
ENGROSSED SUBSTITUTE HOUSE BILL 2155

State of Washington

63rd Legislature

2014 Regular Session

By House Government Accountability & Oversight (originally sponsored by Representatives Dahlquist, Hurst, S. Hunt, Morrell, and Moscoso)

READ FIRST TIME 02/05/14.

1 AN ACT Relating to preventing theft of alcoholic spirits from
2 licensed retailers; amending RCW 66.08.030 and 66.08.050; and adding a
3 new section to chapter 66.28 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 66.28 RCW
6 to read as follows:

7 (1) Subject to the procedural requirements of subsection (3) of
8 this section, the board is authorized to regulate spirits retailers
9 licensed under RCW 66.24.630 for the purpose of reducing the theft of
10 spirits from the premises of such retailers. The authority of the
11 board to implement the regulatory measures set forth in this section
12 requires a finding by the board that a licensee is experiencing an
13 unacceptable rate of spirits theft from its premises. For the purposes
14 of this section, "unacceptable rate of spirits theft" means two or more
15 thefts of spirits from a licensee in a six-month period and that result
16 in a minor unlawfully using or gaining possession of spirits, or that
17 involves, or results in, adults unlawfully providing spirits to minors,
18 and where such thefts result in an incident report being generated by
19 a law enforcement agency.

1 (2) The regulatory measures that may be considered and implemented
2 under this section may require the imposition of one or more of the
3 following requirements on licensees who are experiencing an
4 unacceptable rate of spirits theft:

5 (a) Participation in one or more consultations with an authorized
6 representative of the board to discuss and analyze spirits theft
7 issues;

8 (b) The implementation of inventory control and/or other
9 recordkeeping system designed to reveal and track spirits theft;

10 (c) The structural modification or relocation of the areas where
11 spirits are displayed or stored;

12 (d) The installation of adequate in store security systems;

13 (e) The employment of a sufficient number of staff for the purpose
14 of monitoring display, checkout, and storage areas; and

15 (f) Requiring additional training for the licensee's staff.

16 (3) The imposition of the regulatory provisions authorized under
17 subsection (2) of this section are subject to the following procedural
18 steps and requirements:

19 (a) If a state or local law enforcement agency obtains information
20 indicating that a licensee is experiencing an unacceptable rate of
21 spirits theft, the law enforcement agency is granted the discretionary
22 authority to initiate and participate in, on a voluntary basis, the
23 procedures outlined in this subsection (3). Should the law enforcement
24 agency opt to initiate the investigative and consultation procedures
25 set forth in this subsection (3), the law enforcement agency must first
26 contact the licensee's manager and/or owner to inform him or her of
27 such alleged theft and arrange a meeting with the licensee's manager or
28 owner to discuss theft issues and possible solutions. This first
29 contact by the law enforcement agency with the licensee must occur
30 prior to the law enforcement agency informing the board of the alleged
31 theft issues and thus initiating the procedures set forth in (c)
32 through (h) of this subsection. At this early stage of the law
33 enforcement consultation process, the board may not be involved in the
34 investigation of the theft allegation until such time as the law
35 enforcement agency has had an opportunity to consult with the
36 licensee's manager or owner as provided under this subsection (3)(a).

37 (b) Following the initial consultation between the law enforcement
38 agency and the licensee as required under (a) of this subsection, the

1 law enforcement agency is granted the discretionary authority to forego
2 any further consultation with the licensee and may terminate its
3 investigation of the theft allegation. However, if the law enforcement
4 agency opts to continue the consultation process with the licensee and
5 proceed with its investigation, the law enforcement agency must
6 endeavor to work with the licensee to identify theft issues and reach
7 cooperative agreements regarding measures that should be taken to
8 eliminate spirits theft problems.

9 (c) If during the consultation process outlined under (a) and (b)
10 of this subsection the law enforcement agency determines that no
11 spirits theft problem exists at the premises of the licensee, or that
12 the licensee has taken the steps necessary to adequately address the
13 theft problem, then the procedural processes outlined in this section
14 may be terminated at the discretion of the law enforcement agency
15 without the involvement of the board. However, if the law enforcement
16 agency finds that a spirits theft problem exists at the licensee's
17 premises and the licensee either refuses or fails to implement remedial
18 measures adequate to address the theft problem, or otherwise fails to
19 cooperate with the law enforcement agency, then the law enforcement
20 agency must formally inform the board in writing regarding the
21 licensee's lack of cooperation in resolving its spirits theft problem.

