
HOUSE BILL 2040

State of Washington 61st Legislature 2009 Regular Session

By Representatives Conway and Condotta

Read first time 02/06/09. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the work of the joint select committee on beer
2 and wine regulation; amending RCW 66.28.180; adding new sections to
3 chapter 66.28 RCW; creating a new section; and repealing RCW 66.28.010.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 66.28 RCW
6 to read as follows:

7 INTENT. The legislature recognizes that Washington's current
8 three-tier system, where the functions of manufacturing, distributing,
9 and retailing are distinct and the financial relationships and business
10 transactions between entities in these tiers are regulated, is a
11 valuable system for the distribution of beer and wine. The legislature
12 further recognizes that the historical total prohibition on ownership
13 of an interest in one tier by a person with an ownership interest in
14 another tier, as well as the historical restriction on financial
15 incentives and business relationships between tiers, is unduly
16 restrictive. The legislature finds the modifications contained in this
17 act are appropriate, so long as the modifications do not impermissibly
18 interfere with the goals of orderly marketing of alcohol in the state,
19 encouraging moderation in consumption of alcohol by the citizens of the

1 state, protecting the public interest and advancing public safety by
2 preventing the use and consumption of alcohol by minors and other
3 abusive consumption, and promoting the efficient collection of taxes by
4 the state.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 66.28 RCW
6 to read as follows:

7 DEFINITIONS. The definitions in this section apply throughout
8 sections 1 through 6 of this act unless the context clearly requires
9 otherwise.

10 (1) "Adverse impact on public health and safety" means a
11 determination by the board that the practice or proposed practice has
12 or will result in alcohol being made more attractive or available to
13 minors than would otherwise be the case or has or will result in
14 overconsumption, consumption by minors, or other harmful or abusive
15 forms of consumption.

16 (2) "Affiliate" means any one of two or more persons if one of
17 those persons has actual or legal control, directly or indirectly,
18 whether by stock ownership or otherwise, of the other person or persons
19 and any one of two or more persons subject to common control, actual or
20 legal, directly or indirectly, whether by stock ownership or otherwise.

21 (3) "Industry member" means a licensed manufacturer, producer,
22 supplier, importer, wholesaler, distributor, authorized representative,
23 certificate of approval holder, warehouse, and any affiliates,
24 subsidiaries, officers, directors, partners, agents, employees, and
25 representatives of any industry member. "Industry member" does not
26 include the board or any of the board's employees.

27 (4) "Person" means any individual, partnership, joint stock
28 company, business trust, association, corporation, or other form of
29 business enterprise, including a receiver, trustee, or liquidating
30 agent and includes any officer or employee of a retailer or industry
31 member.

32 (5) "Retailer" means the holder of a license issued by the board to
33 allow for the sale of alcoholic beverages to consumers for consumption
34 on or off premises and any of the retailer's agents, officers,
35 directors, shareholders, partners, or employees. "Retailer" does not
36 include the board or any of the board's employees.

1 (6) "Undue influence over the purchasing, marketing, or sales
2 decisions of one retailer or industry member over another industry
3 member or retailer" means any agreement written or unwritten or any
4 other business practices or arrangements which result directly or
5 indirectly in circumstances including but not limited to the following:

6 (a) Any form of coercion between industry members and retailers or
7 between retailers and industry members through acts or threats of
8 physical or economic harm, including threat of loss of supply or threat
9 of curtailment of purchase;

10 (b) A retailer on an involuntary basis purchasing less than it
11 would have of another industry member's product;

12 (c) Purchases made by a retailer or industry member as a
13 prerequisite for purchase of other items;

14 (d) A retailer purchasing a specific or minimum quantity or type of
15 a product or products from an industry member;

16 (e) An industry member requiring a retailer to take and dispose of
17 a certain product type or quota of the industry member's products;

18 (f) A retailer having a continuing obligation to purchase or
19 otherwise promote or display an industry member's product;

20 (g) An industry member having a continuing obligation to sell a
21 product to a retailer;

22 (h) A retailer having a commitment not to terminate its
23 relationship with the industry member with respect to purchase of the
24 industry member's products or the industry member having a commitment
25 not to terminate its relationship with a retailer with respect to the
26 sale of a particular product or products;

27 (i) An industry member being involved in the day-to-day operations
28 of the retailer or the retailer being involved in the day-to-day
29 operations of the industry member in a manner that violates the
30 provisions of this section;

