
SUBSTITUTE SENATE BILL 5145

State of Washington

65th Legislature

2017 Regular Session

By Senate Commerce, Labor & Sports (originally sponsored by Senators Llias 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, 66.24.145, and 66.24.630.

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

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

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

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

16 (ii) Must bear imprinted advertising matter of the industry
17 member only, except imprinted advertising matter of the industry
18 member can include the logo of a professional sports team which the
19 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, craft distilleries, distilleries,
5 certificate of approval holders, ~~((and))~~ or retail licensees from
6 identifying the producers on private labels ~~((authorized under RCW~~
7 ~~66.24.400, 66.24.425, 66.24.450, 66.24.360, and 66.24.371))~~.

8 ~~((+6))~~ (7) Nothing in RCW 66.28.305 prohibits an industry member
9 from entering into an arrangement with any holder of a sports
10 entertainment facility license or an affiliated business for brand
11 advertising at the licensed facility or promoting events held at the
12 sports entertainment facility as authorized under RCW 66.24.570.

13 ~~((+7))~~ (8) Nothing in RCW 66.28.305 prohibits the performance of
14 personal services offered from time to time by a domestic brewery,
15 microbrewery, or beer certificate of approval holder to grocery store
16 licensees with a tasting endorsement when the personal services are
17 (a) conducted at a licensed premises in conjunction with a tasting
18 event, and (b) intended to inform, educate, or enhance customers'
19 knowledge or experience of the manufacturer's products. The
20 performance of personal services may include participation and
21 pouring, bottle signing events, and other similar informational or
22 educational activities. A domestic brewery, microbrewery, or beer
23 certificate of approval holder is not obligated to perform any such
24 personal services, and a grocery store licensee may not require the
25 performance of any personal service as a condition for including any
26 product in any tasting conducted by the licensee.

27 ~~((+8))~~ (9) Nothing in RCW 66.28.305 prohibits an arrangement
28 between a domestic winery and a restaurant licensed under RCW
29 66.24.320 or 66.24.400 to waive a corkage fee.

30 ~~((+9))~~ (10) Nothing in this section prohibits professional
31 sports teams who hold a retail liquor license or their agents from
32 accepting bona fide liquor advertising from manufacturers, importers,
33 distributors, or their agents for use in the sporting arena.
34 Professional sports teams who hold a retail liquor license or their
35 agents may license the manufacturer, importer, distributor, or their
36 agents to use the name and trademarks of the professional sports team
37 in their advertising and promotions, under the following conditions:

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

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

7 ~~((10))~~ (11) Nothing in RCW 66.28.305 prohibits a licensed
8 domestic brewery or microbrewery from providing branded promotional
9 items which are of nominal value, singly or in the aggregate, to a
10 nonprofit charitable corporation or association exempt from taxation
11 under 26 U.S.C. Sec. 501(c)(3) of the internal revenue code as it
12 existed on July 24, 2015, for use consistent with the purpose or
13 purposes entitling it to such exemption.

14 (12) Beer, wine, and spirits private label items may be produced,
15 distributed, and sold by any person otherwise properly licensed to
16 produce, distribute, or sell beer, wine, and spirits.

17 **Sec. 2.** RCW 66.24.145 and 2015 c 194 s 2 are each amended to
18 read as follows:

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

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

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

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

34 (4)(a) A distillery or craft distillery licensee may apply to the
35 board for an endorsement to sell spirits of its own production at
36 retail for off-premises consumption at a qualifying farmers market.
37 The annual fee for this endorsement is seventy-five dollars.

38 (b) For each month during which a distillery or craft distillery
39 will sell spirits at a qualifying farmers market, the distillery or

1 craft distillery must provide the board or its designee a list of the
2 dates, times, and locations at which bottled spirits may be offered
3 for sale. This list must be received by the board before the spirits
4 may be offered for sale at a qualifying farmers market.

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

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

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

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

36 (6) Distilling is an agricultural practice.

