

HOUSE BILL REPORT

SSB 6392

As Passed House:
March 5, 2020

Title: An act relating to the creation of a local wine industry association license.

Brief Description: Creating a local wine industry association license.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Van De Wege, King, Walsh, Warnick, Rolfes, Honeyford and Wilson, C.).

Brief History:

Committee Activity:

Commerce & Gaming: 2/20/20 [DP].

Floor Activity:

Passed House: 3/5/20, 93-4.

Brief Summary of Substitute Bill

- Establishes the local wine industry association license (license), authorizing eligible entities to receive purchased or donated wine for promotional or marketing purposes from domestic and certain out-of-state wineries.
- Provides that entities eligible to receive the license include nonprofit societies or certain organizations that promote Washington's wine industry.
- Exempts a domestic winery, including its off-site tasting rooms, from the three-tier system "money or moneys' worth" prohibition while participating in an event or marketing program.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass. Signed by 10 members: Representatives Peterson, Chair; Kloba, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Ramel, Vick and Young.

Staff: Kyle Raymond (786-7190).

Background:

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.

Domestic Winery License.

A domestic winery license issued by the Liquor and Cannabis Board (LCB) authorizes the manufacture of wine in the state. Subject to restrictions, a domestic winery may also act as a distributor and retailer of wine of its own production while complying with the laws applicable to wine distributors and retailers. Domestic winery licensees may take orders and accept payment for wines of its own production during an event held by a nonprofit holding a special occasion license. Also, a domestic winery may qualify for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers' market, subject to restrictions.

Out-of-State Winery Certificate of Approval.

Wineries located outside the state may obtain a certificate of approval to sell and ship wine of the winery's own production to licensed Washington wine distributors, importers, or retailers. A certificate of approval holder with a direct shipment endorsement may act as a distributor of its own production, and endorsement holders may use a common carrier to deliver wine of its own production to licensed Washington retailers, up to 100 cases per month.

Special Occasion Licenses.

A not-for-profit society or organization that obtains a special occasion liquor license may sell spirits, beer, and wine by the individual glass to be consumed on the premises. The special occasion license permits the licensee to serve liquor at a specified event, on a specified date and place. The fee for this license is \$60 per day, and the organization is limited to sales on no more than 12 single-day events per year. Once per year, certain agricultural fairs may count a multiple-day fair as one event.

Under a special occasion license, a "society or organization" means a not-for-profit group organized and operated: (1) solely for charitable, religious, social, political, educational, civic, fraternal, athletic, or benevolent purposes; or (2) as a local wine industry association registered under section 501(c)(6) of the Internal Revenue Code as it exists on July 22, 2007.

No portion of the profits from events sponsored by a not-for-profit group may be paid directly or indirectly to members, officers, directors, or trustees except for services performed for the organization. Any compensation paid to its officers and executives must be only for actual services and at levels comparable to the compensation for like positions within the state. A society or organization which is registered with the Washington Secretary of State or the United States Internal Revenue Service as a nonprofit organization is required to submit such registration, upon request, as proof that it is a not-for-profit group.

Three-Tier System Prohibition.

Built into the post-prohibition legal framework regulating liquor manufacturing, distribution, and sales is a separation between the three-tiers of the liquor industry: (1) manufacturing; (2) distributing; and (3) retailing. Liquor licensees in the manufacturing and distributing tiers of the industry, and their authorized representatives, are defined as "industry members" for certain purposes in liquor statutes.

There are two primary prohibitions that provide the separation between the tiers of the industry. First, generally, liquor licensees in the manufacturing and distributing tiers are prohibited from having financial interests in a business within the retail tier of the industry,

and vice versa. Secondly, industry members are prohibited from providing "money or moneys' worth," under any type of business practice or arrangement, to a business in the retail tier of the industry. Retailers are similarly prohibited from receiving "money or moneys' worth" from industry members.

Imposition of Taxes on Sales of Wine and Cider.

The LCB administers the collection of the wine tax. The tax rate for wine varies based on the type of wine sold. Tax rates include \$0.2292 per liter for table wines, \$0.4536 per liter for fortified wines, and \$0.0814 per liter for cider.

Summary of Bill:

The local wine industry association license (license) is established. The license may be issued to a nonprofit society or an organization created with the express purpose of educating consumers on, or promoting the economic development of, the Washington wine industry. The annual fee for the license is \$700.

A local wine industry association licensee (licensee) may purchase or receive donations of wine from domestic winery licensees or out-of-state wineries who hold a certificate of approval. The wine obtained by association licensees may be used for promotional or marketing purposes.

Events or marketing programs conducted by licensees may be held on domestic winery premises only if the domestic winery and the licensee each separately account for the sale of its wine. The domestic winery premises includes the premises of additional off-site tasting location premises under the domestic winery license.

While participating in an event or marketing program conducted by licensees, a domestic winery and its off-site locations are not subject to the "money or moneys' worth" prohibition under the three-tier system requirements.

Licensees may conduct no more than 12 events per year under the license. Licensees must notify the Liquor and Cannabis Board of any event or marketing program conducted under the license at least 45 days prior to the event or start of the marketing program.

All licensees participating in an event or marketing program are jointly responsible for any violation or enforcement issues, unless it can be demonstrated that the violation or enforcement issue was due to one or more licensee's specific conduct or action.

Licensees are not prohibited from accessing a special occasion license or special permits.

Wine furnished to a licensee that is a nonprofit society is subject to the wine sales tax.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill had strong support in the Senate. The bill was amended to accommodate the concerns from the Liquor and Cannabis Board and other stakeholders. The bill will provide local wine associations with a new, modern license to put on events and marketing programs. The events will bring tourists and money into rural communities and support local businesses. The bill will allow licensees to put on events and programs in a much more streamlined and efficient manner. This bill will support wineries in the state through helping Washington's nearly 1,000 wineries create direct-to-consumer sales.

(Opposed) None.

(Other) The Washington Association for Substance Abuse and Violence Prevention supports the amendments incorporated in the bill and remains neutral on the bill if the amendments remain.

Persons Testifying: (In support) Josh McDonald, Washington Wine Institute.

(Other) Seth Dawson, Washington Association for Substance Abuse and Violence Prevention.

Persons Signed In To Testify But Not Testifying: None.