31 (j) Discriminatory pricing practices as prohibited by law or other
32 practices that are discriminatory if that product is not offered to all
33 retailers in the local market on the same terms.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 66.28 RCW
35 to read as follows:

36 **LAWFUL FINANCIAL INTEREST.** (1) Notwithstanding any prohibitions
37 and restrictions contained in this title, it shall be lawful for an

1 industry member or affiliate to have a direct or indirect financial
2 interest in a retailer, and for a retailer or affiliate to have a
3 direct or indirect financial interest in an industry member unless such
4 interest has or will result in undue influence over the purchasing
5 decisions of the retailer and/or undue influence over the marketing or
6 sales decisions of the industry member or has or will result in an
7 adverse impact on public health and safety.

8 (2) Any industry member or retailer or any other person asserting
9 that a proposed or existing financial interest has or will result in
10 undue influence over purchasing, marketing, or sales decisions of a
11 retailer or in undue influence over marketing or sales decisions of an
12 industry member or has or will result in an adverse impact on public
13 health and safety may file a complaint with the board. Upon receipt of
14 a complaint the board may investigate and if the investigation reveals
15 the practice has or will result in undue influence over purchasing,
16 marketing, or sales decisions of a retailer or in undue influence over
17 marketing or sales decisions of an industry member or has or will
18 result in an adverse impact on public health and safety the board may
19 issue an administrative violation notice to the industry member, to the
20 retailer, or both. The recipient of the administrative notice of
21 violation may request a hearing under chapter 34.05 RCW.

22 (3) It shall be presumed any financial interest or arrangement
23 allowed by law as of the effective date of this act, including but not
24 limited to those financial arrangements allowed under RCW 66.28.010 as
25 it existed on the effective date of this act, is a lawful financial
26 interest, unless subject to a later determination the existing
27 financial interest results in undue influence over purchasing,
28 marketing, or sales decisions of a retailer, undue influence over
29 marketing or sales decisions of an industry member, or has an adverse
30 impact on public health and safety.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 66.28 RCW
32 to read as follows:

33 **MONEYS' WORTH.** Except as provided in section 5 of this act, no
34 industry member shall advance and no retailer shall receive moneys or
35 moneys' worth under an agreement written or unwritten or by means of
36 any other business practice or arrangement.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 66.28 RCW
2 to read as follows:

3 EXCEPTIONS TO MONEYS' WORTH PROHIBITION. (1)(a) Nothing in section
4 of this act prohibits an industry member from providing retailers
5 branded promotional items which are of nominal value. Items include
6 but are not limited to: Trays, lighters, blotters, postcards, pencils,
7 coasters, menu cards, meal checks, napkins, clocks, mugs, glasses,
8 bottles or can openers, corkscrews, matches, printed recipes, shirts,
9 hats, visors, and other items of similar nominal value, whether a
10 single item or in the aggregate. Branded promotional items:

11 (i) Must be used exclusively by the retailer or employees in a
12 manner consistent with its license;

13 (ii) Must bear imprinted advertising matter of the industry member
14 only;

15 (iii) May be provided by industry members only to retailers and
16 their employees and may not be provided by or through retailers or
17 their employees to retail customers; and

18 (iv) May not be targeted to or appeal to youth.

19 (b) Any industry member or retailer or any other person asserting
20 the provision of branded promotional items as allowed in (a) of this
21 subsection has or will result in undue influence over marketing or
22 sales decisions of an industry member or has or will result in an
23 adverse impact on public health and safety or is otherwise inconsistent
24 with the criteria in (a) of this subsection may file a complaint with
25 the board. Upon receipt of a complaint the board may investigate and
26 if the investigation reveals the provision of branded promotional items
27 has or will result in an undue influence over marketing or sales
28 decisions of an industry member or has or will result in an adverse
29 impact on public health and safety or is otherwise inconsistent with
30 (a) of this subsection the board may issue an administrative violation
31 notice to the industry member, to the retailer, or both. The recipient
32 of the administrative violation notice may request a hearing under
33 chapter 34.05 RCW.

34 (2) Nothing in section 4 of this act prohibits an industry member
35 from providing to a special occasion licensee and a special occasion
36 licensee from receiving services for:

37 (a) Installation of draft beer dispensing equipment or advertising;
38 or

1 (b) Advertising, pouring, or dispensing of beer or wine at a beer
2 or wine tasting exhibition or judging event.

