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**SUBSTITUTE HOUSE BILL 2364**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** House Government Accountability & Oversight (originally sponsored by Representatives Hurst, Blake, Pettigrew, Manweller, Pollet, and Vick)

READ FIRST TIME 01/30/14.

1       AN ACT Relating to sales by craft and general licensed distilleries  
2 of spirits for off-premise consumption and spirits samples for on-  
3 premise consumption; and amending RCW 66.24.145, 66.28.040, 19.126.020,  
4 66.24.140, and 66.28.310.

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

6       **Sec. 1.** RCW 66.24.145 and 2013 c 98 s 1 are each amended to read  
7 as follows:

8       (1) Any craft distillery may sell spirits of its own production for  
9 consumption off the premises(~~(, up to three liters per person per~~  
10 ~~day)~~). A craft distillery selling spirits under this subsection must  
11 comply with the applicable laws and rules relating to retailers.

12       (2) Any craft distillery may contract distilled spirits for, and  
13 sell contract distilled spirits to, holders of distillers' or  
14 manufacturers' licenses, including licenses issued under RCW 66.24.520,  
15 or for export.

16       (3) Any craft distillery licensed under this section may provide,  
17 free ((of)) or for a charge, one-half ounce or less samples of spirits  
18 of its own production to persons on the premises of the distillery.

1 The maximum total per person per day is two ounces. Every person who  
2 participates in any manner in the service of samples must obtain a  
3 class 12 alcohol server permit.

4 (4) The board must adopt rules to implement the alcohol server  
5 permit requirement and may adopt additional rules to implement this  
6 section.

7 (5) Distilling is an agricultural practice.

8 **Sec. 2.** RCW 66.28.040 and 2012 c 2 s 116 are each amended to read  
9 as follows:

10 Except as permitted by the board under RCW 66.20.010, no domestic  
11 brewery, microbrewery, distributor, distiller, domestic winery,  
12 importer, rectifier, certificate of approval holder, or other  
13 manufacturer of liquor may, within the state of Washington, give to any  
14 person any liquor; but nothing in this section nor in RCW 66.28.305  
15 prevents a domestic brewery, microbrewery, distributor, domestic  
16 winery, distiller, certificate of approval holder, or importer from  
17 furnishing samples of beer, wine, or spirituous liquor to authorized  
18 licensees for the purpose of negotiating a sale, in accordance with  
19 regulations adopted by the liquor control board, provided that the  
20 samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210;  
21 nothing in this section prevents a domestic brewery, microbrewery,  
22 domestic winery, distillery, certificate of approval holder, or  
23 distributor from furnishing beer, wine, or spirituous liquor for  
24 instructional purposes under RCW 66.28.150; nothing in this section  
25 prevents a domestic winery, certificate of approval holder, or  
26 distributor from furnishing wine without charge, subject to the taxes  
27 imposed by RCW 66.24.210, to a not-for-profit group organized and  
28 operated solely for the purpose of enology or the study of viticulture  
29 which has been in existence for at least six months and that uses wine  
30 so furnished solely for such educational purposes or a domestic winery,  
31 or an out-of-state certificate of approval holder, from furnishing wine  
32 without charge or a domestic brewery, or an out-of-state certificate of  
33 approval holder, from furnishing beer without charge, subject to the  
34 taxes imposed by RCW 66.24.210 or 66.24.290, or a domestic distiller  
35 licensed under RCW 66.24.140 or an accredited representative of a  
36 distiller, manufacturer, importer, or distributor of spirituous liquor  
37 licensed under RCW 66.24.310, from furnishing spirits without charge,

1 to a nonprofit charitable corporation or association exempt from  
2 taxation under 26 U.S.C. Sec. 501(c)(3) or (6) of the internal revenue  
3 code of 1986 for use consistent with the purpose or purposes entitling  
4 it to such exemption; nothing in this section prevents a domestic  
5 brewery or microbrewery from serving beer without charge, on the  
6 brewery premises; nothing in this section prevents donations of wine  
7 for the purposes of RCW 66.12.180; nothing in this section prevents a  
8 domestic winery from serving wine without charge, on the winery  
9 premises; and nothing in this section prevents a craft distillery from  
10 serving spirits (~~(without charge)~~), on the distillery premises subject  
11 to RCW 66.24.145.

