
SENATE BILL 5173

State of Washington

62nd Legislature

2011 Regular Session

By Senators Honeyford, Kohl-Welles, Hewitt, King, Holmquist Newbry,
and Tom

Read first time 01/17/11. Referred to Committee on Labor, Commerce &
Consumer Protection.

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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