3 (3) Nothing in sections 1 through 6 of this act prohibit industry
4 members from performing, and retailers from accepting the service of
5 building, rotating, and restocking displays and stockroom inventories;
6 rotating and rearranging can and bottle displays of their own products;
7 providing point of sale material and brand signs; pricing case goods of
8 their own brands; and performing such similar business services
9 consistent with board rules.

10 (4) Nothing in section 4 of this act prohibits:

11 (a) Industry members from listing on their internet web sites
12 information related to retailers who sell or promote their products,
13 including direct links to the retailers' internet web sites; and

14 (b) Retailers from listing on their internet web sites information
15 related to industry members whose products those retailers sell or
16 promote, including direct links to the industry members' web sites; or

17 (c) Industry members and retailers from producing, jointly or
18 together with regional, state, or local industry associations,
19 brochures and materials promoting tourism in Washington state which
20 contain information regarding retail licensees, industry members, and
21 their products.

22 (5) Nothing in section 4 of this act prohibits the performance of
23 personal services offered from time to time by a domestic winery or
24 certificate of approval holder to retailers when the personal services
25 are (a) conducted at a licensed premises, and (b) intended to inform,
26 educate, or enhance customers' knowledge or experience of the
27 manufacturer's products. The performance of personal services may
28 include participation and pouring, bottle signing events, and other
29 similar informational or educational activities at the premises of a
30 retailer holding a spirits, beer, and wine restaurant license, a wine
31 and/or beer restaurant license, a specialty wine shop license, a
32 special occasion license, or a private club license. A domestic winery
33 or certificate of approval holder is not obligated to perform any such
34 personal services, and a retail licensee may not require a domestic
35 winery or certificate of approval holder to conduct any personal
36 service as a condition for selling any alcohol to the retail licensee.
37 Except as provided in RCW 66.28.150, the cost of sampling may not be
38 borne, directly or indirectly, by any domestic winery or certificate of

1 approval holder. Nothing in this section prohibits wineries,
2 certificate of approval holders, and retail licensees from identifying
3 the producers on private labels authorized under RCW 66.24.400,
4 66.24.425, and 66.24.450.

5 (6) An industry member may enter into an arrangement with any
6 holder of a sports entertainment facility license or an affiliated
7 business for brand advertising at the licensed facility or promoting
8 events held at the sports entertainment facility as authorized under
9 RCW 66.24.570.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 66.28 RCW
11 to read as follows:

12 All industry members and retailers shall keep and maintain the
13 following records on their premises for a three-year period:

14 (1) Records of all items, services, and things of value furnished
15 to and received by a retailer and of all items, services, and things of
16 value provided to a retailer and purchased by a retailer at fair market
17 value; and

18 (2) Records of all industry member financial ownership interests in
19 a retailer and of all retailer financial ownership interests in an
20 industry member.

21 **Sec. 7.** RCW 66.28.180 and 2006 c 302 s 10 are each amended to read
22 as follows:

23 ~~((It is unlawful for a person, firm, or corporation holding a
24 certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer
25 distributor's license, a domestic brewery license, a microbrewery
26 license, a beer importer's license, a beer distributor's license, a
27 domestic winery license, a wine importer's license, or a wine
28 distributor's license within the state of Washington to modify any
29 prices without prior notification to and approval of the board.~~

30 ~~(1) Intent. This section is enacted, pursuant to the authority of
31 this state under the twenty first amendment to the United States
32 Constitution, to promote the public's interest in fostering the orderly
33 and responsible distribution of malt beverages and wine towards
34 effective control of consumption; to promote the fair and efficient
35 three tier system of distribution of such beverages; and to confirm~~

1 ~~existing board rules as the clear expression of state policy to~~
2 ~~regulate the manner of selling and pricing of wine and malt beverages~~
3 ~~by licensed suppliers and distributors.~~

4 ~~(2))~~ (1) Beer and wine distributors ~~((price posting))~~.

5 (a) Every beer or wine distributor shall ~~((file with the board at~~
6 ~~its office in Olympia))~~ maintain at their liquor licensed location a
7 price ~~((posting))~~ list showing the wholesale prices at which any and
8 all brands of beer and wine sold by such beer and/or wine distributor
9 shall be sold to retailers within the state.

