

HOUSE BILL REPORT

ESSB 6095

As Passed House:
March 6, 2020

Title: An act relating to common carrier activities that are not prohibited under the three-tier system.

Brief Description: Describing permissible common carrier activities under the three-tier system.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senator Keiser).

Brief History:

Committee Activity:

Commerce & Gaming: 2/24/20, 2/25/20 [DP].

Floor Activity:

Passed House: 3/6/20, 93-3.

Brief Summary of Engrossed Substitute Bill

- Exempts interstate common carrier licensees (common carriers) from certain promotional activities prohibited under three-tier system requirements, including transporting liquor purchased by ticketed passengers.
- Allows members of the liquor industry to enter into arrangements to provide tastings to passengers of common carriers, with or without charge.
- Allows common carriers to purchase alcoholic beverages from outside the state and import the beverages for sales and service aboard passenger trains, vessels, and airplanes.
- Allows common carriers to provide complimentary alcoholic beverages to passengers aboard trains, vessels, and airplanes.
- Extends certain retailer exceptions to the moneys' worth prohibition to interstate common carrier licensees, including the provision of branded promotional items and personal services.

HOUSE COMMITTEE ON COMMERCE & GAMING

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.

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

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. The full definition of "industry member" means a licensed manufacturer, producer, supplier, importer, wholesaler, distributor, authorized representative, certificate of approval holder, warehouse, and any affiliates, subsidiaries, officers, directors, partners, agents, employees, and representatives of any industry member.

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 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.

There are specific exceptions authorizing various business practices that may otherwise be prohibited. 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 domestic wineries, and out-of-state wineries holding a certificate of approval, to perform personal services for retailers if conducted at a licensed premises; and
- for domestic breweries, microbreweries, and out-of-state breweries holding a certificate to perform personal services for grocery store licensees with a tasting endorsement if conducted at a licensed premises in conjunction with a tasting event.

The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities related to the manufacturer's products.

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. Interstate common carrier's licensees (common carriers) may transport and store liquor for later retail sale to passengers in passenger train cars, vessels, or airplanes.

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

Summary of Bill:

Interstate common carrier licensees (common carriers) are authorized to conduct certain activities, including to:

- transport liquor purchased by a ticketed passenger without charge, or at a discounted rate;
- display or distribute information about an industry member if the industry member does not pay the common carrier to do so;
- sponsor public or private events, including industry member-hosted events;
- engage in joint promotional activities if the industry member does not pay the common carrier to participate; and
- provide employees or ticketed common carrier passengers branded promotional items of nominal value from industry members.

In addition, common carriers may accept payment from an industry member for advertising if: (1) the advertising appears in a publication produced and distributed to passengers of the common carrier; (2) the amount of the payment is consistent with the advertising rates paid by other advertisers; and (3) the payment is not used to induce or exclude industry member products.

Common carriers may purchase alcoholic beverages from outside the state and import the beverages for sales and service aboard passenger trains, vessels, and airplanes. Common carriers may also provide complimentary alcoholic beverages to train, vessel, or airplane passengers.

An industry member may enter into an arrangement to provide tastings, with or without charge, to passengers of a common carrier.

Existing exceptions to the moneys' worth prohibition for retailers apply to common carriers, including the following authorizations:

- for industry members to provide branded promotional items of nominal value to licensees;
- for domestic wineries, and out-of-state wineries holding a certificate of approval, to perform personal services for interstate common carriers; and

- for domestic breweries, microbreweries, and out-of-state breweries holding a certificate of approval to perform personal services for interstate common carriers in conjunction with a tasting event.

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.

Staff Summary of Public Testimony:

(In support) This bill represents many hours of stakeholder work to correct an inadvertent removal of an exemption from statute when Initiative Measure No. 1183 was passed. When the statute was subsequently reorganized, two exemptions for the common carrier license were apparently missed. The result is that the common carrier exemption authorizing Alaska Airlines to do promotional programs was removed. The LCB brought this to Alaska Airline's attention. This bill takes a different approach and is not the exemption that previously existed. Rather, the bill recognizes the promotional activities that are allowed for common carriers.

This bill is important for the Washington wine industry and the future of the industry. Alaska Airlines, and other interested common carriers, run important promotional programs that benefit the Washington wine industry, including the Wine Flies Free program, market promotions, and tastings. These programs help bring people into Washington wineries and hopefully bring wine home through the Wine Flies Free program.

(Opposed) None.

Persons Testifying: Senator Keiser, prime sponsor; Dan Coyne, Alaska Airlines; and Josh McDonald, Washington Wine Institute.

Persons Signed In To Testify But Not Testifying: None.