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

1 **Sec. 3.** RCW 66.24.630 and 2015 c 186 s 1 are each amended to
2 read as follows:

3 (1)(a) There is a spirits retail license to: Sell spirits in
4 original containers to consumers for consumption off the licensed
5 premises and to permit holders; sell spirits in original containers
6 to retailers licensed to sell spirits for consumption on the
7 premises, for resale at their licensed premises according to the
8 terms of their licenses, although no single sale may exceed twenty-
9 four liters, unless the sale is by a licensee that was a contract
10 liquor store manager of a contract liquor store at the location of
11 its spirits retail licensed premises from which it makes such sales;
12 and export spirits.

13 **(b) A spirits retail licensee may sell spirits carrying their own**
14 **private label or a private label exclusive to a restaurant or private**
15 **club holding a license under RCW 66.24.400, 66.24.425, or 66.24.450.**

16 (2) For the purposes of this title, a spirits retail license is a
17 retail license, and a sale by a spirits retailer is a retail sale
18 only if not for resale. Nothing in this title authorizes sales by on-
19 sale licensees to other retail licensees. The board must establish by
20 rule an obligation of on-sale spirits retailers to:

21 (a) Maintain a schedule by stock-keeping unit of all their
22 purchases of spirits from spirits retail licensees, indicating the
23 identity of the seller and the quantities purchased; and

24 (b) Provide, not more frequently than quarterly, a report for
25 each scheduled item containing the identity of the purchasing on-
26 premises licensee and the quantities of that scheduled item purchased
27 since any preceding report to:

28 (i) A distributor authorized by the distiller to distribute a
29 scheduled item in the on-sale licensee's geographic area; or

30 (ii) A distiller acting as distributor of the scheduled item in
31 the area.

32 (3)(a) Except as otherwise provided in (c) of this subsection,
33 the board may issue spirits retail licenses only for premises
34 comprising at least ten thousand square feet of fully enclosed retail
35 space within a single structure, including storerooms and other
36 interior auxiliary areas but excluding covered or fenced exterior
37 areas, whether or not attached to the structure, and only to
38 applicants that the board determines will maintain systems for
39 inventory management, employee training, employee supervision, and
40 physical security of the product substantially as effective as those

1 of stores currently operated by the board with respect to preventing
2 sales to or pilferage by underage or inebriated persons.

3 (b) License issuances and renewals are subject to RCW 66.24.010
4 and the regulations promulgated thereunder, including without
5 limitation rights of cities, towns, county legislative authorities,
6 the public, churches, schools, and public institutions to object to
7 or prevent issuance of local liquor licenses. However, existing
8 grocery premises licensed to sell beer and/or wine are deemed to be
9 premises "now licensed" under RCW 66.24.010(9)(a) for the purpose of
10 processing applications for spirits retail licenses.

11 (c) The board may not deny a spirits retail license to an
12 otherwise qualified contract liquor store at its contract location or
13 to the holder of former state liquor store operating rights sold at
14 auction under RCW 66.24.620 on the grounds of location, nature, or
15 size of the premises to be licensed. The board may not deny a spirits
16 retail license to applicants that are not contract liquor stores or
17 operating rights holders on the grounds of the size of the premises
18 to be licensed, if such applicant is otherwise qualified and the
19 board determines that:

20 (i) There is no spirits retail license holder in the trade area
21 that the applicant proposes to serve;

22 (ii) The applicant meets, or upon licensure will meet, the
23 operational requirements established by the board by rule; and

24 (iii) The licensee has not committed more than one public safety
25 violation within the three years preceding application.

