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SENATE BILL 5953

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State of Washington

65th Legislature

2017 2nd Special Session

By Senator Walsh

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 2017 c 260 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 samples subject to the following conditions:

11 (i) For the purposes of this subsection, the maximum amount of  
12 alcohol per person per day is two ounces;

13 (ii) Provide free or for a charge one-half ounce or less samples  
14 of spirits of its own production to persons on the premises of the  
15 distillery. Spirits samples may be adulterated with nonalcoholic  
16 mixers, mixers with alcohol of the distiller's own production, water,  
17 and/or ice;

18 (iii) Sell adulterated samples of spirits of their own  
19 production, water, and/or ice to persons on the premises at the  
20 distillery; (~~and~~)

21 (iv) Every person who participates in any manner in the service  
22 of these samples must obtain a class 12 alcohol server permit; and

23 (v) Produce and sell spirits carrying a private label exclusive  
24 to a restaurant or private club holding a license under RCW  
25 66.24.400, 66.24.425, or 66.24.450, or a spirits retail licensee  
26 holding a license under RCW 66.24.630.

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

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

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

33 (2) Any craft distillery may contract distilled spirits for, and  
34 sell contract distilled spirits to, holders of distillers' or  
35 manufacturers' licenses, including licenses issued under RCW  
36 66.24.520, or for export.

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

1 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. Spirits samples may be adulterated  
4 with nonalcoholic mixers, water, and/or ice.

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

9 (b) For each month during which a distillery or craft distillery  
10 will sell spirits at a qualifying farmers market, the distillery or  
11 craft distillery must provide the board or its designee a list of the  
12 dates, times, and locations at which bottled spirits may be offered  
13 for sale. This list must be received by the board before the spirits  
14 may be offered for sale at a qualifying farmers market.

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

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

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

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

6 (6) Distilling is an agricultural practice.

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

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

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

18 (2) A licensee manufacturing spirits pursuant to this section may  
19 produce and sell spirits carrying a private label exclusive to a  
20 restaurant or private club holding a license under RCW 66.24.400,  
21 66.24.425, or 66.24.450, or a spirits retail licensee holding a  
22 license under RCW 66.24.630.

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

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

37 (2) By January 1, 2012, the board must issue spirits distributor  
38 licenses to all applicants who, upon December 8, 2011, have the right



1 to purchase spirits from a spirits manufacturer, spirits distiller,  
2 or other spirits supplier for resale in the state, or are agents of  
3 such supplier authorized to sell to licensees in the state, unless  
4 the board determines that issuance of a license to such applicant is  
5 not in the public interest.

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

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

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

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

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

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

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

38 (d) A retail licensee selling for resale must pay a distributor  
39 license fee under the terms and conditions in this section on resales  
40 of spirits the licensee has purchased on which no other distributor

1 license fee has been paid. The board must establish rules setting  
2 forth the frequency and timing of such payments and reporting of  
3 sales dollar volume by the licensee, with payments due quarterly in  
4 arrears.

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

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

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

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

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

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

37 (2) A distributor licensed under this section must, to the extent  
38 it is reasonably practicable for the distributor to do so, make any

1 product the distributor acquires for resale available to any person  
2 legally entitled to purchase such product.

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

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

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

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