10 (b) Each price ~~((posting shall be made on a form prepared and~~
11 ~~furnished by the board, or a reasonable facsimile thereof, and))~~ list
12 shall set forth:

13 (i) All brands, types, packages, and containers of beer offered for
14 sale by such beer and/or wine distributor;

15 (ii) The wholesale prices thereof to retail licensees, including
16 allowances, if any, for returned empty containers.

17 (c) No beer and/or wine distributor may sell or offer to sell any
18 package or container of beer or wine to any retail licensee at a price
19 differing from the price for such package or container as shown in the
20 price ~~((posting filed by the beer and/or wine distributor and then in~~
21 ~~effect))~~ list, according to rules adopted by the board.

22 (d) Quantity discounts are prohibited. No price may be ~~((posted~~
23 ~~that is))~~ below acquisition cost ~~((plus ten percent of acquisition~~
24 ~~cost. However, the board is empowered to review periodically, as it~~
25 ~~may deem appropriate, the amount of the percentage of acquisition cost~~
26 ~~as a minimum mark up over cost and to modify such percentage by rule of~~
27 ~~the board, except such percentage shall be not less than ten percent))~~.

28 (e) Distributor prices on a "close-out" item shall be ~~((accepted by~~
29 ~~the board))~~ allowed if the item to be discontinued has been listed ~~((on~~
30 ~~the state market))~~ for a period of at least six months, and upon the
31 further condition that the distributor who ~~((posts))~~ offers such a
32 close-out price shall not restock the item for a period of one year
33 following the first effective date of such close-out price.

34 (f) ~~((The board may reject any price posting that it deems to be in~~
35 ~~violation of this section or any rule, or portion thereof, or that~~
36 ~~would tend to disrupt the orderly sale and distribution of beer and~~
37 ~~wine. Whenever the board rejects any posting, the licensee submitting~~
38 ~~the posting may be heard by the board and shall have the burden of~~

1 ~~showing that the posting is not in violation of this section or a rule~~
2 ~~or does not tend to disrupt the orderly sale and distribution of beer~~
3 ~~and wine. If the posting is accepted, it shall become effective at the~~
4 ~~time fixed by the board. If the posting is rejected, the last~~
5 ~~effective posting shall remain in effect until such time as an amended~~
6 ~~posting is filed and approved, in accordance with the provisions of~~
7 ~~this section.~~

8 ~~(g) Prior to the effective date of the posted prices, all price~~
9 ~~postings filed as required by this section constitute investigative~~
10 ~~information and shall not be subject to disclosure, pursuant to RCW~~
11 ~~42.56.240(1).~~

12 ~~(h)) Any beer and/or wine distributor or employee authorized by~~
13 ~~the distributor-employer may sell beer and/or wine at the distributor's~~
14 ~~posted prices to any annual or special occasion retail licensee upon~~
15 ~~presentation to the distributor or employee at the time of purchase of~~
16 ~~a special permit issued by the board to such licensee.~~

17 (i) Every annual or special occasion retail licensee, upon
18 purchasing any beer and/or wine from a distributor, shall immediately
19 cause such beer or wine to be delivered to the licensed premises, and
20 the licensee shall not thereafter permit such beer to be disposed of in
21 any manner except as authorized by the license.

22 (ii) Beer and wine sold as provided in this section shall be
23 delivered by the distributor or an authorized employee either to the
24 retailer's licensed premises or directly to the retailer at the
25 distributor's licensed premises. When a domestic winery, brewery,
26 microbrewery, or certificate of approval holder with a direct shipping
27 endorsement is acting as a distributor of its own production, a
28 licensed retailer may contract with a common carrier to obtain the
29 product directly from the domestic winery, brewery, microbrewery, or
30 certificate of approval holder with a direct shipping endorsement. A
31 distributor's prices to retail licensees shall be the same at both such
32 places of delivery.

33 ~~((3)) (2) Beer and wine suppliers' ((price filings,))~~
34 ~~contracts((7)) and memoranda.~~

35 (a) Every domestic brewery, microbrewery, and domestic winery
36 offering beer and/or wine for sale within the state shall ~~((file with~~
37 ~~the board at its office in Olympia))~~ maintain at its liquor licensed

1 location a copy of every written contract and a memorandum of every
2 oral agreement which such brewery or winery may have with any beer or
3 wine distributor, which contracts or memoranda shall contain:

4 (i) A schedule of prices charged to distributors for all items and
5 all terms of sale, including all regular and special discounts;

6 (ii) All advertising, sales and trade allowances, and incentive
7 programs; and

8 (iii) All commissions, bonuses or gifts, and any and all other
9 discounts or allowances.

