

FINAL BILL REPORT

ESSB 6095

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Synopsis as Enacted

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

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

Senate Committee on Labor & Commerce
House Committee on Commerce & Gaming

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;

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- 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: 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.

Votes on Final Passage:

Senate	47	0
House	93	3

Effective: June 11, 2020