26 (d) A retailer authorized to sell spirits for consumption on or
27 off the licensed premises may accept delivery of spirits at its
28 licensed premises, at another licensed premises as designated by the
29 retailer, or at one or more warehouse facilities registered with the
30 board, which facilities may also warehouse and distribute nonliquor
31 items, and from which the retailer may deliver to its own licensed
32 premises and, pursuant to sales permitted under subsection (1) of
33 this section:

34 (i) To other retailer premises licensed to sell spirits for
35 consumption on the licensed premises;

36 (ii) To other registered facilities; or

37 (iii) To lawful purchasers outside the state. The facilities may
38 be registered and utilized by associations, cooperatives, or
39 comparable groups of retailers, including at least one retailer
40 licensed to sell spirits.

1 (e) For purposes of negotiating volume discounts, a group of
2 individual retailers authorized to sell spirits for consumption off
3 the licensed premises may accept delivery of spirits at their
4 individual licensed premises or at any one of the individual
5 licensee's premises, or at a warehouse facility registered with the
6 board.

7 (4)(a) Except as otherwise provided in RCW 66.24.632, or in (b)
8 of this subsection, each spirits retail licensee must pay to the
9 board, for deposit into the liquor revolving fund, a license issuance
10 fee equivalent to seventeen percent of all spirits sales revenues
11 under the license, exclusive of taxes collected by the licensee and
12 of sales of items on which a license fee payable under this section
13 has otherwise been incurred. The board must establish rules setting
14 forth the timing of such payments and reporting of sales dollar
15 volume by the licensee, with payments required quarterly in arrears.
16 The first payment is due October 1, 2012.

17 (b) This subsection (4) does not apply to craft distilleries.

18 (5) In addition to the payment required under subsection (4) of
19 this section, each licensee must pay an annual license renewal fee of
20 one hundred sixty-six dollars. The board must periodically review and
21 adjust the renewal fee as may be required to maintain it as
22 comparable to annual license renewal fees for licenses to sell beer
23 and wine not for consumption on the licensed premises. If required by
24 law at the time, any increase of the annual renewal fee becomes
25 effective only upon ratification by the legislature.

26 (6) As a condition to receiving and renewing a spirits retail
27 license the licensee must provide training as prescribed by the board
28 by rule for individuals who sell spirits or who manage others who
29 sell spirits regarding compliance with laws and regulations regarding
30 sale of spirits, including without limitation the prohibitions
31 against sale of spirits to individuals who are underage or visibly
32 intoxicated. The training must be provided before the individual
33 first engages in the sale of spirits and must be renewed at least
34 every five years. The licensee must maintain records documenting the
35 nature and frequency of the training provided. An employee training
36 program is presumptively sufficient if it incorporates a "responsible
37 vendor program" promulgated by the board.

38 (7) The maximum penalties prescribed by the board in WAC
39 314-29-020 through 314-29-040 relating to fines and suspensions are

1 doubled for violations relating to the sale of spirits by spirits
2 retail licensees.

3 (8)(a) The board must promulgate regulations concerning the
4 adoption and administration of a compliance training program for
5 spirits retail licensees, to be known as a "responsible vendor
6 program," to reduce underage drinking, encourage licensees to adopt
7 specific best practices to prevent sales to minors, and provide
8 licensees with an incentive to give their employees ongoing training
9 in responsible alcohol sales and service.

10 (b) Licensees who join the responsible vendor program under this
11 section and maintain all of the program's requirements are not
12 subject to the doubling of penalties provided in this section for a
13 single violation in any period of twelve calendar months.

14 (c) The responsible vendor program must be free, voluntary, and
15 self-monitoring.

16 (d) To participate in the responsible vendor program, licensees
17 must submit an application form to the board. If the application
18 establishes that the licensee meets the qualifications to join the
19 program, the board must send the licensee a membership certificate.

20 (e) A licensee participating in the responsible vendor program
21 must at a minimum:

22 (i) Provide ongoing training to employees;

23 (ii) Accept only certain forms of identification for alcohol
24 sales;

25 (iii) Adopt policies on alcohol sales and checking
26 identification;

27 (iv) Post specific signs in the business; and

28 (v) Keep records verifying compliance with the program's
29 requirements.

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