

HOUSE BILL REPORT

SSB 5417

As Reported by House Committee On:
Commerce & Gaming

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: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators King, Conway, Nguyen, Randall and Wilson, C.; by request of Liquor and Cannabis Board).

Brief History:

Committee Activity:

Commerce & Gaming: 3/12/21, 3/19/21 [DPA].

**Brief Summary of Substitute Bill
(As Amended By Committee)**

- Codifies, until July 1, 2023, liquor license privileges similar to privileges the Liquor and Cannabis Board (LCB) is providing to licensees during the COVID-19 pandemic.
- Includes authorizations for curbside service, takeout, and delivery of alcohol products, the sale by restaurants and distillers of premixed drinks and kits, the sale by restaurants of wine drinks by the glass, 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 LCB's temporary relaxation of certain requirements.
- Requires the LCB to contract for an independent study of the impacts of the new, temporary privileges.

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.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass as amended. 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).

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, Takeout, and Delivery. Temporary privileges include privileges related to curbside service, takeout, 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, takeout, or delivery must be in factory sealed bottles or meet the requirements for premixed cocktails, and must be sold in combination with food.

Premixed Alcoholic Drinks. 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. For distilleries and craft distilleries, they must provide, for free or for a charge, food offerings to customers consisting of a combination of small serving food items to include a mix of hors d'oeuvre-type foods, cheeses, fruits, vegetables, deli-style meats, chips, pretzels, nuts,

popcorn, crackers, or similar items.

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 guidance during the COVID-19 pandemic provides that the LCB is temporarily relaxing enforcement of the signature requirement. The guidance provides that 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 of the purchase price paid by the retailer and a spirits liter tax of \$2.4408 per liter.

Summary of Amended 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, Takeout, and Delivery. The following liquor licensees may sell alcohol products at retail for curbside service, takeout, and 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 Alcoholic Drinks and Kits. Spirits, beer, and wine restaurant licensees may also sell premixed servings of spirits containing other alcohol authorized to be sold under the terms of their license or nonalcoholic mixers, or both, for curbside service, takeout, and for delivery, pursuant to rules the LCB may adopt regulating these sales. Spirits, beer, and wine restaurant licensees may also sell kits containing bottled or packaged spirits, other alcohol authorized to be sold under the terms of their license, or nonalcoholic mixers, or both, for takeout, curbside service, and for delivery. It is provided that this new authorization does not allow the sale of full bottles of spirits by restaurant licensees for off-premises consumption, with the exception of mini-bottles as part of kits.

Mini-bottle sales as part of kits sold by restaurants 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.

Distillery and craft distillery licensees may sell premixed servings of spirits containing other alcohol authorized to be sold under the terms of their license or nonalcoholic mixers, or both, for takeout, curbside service, and for delivery. Distillery and craft distillery licensees may also sell kits containing bottled or packaged spirits, other alcohol authorized to be sold under the terms of their license or nonalcoholic mixers, or both, for takeout, curbside service, and for delivery. The LCB may establish by rule the manner in which spirits, other alcohol, and nonalcoholic mixers sold for off-premises consumption must be provided by distillers and craft distillers, so long as the requirements do not increase the underlying food service obligations for distillers and craft distillers provided in law.

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 drinks for takeout or curbside service and for delivery. The LCB is granted rulemaking authority to establish the manner in which wine by the glass 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, curbside service, and for 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 above new authorizations and endorsements expire on July 1, 2023.

Additional Rulemaking by the Liquor and Cannabis Board, Revisiting 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.

Amended Bill Compared to Substitute Bill:

The amended bill makes the following changes to the substitute bill:

- removes the last sentence of the intent section, which states, "The legislature intends that these revisions at the same time continue to promote regulation of an orderly market for liquor sales while maintaining protection of public health and efficient collection of taxes and fees";
- changes terminology by replacing references to premixed cocktails with references to premixed servings of spirits containing other alcohol authorized to be sold under the terms of the license and/or nonalcoholic mixers. Makes similar terminology changes with respect to cocktail kits;
- authorizes, until July 1, 2023, distillers and craft distillers to sell premixed servings of spirits containing other alcohol and/or nonalcoholic mixers, and to sell kits containing bottled or packaged spirits, other alcohol, and/or nonalcoholic mixers, for takeout, curbside service, and for delivery. Requires licensees to obtain a license endorsement (at no cost) to conduct these sales. Authorizes the Liquor and Cannabis Board (LCB) to adopt rules establishing the manner in which these sales may occur, so long as the requirements do not increase underlying food service obligations provided in law for distillers and craft distillers;
- provides that 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;
- removes the requirement that the LCB must adopt rules authorizing licensees with a delivery endorsement to photograph or scan customer identification in lieu of obtaining a physical signature to document liquor product delivery and verify the age of customers;

