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ENGROSSED SUBSTITUTE SENATE BILL 5145

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State of Washington

65th Legislature

2017 Regular Session

By Senate Commerce, Labor & Sports (originally sponsored by Senators Lias and Walsh)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to equalizing differences between the liquor  
2 industries regarding certain sales of alcohol carrying a private  
3 label; and amending RCW 66.28.310, 66.24.140, 66.24.145, 66.24.150,  
4 66.24.055, 66.24.200, and 66.24.250.

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

6 **Sec. 1.** RCW 66.28.310 and 2015 c 94 s 1 are each amended to read  
7 as follows:

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

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

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

1 (iii) May be provided by industry members only to retailers and  
2 their employees and may not be provided by or through retailers or  
3 their employees to retail customers; and

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

5 (b) An industry member is not obligated to provide any such  
6 branded promotional items, and a retailer may not require an industry  
7 member to provide such branded promotional items as a condition for  
8 selling any alcohol to the retailer.

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

24 (2) Nothing in RCW 66.28.305 prohibits:

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

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

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

31 (iii) Pouring or dispensing of spirits by a licensed domestic  
32 distiller or the accredited representative of a distiller,  
33 manufacturer, importer, or distributor of spirituous liquor licensed  
34 under RCW 66.24.310; or

35 (b) Special occasion licensees from paying for beer, wine, or  
36 spirits immediately following the end of the special occasion event;  
37 or

38 (c) Wineries, breweries, or distilleries that are participating  
39 in a special occasion event from paying reasonable booth fees to the  
40 special occasion licensee.

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

9 (4) Nothing in RCW 66.28.305 prohibits:

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

13 (b) Retailers from listing on their internet web sites  
14 information related to industry members whose products those  
15 retailers sell or promote, including direct links to the industry  
16 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 RCW 66.28.305 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  
25 services are (a) conducted at a licensed premises, and (b) intended  
26 to inform, educate, or enhance customers' knowledge or experience of  
27 the 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, a grocery store license with a tasting  
33 endorsement, or a private club license. A domestic winery or  
34 certificate of approval holder is not obligated to perform any such  
35 personal services, and a retail licensee may not require a domestic  
36 winery or certificate of approval holder to conduct any personal  
37 service as a condition for selling any alcohol to the retail  
38 licensee, or as a condition for including any product of the domestic  
39 winery or certificate of approval holder in any tasting conducted by  
40 the licensee. Except as provided in RCW 66.28.150, the cost of

1 sampling may not be borne, directly or indirectly, by any domestic  
2 winery or certificate of approval holder or any distributor.

3 ~~(6)~~ Nothing in ~~((this section))~~ RCW 66.28.305 prohibits wineries,  
4 breweries, microbreweries, distillers, craft distilleries,  
5 manufacturer's licensees, certificate of approval holders, and retail  
6 licensees from identifying the producers on private labels  
7 ~~((authorized under RCW 66.24.400, 66.24.425, 66.24.450, 66.24.360,~~  
8 ~~and 66.24.371))~~.

9 ~~((+6))~~ (7) Nothing in RCW 66.28.305 prohibits an industry member  
10 from entering into an arrangement with any holder of a sports  
11 entertainment facility license or an affiliated business for brand  
12 advertising at the licensed facility or promoting events held at the  
13 sports entertainment facility as authorized under RCW 66.24.570.

14 ~~((+7))~~ (8) Nothing in RCW 66.28.305 prohibits the performance of  
15 personal services offered from time to time by a domestic brewery,  
16 microbrewery, or beer certificate of approval holder to grocery store  
17 licensees with a tasting endorsement when the personal services are  
18 (a) conducted at a licensed premises in conjunction with a tasting  
19 event, and (b) intended to inform, educate, or enhance customers'  
20 knowledge or experience of the manufacturer's products. The  
21 performance of personal services may include participation and  
22 pouring, bottle signing events, and other similar informational or  
23 educational activities. A domestic brewery, microbrewery, or beer  
24 certificate of approval holder is not obligated to perform any such  
25 personal services, and a grocery store licensee may not require the  
26 performance of any personal service as a condition for including any  
27 product in any tasting conducted by the licensee.

28 ~~((+8))~~ (9) Nothing in RCW 66.28.305 prohibits an arrangement  
29 between a domestic winery and a restaurant licensed under RCW  
30 66.24.320 or 66.24.400 to waive a corkage fee.

