

SENATE BILL REPORT

SB 5448

As of February 22, 2023

Title: An act relating to liquor licensee privileges for the delivery of alcohol.

Brief Description: Concerning liquor licensee privileges for the delivery of alcohol.

Sponsors: Senators MacEwen, Mullet, Nguyen and Shewmake.

Brief History:

Committee Activity: Labor & Commerce: 2/02/23, 2/16/23 [DPS-WM, DNP, w/oRec].
Ways & Means: 2/22/23.

Brief Summary of First Substitute Bill

- Removes the July 1, 2023 expiration date for liquor license privileges related to alcohol delivery and takeout.
- Requires the Liquor and Cannabis Board (LCB) to create an alcohol delivery endorsement to certain liquor licenses.
- Expands the class 12 alcohol server permit requirements to require an employee conducting alcohol deliveries for an alcohol delivery endorsement holder to have a class 12 permit before engaging in alcohol delivery.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5448 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; King, Ranking Member; Braun, MacEwen, Robinson and Schoesler.

Minority Report: Do not pass.

Signed by Senator Stanford.

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.

Minority Report: That it be referred without recommendation.

Signed by Senators Conway, Vice Chair; Saldaña, Vice Chair.

Staff: Jarrett Sacks (786-7448)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Alia Kennedy (786-7405)

Background: In 2021, the Legislature codified certain liquor license privileges, similar to the allowances the Washington State Liquor and Cannabis Board (LCB) had temporarily provided to liquor licensees during the COVID-19 pandemic. These privileges expire July 1, 2023. Under the temporary privileges, licensees are required to obtain a no-cost endorsement to engage in the activities authorized by the temporary privileges.

Curbside Service and Delivery. The temporary privileges include the ability for the following liquor licensees to sell alcohol products at retail for curbside service, takeout, and for 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. The temporary privileges also authorize spirits, beer, and wine restaurant licensees to sell premixed cocktails and cocktail kits for curbside service, takeout, and delivery, pursuant to rules the LCB may adopt. The sale of mini-bottles of spirits as part of cocktail kits are excluded from the spirits license issuance fee and spirits taxes while the temporary privileges are in effect. Mini-bottles are original factory-sealed containers holding not more than 50 milliliters of a spiritous beverage.

Wine Drinks. Restaurant licensees are temporarily authorized to sell wine by the glass and premixed wine drinks for curbside service, takeout, and delivery. Restaurant licensees who may sell spirits may also sell premixed wine and spirits cocktails for curbside service, takeout, and delivery. The LCB is granted rule-making 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. Additionally, without obtaining an

endorsement, beer and wine specialty shops and domestic breweries and microbreweries are authorized to 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. A growler is 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.

Age Verification. The 2021 law requires 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.

Impact Study. The LCB was required to contract with an independent entity to conduct a study of the impacts of the new privileges granted to businesses with liquor licenses. The LCB conducted a request for proposal and competitive bid process to select the vendor for the report, which was completed with findings and recommendations and available to the Legislature in December 2022.

Alcohol Server Permits. The LCB regulates a mandatory alcohol server education program and certifies training entities to provide class 12 permits to a manager or bartender who has successfully completed an LCB-certified course. A class 12 permit is for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility. There is also a class 13 permit available for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

Summary of Bill (First Substitute): The July 1, 2023 expiration of the temporary liquor license privileges is removed and the privileges are made permanent, except for the authorization to sell alcohol products curbside and the authorization for spirits, beer, and wine restaurant licensees to sell cocktail kits with mini-bottles for takeout and delivery. A licensee delivering alcohol must maintain a compliance rate of 95 percent per year in ensuring that all deliveries of alcohol are made only to a person who is 21 years or older who signs for the delivery. The LCB may establish rules to revoke the delivery privileges of a licensee who is out of compliance.

Alcohol Delivery Endorsement. The LCB must create an alcohol delivery endorsement to the following licenses:

- beer and wine restaurant;
- spirits, beer, and wine restaurant;
- tavern;
- domestic winery;
- domestic brewery;
- microbrewery;
- distillery; and
- craft distillery.

Delivery services conducted by restaurant licensees must be accompanied by a purchased meal prepared and sold by the license holder.

The cost of the endorsement is \$50. Alcohol delivery may be performed by employees of an alcohol delivery endorsement holder if the employee:

- is at least 21 years of age; and
- possesses a class 12 alcohol server permit.

