawmakers, pushed by those in the booming industry of ready-to-drink cocktails, are considering changes to a tax structure that adds a liquor tax to the canned drinks because of the distilled spirits contained within. A bill, which has been heard by lawmakers in both chambers of the Legislature, would create a new taxing category for so-called "low-proof beverages," spirit-containing drinks of 16 ounces or less with an alcohol-by-volume content of between 0.5% and 7%, intoxicating levels similar to beer that is taxed at a much lower rate.

"I think this is a matter of fairness and of equity," state Sen. Curtis King, R-Yakima, said Thursday, in introducing the bill to the Senate's Labor & Commerce Committee.

But craft brewers and substance abuse advocates warn changing the rules for a popular product could have long and lasting consequences for small businesses and young adults.

The law would impose a new, $2.50 per gallon tax on such beverages. That's still 10 times greater than the amount charged in the state for fermented drinks, such as wine and beer, King noted, and is more than double the $1.19 tax proposed in a bill that failed to reach the floor during the last legislative session.

It's a reverberation of an argument that has been taking place nationwide as consumers turn to convenient, canned cocktails with a fixed amount of alcohol.

One recent industry analysis by IWSR, a London-based research firm widely cited for its international analysis of the alcoholic drink industry, estimated an $11.6 billion growth in the industry over the next five years, as reported by Forbes.

Such growth in sales indicates the tax structure is adequate and customers aren't being driven away from the products, said Scott Hazlegrove, executive director of the Washington Beer & Wine Distributors Association.

"The liquor industry is making record profits selling canned cocktails at twice the price but is now demanding a special tax break arguing they are really more like beer," Hazlegrove wrote in an email.

Even so, those selling the canned cocktails in Eastern Washington say the sticker shock of approaching a checkout counter, unaware of the liquor tax that is tacked on at the point of sale, leads many customers to put the more expensive item back.

They may also avoid the cocktails because the tax structure has led to smaller package sizes, with many canned cocktails served in four-packs while seltzers can be bought in the six-, 12- and even 18-packs more common among sales of beer.

"What's happening is the consumer is really being directed unfairly toward the malt-based, wine-based, beer-based seltzer, because it's less expensive," said Jon Soulier, the Spokane-based general sales manager for the spirits distributor Southern Glazes in Eastern Washington.

Liquor taxes in Washington, like many other states, are complicated and based on different measurements and an overall sales tax rate different for the type of alcoholic beverage. Those pushing for passage of the bill argue that taxes total about 26 cents per gallon for hard seltzers made with malt, including popular brands like White Claw, Truly and Bud Light Seltzer. For hard seltzers made with spirits, such as the vodka-based High Noon drink, and premade cocktails such as Jack Daniels' Whiskey and Cola in a can, the tax totals about $26 a gallon.

One of the industry players pushing for a change to the tax structure is Dry Fly Distilling, a craft distiller headquartered in downtown Spokane.

Patrick Donovan, the distillery's vice president of operations, said the company's bestseller is a huckleberry lemonade and vodka-based cocktail that is 4.9% alcohol by volume, well below some of the beer the distillery is fighting to compete with on store shelves.

Because of the state's tax structure, though, Donovan said the beverage is "taxed like it's a can of vodka."

"There's definitely checkout shock," he said.

The shock may be compounded by the fact that consumers don't realize what they're drinking is actually a different type of alcohol than beer, even in the case of what may appear to be small, packaged spirits.

In January, a Chicago woman [launched a class action against Sazerac Co.](), the company that bottles and manufactures products under the "Fireball" brand.

The lawsuit alleges fraud and deceptive business practices stemming from the company's sale of 99-cent bottles in several states, including Idaho, under the "Fireball Cinnamon" label that look almost identical to their "Fireball Cinnamon Whisky" label. Because liquor cannot be sold in gas stations in Idaho, the drink sold in the Gem State is made with malt, not distilled spirits.

The difference in taxes for the two types of alcohol in Washington has its basis in the initiative passed by voters in 2011 to privatize state's liquor industry. Members of the Liquor and Cannabis Board, the agency tasked with enforcing state liquor laws, told lawmakers last week under questioning about the reason for the discrepancy between the two that the split has existed in Washington law for a long time.

"I don't know if I can give you a specific answer for that," said Justin Nordhorn, director of policy and external affairs for the Liquor and Cannabis Board. He was responding to a question from state Rep. Sharon Wylie, D-Vancouver, co-chair of the House Committee on Regulated Substances & Gaming, about whether the difference had to do with the perceived public health implications of high-alcohol spirits versus beer. "But spirits in the state of Washington has always been treated differently than beer and wine."

Other states have also passed laws changing the way ready-to-drink alcoholic beverages with lower levels of distilled spirits are taxed at the urging of companies looking to cash in on the cocktail craze. Michigan reduced its taxes on spirit-based drinks with an ABV of less than 10%, and Nebraska passed a bill targeting such drinks with an ABV of less than 12.5%.

Opponents of the Washington bill point out that, after those laws were passed in 2021, consumers did not receive the price break promised by distributors who say a tax adjustment would benefit consumers. In fact, a year after the law took effect, per unit prices in Nebraska rose from $5.53 to $9.62, and in Michigan from $5.23 to $8.41, according to a November study prepared by the nonpartisan consulting firm Public Policy Consultants, based in Michigan.

There are also concerns that lowering the taxes for spirit-based canned drinks will add to their desirability for vulnerable people, including young adults and those with substance abuse issues.

Linda Thompson, executive director of the Greater Spokane Substance Abuse Council, said the addition of sugar and soda pop-like flavoring that attracts more adult consumers also makes them appealing to a younger audience.

"Any price reduction would make them more affordable and more appealing," Thompson said. "That is a concern."

Thompson pointed to a February 2019 study by the group Alcohol Justice, a California-based nonprofit that advocates for stricter policies to prevent abuse of alcohol by young people. That report, however, largely targeted malt-based beverages known as "alcopops," such as Four Loko and Mike's Hard Lemonade. The report includes among its suggestions classifying those drinks as distilled spirits in an effort to increase the price and keep them out of the hands of young people.

The hearing before the Senate committee on Thursday was the bill's second such presentation to Washington lawmakers. It had not been voted out of committee or scheduled for a floor vote as of Thursday afternoon.