

HOUSE BILL REPORT

SHB 2342

As Passed House:
February 17, 2016

Title: An act relating to performance of personal services by members of the liquor industry to retailers.

Brief Description: Concerning performance of personal services by members of the liquor industry to retailers.

Sponsors: House Committee on Commerce & Gaming (originally sponsored by Representative Hurst).

Brief History:

Committee Activity:

Commerce & Gaming: 1/12/16, 1/19/16 [DPS].

Floor Activity:

Passed House: 2/17/16, 50-48.

Brief Summary of Substitute Bill

- Authorizes breweries to perform certain personal services to beer and/or wine specialty shop licensees.
- Authorizes distillers, importers, and manufacturers of spirits to perform certain personal services to beer and/or wine specialty shop licensees with a spirits retail license.
- Permits agents of distillers, importers, and manufacturers of spirits that are not also distributors to perform the authorized personal services.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hurst, Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake and Kirby.

Minority Report: Do not pass. Signed by 3 members: Representatives Scott, Van De Wege and Vick.

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.

Minority Report: Without recommendation. Signed by 1 member: Representative Wylie, Vice Chair.

Staff: Peter Clodfelter (786-7127).

Background:

Washington's tied-house laws regulate the relationship between liquor manufacturers, distributors (industry members), 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. The general rule is that no industry member may advance and no retailer may receive moneys or money's worth under an agreement, or by means of any other business practice or arrangement.

There are numerous exceptions to the tied-house laws. One exception allows domestic wineries and wine certificate-of-approval holders to perform personal services to certain retailers on a licensed premises to inform, educate, or enhance customers' knowledge or experience of the wineries' products. Such services can include pourings, bottle-signing events, and similar informational activities. If the services include sampling of wine, the sampling costs must not be borne by the winery.

Another exception allows domestic breweries, microbreweries, and beer certificate-of-approval holders to perform similar personal services to grocery store licensees with a tasting endorsement during a tasting event.

Summary of Substitute Bill:

Domestic breweries, microbreweries, and beer certificate-of-approval holders may perform personal services to beer and/or wine specialty shop licensees.

Distillers, importers, manufacturers of spirits, and spirits importers are granted an exception to the tied-house laws for personal services. The services must be conducted at a licensed premises of a beer and/or wine specialty shop with a spirits retail license and with the intent to educate customers or enhance customers' knowledge or experience of the manufacturer's products. Services may include participation in pouring for tastings, bottle-signing events, personalized bottle engraving, embroidery of fabric bottle bags, and other similar activities.

All spirits sampling activities must be conducted in compliance with the spirits sampling program allowed to licensees participating in the responsible vendor program under rules applicable to beer and/or wine specialty shops, and sampling costs must not be borne by the distiller, importer, manufacturer of spirits, or spirits importer. Distillers, importers, manufacturers of spirits, and spirits importers are not obligated to perform personal services, and a beer and/or wine specialty shop with a spirits retail license may not require a distiller or importer of spirits to perform personal services as a condition of selling its products.

Agents of distillers, importers, manufacturers of spirits, or spirits importers that are not also distributors may perform the authorized personal services.

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 is similar to a bill heard last year (House Bill 1429) and would extend the personal services that are currently authorized to wine and beer retailers to beer and wine specialty shops with a spirits retail license. This is a small, limited exemption. Because of concerns raised in 2015, the previous bill was narrowed and the authorization in this bill only allows personal services by liquor industry members to be performed to beer and/or wine specialty shops with a spirits retail license, and not also to grocery store licensees with a spirits retail license, as was in the 2015 bill. For years the current system has worked well, and there is no reason why the same rules that apply to the wine and beer industry should not be extended to the liquor industry. The bill would not erode the three-tier system or harm small producers. Small distillers will also benefit because they will be able to increase their product awareness through services like in-store samplings. The bill would allow alcohol industry members to provide personal services that include "enhanced packaging promotions," like bottle-engraving or fabric bag embroidery services. A person could buy a bottle from the retailer, then pay for embroidery at an embroidery station or engraving at an engraving station in the retail outlet. It should be clear that "enhanced packaging promotions" must not appeal to children.

(Opposed) This bill is a further erosion of the three-tiered system. The three-tiered system goes beyond controlling ownership and prohibits practices that result in undue influence between the three tiers. Large suppliers have more money and are able to give away more products, which will drive sales at the expense of small suppliers. One tier of the industry should not be able to influence another tier in this way. This bill would also result in an uneven playing field for retailers, because only certain retailers have the opportunity to receive these personal services and other retailers do not. This does not make sense, especially because grocery store licensees have some of the highest compliance rates under the existing sampling program and are left out of the bill. Different types of licensed retailers selling identical products and that are otherwise similarly situated should not be treated unequally. Also, large retailers could secure financial benefits that place small retailers at a disadvantage. Retailers would receive free labor under the bill, and this would encourage retailers to favorably display products from those suppliers offering the free labor. The provision of these personal services, like pourings, is actually a considerable cash contribution when taking into account the cost of labor and liability concerns associated with sampling. The Liquor and Cannabis Board has limited resources to enforce existing practices and rules aimed at avoiding undue influence in the three-tier system, and this bill makes that problem worse. The phrase "enhanced packaging promotions" is unclear and would allow suppliers to provide a host of items to people to get them to buy a supplier's products. The bill does not require employees of suppliers to be the people who provide the personal services to retailers. Adding in grocery stores licensees as authorized to receive personal services would increase the amount of sampling conducted.

(Other) It should be clear that "enhanced packaging promotions" must not appeal to children. The embroidered bag shown at the hearing and the described bottle engravings are not objectionable, but the language used to authorize those things, "enhanced packaging promotions," is broad. Attempts to expand the sampling beyond what is currently authorized in the bill will be opposed. Washington leads the nation in new craft breweries opened. To ensure continued growth, equal access to the market is essential. There are concerns that expanding the current personal services authorized by breweries to also include "enhanced packaging promotions" and authorizing agents to perform the personal services could result in undue influence being exerted on retailers to the detriment of small craft breweries with less resources to offer personal services. If the bill moves forward, please remove the parts of the bill addressing breweries.

Persons Testifying: (In support) Charlie Brown and Stephenie Shah, Diageo; Cindy Zehnder, Total Wine and More; and Joanie Deutsch, Washington Retail Association.

(Opposed) Scott Hazlegrove, Washington Beer & Wine Distributors Association; Amy Brackenbury, Washington Food Industry Association; and Holly Chisa, Northwest Grocery Association.

(Other) Seth Dawson, Washington Association for Substance Abuse Prevention; T.K. Bentler and Annie McGrath, Washington Brewers Guild; and Jim Halstrom, Southern Wine & Spirits.

Persons Signed In To Testify But Not Testifying: None.