
HOUSE BILL 2155

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Dahlquist, Hurst, S. Hunt, Morrell, and Moscoso

Prefiled 01/06/14. Read first time 01/13/14. Referred to Committee on Government Accountability & Oversight.

1 AN ACT Relating to preventing theft of alcoholic spirits from
2 licensed retailers; amending RCW 66.08.030 and 66.08.050; and adding a
3 new section to chapter 66.28 RCW.

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 (1) Subject to the procedural requirements of subsection (2) of
8 this section, the board is authorized to regulate spirits retailers
9 licensed under RCW 66.24.630 for the purpose of reducing the theft of
10 spirits from the premises of such retailers. A regulation may include,
11 but is not limited to, the imposition of the following requirements on
12 licensees who are experiencing unacceptable rates of theft as
13 determined by reference to standards established by the board by rule:

14 (a) At the request of the board, participation in one or more
15 consultations with an authorized representative of the board and
16 pertinent law enforcement agencies to discuss and analyze spirits theft
17 issues;

18 (b) At the request of the board and in accordance with its

1 directions, provide a written audit accurately documenting theft
2 related losses of spirits inventory;

3 (c) The implementation of inventory control and/or other
4 recordkeeping system designed to reveal and track spirits theft
5 problems;

6 (d) The structural modification or relocation of the areas where
7 spirits are displayed or stored;

8 (e) The installation of adequate in store security systems; and

9 (f) The employment of a sufficient number of trained staff for the
10 purpose of monitoring display, checkout, and storage areas.

11 (2) The regulatory provisions authorized under subsection (1) of
12 this section are subject to the following procedural steps and
13 requirements:

14 (a) If a state or local law enforcement agency obtains information
15 indicating that a licensee is experiencing an unacceptable rate of
16 spirits theft, it must notify the board. Upon the notification, the
17 board must inform the licensee of the alleged theft problem and may
18 demand that the licensee participate in a consultation process
19 involving a representative of the board, the licensee, and the
20 pertinent law enforcement agency. The licensee's participation in the
21 consultation is mandatory and the licensee is entitled to at least
22 thirty days notice by the board. At any time during the initial or
23 follow-up consultation process, the board may request that the licensee
24 provide a written audit accurately documenting theft related losses of
25 spirits from its inventory. In the event a licensee fails to attend or
26 otherwise cooperate in the initial or subsequent consultations, or
27 provide the written audit as requested by the board, the board is
28 authorized to suspend the licensee's spirits retail license until such
29 time as the retailer is in compliance with the requirements of this
30 subsection (2)(a).

31 (b) At the consultation, the board and the law enforcement agency
32 must provide the licensee with any information or evidence pertinent to
33 the law enforcement agency's allegation that the retailer has an
34 unacceptably high spirits theft rate. The licensee must be provided
35 with a reasonable opportunity to respond and present evidence, and, if
36 necessary, the consultation can be continued at the discretion of the
37 board to allow adequate time for the licensee to prepare such response.

1 (c) At the conclusion of the initial consultation process, if the
2 board finds that the licensee has an unacceptably high spirits theft
3 rate, it may develop a corrective action plan outlining the remedial
4 measures that must be taken by the licensee pursuant to subsection (1)
5 of this section. In developing the plan, the board should seek the
6 assistance of law enforcement authorities and make a concerted effort
7 to obtain voluntary participation in the plan by the licensee. At
8 every step in the consultation and corrective action plan process, the
9 board is encouraged to work with the licensee in a cooperative manner
10 and, where possible, to strive for voluntary agreements with the
11 licensee. However, in the absence of licensee cooperation or
12 agreement, the board is authorized to unilaterally develop and enforce
13 a corrective action plan as authorized under this section. Once the
14 plan is finalized, it must be filed with the board and a copy provided
15 to the licensee either personally or through certified mail.

