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HOUSE BILL 1227

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State of Washington

62nd Legislature

2011 Regular Session

By Representatives Ross, Taylor, Chandler, Hinkle, Warnick, Armstrong, Johnson, Moeller, Harris, and Condotta

Read first time 01/17/11. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to the waiver of restaurant corkage fees; amending  
2 RCW 66.28.295; reenacting and amending RCW 66.28.310; and creating a  
3 new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that some restaurants  
6 allow patrons to bring bottles of wine to the restaurant so long as  
7 restaurant personnel open and serve the beverage. In these cases, the  
8 restaurants often charge a fee known as a corkage fee. The legislature  
9 supports activities in the free market that facilitate local businesses  
10 in selling their products. One of the methods restaurants and wineries  
11 have found to be mutually beneficial is a waiver of corkage fees for  
12 local businesses. The legislature intends to allow wineries and  
13 restaurants the ability to make agreements as to whether to charge a  
14 corkage fee without restriction or regulation under the tied-house  
15 laws.

16 **Sec. 2.** RCW 66.28.295 and 2009 c 506 s 4 are each amended to read  
17 as follows:

18 Nothing in RCW 66.28.290 shall prohibit:

1 (1) A licensed domestic brewery or microbrewery from being licensed  
2 as a retailer pursuant to chapter 66.24 RCW for the purpose of selling  
3 beer or wine at retail on the brewery premises and at one additional  
4 off-site retail only location.

5 (2) A domestic winery from being licensed as a retailer pursuant to  
6 chapter 66.24 RCW for the purpose of selling beer or wine at retail on  
7 the winery premises. Such beer and wine so sold at retail shall be  
8 subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to  
9 reporting and bonding requirements as prescribed by regulations adopted  
10 by the board pursuant to chapter 34.05 RCW, and beer and wine that is  
11 not produced by the brewery or winery shall be purchased from a  
12 licensed beer or wine distributor.

13 (3) A microbrewery holding a beer and/or wine restaurant license  
14 under RCW 66.24.320 from holding the same privileges and endorsements  
15 attached to the beer and/or wine restaurant license.

16 (4) A licensed craft distillery from selling spirits of its own  
17 production under RCW 66.24.145.

18 (5) A licensed distiller, domestic brewery, microbrewery, domestic  
19 winery, or a lessee of a licensed domestic brewer, microbrewery, or  
20 domestic winery, from being licensed as a spirits, beer, and wine  
21 restaurant pursuant to chapter 66.24 RCW for the purpose of selling  
22 liquor at a spirits, beer, and wine restaurant premises on the property  
23 on which the primary manufacturing facility of the licensed distiller,  
24 domestic brewer, microbrewery, or domestic winery is located or on  
25 contiguous property owned or leased by the licensed distiller, domestic  
26 brewer, microbrewery, or domestic winery as prescribed by rules adopted  
27 by the board pursuant to chapter 34.05 RCW.

28 (6) A microbrewery holding a spirits, beer, and wine restaurant  
29 license under RCW 66.24.420 from holding the same privileges and  
30 endorsements attached to the spirits, beer, and wine restaurant  
31 license.

32 (7) A brewery or microbrewery holding a spirits, beer, and wine  
33 restaurant license or a beer and/or wine license under chapter 66.24  
34 RCW operated on the premises of the brewery or microbrewery from  
35 holding a second retail only license at a location separate from the  
36 premises of the brewery or microbrewery.

37 (8) Retail licensees with a caterer's endorsement issued under RCW  
38 66.24.320 or 66.24.420 from operating on a domestic winery premises.

1 (9) An organization qualifying under RCW 66.24.375 formed for the  
2 purpose of constructing and operating a facility to promote Washington  
3 wines from holding retail licenses on the facility property or leasing  
4 all or any portion of such facility property to a retail licensee on  
5 the facility property if the members of the board of directors or  
6 officers of the board for the organization include officers, directors,  
7 owners, or employees of a licensed domestic winery. Financing for the  
8 construction of the facility must include both public and private  
9 money.

10 (10) A bona fide charitable nonprofit society or association  
11 registered under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal  
12 revenue code, or a local wine industry association registered under  
13 Title 26 U.S.C. Sec. 501(c)(6) of the federal internal revenue code as  
14 it existed on July 22, 2007, and having an officer, director, owner, or  
15 employee of a licensed domestic winery or a wine certificate of  
16 approval holder on its board of directors from holding a special  
17 occasion license under RCW 66.24.380.

18 (11) A person licensed pursuant to RCW 66.24.170, 66.24.240, or  
19 66.24.244 from exercising the privileges of distributing and selling at  
20 retail such person's own production or from exercising any other right  
21 or privilege that attaches to such license.

22 (12) A person holding a certificate of approval pursuant to RCW  
23 66.24.206 from obtaining an endorsement to act as a distributor of  
24 their own product or from shipping their own product directly to  
25 consumers as authorized by RCW 66.20.360.

26 (13) A person holding a wine shipper's permit pursuant to RCW  
27 66.20.375 from shipping their own product directly to consumers.

28 (14) A person holding a certificate of approval pursuant to RCW  
29 66.24.270(2) from obtaining an endorsement to act as a distributor of  
30 their own product.

31 (15) A domestic winery and a restaurant licensed under RCW  
32 66.24.320 or 66.24.400 from entering an arrangement to waive a corkage  
33 fee.

