

HOUSE BILL REPORT

SSB 5394

As Passed House:
April 12, 2019

Title: An act relating to liquor licensees' use of web sites and social media to promote events.

Brief Description: Concerning liquor licensees' use of web sites and social media to promote events.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators King, Conway, Palumbo and Keiser).

Brief History:

Committee Activity:

Commerce & Gaming: 3/18/19, 3/19/19 [DP].

Floor Activity:

Passed House: 4/12/19, 90-6.

Brief Summary of Substitute Bill

- Authorizes liquor manufacturers, distributors, and their licensed representatives to post and share on their websites and social media accounts, promotional information and images, related to certain events at on-premises liquor retailers' premises or licensed special occasion events.
- Requires events to feature a product of the manufacturer's own production or a product sold by the distributor, to qualify for the authorization.
- Specifies that the promotional information posted and shared may include links to purchase event tickets.
- Specifies there is no obligation on liquor manufacturers, distributors, or their licensed representatives to post or share information, and retailers may not require the posting or sharing of information related to retailer events.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass. Signed by 9 members: Representatives Stanford, Chair; Reeves, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kloba, Morgan 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.

Staff: Peter Clodfelter (786-7127).

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" is: 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.

There are two primary prohibitions that separate the tiers of the industry. First, generally industry members are prohibited from having financial interests in another industry member or 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 prohibitions, there are numerous 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 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.

One type of retail liquor license available is a special occasion license. The license is available to nonprofit organizations or societies to hold events lasting a day or several days at which beer, wine, or spirits may be sold to adults age 21 and over for on-premises consumption. Events can include booths at which different manufacturers' liquor products may be purchased, consumed, and learned about. With approval from the Liquor and Cannabis Board, a special occasion licensee may also sell spirits, beer, and wine in original, unopened containers for off-premises consumption.

Summary of Bill:

It is provided that the "moneys' worth" prohibition of the liquor industry tied-house laws does not prohibit manufacturers, distributors, or their licensed representatives from using websites or social media accounts in their name to post, repost, or share promotional information or images about events featuring a product of the manufacturer's own production or a product sold by the distributor, held at an on-premises licensed liquor retailer's location or a licensed special occasion event. The promotional information may include links to purchase event tickets.

Manufacturers, distributors, or their licensed representatives may not pay a third party to enhance viewership of a specific post. Industry members, or their licensed representatives, are not obligated to post, repost, or share information or images on a website or on social media. A licensed liquor retailer may not require an industry member or their licensed representative to post, repost, or share information or images on a website or on social media as a condition for selling any alcohol to the retailer or participating in a retailer's event.

Appropriation: None.

Fiscal Note: Available.

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 will allow liquor manufacturers, distributors, and their representatives to promote events that feature their products, which will help these businesses build their brands. This will provide much needed clarity on the type of information breweries can post about events taking place at a location that is not their own brewery premises. Currently, breweries can post some information about these events, but are limited in the type of language that can be used. There is confusion about what is permitted, and the law needs modernization. This bill is a practical update and in line with other nominal services that liquor industry members may provide to retailers. The bill is supported by restaurants and bars, where some of these events occur, and is also supported by wineries. Direct sales of wine to consumers is the lifeblood of wineries. Communication tools, including websites and social media, are tremendously important for wineries to reach consumers and to succeed. Wineries are excited for the new opportunities to partner with charitable and nonprofit organizations with special occasion licenses to use wineries' communication tools to help make events successful. Reasonable parameters are included in the bill in order for sharing of information to be free, and for the law to be fairly and consistently applied.

(Opposed) None.

(Other) Stakeholders who signed in opposed when testifying in the Senate have reviewed the updated version of the bill and are now neutral. This bill is very similar to House Bill 1416. Stakeholders want to ensure the language prohibiting payments to third parties for enhancing viewership of website and social media posts is retained.

Persons Testifying: (In support) Senator King, prime sponsor; Annie McGrath, Washington Brewers Guild; Zachary Lindahl, Washington Hospitality Association; and Josh McDonald, Washington Wine Institute.

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

Persons Signed In To Testify But Not Testifying: None.