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**SUBSTITUTE HOUSE BILL 2204**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** House Commerce & Gaming (originally sponsored by Representatives Kirby, Vick, Walen, Corry, Jenkin, Hoff, Fey, Chapman, and Wylie)

AN ACT Relating to the creation of a limited spirits retail license; amending RCW 66.24.055; and adding new sections to chapter 66.24 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 66.24 RCW to read as follows:

(1) There is a limited spirits retail license to:

(a) Sell spirits in original containers to consumers for consumption off the licensed premises and to permit holders; and

(b) Export spirits.

(2) For the purposes of this title, a limited spirits retail license is a retail license, and a sale by a limited spirits retailer is a retail sale.

(3)(a) Except as otherwise provided in (c) or (e) of this subsection, the board may issue limited spirits retail licenses to applicants holding licenses for off-premises sales of either beer or wine, or both, issued pursuant to RCW 66.24.360(1), but only to applicants that:

(i) Do not hold any endorsement issued pursuant to RCW 66.24.360 (2), (3), (6), or (10);

(ii) Do not hold a restricted license issued pursuant to RCW 66.24.360(7);

(iii) Satisfy all reasonable requirements imposed by statute or regulation for issuance of a retail liquor license, including any enhanced employee training requirements required by the board for holders of limited spirits retail licenses;

(iv) The board determines will maintain systems for inventory management, employee training, employee supervision, and physical security of the product substantially as effective with respect to preventing sales to, or pilferage by, underage or inebriated persons as those systems currently used by stores holding spirits retail licenses issued pursuant to RCW 66.24.630;

(v) The board determines have not committed more than one safety violation within the three years preceding the filing of the application; and

(vi) Except as provided in (e) of this subsection, the board determines are not located, or proposed to be located, within a one-mile radius of a spirits retail licensee who is operating on the effective date of this section and obtained the spirits retail license for the location through rights purchased at the auction held under RCW 66.24.620.

(b)(i) License issuances and renewals pursuant to this section are subject to RCW 66.24.010 and the regulations adopted thereunder, including, without limitation, rights of the public, churches, schools, and public institutions to object to local liquor licenses.

(ii) Nothing in this section prevents a city, town, or county legislative authority from adopting an ordinance or resolution that institutes a ban or moratorium on the issuance of a limited spirits retail license within its jurisdiction.

(c) The board may deny a limited spirits retail license to an otherwise qualified applicant if:

(i) The board reasonably determines that issuance of the limited spirits retail license to the applicant would not be in the best interests of the community to be served by the applicant because it would result in an excessive number of locations where spirits could be purchased in the community;

(ii) The board reasonably determines that issuance of the limited spirits retail license to the applicant would otherwise pose an unacceptable risk to the health and welfare of the community to be served; or

(iii) Issuance of the limited spirits retail license would cause the total number of liquor licenses for the sale of alcohol for off-premises consumption to exceed any limits imposed by the legislature on the number of licenses permitted to be active in the state or any defined portion of the state at the time the application is processed.

(d) Any spirits sold by the holder of a limited spirits retailer license must have been purchased from a spirits distributor licensed to do business within the state of Washington or from a licensed distiller or licensed craft distiller authorized to sell spirits to a retail licensee for off-premises consumption.

(e) Three years after the effective date of this section the board shall stop using (a)(vi) of this subsection as a basis for denying a license to an otherwise qualified applicant and nothing prevents an otherwise qualified applicant from being issued a limited spirits retail license for a location regardless if it is located within a one-mile radius of any other spirits retail licensee.

(4) Each limited spirits retail licensee must pay to the board, for deposit into the liquor revolving fund, a license issuance fee equivalent to seventeen percent of all spirits sales revenues under the license, exclusive of taxes collected by the licensee and of sales of items on which a license fee payable under this section has otherwise been incurred. The board must establish rules setting forth the timing of the payments and reporting of sales dollar volume by the licensee, with payments required quarterly in arrears.

