

# HOUSE BILL REPORT

## E2SHB 1480

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**As Passed House:**

February 25, 2021

**Title:** An act relating to extending certain privileges granted to liquor licensees to mitigate the impact of the coronavirus pandemic.

**Brief Description:** Extending certain privileges granted to liquor licensees to mitigate the impact of the coronavirus pandemic.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives MacEwen, Kloba, Sutherland, Robertson, Ormsby, Chambers, Eslick and Tharinger; by request of Liquor and Cannabis Board).

**Brief History:**

**Committee Activity:**

Commerce & Gaming: 2/11/21, 2/12/21 [DPS];

Appropriations: 2/22/21 [DP2S(w/o sub COG)].

**Floor Activity:**

Passed House: 2/25/21, 86-12.

**Brief Summary of Engrossed Second Substitute Bill**

- Codifies, temporarily, liquor license privileges similar to allowances that the Liquor and Cannabis Board (LCB) is providing to licensees during the COVID-19 pandemic.
- Includes authorizations related to curbside and takeout service or delivery of alcohol products, the sale by restaurants of premixed cocktails, cocktail kits, and wine drinks, and the sale of growlers by certain licensees.
- Requires the LCB to adopt rules related to the temporary privileges, directs the LCB to consider revising rules to provide greater flexibility for food service requirements for liquor licensees, and addresses the

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

LCB's temporary relaxation of certain requirements.

- Requires the LCB to contract for an independent study of the impacts of the new, temporary privileges.

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## HOUSE COMMITTEE ON COMMERCE & GAMING

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kloba, Chair; Wicks, Vice Chair; MacEwen, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Chambers, Kirby, Morgan, Vick and Wylie.

**Staff:** Peter Clodfelter (786-7127).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Gaming. Signed by 27 members: Representatives Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Schmick, Springer, Steele, Stonier, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Dye, Harris, Ryu and Senn.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Ormsby, Chair.

**Staff:** Linda Merelle (786-7092).

### **Background:**

#### Temporary Liquor License Privileges.

The Liquor and Cannabis Board (LCB) is currently providing certain liquor licensees with temporary alcohol sales privileges during the COVID-19 pandemic.

*Curbside Service and Delivery.* Temporary privileges include privileges related to curbside service and delivery of liquor products by certain licensees. For example, among other

temporary privileges, restaurant licensees may temporarily sell factory sealed bottles and cans of beer, wine, and spirits to customers in combination with the sale of to-go food or by delivery with a food order. Under the LCB's guidance, spirits sold by a restaurant licensee for curbside service or delivery must be in factory sealed bottles or meet the requirements for premixed cocktails, and must be sold in combination with food.

*Premixed Cocktails.* In accordance with the LCB's guidance, restaurants with a spirits, beer, and wine license may temporarily sell premixed alcoholic drinks (cocktails) for consumption off the licensed premises, subject to requirements. Among the requirements is that the licensee must ensure a complete meal is ordered with the premixed cocktail order and prepared on the licensed premises. Also, premixed cocktails must be packaged in a container with a secure lid or cap and in a manner designed to prevent consumption without removal of the lid or cap. Under the LCB's guidance, additional requirements apply to deliveries of premixed cocktails.

#### Food Service Requirements for Certain Liquor Licensees.

Certain liquor licensees including restaurants, certain theaters, and hotels are required in statute to have food service in combination with alcohol sales. The LCB's rules establishing food service requirements require certain licensees like spirits, beer, and wine restaurants, hotels, and certain theaters to serve eight complete meals. The LCB's rules define a "complete meal" as an entree and at least one side dish. For restaurants that sell only beer and/or wine but not spirits, they are required to offer "minimum food service" to customers instead of the complete meal requirements.

#### Required Signature for Home Deliveries.

The LCB's rules predating the COVID-19 pandemic authorize certain licensees to sell and make home deliveries of liquor to customers, subject to a variety of requirements. One requirement is that a private carrier must obtain the signature of the person who receives liquor upon delivery. However, the LCB's current guidance during the COVID-19 pandemic provides that the LCB is temporarily relaxing enforcement of the signature requirement. The current guidance provides that certain licensees with a delivery endorsement may choose to photograph the customer's identification, or use other devices such as an application scanning the identification, in lieu of gaining a physical signature to document delivery to the customer.

#### Beer and Wine Sampling at Farmers Markets.

If a qualifying farmers market and participating winery or microbrewery both hold the appropriate endorsements, the winery or microbrewery may offer samples to customers under a variety of conditions and limitations. One of the requirements is that a winery or microbrewery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food. During the COVID-19 pandemic, the LCB is temporarily relaxing enforcement of food-related requirements associated with alcohol sampling at farmers markets.

### Spirits Taxes.

Taxes on retail sales of bottled or packaged spirits sold for off-premises consumption include a spirits sales tax of 20.5 percent of the selling price and a spirits liter tax of \$3.7708 per liter, both paid by the consumer. When retailers purchase spirits for later resale to consumers for consumption on the retail premises, the retailer pays a spirits sales tax of 13.7 percent and a spirits liter tax of \$2.4408 per liter.

