
SENATE BILL 5660

State of Washington 64th Legislature 2015 Regular Session

By Senators Hobbs, Honeyford, and Angel

Read first time 01/28/15. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to assisting small businesses licensed to sell
2 spirits in Washington state; amending RCW 66.24.630, 66.28.170,
3 66.28.285, and 66.28.330; adding a new section to chapter 66.28 RCW;
4 creating a new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that in the wake of
7 the implementation of Initiative Measure No. 1183, many small
8 business owners suffered severe losses in assuming the operation of
9 state-owned and contract liquor stores. Approximately one-third of
10 these small businesses have already failed, and many more are in
11 imminent danger of failure. These losses were due, in part, to
12 regulatory actions of the state and unintentional misrepresentations
13 of market conditions and the applicability of certain taxes and fees
14 on the business being sold or transferred to these private parties.
15 The state received over thirty million dollars from these small
16 business people, the majority of whom are minority business owners,
17 for the right to continue operations that were previously state-owned
18 and operated. It is the intent of the legislature to mitigate the
19 economic hardships facing these small businesses and create
20 opportunities for them to restructure their enterprises to meet
21 current market conditions.

1 **Sec. 2.** RCW 66.24.630 and 2012 2nd sp.s. c 6 s 401 are each
2 amended to read as follows:

3 (1) 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 (2) For the purposes of this title, a spirits retail license is a
14 retail license, and a sale by a spirits retailer is a retail sale
15 only if not for resale. Nothing in this title authorizes sales by on-
16 sale licensees to other retail licensees. The board must establish by
17 rule an obligation of on-sale spirits retailers to:

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

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

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

27 (ii) A distiller acting as distributor of the scheduled item in
28 the area.

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

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

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

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

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

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

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

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

34 (ii) To other registered facilities; or

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

39 (4)(a) Except as otherwise provided in RCW 66.24.632, or in (b)
40 or (c) of this subsection, each spirits retail licensee must pay to

1 the board, for deposit into the liquor revolving fund, a license
2 issuance fee equivalent to seventeen percent of all spirits sales
3 revenues under the license, exclusive of taxes collected by the
4 licensee and of sales of items on which a license fee payable under
5 this section has otherwise been incurred. The board must establish
6 rules setting forth the timing of such payments and reporting of
7 sales dollar volume by the licensee, with payments required quarterly
8 in arrears. The first payment is due October 1, 2012.

9 (b) Those licensees who are either holders of former state liquor
10 store operating rights under RCW 66.24.620, or the owners of former
11 contract liquor stores, who are qualified as a small business under
12 RCW 19.85.020 and are licensed under subsection (3)(c) of this
13 section, are subject to the following requirements regarding the
14 payment of license issuance fees:

15 (i) Licensees with monthly gross receipts of three hundred
16 thousand dollars or less must pay a license issuance fee of seven
17 percent on the first fifty thousand dollars of its monthly retail
18 spirits sales revenues and must pay seventeen percent on the
19 remainder of its monthly retail spirits sales revenues; and

20 (ii) Licensees with monthly gross receipts of more than three
21 hundred thousand dollars must pay a license issuance fee of seventeen
22 percent on the full amount of its monthly retail spirits sales
23 revenues.

24 (c) This subsection (4) does not apply to craft distilleries.

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

33 (6) As a condition to receiving and renewing a (~~retail~~) spirits
34 retail license the licensee must provide training as prescribed by
35 the board by rule for individuals who sell spirits or who manage
36 others who sell spirits regarding compliance with laws and
37 regulations regarding sale of spirits, including without limitation
38 the prohibitions against sale of spirits to individuals who are
39 underage or visibly intoxicated. The training must be provided before
40 the individual first engages in the sale of spirits and must be

1 renewed at least every five years. The licensee must maintain records
2 documenting the nature and frequency of the training provided. An
3 employee training program is presumptively sufficient if it
4 incorporates a "responsible vendor program" promulgated by the board.

5 (7) The maximum penalties prescribed by the board in WAC
6 314-29-020 through 314-29-040 relating to fines and suspensions are
7 doubled for violations relating to the sale of spirits by (~~retail~~)
8 spirits retail licensees.