12 **Sec. 3.** RCW 19.126.020 and 2012 c 2 s 213 are each amended to read  
13 as follows:

14 The definitions in this section apply throughout this chapter  
15 unless the context clearly requires otherwise.

16 (1) "Agreement of distributorship" means any contract, agreement,  
17 commercial relationship, license, association, or any other  
18 arrangement, for a definite or indefinite period, between a supplier  
19 and distributor.

20 (2) "Authorized representative" has the same meaning as "authorized  
21 representative" as defined in RCW 66.04.010.

22 (3) "Brand" means any word, name, group of letters, symbol, or  
23 combination thereof, including the name of the distiller or brewer if  
24 the distiller's or brewer's name is also a significant part of the  
25 product name, adopted and used by a supplier to identify specific  
26 spirits or a specific malt beverage product and to distinguish that  
27 product from other spirits or malt beverages produced by that supplier  
28 or other suppliers.

29 (4) "Distributor" means any person, including but not limited to a  
30 component of a supplier's distribution system constituted as an  
31 independent business, importing or causing to be imported into this  
32 state, or purchasing or causing to be purchased within this state, any  
33 spirits or malt beverages for sale or resale to retailers licensed  
34 under the laws of this state, regardless of whether the business of  
35 such person is conducted under the terms of any agreement with a  
36 distiller or malt beverage manufacturer.

1 (5) "Importer" means any distributor importing spirits or beer into  
2 this state for sale to retailer accounts or for sale to other  
3 distributors designated as "subjobbers" for resale.

4 (6) "Malt beverage manufacturer" means every brewer, fermenter,  
5 processor, bottler, or packager of malt beverages located within or  
6 outside this state, or any other person, whether located within or  
7 outside this state, who enters into an agreement of distributorship for  
8 the resale of malt beverages in this state with any wholesale  
9 distributor doing business in the state of Washington.

10 (7) "Person" means any natural person, corporation, partnership,  
11 trust, agency, or other entity, as well as any individual officers,  
12 directors, or other persons in active control of the activities of such  
13 entity.

14 (8) "Spirits manufacturer" means every distiller, processor,  
15 bottler, or packager of spirits located within or outside this state,  
16 or any other person, whether located within or outside this state, who  
17 enters into an agreement of distributorship for the resale of spirits  
18 in this state with any wholesale distributor doing business in the  
19 state of Washington.

20 (9) "Successor distributor" means any distributor who enters into  
21 an agreement, whether oral or written, to distribute a brand of spirits  
22 or malt beverages after the supplier with whom such agreement is made  
23 or the person from whom that supplier acquired the right to manufacture  
24 or distribute the brand has terminated, canceled, or failed to renew an  
25 agreement of distributorship, whether oral or written, with another  
26 distributor to distribute that same brand of spirits or malt beverages.

27 (10) "Supplier" means any spirits or malt beverage manufacturer or  
28 importer who enters into or is a party to any agreement of  
29 distributorship with a wholesale distributor. "Supplier" does not  
30 include: (a) Any distiller licensed under RCW 66.24.140 or 66.24.145  
31 and producing less than (~~sixty~~) one hundred fifty thousand proof  
32 gallons of spirits annually or any brewery or microbrewery licensed  
33 under RCW 66.24.240 and producing less than two hundred thousand  
34 barrels of malt liquor annually; (b) any brewer or manufacturer of malt  
35 liquor producing less than two hundred thousand barrels of malt liquor  
36 annually and holding a certificate of approval issued under RCW  
37 66.24.270; or (c) any authorized representative of distillers or malt  
38 liquor manufacturers who holds an appointment from one or more

1 distillers or malt liquor manufacturers which, in the aggregate,  
2 produce less than two hundred thousand barrels of malt liquor or  
3 (~~sixty~~) one hundred fifty thousand proof gallons of spirits.

4 (11) "Terminated distribution rights" means distribution rights  
5 with respect to a brand of malt beverages which are lost by a  
6 terminated distributor as a result of termination, cancellation, or  
7 nonrenewal of an agreement of distributorship for that brand.

8 (12) "Terminated distributor" means a distributor whose agreement  
9 of distributorship with respect to a brand of spirits or malt  
10 beverages, whether oral or written, has been terminated, canceled, or  
11 not renewed.