### **Summary of Engrossed Second Substitute Bill:**

#### Temporary Liquor License Privileges.

Several liquor license privileges similar to privileges the Liquor and Cannabis Board (LCB) is temporarily providing to liquor licensees during the COVID-19 pandemic are added to law through July 1, 2023. Licensees must generally obtain an endorsement, at no cost, from the LCB to engage in the authorized activities, but licensees are not required to wait for the LCB to finalize rules and other actions, such as the completion of information systems changes, to engage in the authorized activities.

*Curbside Service and Delivery.* The following liquor licensees may sell alcohol products at retail for curbside and takeout service or delivery:

- beer and wine restaurants;
- spirits, beer, and wine restaurants;
- taverns;
- domestic wineries;
- domestic breweries and microbreweries;
- distilleries;
- snack bars;
- nonprofit arts licensees; and
- caterers.

*Premixed Cocktails and Cocktail Kits.* Spirits, beer, and wine restaurant licensees may also sell premixed cocktails and cocktail kits for takeout or curbside service and for delivery, pursuant to rules the LCB may adopt regulating these sales. It is provided that this new authorization does not allow the sale of full bottles of spirits by licensees for off-premises consumption, with the exception of mini-bottles as part of cocktail kits.

Mini-bottle sales as part of authorized cocktail kits are exempted from the spirits license issuance fee and spirits taxes, and an explicit exemption from the requirements for tax preference performance statements is included. "Mini-bottles" are defined as original factory-sealed containers holding not more than 50 milliliters of a spirituous beverage.

*Wine Drinks.* Restaurant licensees are temporarily also authorized to sell wine by the glass and premixed wine drinks for takeout or curbside service and for delivery. Restaurant licensees who may sell spirits may also sell premixed wine and spirits cocktails for takeout or curbside service and for delivery. The LCB is granted rulemaking authority to establish

the manner in which wine by the glass and cocktails for off-premises consumption must be provided.

*Growlers.* Licensees that were authorized by statute or rule before January 1, 2020, to sell growlers for on-premises consumption may sell growlers for off-premises consumption through curbside, takeout, or delivery service. Sales of growlers must meet federal Alcohol and Tobacco Tax and Trade Bureau requirements.

Without obtaining an endorsement, beer and wine specialty shops and domestic breweries and microbreweries may sell prefilled growlers for off-premises consumption through takeout or curbside service and delivery, if prefilled growlers are sold the same day they are prepared for sale and not stored overnight for sale on future days. "Growler" is defined as a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled by the retailer at the time of sale.

*Temporary Rulemaking Authority.* The LCB may adopt rules governing the manner in which the new activities must be conducted. The LCB must adopt or revise current rules to allow for outdoor service of alcohol by on-premises licensees holding the following liquor licenses:

- beer and wine restaurant license;
- spirits, beer, and wine restaurant license;
- tavern license;
- domestic winery license;
- domestic brewery or microbrewery license;
- distillery license;
- snack bar license; and
- private club license.

*Signature Upon Delivery.* Upon delivery of any alcohol product authorized to be delivered under the temporary liquor privileges, the signature of the person age 21 or over receiving the delivery must be obtained. It is specified that any temporary authorization or relaxation of requirements provided by the LCB, in effect on the effective date of the act, related to authorizing the photographing or scanning of customer identification in lieu of obtaining a physical signature to document liquor product delivery or verify the age of customers, expires at the end of the Governor's proclamation of emergency related to COVID-19.

All of the temporary liquor license privileges expire on July 1, 2023.

#### Additional Rulemaking by the Liquor and Cannabis Board, Revisiting Current Food Service Requirements.

The LCB must consider revising current rules in order to provide greater flexibility regarding food service menu requirements that businesses holding a liquor license issued by the LCB must provide in conjunction with alcohol sales. It is specified that the scope of the rules does not apply to licensees that were not required to provide food service under rules

in effect on January 1, 2020.

Beer and Wine Sampling at Farmers Markets.

It is specified that any temporary authorization or relaxation of statutory requirements provided by the LCB related to food requirements associated with wine and beer sampling at farmers markets expires at the end of the Governor's proclamation of emergency related to COVID-19.

Contract for Independent Study of Impacts.

The LCB must contract with an independent entity to conduct a study of the impacts of the new privileges granted to businesses with liquor licenses. The study must examine relevant issues including, but not limited to, the following:

- quantitative measures of impact such as liquor sales data, licensee locations, enforcement activity, hospital and other health provider visits for alcohol-related causes, underage drinking, alcohol dependence treatment, alcohol-related traffic violations, and motor vehicle crash deaths or injuries;
- qualitative investigation of relevant impacts using methods such as key informant interviews and supplemental data collection with licensees, law enforcement, behavioral health service providers, youth prevention and intervention specialists, and revenue stakeholders; and
- additional issues deemed relevant to the goals and results of the legislation.

