

SENATE BILL REPORT

ESSB 6095

As Passed Senate, February 18, 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: Labor & Commerce: 2/03/20, 2/04/20 [DPS, w/oRec].

Floor Activity:

Passed Senate: 2/18/20, 47-0.

Brief Summary of Engrossed First Substitute Bill

- Authorizes a common carrier to transport liquor purchased by a ticketed passenger.
- Places conditions on common carriers' activities involving members of the liquor industry, including the displaying of information, sponsoring events, and selling advertising.
- Allows members of the liquor industry to provide tastings to passengers of a common carrier, with or without charge.
- Allows interstate common carriers may purchase alcoholic beverages outside the state and import the beverages for sales and service aboard passenger trains, vessels, and airplanes.
- Allows the carriers to provide complimentary alcoholic beverages to the passengers.
- Allows industry members to provide branded promotional items and for certain members to perform personal services.

SENATE COMMITTEE ON LABOR & COMMERCE

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: That Substitute Senate Bill No. 6095 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; King, Ranking Member; Braun, Walsh and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Saldaña, Schoesler and Stanford.

Staff: Richard Rodger (786-7461)

Background: The legal framework regulating liquor manufacturing, distribution, and sales includes a separation between the three tiers of the liquor industry—manufacturing, distributing, and 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 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.

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 websites information related to retailers who sell or promote their products, including direct links to the retailers' websites.

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 served, or both, 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 must report sales and service, or both, and pay taxes in accordance with procedures prescribed by the LCB.

Summary of Engrossed First Substitute Bill: Industry members may provide branded promotional items of nominal value to interstate common carriers for use by employees and ticketed passengers. Wineries, breweries, and microbreweries may perform personal services for interstate common carriers, including pouring, bottle signing events, and other information and educational activities.

A common carrier may: (1) transport liquor without charge or at a discounted rate when the liquor was purchased by a ticketed passenger and is not intended to be sold for resale; (2) display or distribute information about an industry member, so long as it is not paid to do so; (3) sponsor any public or private event including those hosted by an industry member; (4) engage in joint promotional activities under specified conditions; and (5) accept payment from an industry member for advertising, if:

- the advertising appears in a publication produced and distributed to passengers of the common carrier;
- the amount of the payment is consistent with the advertising rates paid by other advertisers; and
- the payment is not used as an inducement to purchase the products of the industry member paying for the advertising nor does it result in the exclusion of products of other industry members.

Interstate common carriers may purchase alcoholic beverages outside the state and import the beverages for sales and service aboard passenger trains, vessels, and airplanes. The carriers may also provide complimentary alcoholic beverages to their passengers.

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

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on First Substitute: PRO: When Initiative 1183 was passed, two subsections of current law were inadvertently omitted. One of the provisions allowed common carriers to fly wine home for their customers for free. The other section concerned public houses, of which there are none in Washington at this time. We support this concept and have been working with stakeholders to perfect the language.

OTHER: We had concerns with the original bill, but are pleased with the talks to improve this legislation. The wine flies free program is extremely important to our small wineries and the wine industry.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Scott Kennedy, Alaska Airlines; Justin Nordhorn, LCB.

OTHER: Josh McDonald, Washington Wine Institute; Annie McGrath, Washington Brewers Guild; Amy Brackenbury, Washington Beer and Wine Distributors Association.

Persons Signed In To Testify But Not Testifying: No one.