12 **Sec. 4.** RCW 66.24.140 and 2010 c 290 s 1 are each amended to read  
13 as follows:

14 (1) There shall be a license to distillers, including blending,  
15 rectifying and bottling; fee two thousand dollars per annum, unless  
16 provided otherwise as follows:

17 (~~(1)~~) (a) For distillers producing (~~sixty~~) one hundred fifty  
18 thousand gallons or less of spirits with at least half of the raw  
19 materials used in the production grown in Washington, the license fee  
20 (~~shall~~) must be reduced to one hundred dollars per annum;

21 (~~(2)~~) (b) The board (~~shall~~) must license stills used and to be  
22 used solely and only by a commercial chemist for laboratory purposes,  
23 and not for the manufacture of liquor for sale, at a fee of twenty  
24 dollars per annum;

25 (~~(3)~~) (c) The board (~~shall~~) must license stills used and to be  
26 used solely and only for laboratory purposes in any school, college or  
27 educational institution in the state, without fee; and

28 (~~(4)~~) (d) The board (~~shall~~) must license stills (~~which shall~~)  
29 that have been duly licensed as fruit and/or wine distilleries by the  
30 federal government, used and to be used solely as fruit and/or wine  
31 distilleries in the production of fruit brandy and wine spirits, at a  
32 fee of two hundred dollars per annum.

33 (2) Any distillery licensed under this section may:

34 (a) Sell spirits of its own production for consumption off the  
35 premises. A distillery selling spirits under this subsection must  
36 comply with the applicable laws and rules relating to retailers;

1 (b) Contract distilled spirits for, and sell contract distilled  
2 spirits to, holders of distillers' or manufacturers' licenses,  
3 including licenses issued under RCW 66.24.520, or for export; and

4 (c) Provide free or for a charge one-half ounce or less samples of  
5 spirits of its own production to persons on the premises of the  
6 distillery. The maximum total per person per day is two ounces. Every  
7 person who participates in any manner in the service of samples must  
8 obtain a class 12 alcohol server permit.

9 **Sec. 5.** RCW 66.28.310 and 2013 c 107 s 1 are each amended to read  
10 as follows:

11 (1)(a) Nothing in RCW 66.28.305 prohibits an industry member from  
12 providing retailers branded promotional items which are of nominal  
13 value, singly or in the aggregate. Such items include but are not  
14 limited to: Trays, lighters, blotters, postcards, pencils, coasters,  
15 menu cards, meal checks, napkins, clocks, mugs, glasses, bottles or can  
16 openers, corkscrews, matches, printed recipes, shirts, hats, visors,  
17 and other similar items. Branded promotional items:

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

20 (ii) Must bear imprinted advertising matter of the industry member  
21 only, except imprinted advertising matter of the industry member can  
22 include the logo of a professional sports team which the industry  
23 member is licensed to use;

24 (iii) May be provided by industry members only to retailers and  
25 their employees and may not be provided by or through retailers or  
26 their employees to retail customers; and

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

28 (b) An industry member is not obligated to provide any such branded  
29 promotional items, and a retailer may not require an industry member to  
30 provide such branded promotional items as a condition for selling any  
31 alcohol to the retailer.

32 (c) Any industry member or retailer or any other person asserting  
33 that the provision of branded promotional items as allowed in (a) of  
34 this subsection has resulted or is more likely than not to result in  
35 undue influence or an adverse impact on public health and safety, or is  
36 otherwise inconsistent with the criteria in (a) of this subsection may  
37 file a complaint with the board. Upon receipt of a complaint the board

1 may conduct such investigation as it deems appropriate in the  
2 circumstances. If the investigation reveals the provision of branded  
3 promotional items has resulted in or is more likely than not to result  
4 in undue influence or has resulted or is more likely than not to result  
5 in an adverse impact on public health and safety or is otherwise  
6 inconsistent with (a) of this subsection the board may issue an  
7 administrative violation notice to the industry member, to the  
8 retailer, or both. The recipient of the administrative violation  
9 notice may request a hearing under chapter 34.05 RCW.

10 (2) Nothing in RCW 66.28.305 prohibits:

11 (a) An industry member from providing to a special occasion  
12 licensee and a special occasion licensee from receiving services for:

13 (i) Installation of draft beer dispensing equipment or advertising;

14 (ii) Advertising, pouring, or dispensing of beer or wine at a beer  
15 or wine tasting exhibition or judging event; or

16 (iii) Pouring or dispensing of spirits by a licensed domestic  
17 distiller or the accredited representative of a distiller,  
18 manufacturer, importer, or distributor of spirituous liquor licensed  
19 under RCW 66.24.310; or

20 (b) Special occasion licensees from paying for beer ~~((or))~~, wine,  
21 or spirits immediately following the end of the special occasion event;  
22 or

23 (c) Wineries ~~((or))~~, breweries, or distilleries that are  
24 participating in a special occasion event from paying reasonable booth  
25 fees to the special occasion licensee.