34 **Sec. 3.** RCW 66.28.310 and 2010 c 290 s 3 and 2010 c 141 s 4 are  
35 each reenacted and amended to read as follows:

36 (1)(a) Nothing in RCW 66.28.305 prohibits an industry member from  
37 providing retailers branded promotional items which are of nominal

1 value, singly or in the aggregate. Such items include but are not  
2 limited to: Trays, lighters, blotters, postcards, pencils, coasters,  
3 menu cards, meal checks, napkins, clocks, mugs, glasses, bottles or can  
4 openers, corkscrews, matches, printed recipes, shirts, hats, visors,  
5 and other similar items. Branded promotional items:

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

8 (ii) Must bear imprinted advertising matter of the industry member  
9 only;

10 (iii) May be provided by industry members only to retailers and  
11 their employees and may not be provided by or through retailers or  
12 their employees to retail customers; and

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

14 (b) An industry member is not obligated to provide any such branded  
15 promotional items, and a retailer may not require an industry member to  
16 provide such branded promotional items as a condition for selling any  
17 alcohol to the retailer.

18 (c) Any industry member or retailer or any other person asserting  
19 that the provision of branded promotional items as allowed in (a) of  
20 this subsection has resulted or is more likely than not to result in  
21 undue influence or an adverse impact on public health and safety, or is  
22 otherwise inconsistent with the criteria in (a) of this subsection may  
23 file a complaint with the board. Upon receipt of a complaint the board  
24 may conduct such investigation as it deems appropriate in the  
25 circumstances. If the investigation reveals the provision of branded  
26 promotional items has resulted in or is more likely than not to result  
27 in undue influence or has resulted or is more likely than not to result  
28 in an adverse impact on public health and safety or is otherwise  
29 inconsistent with (a) of this subsection the board may issue an  
30 administrative violation notice to the industry member, to the  
31 retailer, or both. The recipient of the administrative violation  
32 notice may request a hearing under chapter 34.05 RCW.

33 (2) Nothing in RCW 66.28.305 prohibits an industry member from  
34 providing to a special occasion licensee and a special occasion  
35 licensee from receiving services for:

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

37 (b) Advertising, pouring, or dispensing of beer or wine at a beer  
38 or wine tasting exhibition or judging event; or

1 (c) Pouring or dispensing of spirits by a licensed domestic  
2 distiller or the accredited representative of a distiller,  
3 manufacturer, importer, or distributor of spirituous liquor licensed  
4 under RCW 66.24.310.

5 (3) Nothing in RCW 66.28.305 prohibits industry members from  
6 performing, and retailers from accepting the service of building,  
7 rotating, and restocking displays and stockroom inventories; rotating  
8 and rearranging can and bottle displays of their own products;  
9 providing point of sale material and brand signs; pricing case goods of  
10 their own brands; and performing such similar business services  
11 consistent with board rules, or personal services as described in  
12 subsection (5) of this section.

13 (4) Nothing in RCW 66.28.305 prohibits:

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

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

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

25 (5) Nothing in RCW 66.28.305 prohibits the performance of personal  
26 services offered from time to time by a domestic winery or certificate  
27 of approval holder to retailers when the personal services are (a)  
28 conducted at a licensed premises, and (b) intended to inform, educate,  
29 or enhance customers' knowledge or experience of the manufacturer's  
30 products. The performance of personal services may include  
31 participation and pouring, bottle signing events, and other similar  
32 informational or educational activities at the premises of a retailer  
33 holding a spirits, beer, and wine restaurant license, a wine and/or  
34 beer restaurant license, a specialty wine shop license, a special  
35 occasion license, a grocery store license with a tasting endorsement,  
36 or a private club license. A domestic winery or certificate of  
37 approval holder is not obligated to perform any such personal services,  
38 and a retail licensee may not require a domestic winery or certificate

1 of approval holder to conduct any personal service as a condition for  
2 selling any alcohol to the retail licensee, or as a condition for  
3 including any product of the domestic winery or certificate of approval  
4 holder in any tasting conducted by the licensee. Except as provided in  
5 RCW 66.28.150, the cost of sampling may not be borne, directly or  
6 indirectly, by any domestic winery or certificate of approval holder or  
7 any distributor. Nothing in this section prohibits wineries,  
8 certificate of approval holders, and retail licensees from identifying  
9 the producers on private labels authorized under RCW 66.24.400,  
10 66.24.425, and 66.24.450.

11 (6) Nothing in RCW 66.28.305 prohibits an industry member from  
12 entering into an arrangement with any holder of a sports entertainment  
13 facility license or an affiliated business for brand advertising at the  
14 licensed facility or promoting events held at the sports entertainment  
15 facility as authorized under RCW 66.24.570.

16 (7) Nothing in RCW 66.28.305 prohibits the performance of personal  
17 services offered from time to time by a domestic brewery, microbrewery,  
18 or beer certificate of approval holder to grocery store licensees with  
19 a tasting endorsement when the personal services are (a) conducted at  
20 a licensed premises in conjunction with a tasting event, and (b)  
21 intended to inform, educate, or enhance customers' knowledge or  
22 experience of the manufacturer's products. The performance of personal  
23 services may include participation and pouring, bottle signing events,  
24 and other similar informational or educational activities. A domestic  
25 brewery, microbrewery, or beer certificate of approval holder is not  
26 obligated to perform any such personal services, and a grocery store  
27 licensee may not require the performance of any personal service as a  
28 condition for including any product in any tasting conducted by the  
29 licensee.

30 (8) Nothing in RCW 66.28.305 prohibits an arrangement between a  
31 domestic winery and a restaurant licensed under RCW 66.24.320 or  
32 66.24.400 to waive a corkage fee.

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