- restores current law by removing the proposed elimination of a food-related requirement associated with wine and beer sampling at farmers markets;
- removes the \$150,000 appropriation to the LCB that accompanied the requirement that the LCB contract with an independent entity to conduct a study of the impacts of the temporary liquor license privileges. Retains the requirement for the study; and
- specifies that any current temporary authorization provided by the LCB related to photographing or scanning customer identification in lieu of obtaining a physical signature to document liquor product delivery or verify the age of customers, as well as any temporary authorization relaxing enforcement of farmers market food requirements, expires at the end of the governor's proclamation of emergency related to COVID-19.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This is an important bill for restaurants and the hospitality industry. The temporary privileges, such as for alcohol sales to-go and for outdoor dining, are a lifeline. These allowances have been safely used while protecting the community. Recovery will take several years and allowances for takeout and delivery will continue to be instrumental. The study required by the bill will provide operators, communities, and the Legislature with tools to make decisions about the temporary allowances. So far, there are not problems with the allowances. Wineries and breweries strongly support the temporary allowances. Wineries, breweries, and distilleries have been disproportionately negatively impacted by the pandemic, and this bill is a small step toward recovery and provides certainty to businesses. Breweries appreciate the allowances around growlers, which are helping breweries survive the pandemic. The reasoning behind removing the existing food requirement associated with wine and beer sampling at farmers markets is there are usually numerous food vendors at farmers markets and the amount of beer or wine tasted is small. The Liquor and Cannabis Board believes the need for this bill is critical. The Department of Commerce reported a 63 percent decline in the leisure and hospitality sector during the pandemic. The two-year duration of the temporary privileges results from extensive discussion and debate, and is a balanced approach. Limiting the allowances to one year in duration would undermine the study included in the bill, which is important to the proposal. The two-year timeframe allows for the gathering of data and a credible, valid review of the activities. The details of the study originated within the prevention community. There are local governments in strong support of this bill. Local governments have worked on increasing opportunities for sidewalk cafes and eateries, and see that the current temporary

allowances have unleashed the entrepreneurial spirit of local operators and been critical to saving jobs and local businesses.

(Opposed) The last sentence of the intent section, referencing the promotion "of an orderly market for liquor sales," is objectionable and should be removed. This phrase has been intentionally removed from the law over the years because it is used to interfere with and prevent competition in the industry by smaller businesses. The liquor initiative that passed in 2011 directed the regulatory focus to be on public safety considerations, not orderly market considerations. There is disappointment this "orderly market" phrase is now reappearing. Regarding the issue of removing food requirements associated with wine and beer sampling at farmers markets, there are many vendors offering food for sale at farmers markets and they would prefer that wineries or breweries not give away free food as part of sampling.

(Other) Distillers support aspects of the bill but ask that the bill be amended to also provide distillers with a temporary privilege to sell mixed drinks to-go, like is included for restaurants. There should be parity in providing the temporary privileges. Distillers are hard hit by the pandemic and a number have closed within the last year. Distillers should not be left out of this temporary privilege. Mixed drinks can be sealed in secure containers for off-premises consumption and could be offered in conjunction with food. The bill uses the term "cocktail," which should be defined. The prevention community sees the need for this bill and is not opposed. But the prevention community recommends moving the sunset of the temporary privileges to 2022 from 2023. It is hard to predict the future, but there have recently been positive developments within a short time. The vaccine situation is more promising than previously expected. Also, the recently passed federal COVID-19 relief package will benefit businesses. Reconsider the sunset and if the need to continue the temporary allowances exists next year, the allowances can be extended at that time.

Persons Testifying: (In support) Senator King, prime sponsor; Chris Thompson, Liquor and Cannabis Board; Robert Thoms, City of Tacoma; Katie Doyle, Washington Hospitality Association; Josh McDonald, Washington Wine Institute; and Annie McGrath, Washington Brewers Guild.

(Opposed) Paul Beveridge, Family Wineries of Washington State.

(Other) Jim Hedrick, Washington Distillers Guild; and Seth Dawson, Washington Association for Substance Abuse and Violence Prevention.

Persons Signed In To Testify But Not Testifying: None.