The LCB's alcohol server education program must include best practices for the delivery of alcohol and persons whose duties include the delivery of alcohol must complete a class 12 permit course with this curriculum. There is a \$5 fee on the issuance and replacement of the class 12 alcohol server permit, which is in addition to the general cost of the alcohol server permit and is to be allocated to the Health Care Authority or the Department of Health for substance abuse prevention, education, and treatment services.

Delivery means the transportation of alcohol to an individual located within Washington from a licensed location holding an alcohol delivery endorsement as part of a to-go order. Delivery does not include services provided by common carriers.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Removes the curbside sale of alcohol privilege for licensees previously granted temporary curbside sales privileges.
- Removes the privilege for spirits, beer, and wine restaurant licensees to sell cocktail kits with mini-bottles of spirits and removes the related exemption from spirits taxes.
- Requires licensees delivering alcohol to maintain a compliance rate of at least 95 percent per year in ensuring that deliveries of alcohol are made only to a person who is 21 years of age or older who signs for the delivery.
- Authorizes LCB to adopt rules establishing procedures to revoke delivery privileges of a licensee not in compliance. Removes the creation of a third-party alcohol delivery license.
- Imposes a \$5 fee on employees of licensees who conduct deliveries at the time of issuance and replacement of a class 12 permit.
- Specifies this fee is in addition to the general cost of the alcohol server permit and is to be allocated to the Health Care Authority or the Department of Health for substance abuse prevention, education, and treatment services.
- Requires the LCB to include best practices for the delivery of alcohol in its alcohol server education program.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: The bill would make it so people do not have to drive somewhere to drink. It has common sense changes to allow outdoor seating and allow a single drink to go. The bill enforces strict requirements on third party deliveries. The new license type makes the liability for noncompliance clear. The industry still needs help as consumer behavior has changed. Businesses have been established to deliver alcohol and have high compliance rates. The hospitality industry has not fully recovered from the pandemic.

CON: The bill should not allow restaurants to sell spirits in the original container for takeout and delivery. The bill should ensure current deliveries are not excluded. Alcohol consumption has gone up during pandemic and the bill may make that uptick permanent. There is no data to support alcohol delivery reduces drunk driving and 2022 had more fatalities on roads than previous years. Alcohol is present in the majority of drivers who test positive for drugs. Increasing availability increases excessive drinking. During the pandemic, drinking and binge drinking increased, same with calls to poison centers.

OTHER: Alcohol delivery allowed for increased order values. Third-party applications have implemented safety measures and the bill would add obstacles to implement delivery. The training the bill requires is not applicable to delivery drivers since they spend a small fraction of their time delivering alcohol. Delivery license holders should be able to provide training. The bill would reduce earnings for delivery drivers.

Persons Testifying (Labor & Commerce): PRO: Senator Drew MacEwen, Prime Sponsor; Riley Smith, Washington Hospitality Association; Derek Baziotis, Bene's, Inferno Wings, and Eagle Bites; Josh McDonald, Washington Wine Institute; Daniel Olson, Washington Brewers Guild.

CON: Brad Tower, Washington Liquor Store Association; Sheri Sawyer, Office of Governor Jay Inslee; Justin Nordhorn, Liquor & Cannabis Board; Mark McKechnie, WA Traffic Safety Commission.

OTHER: Anna Powell, DoorDash; Allison Ford, Uber Technologies; Michael Wolfe, Drive Forward.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: The bill allows commonsense outdoor seating to continue and provides the option for customers to take a single serving of alcohol to-go when purchasing a meal. The bill was amended in the policy committee and is a culmination of hours of stakeholder input to address a range of concerns.

The policy is essential in continued pandemic recovery for the hospitality industry.

CON: Only 45 percent of delivery drivers were able to pass youth compliance checks by the LCB and drivers could not even be counted on to verify a recipient's age. The bill is silent on how drivers will meet the bill's 95 percent compliance rating. The bill is a misuse of liquor revolving account funds. The bill makes alcohol more readily available during a time when the state has seen a spike in alcohol consumption. Alcohol fatalities increased during the pandemic. Regulating alcohol availability reduces alcohol related deaths. The bill is an improvement but is a lot of money to spend on a relatively small amount of licenses.

Persons Testifying (Ways & Means): PRO: Riley Smith, Washington Hospitality Association; Daniel Olson, Washington Brewers Guild; Josh McDonald, Washington Wine Institute.

CON: Scott Waller, WASAVP - Prevention First! for Safe and Healthy Communities; Sheri Sawyer, Office of Governor Jay Inslee; Mark McKechnie, WA Traffic Safety Commission; Marc Webster, Liquor & Cannabis Board.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.