31 ~~((+9))~~ (10) Nothing in this section prohibits professional  
32 sports teams who hold a retail liquor license or their agents from  
33 accepting bona fide liquor advertising from manufacturers, importers,  
34 distributors, or their agents for use in the sporting arena.  
35 Professional sports teams who hold a retail liquor license or their  
36 agents may license the manufacturer, importer, distributor, or their  
37 agents to use the name and trademarks of the professional sports team  
38 in their advertising and promotions, under the following conditions:

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

4 (b) Such advertising may carry with it no express or implied  
5 offer on the part of the manufacturer, importer, distributor, or  
6 their agent, or promise on the part of the retail licensee whose  
7 operation is directly or indirectly part of the sporting arena, to  
8 stock or list any particular brand of liquor to the total or partial  
9 exclusion of any other brand.

10 ~~((10))~~ (11) Nothing in RCW 66.28.305 prohibits a licensed  
11 domestic brewery or microbrewery from providing branded promotional  
12 items which are of nominal value, singly or in the aggregate, to a  
13 nonprofit charitable corporation or association exempt from taxation  
14 under 26 U.S.C. Sec. 501(c)(3) of the internal revenue code as it  
15 existed on July 24, 2015, for use consistent with the purpose or  
16 purposes entitling it to such exemption.

17 (12) Beer, wine, or spirits private label items may be produced,  
18 distributed, or sold by any person to the same extent that person is  
19 otherwise properly licensed to produce, distribute, or sell beer,  
20 wine, or spirits generally.

21 **Sec. 2.** RCW 66.24.140 and 2015 c 194 s 1 are each amended to  
22 read as follows:

23 (1) There is a license to distillers, including blending,  
24 rectifying, and bottling; fee two thousand dollars per annum, unless  
25 provided otherwise as follows:

26 (a) For distillers producing one hundred fifty thousand gallons  
27 or less of spirits with at least half of the raw materials used in  
28 the production grown in Washington, the license fee must be reduced  
29 to one hundred dollars per annum;

30 (b) The board must license stills used and to be used solely and  
31 only by a commercial chemist for laboratory purposes, and not for the  
32 manufacture of liquor for sale, at a fee of twenty dollars per annum;

33 (c) The board must license stills used and to be used solely and  
34 only for laboratory purposes in any school, college, or educational  
35 institution in the state, without fee; and

36 (d) The board must license stills that have been duly licensed as  
37 fruit and/or wine distilleries by the federal government, used and to  
38 be used solely as fruit and/or wine distilleries in the production of

1 fruit brandy and wine spirits, at a fee of two hundred dollars per  
2 annum.

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

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

7 (b) Contract distilled spirits for, and sell contract distilled  
8 spirits to, holders of distillers' or manufacturers' licenses,  
9 including licenses issued under RCW 66.24.520, or for export; (~~and~~)

10 (c) Provide free or for a charge one-half ounce or less samples  
11 of spirits of its own production to persons on the premises of the  
12 distillery. The maximum total per person per day is two ounces. Every  
13 person who participates in any manner in the service of samples must  
14 obtain a class 12 alcohol server permit. Spirits samples may be  
15 adulterated with nonalcoholic mixers, water, and/or ice; and

16 (d) Produce and sell spirits carrying a private label exclusive  
17 to a restaurant or private club holding a license under RCW  
18 66.24.400, 66.24.425, or 66.24.450, or a spirits retail licensee  
19 holding a license under RCW 66.24.630.

20 **Sec. 3.** RCW 66.24.145 and 2015 c 194 s 2 are each amended to  
21 read as follows:

22 (1)(a) Any craft distillery may sell spirits of its own  
23 production for consumption off the premises.

24 (b) A craft distillery selling spirits under this subsection must  
25 comply with the applicable laws and rules relating to retailers.

26 (2) Any craft distillery may contract distilled spirits for, and  
27 sell contract distilled spirits to, holders of distillers' or  
28 manufacturers' licenses, including licenses issued under RCW  
29 66.24.520, or for export.

30 (3) Any craft distillery licensed under this section may provide,  
31 free or for a charge, one-half ounce or less samples of spirits of  
32 its own production to persons on the premises of the distillery. The  
33 maximum total per person per day is two ounces. Every person who  
34 participates in any manner in the service of samples must obtain a  
35 class 12 alcohol server permit. Spirits samples may be adulterated  
36 with nonalcoholic mixers, water, and/or ice.

37 (4)(a) A distillery or craft distillery licensee may apply to the  
38 board for an endorsement to sell spirits of its own production at

1 retail for off-premises consumption at a qualifying farmers market.  
2 The annual fee for this endorsement is seventy-five dollars.