(5) In addition to the payments required under subsection (4) of this section, each limited spirits retail licensee must pay an annual license renewal fee of one hundred sixty-six dollars. The board must periodically review and adjust the renewal fee as may be required to maintain it as comparable to annual license renewal fees for spirits retail licenses issued pursuant to RCW 66.24.630 or 66.24.035. If required by law at the time, any increase of the annual renewal fee becomes effective only upon ratification by the legislature.

(6) As a condition to receiving and renewing a limited spirits retail license, the licensee must provide training to all individuals who sell spirits or who manage others who sell spirits regarding compliance with the laws and regulations regarding the sale of spirits, including, without limitation, the prohibitions against the sale of spirits to individuals who are underage or visibly intoxicated. The training must be provided before the individual first engages in the sale of spirits and must be renewed at least every five years. The licensee must maintain records documenting the nature and frequency of the training provided. An employee training program is presumptively sufficient if it incorporates all enhanced employee training requirements required by the board for holders of limited spirits retail licenses.

(7) The maximum penalties prescribed by the board in WAC 314-29-020 through 314-29-040 relating to fines and suspensions are doubled for violations relating to the sale of spirits by limited spirits retail licensees. Licensees who comply with all employee training and education requirements established by the board for limited spirits retail licensees are not subject to the doubling of penalties provided in this section for a single violation in any period of twelve calendar months.

(8) Limited spirits retail licensees must comply with all laws and regulations governing spirits retail licensees, except to the extent that doing so would result in a violation of, or failure to fully comply with, this section.

NEW SECTION. **Sec.**  A new section is added to chapter 66.24 RCW to read as follows:

(1)(a) In addition to the spirits distributor license fees required by RCW 66.24.055, each spirits distributor selling spirits to a limited spirits retail licensee must pay to the board, for deposit into the liquor revolving fund, a mitigation fee equivalent to five percent of the amount paid for the spirits by the limited spirits retail licensee, exclusive of any taxes and fees that may be included in the invoice to the retailer.

(b) Each distiller or craft distiller selling spirits to a limited spirits retail licensee must pay to the board, for deposit into the liquor revolving fund, a mitigation fee equivalent to five percent of the amount paid for the spirits by the limited spirits retail licensee, exclusive of any taxes and fees that may be included in the invoice to the retailer.

(2) On or before January 31st of each year, the board will determine the total amount of mitigation fees paid into the liquor revolving fund during the preceding year and disburse those moneys as follows:

(a) The board will retain the first three hundred thousand dollars of mitigation fees collected during a calendar year in the liquor revolving fund and use it for general enforcement purposes.

(b) To the extent sufficient mitigation fees were collected during the preceding calendar year, the board will distribute one million five hundred thousand dollars of the fees to the department of commerce for distribution to countywide community mobilization programs as provided in RCW 43.270.020.

(c) After the distributions pursuant to (a) and (b) of this subsection, and to the extent sufficient mitigation fees were collected during the preceding calendar year, the board will transfer two million dollars from the liquor revolving fund to a repayment fund to be disbursed in accordance with subsection (3) of this section.

(d) After the distributions pursuant to (a) through (c) of this subsection, and to the extent sufficient mitigation fees were collected during the preceding calendar year, the board will distribute five hundred thousand dollars of the fees to the Washington association of sheriffs and police chiefs, or such other law enforcement group or agency as the board may designate, for use in enforcement activities related to alcohol sales or consumption.

(e) In the event mitigation fees from the prior year remain in the liquor revolving fund after the distributions pursuant to (a) through (d) of this subsection have been made, the board will distribute:

(i) Forty percent of the excess fees to the department of commerce for distribution to countywide community mobilization programs as provided in RCW 43.270.020;

(ii) Fifty percent of the excess fees to the repayment fund to be disbursed in accordance with subsection (3) of this section; and

(iii) Ten percent of the excess fees to the Washington association of sheriffs and police chiefs, or such other law enforcement group or agency as the board may designate, for use in enforcement activities related to alcohol sales or consumption.