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

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

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

22 (d) To participate in the responsible vendor program, licensees
23 must submit an application form to the board. If the application
24 establishes that the licensee meets the qualifications to join the
25 program, the board must send the licensee a membership certificate.

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

28 (i) Provide ongoing training to employees;

29 (ii) Accept only certain forms of identification for alcohol
30 sales;

31 (iii) Adopt policies on alcohol sales and checking
32 identification;

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

34 (v) Keep records verifying compliance with the program's
35 requirements.

36 NEW SECTION. **Sec. 3.** A new section is added to chapter 66.28
37 RCW to read as follows:

38 (1) If a licensee subject to the license issuance fee
39 requirements of RCW 66.24.630(4) fails to submit its quarterly

1 reports or payment to the board, the board may assess a penalty at a
2 rate no higher than one-half percent per month on the balance of the
3 unpaid license issuance fee.

4 (2) Any penalty imposed on a licensee for its failure to pay the
5 license issuance fee that accrued prior to the effective date of this
6 section shall be waived, and all penalty payments made by licensees
7 prior to the effective date of this section, if any, must be credited
8 towards any outstanding balance of unpaid license issuance fee or
9 towards the future payments of its license issuance fee.

10 (3) A holder of the right to operate a former contract liquor
11 store or former state liquor store who has any outstanding balance of
12 unpaid license issuance fee accrued prior to the effective date of
13 this section shall not be denied the ability to reopen its closed
14 store, to relocate its store to a new location, or to lease its right
15 to a new licensee during the twenty-four months following the
16 effective date of this section, for reason of nonpayment of the
17 license issuance fee. The right holder's failure to pay the license
18 issuance fee until after said twenty-four months will be a sufficient
19 ground for suspending or revoking its license or any third party's
20 license then associated with the holder's operating right.

21 **Sec. 4.** RCW 66.28.170 and 2012 c 2 s 119 are each amended to
22 read as follows:

23 It is unlawful for a manufacturer of spirits, wine, or malt
24 beverages holding a certificate of approval or the manufacturer's
25 authorized representative or distributor, a distillery, brewery, or a
26 domestic winery to discriminate in price in selling to any purchaser
27 for resale in the state of Washington. Price differentials for sales
28 of spirits or wine based upon competitive conditions, costs of
29 servicing a purchaser's account, or efficiencies in handling goods(~~(or~~
30 ~~or other bona fide business factors))~~), to the extent the
31 differentials are not unlawful under trade regulation laws applicable
32 to goods of all kinds, do not violate this section. In offering price
33 or volume discounts to purchasers for resale, any practice that
34 favors or discriminates against, directly or indirectly, one group of
35 purchasers over another group of purchasers based on the type of
36 purchasers or its license shall be unlawful under this section.

37 **Sec. 5.** RCW 66.28.285 and 2009 c 506 s 2 are each amended to
38 read as follows:

1 The definitions in this section apply throughout RCW 66.28.280
2 through 66.28.315 unless the context clearly requires otherwise.

3 (1) "Adverse impact on public health and safety" means that an
4 existing or proposed practice or occurrence has resulted or is more
5 likely than not to result in alcohol being made significantly more
6 attractive or available to minors than would otherwise be the case or
7 has resulted or is more likely than not to result in overconsumption,
8 consumption by minors, or other harmful or abusive forms of
9 consumption.

10 (2) "Affiliate" means any one of two or more persons if one of
11 those persons has actual or legal control, directly or indirectly,
12 whether by stock ownership or otherwise, of the other person or
13 persons and any one of two or more persons subject to common control,
14 actual or legal, directly or indirectly, whether by stock ownership
15 or otherwise.

16 (3) "Industry member" means a licensed manufacturer, producer,
17 supplier, importer, wholesaler, distributor, authorized
18 representative, certificate of approval holder, warehouse, and any
19 affiliates, subsidiaries, officers, directors, partners, agents,
20 employees, and representatives of any industry member. "Industry
21 member" does not include the board or any of the board's employees.

22 (4) "Local market" means a geographic region within the state
23 where a product is available for purchase by a retailer from two or
24 fewer industry members.