The study must be started by January 1, 2022. A report with findings and any recommendations must be provided to the Legislature and the Governor by December 1, 2022.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 25, 2021.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony (Commerce & Gaming):**

(In support) The hospitality industry and other licensees appreciate the work of the Liquor and Cannabis Board (LCB) to assist businesses during the COVID-19 pandemic. To support economic recovery, this bill would temporarily codify allowances the LCB is providing to licensees. Businesses are facing economic hardship. Ending the temporary allowances, including those related to curbside pickup, take-out, and delivery, would harm the industry. The tax exemption for sales of mini-bottles of spirits in cocktail kits by restaurants alleviates what would be an administrative burden for restaurants. Ideally, privileges would be extended through 2024 to help recovery. Breweries are particularly impacted by restrictions and face monthly losses. Breweries appreciate the LCB's careful adoption of the temporary allowances. Defining "growler" in statute for the first time is

also appreciated. Wineries also support the legislation. Prior to the COVID-19 pandemic and the loss in tourism, the industry already faced problems from tariffs and devastating wildfires. Substantial losses are expected for the winery industry in the next several years. Adding temporary privileges related to sales of wine by the glass would be helpful and would complement the privilege included for premixed cocktails by restaurants. The LCB can adopt rules to ensure the sales are made safely in secure containers like in the current guidance. Industry stakeholders who might normally oppose some of the privileges included in this bill understand their partner industry members need these allowances to remain in business. The industry also appreciates the sunset and the study, which provide balance and takes into consideration public health and safety.

The LCB sees the economic hardship many LCB licensees are experiencing. Economic activity in the hospitality and leisure sector of the economy is down 65 percent, according to Department of Commerce data. The LCB has received many inquiries from licensees seeking help. At the Governor's request, the LCB worked to craft this legislation to continue to support the most hard hit parts of the industry. The bill would extend some of the most important allowances for two years. The ability of restaurants to continue to sell beer, wine, and premixed cocktails and cocktail kits to customers in combination with a food order is perhaps the most important privilege. The LCB is also proposing making food service requirements for all liquor licensees with existing food service requirements more flexible, easier, and less costly. Additionally, the bill will provide for greater flexibility in outdoor seating and dining service, which is a topic on which the LCB continues to engage with local governments. It would also continue to allow licensees who sell growlers for on-premises consumption to temporarily sell growlers for off-premises consumption. Public safety is at the heart of the LCB's mission, and a cautious approach, like in this bill, should be taken. The LCB has heard from law enforcement and the prevention community with concerns over the temporary privileges. The study in the bill will examine both the economic benefits as well as social and health impacts associated with the temporary allowances. The timeline of the study and temporary privileges would allow for the Legislature in the 2023 Legislative Session to examine the results of this legislation and the study and have an opportunity to act before the temporary privileges expire in July 2023.

(Opposed) This type of legislation can increase youth access to alcohol and alcohol abuse. However, stakeholders with concerns about substance abuse and prevention recognize the current circumstances businesses are facing and the points made by proponents. Stakeholders opposed can become neutral on the bill with changes. The provisions about scanning customer identifications should be removed. Scanning identifications is not effective in preventing youth access. Also, make the sunset of the temporary allowances in 2022, not 2023. If negative conditions prevail in a year, the Legislature can extend the allowances again next legislative session. Be mindful of open container laws in the context of the allowances.

(Other) Distilleries support provisions in the bill. But distilleries ask for an amendment to temporarily also allow distilleries to sell premixed cocktails to customers for off-premises



consumption. Distilleries want the opportunity for their businesses to survive. This temporary allowance would give distillers a much-needed avenue to continue operations. Distilleries have a narrowly tailored amendment to accomplish this goal, which requires a license endorsement and would not increase food service requirements for distilleries beyond the current food requirements.

**Staff Summary of Public Testimony (Appropriations):**

(In support) This bill temporarily codifies the flexibility that the Liquor and Cannabis Board afforded to licensees during the COVID-19 pandemic regarding curbside pickup, takeout, and deliveries.

(Opposed) None.

**Persons Testifying (Commerce & Gaming):** (In support) Representative MacEwen, prime sponsor; Rick Garza, Washington State Liquor and Cannabis Board; Scott Hazlegrove, Washington Beer and Wine Distributors Association; Katie Doyle, Washington Hospitality Association; Annie McGrath, Washington Brewers Guild; Josh McDonald, Washington Wine Institute; and Rowland Thompson, Wine Institute.

(Opposed) Seth Dawson, Washington Association for Substance Abuse and Violence Prevention.

(Other) Jim Hedrick, Washington Distillers Guild.

**Persons Testifying (Appropriations):** Representative MacEwen, prime sponsor.

**Persons Signed In To Testify But Not Testifying (Commerce & Gaming):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.