10 (b) Whenever changed or modified, such revised contracts or
11 memoranda shall ~~((forthwith))~~ also be ~~((filed with the board as
12 provided for by rule))~~ maintained at its liquor licensed location. The
13 provisions of this section also apply to certificate of approval
14 holders, beer and/or wine importers, and beer and/or wine distributors
15 who sell to other beer and/or wine distributors.

16 (c) Each price ~~((schedule shall be made on a form prepared and
17 furnished by the board, or a reasonable facsimile thereof, and))~~ list
18 shall set forth all brands, types, packages, and containers of beer or
19 wine offered for sale by such licensed brewery or winery~~((; all
20 additional information required may be filed as a supplement to the
21 price schedule forms))~~.

22 ~~((b))~~ (d) Prices ~~((filed by))~~ of a domestic brewery,
23 microbrewery, domestic winery, or certificate of approval holder shall
24 be uniform prices to all distributors or retailers on a statewide basis
25 less bona fide allowances for freight differentials. Quantity
26 discounts are prohibited. No price shall be ~~((filed that is))~~ below
27 acquisition/production cost ~~((plus ten percent of that cost, except
28 that acquisition cost plus ten percent of acquisition cost does not
29 apply to sales of beer or wine between a beer or wine importer who
30 sells beer or wine to another beer or wine importer or to a beer or
31 wine distributor, or to a beer or wine distributor who sells beer or
32 wine to another beer or wine distributor. However, the board is
33 empowered to review periodically, as it may deem appropriate, the
34 amount of the percentage of acquisition/production cost as a minimum
35 mark-up over cost and to modify such percentage by rule of the board,
36 except such percentage shall be not less than ten percent))~~.

37 ~~((e))~~ (e) No domestic brewery, microbrewery, domestic winery,
38 certificate of approval holder, beer or wine importer, or beer or wine

1 distributor may sell or offer to sell any beer or wine to any persons
2 whatsoever in this state until copies of such written contracts or
3 memoranda of such oral agreements are on file with the board.

4 ~~((d))~~ (f) No domestic brewery, microbrewery, domestic winery, or
5 certificate of approval holder may sell or offer to sell any package or
6 container of beer or wine to any distributor at a price differing from
7 the price list for such package or container as shown in the ~~((schedule~~
8 ~~of prices filed by))~~ price list of the domestic brewery, microbrewery,
9 domestic winery, or certificate of approval holder and then in effect,
10 according to rules adopted by the board.

11 ~~((e) The board may reject any supplier's price filing, contract,~~
12 ~~or memorandum of oral agreement, or portion thereof that it deems to be~~
13 ~~in violation of this section or any rule or that would tend to disrupt~~
14 ~~the orderly sale and distribution of beer or wine. Whenever the board~~
15 ~~rejects any such price filing, contract, or memorandum, the licensee~~
16 ~~submitting the price filing, contract, or memorandum may be heard by~~
17 ~~the board and shall have the burden of showing that the price filing,~~
18 ~~contract, or memorandum is not in violation of this section or a rule~~
19 ~~or does not tend to disrupt the orderly sale and distribution of beer~~
20 ~~or wine. If the price filing, contract, or memorandum is accepted, it~~
21 ~~shall become effective at a time fixed by the board. If the price~~
22 ~~filing, contract, or memorandum, or portion thereof, is rejected, the~~
23 ~~last effective price filing, contract, or memorandum shall remain in~~
24 ~~effect until such time as an amended price filing, contract, or~~
25 ~~memorandum is filed and approved, in accordance with the provisions of~~
26 ~~this section.~~

27 ~~(f) Prior to the effective date of the posted prices, all prices,~~
28 ~~contracts, and memoranda filed as required by this section constitute~~
29 ~~investigative information and shall not be subject to disclosure,~~
30 ~~pursuant to RCW 42.56.240(1).)~~

31 NEW SECTION. **Sec. 8.** RCW 66.28.010 (Manufacturers, importers,
32 distributors, and authorized representatives barred from interest in
33 retail business or location--Advances prohibited--"Financial interest"
34 defined--Exceptions) and 2008 c 94 s 5 are each repealed.

35 NEW SECTION. **Sec. 9.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the
2 remainder of the act or the application of the provision to other
3 persons or circumstances is not affected.

4 NEW SECTION. **Sec. 10.** Captions used in this act are not any part
5 of the law.

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