16 (d) Not more than thirty days after the filing and service of the
17 original corrective action plan, the board must schedule one or more
18 follow up consultations with the licensee. The purpose of these
19 consultations is to review the licensee's performance with respect to
20 the requirements of the corrective action plan and to generally assess
21 the licensee's progress in addressing spirits theft issues. If the
22 licensee is following the corrective action plan but spirits theft
23 remains unacceptably high, then the board and the licensee may review
24 and revise the plan as deemed necessary by the board. Following the
25 filing of a revised plan, the board may schedule one or more follow-up
26 consultations at its discretion.

27 (e) During the review process set forth in (d) of this subsection,
28 if the board finds that the licensee has failed to comply with the
29 requirements of the original or revised corrective action plan the
30 board may:

31 (i) Demand that the licensee take remedial steps so as to be
32 compliant with the corrective action plan and schedule an additional
33 follow-up consultation at the board's discretion; or

34 (ii) If the licensee's noncompliance is deemed to be willful,
35 suspend the retailer's spirits retail license for a period to be
36 determined by the board by rule.

37 (f) If a licensee remains consistently noncompliant with the

1 original corrective action plan and any revised plans for a period of
2 at least nine months, then the board is authorized to suspend or revoke
3 the licensee's spirits retail license.

4 (3) The board is granted the rule-making authority necessary to
5 implement and enforce the provisions of this section.

6 **Sec. 2.** RCW 66.08.030 and 2012 c 2 s 204 are each amended to read
7 as follows:

8 The power of the board to make regulations under chapter 34.05 RCW
9 extends to:

10 (1) Prescribing the duties of the employees of the board, and
11 regulating their conduct in the discharge of their duties;

12 (2) Prescribing an official seal and official labels and stamps and
13 determining the manner in which they must be attached to every package
14 of liquor sold or sealed under this title, including the prescribing of
15 different official seals or different official labels for different
16 classes of liquor;

17 (3) Prescribing forms to be used for purposes of this title or the
18 regulations, and the terms and conditions to be contained in permits
19 and licenses issued under this title, and the qualifications for
20 receiving a permit or license issued under this title, including a
21 criminal history record information check. The board may submit the
22 criminal history record information check to the Washington state
23 patrol and to the identification division of the federal bureau of
24 investigation in order that these agencies may search their records for
25 prior arrests and convictions of the individual or individuals who
26 filled out the forms. The board must require fingerprinting of any
27 applicant whose criminal history record information check is submitted
28 to the federal bureau of investigation;

29 (4) Prescribing the fees payable in respect of permits and licenses
30 issued under this title for which no fees are prescribed in this title,
31 and prescribing the fees for anything done or permitted to be done
32 under the regulations;

33 (5) Prescribing the kinds and quantities of liquor which may be
34 kept on hand by the holder of a special permit for the purposes named
35 in the permit, regulating the manner in which the same is kept and
36 disposed of, and providing for the inspection of the same at any time
37 at the instance of the board;

1 (6) Regulating the sale of liquor kept by the holders of licenses
2 which entitle the holder to purchase and keep liquor for sale;

3 (7) Prescribing the records of purchases or sales of liquor kept by
4 the holders of licenses, and the reports to be made thereon to the
5 board, and providing for inspection of the records so kept;

6 (8) Prescribing the kinds and quantities of liquor for which a
7 prescription may be given, and the number of prescriptions which may be
8 given to the same patient within a stated period;

9 (9) Prescribing the manner of giving and serving notices required
10 by this title or the regulations, where not otherwise provided for in
11 this title;

12 (10) Regulating premises in which liquor is kept for export from
13 the state, or from which liquor is exported, prescribing the books and
14 records to be kept therein and the reports to be made thereon to the
15 board, and providing for the inspection of the premises and the books,
16 records and the liquor so kept;

17 (11) Prescribing the conditions and qualifications requisite for
18 the obtaining of club licenses and the books and records to be kept and
19 the returns to be made by clubs, prescribing the manner of licensing
20 clubs in any municipality or other locality, and providing for the
21 inspection of clubs;

22 (12) Prescribing the conditions, accommodations, and qualifications
23 requisite for the obtaining of licenses to sell beer, wines, and
24 spirits, and regulating the sale of beer, wines, and spirits
25 thereunder;