3 (b) For each month during which a distillery or craft distillery  
4 will sell spirits at a qualifying farmers market, the distillery or  
5 craft distillery must provide the board or its designee a list of the  
6 dates, times, and locations at which bottled spirits may be offered  
7 for sale. This list must be received by the board before the spirits  
8 may be offered for sale at a qualifying farmers market.

9 (c) Each approved location in a qualifying farmers market is  
10 deemed to be part of the distillery or craft distillery license for  
11 the purpose of this title. The approved locations under an  
12 endorsement granted under this subsection do not include tasting or  
13 sampling privileges. The distillery or craft distillery may not store  
14 spirits at a farmers market beyond the hours that the bottled spirits  
15 are offered for sale. The distillery or craft distillery may not act  
16 as a distributor from a farmers market location.

17 (d) Before a distillery or craft distillery may sell bottled  
18 spirits at a qualifying farmers market, the farmers market must apply  
19 to the board for authorization for any distillery or craft distillery  
20 with an endorsement approved under this subsection to sell bottled  
21 spirits at retail at the farmers market. This application must  
22 include, at a minimum: (i) A map of the farmers market showing all  
23 booths, stalls, or other designated locations at which an approved  
24 distillery or craft distillery may sell bottled spirits; and (ii) the  
25 name and contact information for the on-site market managers who may  
26 be contacted by the board or its designee to verify the locations at  
27 which bottled spirits may be sold. Before authorizing a qualifying  
28 farmers market to allow an approved distillery or craft distillery to  
29 sell bottled spirits at retail at its farmers market location, the  
30 board must notify the persons or entities of such application for  
31 authorization pursuant to RCW 66.24.010 (8) and (9). An authorization  
32 granted under this subsection (4)(d) may be withdrawn by the board  
33 for any violation of this title or any rules adopted under this  
34 title.

35 (e) For the purposes of this subsection (4), "qualifying farmers  
36 market" has the same meaning as defined in RCW 66.24.170.

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

40 (6) Distilling is an agricultural practice.

1       (7) A craft distillery may produce and sell spirits carrying a  
2 private label exclusive to a restaurant or private club holding a  
3 license under RCW 66.24.400, 66.24.425, or 66.24.450, or a spirits  
4 retail licensee holding a license under RCW 66.24.630.

5       **Sec. 4.** RCW 66.24.150 and 1997 c 321 s 2 are each amended to  
6 read as follows:

7       (1) There shall be a license to manufacturers of liquor,  
8 including all kinds of manufacturers except those licensed as  
9 distillers, domestic brewers, microbreweries, wineries, and domestic  
10 wineries, authorizing such licensees to manufacture, import, sell,  
11 and export liquor from the state; fee five hundred dollars per annum.

12       (2) A licensee manufacturing spirits pursuant to this section may  
13 produce and sell spirits carrying a private label exclusive to a  
14 restaurant or private club holding a license under RCW 66.24.400,  
15 66.24.425, or 66.24.450, or a spirits retail licensee holding a  
16 license under RCW 66.24.630.

17       **Sec. 5.** RCW 66.24.055 and 2013 2nd sp.s. c 12 s 1 are each  
18 amended to read as follows:

19       (1) There is a license for spirits distributors to (a) sell  
20 spirits purchased from manufacturers, distillers, or suppliers  
21 including, without limitation, licensed Washington distilleries,  
22 licensed spirits importers, other Washington spirits distributors, or  
23 suppliers of foreign spirits located outside of the United States, to  
24 spirits retailers including, without limitation, spirits retail  
25 licensees, special occasion license holders, interstate common  
26 carrier license holders, restaurant spirits retailer license holders,  
27 spirits, beer, and wine private club license holders, hotel license  
28 holders, sports entertainment facility license holders, and spirits,  
29 beer, and wine nightclub license holders, and to other spirits  
30 distributors; and (b) export the same from the state.

31       (2) By January 1, 2012, the board must issue spirits distributor  
32 licenses to all applicants who, upon December 8, 2011, have the right  
33 to purchase spirits from a spirits manufacturer, spirits distiller,  
34 or other spirits supplier for resale in the state, or are agents of  
35 such supplier authorized to sell to licensees in the state, unless  
36 the board determines that issuance of a license to such applicant is  
37 not in the public interest.



1 (3)(a) As limited by (b) of this subsection and subject to (c) of  
2 this subsection, each spirits distributor licensee must pay to the  
3 board, for deposit into the liquor revolving fund, a license issuance  
4 fee calculated as follows:

5 (i) In each of the first twenty-seven months of licensure, ten  
6 percent of the total revenue from all the licensee's sales of spirits  
7 made during the month for which the fee is due, respectively; and

8 (ii) In the twenty-eighth month of licensure and each month  
9 thereafter, five percent of the total revenue from all the licensee's  
10 sales of spirits made during the month for which the fee is due,  
11 respectively.