26 (3) Nothing in RCW 66.28.305 prohibits industry members from  
27 performing, and retailers from accepting the service of building,  
28 rotating, and restocking displays and stockroom inventories; rotating  
29 and rearranging can and bottle displays of their own products;  
30 providing point of sale material and brand signs; pricing case goods of  
31 their own brands; and performing such similar business services  
32 consistent with board rules, or personal services as described in  
33 subsection (5) of this section.

34 (4) Nothing in RCW 66.28.305 prohibits:

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

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

4 (c) Industry members and retailers from producing, jointly or  
5 together with regional, state, or local industry associations,  
6 brochures and materials promoting tourism in Washington state which  
7 contain information regarding retail licensees, industry members, and  
8 their products.

9 (5) Nothing in RCW 66.28.305 prohibits the performance of personal  
10 services offered from time to time by a domestic winery or certificate  
11 of approval holder to retailers when the personal services are (a)  
12 conducted at a licensed premises, and (b) intended to inform, educate,  
13 or enhance customers' knowledge or experience of the manufacturer's  
14 products. The performance of personal services may include  
15 participation and pouring, bottle signing events, and other similar  
16 informational or educational activities at the premises of a retailer  
17 holding a spirits, beer, and wine restaurant license, a wine and/or  
18 beer restaurant license, a specialty wine shop license, a special  
19 occasion license, a grocery store license with a tasting endorsement,  
20 or a private club license. A domestic winery or certificate of  
21 approval holder is not obligated to perform any such personal services,  
22 and a retail licensee may not require a domestic winery or certificate  
23 of approval holder to conduct any personal service as a condition for  
24 selling any alcohol to the retail licensee, or as a condition for  
25 including any product of the domestic winery or certificate of approval  
26 holder in any tasting conducted by the licensee. Except as provided in  
27 RCW 66.28.150, the cost of sampling may not be borne, directly or  
28 indirectly, by any domestic winery or certificate of approval holder or  
29 any distributor. Nothing in this section prohibits wineries,  
30 breweries, microbreweries, certificate of approval holders, and retail  
31 licensees from identifying the producers on private labels authorized  
32 under RCW 66.24.400, 66.24.425, 66.24.450, 66.24.360, and 66.24.371.

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



1 (7) Nothing in RCW 66.28.305 prohibits the performance of personal  
2 services offered from time to time by a domestic brewery, microbrewery,  
3 or beer certificate of approval holder to grocery store licensees with  
4 a tasting endorsement when the personal services are (a) conducted at  
5 a licensed premises in conjunction with a tasting event, and (b)  
6 intended to inform, educate, or enhance customers' knowledge or  
7 experience of the manufacturer's products. The performance of personal  
8 services may include participation and pouring, bottle signing events,  
9 and other similar informational or educational activities. A domestic  
10 brewery, microbrewery, or beer certificate of approval holder is not  
11 obligated to perform any such personal services, and a grocery store  
12 licensee may not require the performance of any personal service as a  
13 condition for including any product in any tasting conducted by the  
14 licensee.

15 (8) Nothing in RCW 66.28.305 prohibits an arrangement between a  
16 domestic winery and a restaurant licensed under RCW 66.24.320 or  
17 66.24.400 to waive a corkage fee.

18 (9) Nothing in this section prohibits professional sports teams who  
19 hold a retail liquor license or their agents from accepting bona fide  
20 liquor advertising from manufacturers, importers, distributors, or  
21 their agents for use in the sporting arena. Professional sports teams  
22 who hold a retail liquor license or their agents may license the  
23 manufacturer, importer, distributor, or their agents to use the name  
24 and trademarks of the professional sports team in their advertising and  
25 promotions, under the following conditions:

26 (a) Such advertising must be paid for by said manufacturer,  
27 importer, distributor, or their agent at the published advertising rate  
28 or at a reasonable fair market value.

29 (b) Such advertising may carry with it no express or implied offer  
30 on the part of the manufacturer, importer, distributor, or their agent,  
31 or promise on the part of the retail licensee whose operation is  
32 directly or indirectly part of the sporting arena, to stock or list any  
33 particular brand of liquor to the total or partial exclusion of any  
34 other brand.

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