(3) The board will adopt regulations governing disbursements from the repayment fund and make appropriate disbursements, consistent with the following:

(a) Any person who purchased former state liquor store operating rights at auction under RCW 66.24.620(4)(c) is eligible for reimbursement of the full amount paid at the auction, together with interest in an amount to be determined by the board, provided the person:

(i) Acquired a spirits retail license to exercise the operating rights purchased at auction;

(ii) Operated a spirits retail store pursuant to the license as of December 31, 2019;

(iii) Submits to the board, within sixty days after the effective date of this section, written notice of intent to seek reimbursement through the repayment fund; and

(iv) Applies to the board for reimbursement, on a form developed by the board, within sixty days after the board makes the application form available to the public.

(b) The board will promptly create an application form for use by persons seeking reimbursement pursuant to this section and will make the application form available to the public within ninety days after the effective date of this section.

(c) The board will establish procedures for processing the applications and for appealing any determinations made by the board as to an applicant's eligibility for reimbursement or the amounts to be reimbursed to an applicant.

(d) As soon as reasonably practicable after beginning to process the applications, the board will notify each applicant as to whether the applicant is eligible for reimbursement and, if so, the amount to be reimbursed.

(e) The board's determination will be binding upon an applicant unless the applicant challenges the determination, in accordance with rules adopted by the board for that purpose, within forty-five days after the applicant learns of the determination.

(f) When the board determines that there is enough money in the repayment fund, it will cease moving moneys into the repayment fund and will promptly reimburse each eligible applicant in the amount approved by the board or established pursuant to an appeal by the applicant under (c) of this subsection.

(g) Any person electing to receive reimbursement from the repayment fund may continue to operate under their spirits retail license before and after receiving reimbursement. There is no requirement that a spirits retail license be relinquished in order to qualify for or receive reimbursement through the repayment fund.

(4) On or before the 31st day of January following the cessation of transfers to the repayment fund and reimbursement to all eligible applicants, and on or before each January 31st thereafter, the board will disburse mitigation fees as follows:

(a) Seventy percent of the available mitigation fees will be disbursed to the department of commerce for distribution to countywide community mobilization programs as provided in RCW 43.270.020.

(b) Thirty percent of the available mitigation fees will be retained in the liquor revolving fund and used by the board solely for enforcement of liquor and cannabis laws.

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

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

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

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

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

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

(b) The fee required under this subsection ((~~(3)~~)) (2) is calculated only on sales of items which the licensee was the first spirits distributor in the state to have received:

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

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

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

~~(d)~~)) A retail licensee selling for resale must pay a distributor license fee under the terms and conditions in this section on resales of spirits the licensee has purchased on which no other distributor license fee has been paid. A limited spirits retail licensee must also pay a mitigation fee equivalent to five percent of all spirits sales revenues under the license on resales of spirits the licensee has purchased on which no other distributor license fee has been paid. The board must establish rules setting forth the frequency and timing of such payments and reporting of sales dollar volume by the licensee, with payments due quarterly in arrears. The board will process and distribute mitigation fees paid under this section in the same manner and subject to the same regulations as the mitigation fees established in section 2 of this act.

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

((~~(4)~~)) (3) In addition to the payment set forth in subsection ((~~(3)~~)) (2) of this section, each spirits distributor licensee renewing its annual license must pay an annual license renewal fee of one thousand three hundred twenty dollars for each licensed location.

((~~(5)~~)) (4) There is no minimum facility size or capacity for spirits distributor licenses, and no limit on the number of such licenses issued to qualified applicants. License applicants must provide physical security of the product that is substantially as effective as the physical security of the distribution facilities currently operated by the board with respect to preventing pilferage. License issuances and renewals are subject to RCW 66.24.010 and the regulations promulgated thereunder, including without limitation rights of cities, towns, county legislative authorities, the public, churches, schools, and public institutions to object to or prevent issuance of local liquor licenses. ((~~However, existing distributor premises licensed to sell beer and/or wine are deemed to be premises "now licensed" under RCW 66.24.010(9)(a) for the purpose of processing applications for spirits distributor licenses.~~))

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