26 (13) Specifying and regulating the time and periods when, and the
27 manner, methods and means by which manufacturers must deliver liquor
28 within the state; and the time and periods when, and the manner,
29 methods and means by which liquor may lawfully be conveyed or carried
30 within the state;

31 (14) Providing for the making of returns by brewers of their sales
32 of beer shipped within the state, or from the state, showing the gross
33 amount of such sales and providing for the inspection of brewers' books
34 and records, and for the checking of the accuracy of any such returns;

35 (15) Providing for the making of returns by the wholesalers of beer
36 whose breweries are located beyond the boundaries of the state;

37 (16) Providing for the making of returns by any other liquor
38 manufacturers, showing the gross amount of liquor produced or

1 purchased, the amount sold within and exported from the state, and to
2 whom so sold or exported, and providing for the inspection of the
3 premises of any such liquor manufacturers, their books and records, and
4 for the checking of any such return;

5 (17) Providing for the giving of fidelity bonds by any or all of
6 the employees of the board. However, the premiums therefor must be
7 paid by the board;

8 (18) Providing for the shipment of liquor to any person holding a
9 permit and residing in any unit which has, by election pursuant to this
10 title, prohibited the sale of liquor therein;

11 (19) Prescribing methods of manufacture, conditions of sanitation,
12 standards of ingredients, quality and identity of alcoholic beverages
13 manufactured, sold, bottled, or handled by licensees and the board; and
14 conducting from time to time, in the interest of the public health and
15 general welfare, scientific studies and research relating to alcoholic
16 beverages and the use and effect thereof;

17 (20) Seizing, confiscating and destroying all alcoholic beverages
18 manufactured, sold or offered for sale within this state which do not
19 conform in all respects to the standards prescribed by this title or
20 the regulations of the board. However, nothing herein contained may be
21 construed as authorizing the liquor board to prescribe, alter, limit or
22 in any way change the present law as to the quantity or percentage of
23 alcohol used in the manufacturing of wine or other alcoholic beverages;

24 (21) Monitoring and regulating the practices of license holders as
25 necessary in order to prevent the theft and illegal trafficking of
26 liquor.

27 **Sec. 3.** RCW 66.08.050 and 2012 c 2 s 107 are each amended to read
28 as follows:

29 The board, subject to the provisions of this title and the rules,
30 must:

31 (1) Determine the nature, form and capacity of all packages to be
32 used for containing liquor kept for sale under this title;

33 (2) Execute or cause to be executed, all contracts, papers, and
34 documents in the name of the board, under such regulations as the board
35 may fix;

36 (3) Pay all customs, duties, excises, charges and obligations
37 whatsoever relating to the business of the board;

1 (4) Require bonds from all employees in the discretion of the
2 board, and to determine the amount of fidelity bond of each such
3 employee;

4 (5) Perform services for the state lottery commission to such
5 extent, and for such compensation, as may be mutually agreed upon
6 between the board and the commission;

7 (6) Accept and deposit into the general fund-local account and
8 disburse, subject to appropriation, federal grants or other funds or
9 donations from any source for the purpose of improving public awareness
10 of the health risks associated with alcohol consumption by youth and
11 the abuse of alcohol by adults in Washington state. The board's
12 alcohol awareness program must cooperate with federal and state
13 agencies, interested organizations, and individuals to effect an active
14 public beverage alcohol awareness program;

15 (7) Monitor and regulate the practices of licensees as necessary in
16 order to prevent the theft and illegal trafficking of liquor;

17 (8) Perform all other matters and things, whether similar to the
18 foregoing or not, to carry out the provisions of this title, and has
19 full power to do each and every act necessary to the conduct of its
20 regulatory functions, including all supplies procurement, preparation
21 and approval of forms, and every other undertaking necessary to perform
22 its regulatory functions whatsoever, subject only to audit by the state
23 auditor. However, the board has no authority to regulate the content
24 of spoken language on licensed premises where wine and other liquors
25 are served and where there is not a clear and present danger of
26 disorderly conduct being provoked by such language or to restrict
27 advertising of lawful prices.

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