25 (5) "Person" means any individual, partnership, joint stock
26 company, business trust, association, corporation, or other form of
27 business enterprise, including a receiver, trustee, or liquidating
28 agent and includes any officer or employee of a retailer or industry
29 member.

30 ~~((+5))~~ (6) "Retailer" means the holder of a license issued by
31 the board to allow for the sale of alcoholic beverages to consumers
32 for consumption on or off premises and any of the retailer's agents,
33 officers, directors, shareholders, partners, or employees. "Retailer"
34 does not include the board or any of the board's employees.

35 ~~((+6))~~ (7) "Undue influence" means one retailer or industry
36 member directly or indirectly influencing the purchasing, marketing,
37 or sales decisions of another retailer or industry member by any
38 agreement written or unwritten or any other business practices or
39 arrangements such as but not limited to the following:

1 (a) Any form of coercion between industry members and retailers
2 or between retailers and industry members through acts or threats of
3 physical or economic harm, including threat of loss of supply or
4 threat of curtailment of purchase;

5 (b) A retailer on an involuntary basis purchasing less than it
6 would have of another industry member's product;

7 (c) Purchases made by a retailer or industry member as a
8 prerequisite for purchase of other items;

9 (d) A retailer purchasing a specific or minimum quantity or type
10 of a product or products from an industry member;

11 (e) An industry member requiring a retailer to take and dispose
12 of a certain product type or quota of the industry member's products;

13 (f) A retailer having a continuing obligation to purchase or
14 otherwise promote or display an industry member's product;

15 (g) An industry member having a continuing obligation to sell a
16 product to a retailer;

17 (h) A retailer having a commitment not to terminate its
18 relationship with an industry member with respect to purchase of the
19 industry member's products or an industry member having a commitment
20 not to terminate its relationship with a retailer with respect to the
21 sale of a particular product or products;

22 (i) An industry member being involved in the day-to-day
23 operations of a retailer or a retailer being involved in the day-to-
24 day operations of an industry member in a manner that violates the
25 provisions of this section;

26 (j) Discriminatory pricing practices as prohibited by law or
27 other practices that are discriminatory in that product is not
28 offered to all retailers in the local market on the same terms.

29 **Sec. 6.** RCW 66.28.330 and 2012 c 2 s 120 are each amended to
30 read as follows:

31 (1) No price for spirits or wines sold in the state by a
32 distributor, retailer, or other licensee acting as a distributor or
33 retailer pursuant to this title may be below acquisition cost unless
34 the item sold below acquisition cost has been stocked by the seller
35 for a period of at least six months. The seller may not restock the
36 item for a period of one year following the first effective date of
37 such below cost price. For the purpose of this section, "acquisition
38 cost" includes any license issuance fee imposed on the licensee by
39 operation of law on the selling price of the sale of spirits.

1 (2) Spirits sold to retailers for resale for consumption on or
2 off the licensed premises may be delivered to the retailer's licensed
3 premises, to a location specified by the retailer and approved for
4 deliveries by the board, or to a carrier engaged by either party to
5 the transaction.

6 (3) In selling spirits to another retailer, to the extent
7 consistent with the purposes of chapter 2, Laws of 2012, a spirits
8 retail licensee must comply with all provisions of and regulations
9 under this title applicable to wholesale distributors selling spirits
10 to retailers.

11 (4) A distiller holding a license or certificate of compliance as
12 a distiller under this title may act as distributor in the state of
13 spirits of its own production or of foreign-produced spirits it is
14 entitled to import. The distiller must, to the extent consistent with
15 the purposes of chapter 2, Laws of 2012, comply with all provisions
16 of and regulations under this title applicable to wholesale
17 distributors selling spirits to retailers.

18 (5) With respect to any alleged violation of this title by sale
19 of spirits at a discounted price, all defenses under applicable trade
20 regulation laws are available, including without limitation good
21 faith meeting of a competitor's lawful price and absence of harm to
22 competition.

23 (6) Notwithstanding any other provision of law, no licensee may
24 import, purchase, distribute, or accept delivery of any wine that is
25 produced outside of the United States or any distilled spirits
26 without the written consent of the brand owner or its authorized
27 agent.

28 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of
30 the state government and its existing public institutions, and takes
31 effect immediately.

--- END ---