

Commerce & Gaming Committee

HB 2686

Brief Description: Excluding the common carrier licensees from the definition of retailer for the purposes of the three-tier system.

Sponsors: Representatives Orwall, MacEwen, DeBolt, Blake, Fey, Vick and Springer.

Brief Summary of Bill

- Amends the definition of a "retailer" under the three-tier system to provide that an interstate common carrier's license does not constitute a retail license.

Hearing Date: 1/23/20

Staff: Kyle Raymond (786-7190).

Background:

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.

A "retailer" is defined as the holder of a license issued by the Liquor and Cannabis Board (LCB) to allow for the sale of alcoholic beverages to consumers for consumption on or off premises and any of the retailer's agents, officers, directors, shareholders, partners, or employees. A retailer does not include the LCB or any of its employees.

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

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.

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.

In addition to these two general prohibitions, there are numerous specific exceptions authorizing various business practices that may otherwise be prohibited.

Examples of exceptions to the financial interest prohibition include, among others, the following authorizations:

- for industry members to wholly own or hold a financial interest in a separate legal entity licensed as a liquor retailer such as a restaurant, tavern, or grocery store;
- for retailers to wholly own or hold a financial interest in a separate legal entity licensed as a manufacturer such as a distillery, winery, or brewery, or licensed as a distributor; and
- for a distillery, brewery, or winery to be licensed as a spirits, beer, and wine restaurant that is established on the property on which the primary manufacturing facility of the licensee is located, or on contiguous property.

However, any of the otherwise authorized arrangements are nevertheless prohibited to the extent they result in undue influence over the retailer or industry member or have resulted in, or are more likely than not to result in, an adverse impact on public health and safety.

Examples of exceptions to the moneys' worth prohibition include, among others, the following authorizations:

- for industry members to provide branded promotional items of nominal value to retailers, such as lighters, coasters, glasses, shirts, hats, and similar items, when used exclusively by the retailer or its employees and subject to other restrictions;
- for industry members to perform, and retailers to receive, services of building, rotating, and restocking displays and stock room inventories, as well as rotating and rearranging can and bottle displays of their own products and providing point of sale material and brand signs;
- for special occasion licensees to pay for beer, wine, or spirits immediately following the end of the event; and
- for industry members to list on their web sites information related to retailers who sell or promote their products, including direct links to the retailers' web sites.

Interstate Common Carrier's License.

The Interstate Common Carrier's License authorizes the sale of spirituous liquor, wine, and beer at retail for passenger consumption on a train passenger car, vessel, or airplane, while in or over the territorial limits of the state. Licensees may transport and store liquor for later retail sale to passengers in passenger train cars, vessels or airplanes.

Alcoholic beverages sold and/or served for consumption by licensees while within or over the territorial limits of this state are subject to the state liquor taxes within the state. Common carriers are required to report sales and/or service and pay taxes in accordance with procedures prescribed by the LCB.

Summary of Bill:

The definition of a "retailer" under the three-tier system is amended to provide that an interstate common carrier's license does not constitute a retail license.

Appropriation: None.

Fiscal Note: Not requested.

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