

HOUSE BILL REPORT

HB 2800

As Reported by House Committee On: Commerce & Gaming

Title: An act relating to the performance of personal services by a craft distillery, distiller, spirits certificate of approval holder, or distributor.

Brief Description: Concerning the performance of personal services by a craft distillery, distiller, spirits certificate of approval holder, or distributor.

Sponsors: Representatives Kirby, Vick and Eslick.

Brief History:

Committee Activity:

Commerce & Gaming: 2/4/20, 2/6/20 [DPS].

Brief Summary of Substitute Bill

- Authorizes a craft distillery, distillery, or spirits certificate-of-approval holder to provide personal services to certain liquor retailers when intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products.
- Provides that personal services may include pourings, bottle-signing events, and other informational or educational activities.
- Limits the retailers who may receive these personal services to: (1) spirits, beer, and wine restaurants; (2) special occasion licensees; and (3) private clubs.
- Provides that the instruction of consumers may include the furnishing of no more than three tastings to an individual per day, and that a single tasting of distilled spirits may not exceed 0.5 ounce.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Peterson, Chair; Kloba, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Morgan, Ramel, Vick and Young.

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.

Staff: Peter Clodfelter (786-7127).

Background:

Washington's tied-house laws regulate the relationship between liquor manufacturers, distributors, and retailers. In general, tied-house laws are meant to regulate how liquor is marketed and to prevent the vertical integration of the three tiers of the liquor industry. Manufacturers and distributors are included in the definition of industry member. The general requirement is that no industry member may advance and no retailer may receive monies or monies' worth under an agreement, or by means of any other business practice or arrangement.

An exception to the tied-house laws allows domestic wineries and wine certificate-of-approval holders to offer personal services like pourings, bottle-signing events, and similar informational activities at the premises of certain licensed liquor retailers like restaurants, specialty wine shops, grocery stores with a tasting endorsement, special occasion licensed events, and private clubs. Personal services must be intended to inform, educate, or enhance customers' knowledge or experience of the wineries' products. If the personal services include sampling of wine, the sampling costs may not be borne by the winery.

Another similar exception allows domestic breweries, microbreweries, and beer certificate-of-approval holders to offer the same types of personal services to grocery store licensees with a tasting endorsement during a tasting event. Wineries, breweries, and certificate-of-approval holders are not required to perform any personal services.

Summary of Substitute Bill:

Authorization is added for craft distilleries, distilleries, and spirits certificate-of-approval holders to provide personal services to certain liquor retailers, subject to the following limitations:

- The personal services must be conducted at a licensed premises and be intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products.
- The performance of personal services may include participation and pouring, bottle-signing events, and other similar informational or educational activities.
- The personal services must be performed at the premises of: (1) a restaurant holding a spirits, beer, and wine license; (2) a special occasion licensed event; or (3) a club holding a private club license.
- A craft distillery, distillery, or spirits certificate-of-approval holder is not obligated to perform personal services, and a retail licensee may not require such a manufacturer to conduct personal service as a condition of selling any alcohol to the retail licensee, or as a condition for including any product of the manufacturer in any tasting conducted by the licensee.
- The cost of sampling spirits conducted pursuant to the new authorization may not be borne, directly or indirectly, by a craft distillery, distillery, or spirits certificate-of-approval holder.

- The instruction of consumers may include the furnishing of not more than three tastings to any individual in one day. A single tasting of distilled spirits may not exceed 0.5 ounce.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- Spirits distributors are removed from the bill as one of the spirits industry members who would be authorized to perform the identified types of personal services to certain liquor retailers.
- A requirement is added that the cost of sampling spirits conducted pursuant to the new authorization may not be borne, directly or indirectly, by a craft distillery, distiller, or spirits certificate-of-approval holder.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: 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 will allow distilled spirits producers to offer limited spirits tastings to adults in bars and restaurants. Samples are limited to 0.5 ounces of spirits per sample, a small amount, with a maximum of three tastings per day per adult consumer. The size of the new privilege in the bill is limited in scope. This is a privilege provided to licensees in 42 other states and is recognized in federal regulations as an acceptable practice. This is also a privilege enjoyed by breweries and wineries, so this will give spirits producers a similar opportunity. It will help consumers make an informed decision before they purchase a full-sized beverage. When Initiative Measure No. 1183 privatized spirits in 2011 and added privileges for spirits producers similar to wineries and breweries, not all the statutes were amended and conformed; there has been work since then to ensure equal opportunity for businesses in the beer, wine, and spirits industries. Customers at bars and restaurants will appreciate this opportunity and can sample local products. Spirits distributors do not want to be included in the new authorization for personal services, and there may be an amendment to remove distributors from the authorization. Hospitality businesses are in support of the bill and appreciate the new opportunities it provides to customers. Training can ensure samples are offered for educational purposes and to help guests select products.

(Opposed) Beer and wine distributors generally oppose giveaways to retailers or practices that encourage a pay-to-play market, which gives large retailers and suppliers with superior financial resources preferred access to the market. Fair market access would be undermined if this bill passes. More than any other sector in the beverage alcohol industry, the spirits industry is dominated by a small handful of very large players. The sales of all Washington craft spirits annually is a small fraction of the spirits sales of the largest national

distiller. Large spirits companies can afford to give away staff for tastings at many restaurants and bars. This bill could change the spirits market. The privilege proposed in this bill is different and more expansive than the current privilege for beer and wine. To clarify, the bill only authorizes a spirits manufacturer to provide samples to customers while at the retail premises; it does not authorize the restaurant or other retailer to provide the samples to customers themselves. This creates a paradox, in that only the manufacturer, not the retailer, can conduct spirits tastings at the retail premises, which is not the case with beer and wine, where restaurants can offer samples in addition to manufacturers. Spirits are typically served differently than beer and wine. The bill is silent on how the spirits are served, and it is unclear if spirits are served as a shot or as a cocktail. Before passing the bill, it is worth asking if there is a need for more sampling events in the state, and whether now is the right time. There is a Senate bill moving through the process, so the committee should wait to see how the issues raised get resolved.

(Other) Proponents' cooperation in ensuring proper implementation of this bill in order to avoid possible concerns is appreciated. There is an understanding there could be training by licensees and perhaps agency rulemaking. The main issue to consider is the manner in which samples are offered. There are objectionable and offensive ways in which samples can be offered, or samples can be offered in ways that are not problematic. Consider when someone in recovery who cannot tolerate any alcohol is suddenly offered a free drink. That would be a problem. Or there could be families in a restaurant who do not want to be exposed to this form of liquor promotion; if the family is suddenly offered samples, that is a problem. But if the customer asks for alcohol or asks for a tasting, then it is entirely different and not problematic. So, there should be a training requirement so samples are offered only after the customer initiates an interest in receiving alcohol. If the bill is implemented so that samples are offered in unobjectionable ways, then concerns are alleviated.

Persons Testifying: (In support) Representative Kirby, prime sponsor; Stephenie Shah and Charlie Brown, Diageo; and Katie Doyle, Washington Hospitality Association.

(Opposed) Scott Hazlegrove, Washington Beer and Wine Distributors Association.

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

Persons Signed In To Testify But Not Testifying: None.