12 (b) The fee required under this subsection (3) is calculated only  
13 on sales of items which the licensee was the first spirits  
14 distributor in the state to have received:

15 (i) In the case of spirits manufactured in the state, from the  
16 distiller; or

17 (ii) In the case of spirits manufactured outside the state, from  
18 an authorized out-of-state supplier.

19 (c) By March 31, 2013, all persons holding spirits distributor  
20 licenses on or before March 31, 2013, must have paid collectively one  
21 hundred fifty million dollars or more in spirits distributor license  
22 fees. If the collective payment through March 31, 2013, totals less  
23 than one hundred fifty million dollars, the board must, according to  
24 rules adopted by the board for the purpose, collect by May 31, 2013,  
25 as additional spirits distributor license fees the difference between  
26 one hundred fifty million dollars and the actual receipts, allocated  
27 among persons holding spirits distributor licenses at any time on or  
28 before March 31, 2013, ratably according to their spirits sales made  
29 during calendar year 2012. Any amount by which such payments exceed  
30 one hundred fifty million dollars by March 31, 2013, must be credited  
31 to future license issuance fee obligations of spirits distributor  
32 licensees according to rules adopted by the board.

33 (d) A retail licensee selling for resale must pay a distributor  
34 license fee under the terms and conditions in this section on resales  
35 of spirits the licensee has purchased on which no other distributor  
36 license fee has been paid. The board must establish rules setting  
37 forth the frequency and timing of such payments and reporting of  
38 sales dollar volume by the licensee, with payments due quarterly in  
39 arrears.

1 (e) No spirits inventory may be subject to calculation of more  
2 than a single spirits distributor license issuance fee.

3 (4) In addition to the payment set forth in subsection (3) of  
4 this section, each spirits distributor licensee renewing its annual  
5 license must pay an annual license renewal fee of one thousand three  
6 hundred twenty dollars for each licensed location.

7 (5) There is no minimum facility size or capacity for spirits  
8 distributor licenses, and no limit on the number of such licenses  
9 issued to qualified applicants. License applicants must provide  
10 physical security of the product that is substantially as effective  
11 as the physical security of the distribution facilities currently  
12 operated by the board with respect to preventing pilferage. License  
13 issuances and renewals are subject to RCW 66.24.010 and the  
14 regulations promulgated thereunder, including without limitation  
15 rights of cities, towns, county legislative authorities, the public,  
16 churches, schools, and public institutions to object to or prevent  
17 issuance of local liquor licenses. However, existing distributor  
18 premises licensed to sell beer and/or wine are deemed to be premises  
19 "now licensed" under RCW 66.24.010(9)(a) for the purpose of  
20 processing applications for spirits distributor licenses.

21 (6) A distributor licensed under this section must, to the extent  
22 it is reasonably practicable for the distributor to do so, make any  
23 product the distributor acquires for resale available to any person  
24 legally entitled to purchase such product.

25 **Sec. 6.** RCW 66.24.200 and 2004 c 160 s 2 are each amended to  
26 read as follows:

27 (1) There shall be a license for wine distributors to sell wine,  
28 purchased from licensed Washington wineries, wine certificate of  
29 approval holders, licensed wine importers, or suppliers of foreign  
30 wine located outside of the United States, to licensed wine retailers  
31 and other wine distributors and to export the same from the state;  
32 fee six hundred sixty dollars per year for each distributing unit.

33 (2) A distributor licensed under this section must, to the extent  
34 it is reasonably practicable for the distributor to do so, make any  
35 product the distributor acquires for resale available to any person  
36 legally entitled to purchase such product.

37 **Sec. 7.** RCW 66.24.250 and 2004 c 160 s 6 are each amended to  
38 read as follows:

1       (1) There shall be a license for beer distributors to sell beer  
2 and strong beer, purchased from licensed Washington breweries, beer  
3 certificate of approval holders, licensed beer importers, or  
4 suppliers of foreign beer located outside of the United States, to  
5 licensed beer retailers and other beer distributors and to export  
6 same from the state of Washington; fee six hundred sixty dollars per  
7 year for each distributing unit.

8       (2) A distributor licensed under this section must, to the extent  
9 it is reasonably practicable for the distributor to do so, make any  
10 product the distributor acquires for resale available to any person  
11 legally entitled to purchase such product.

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