HOUSE BILL REPORT
HB 2686

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to excluding the common carrier licensees from the definition of retailer for the purposes of the three-tier system.

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 History:

Committee Activity:

Commerce & Gaming: 1/23/20, 2/3/20 [DPS].

Brief Summary of Substitute Bill

- Creates certain exemptions for an Interstate Common Carrier's Licensee from the three-tier system requirements.
- Provides that an industry member is not prohibited from entering into an arrangement to provide tastings, with or without charge, to passengers of an Interstate Common Carrier's License.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Peterson, Chair; Kloba, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Morgan, Ramel and Vick.

Minority Report: Without recommendation. Signed by 1 member: Representative Young.

Staff: Kyle Raymond (786-7190).

Background:

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.

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

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 Substitute Bill:

An Interstate Common Carrier's License is exempt from certain three-tier system requirements. The specific exemptions include:
- transporting liquor without charge, or at a discounted rate, when the liquor was purchased by a ticketed passenger;
- displaying or distributing information about an industry member, provided the industry member did not pay the common carrier to display or distribute the information;
- sponsoring public or private events, including those hosted by or otherwise affiliated with an industry member; and
- accepting payment from an industry member for advertising, subject to certain restrictions.

An industry member is not prohibited from entering into an arrangement to provide tastings, with or without charge, to passengers of an Interstate Common Carrier's License.

Substitute Bill Compared to Original Bill:

The substitute bill removes the provision providing that an Interstate Common Carrier Licensee (licensee) does not constitute a retail license, exempting licensees from all three-tier system requirements.

The substitute bill creates an exemption for licensees from certain three-tier system requirements, including:
- transporting liquor without charge, or at a discounted rate, when the liquor was purchased by a ticketed passenger;
- displaying or distributing information about an industry member, provided the industry member did not pay the common carrier to display or distribute the information;
- sponsoring public or private events, including those hosted by or otherwise affiliated with an industry member; and

- accepting payment from an industry member for advertising, subject to certain restrictions.

The substitute bill provides that an industry member is not prohibited from entering into an arrangement to provide tastings, with or without charge, to passengers of licensees.

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) Alaska Airlines (Alaska) has a Wine Flies Free Program (Program) which is a great way to help promote Washington wine. The program allows Alaskan Mileage Plan Members the opportunity to fly a case of packaged wine for free when traveling on domestic flights. The Program was designed to connect travelers with West Coast destinations known for their excellent selection of wines. The Program also provides easy opportunities for travelers to bring those products home and avoid costly shipping.

This is kind of a fix bill. A bill from a previous year, House Bill 1183, removed a provision that created the exemption contained in this bill. The provision exempted Interstate Common Carriers from the prohibitions on relationships between retailers and manufacturers, distributors, and importers of alcohol. The removal of this provision does not seem to have been connected to a policy change and may have been an inadvertent technical omission. That section of statute was moved and the last two exemptions on the page were left out.

This exemption brings certain promotions, such as the Program, out of compliance under Washington law. Alaska was made aware of this change late last year by the Liquor and Cannabis Board and was encouraged to pursue a legislative fix to reintroduce that exemption into the statute. This exemption plays an important role in the successful promotional programs that Alaska has operated for many years, including free wine tastings at wineries when you show your Alaska Airlines boarding pass, joint promotional videos with some brands that are served on board, brand advertising in the Alaska Beyond Magazine, other in-flight collateral Mileage Plan Member events that involve partnering with restaurants and wine makers, and sponsorship of events.

(Opposed) This bill is structured to create a universal exemption for any common carrier airline, cruise ship, rail line, bus line, or others from the rules that regulate alcohol beverages. The three-tier system is designed to separate retailers, suppliers, and distributors to avoid direct and indirect control of the market.

The system requirements help avoid big players from dominating the market and demanding special treatment for the system all licensees support. The broad exemption removing all common carriers from these rules would create challenges in the market. The common carriers this bill concerns are very large retail customers, but they operate like any other retailer in that they purchase products at wholesale and they sell that product at retail.

There may be special circumstances that would justify exemptions, but the Legislature should not create this broad of an exemption.

(Other) The exemption for Interstate Common Carrier Licensees under the bill is too broad. Washington wineries of all sizes should have the same opportunity to have their wine on airlines, cruise ships, or trains across the state. The competitive nature needs to be protected for Washington wine.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Scott Kennedy, Alaska Airlines; and Justin Nordhorn, Liquor and Cannabis Board.

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

(Other) Josh McDonald, Washington Wine Institute.

Persons Signed In To Testify But Not Testifying: None.