22 (d) Upon the receipt of law enforcement agency notification as
23 required under (c) of this subsection, the board must provide written
24 notification to the licensee of the alleged theft problem and may
25 demand that the licensee participate in a consultation process
26 involving a representative of the board and the licensee. The
27 reporting law enforcement agency may be included in this consultation
28 process at the discretion of the board and upon the agreement of the
29 law enforcement agency. The licensee's participation in the
30 consultation process is mandatory and the licensee is entitled to at
31 least thirty days' notice by the board. In the event a licensee fails
32 to attend or otherwise cooperate in initial or subsequent
33 consultations, the board is authorized to suspend the licensee's
34 spirits retail license until such time as the retailer is in compliance
35 with the requirements of this subsection (3)(d).

36 (e) At the consultation, the board must provide the licensee with
37 any information or evidence pertinent to any allegation that the
38 retailer has an unacceptable spirits theft rate. The licensee must be

1 provided with a reasonable opportunity to respond and present evidence,
2 and, if necessary, the consultation may be continued at the discretion
3 of the board to allow adequate time for the licensee to prepare such
4 response.

5 (f) At the conclusion of the initial consultation process, if the
6 board finds that the licensee has an unacceptable spirits theft rate,
7 it may develop a corrective action plan outlining the remedial measures
8 that must be taken by the licensee pursuant to subsection (2) of this
9 section. In developing the plan, the board must make a concerted
10 effort to obtain voluntary participation in the plan by the licensee.
11 At every step in the consultation and corrective action plan process,
12 the board is encouraged to work with the licensee in a cooperative
13 manner and, where possible, to strive for voluntary agreements with the
14 licensee. However, in the absence of licensee cooperation or
15 agreement, the board is authorized to unilaterally develop and enforce
16 a corrective action plan as authorized under this section. Once the
17 plan is finalized, it must be filed with the board and a copy provided
18 to the licensee either personally or through certified mail.

19 (g) Not more than thirty days after the filing and service of the
20 original corrective action plan, the board must schedule one or more
21 follow up consultations with the licensee. The purpose of these
22 consultations is to review the licensee's performance with respect to
23 the requirements of the corrective action plan and to generally assess
24 the licensee's progress in addressing spirits theft issues. If the
25 licensee is following the corrective action plan but is continuing to
26 experience an unacceptable spirits theft rate, then the board and the
27 licensee may review and revise the plan as deemed necessary by the
28 board. Following the filing of a revised plan, the board may schedule
29 one or more follow-up consultations at its discretion.

30 (h) During the review process established in (g) of this
31 subsection, if the board finds that the licensee has failed to comply
32 with the requirements of the original or revised corrective action plan
33 the board may:

34 (i) Demand that the licensee take remedial steps so as to be
35 compliant with the corrective action plan and schedule an additional
36 follow-up consultation at the board's discretion; or

37 (ii) If the licensee's noncompliance is deemed to be willful,

1 suspend the retailer's spirits retail license for a period to be
2 determined by the board by rule.

3 (i) If a licensee remains consistently noncompliant with the
4 original corrective action plan and any revised plans for a period of
5 at least nine months, then the board is authorized to suspend or revoke
6 the licensee's spirits retail license.

7 (4) The board is granted the rule-making authority necessary to
8 implement and enforce the provisions of this section pertaining to the
9 regulation of licensees deemed to have unacceptable spirits theft
10 rates.

11 (5) If the board suspends or revokes a licensee's spirits retail
12 license under this section, the licensee may appeal and request a
13 hearing under chapter 34.05 RCW, the administrative procedure act.

14 **Sec. 2.** RCW 66.08.030 and 2012 c 2 s 204 are each amended to read
15 as follows:

16 The power of the board to make regulations under chapter 34.05 RCW
17 extends to:

18 (1) Prescribing the duties of the employees of the board, and
19 regulating their conduct in the discharge of their duties;

20 (2) Prescribing an official seal and official labels and stamps and
21 determining the manner in which they must be attached to every package
22 of liquor sold or sealed under this title, including the prescribing of
23 different official seals or different official labels for different
24 classes of liquor;

25 (3) Prescribing forms to be used for purposes of this title or the
26 regulations, and the terms and conditions to be contained in permits
27 and licenses issued under this title, and the qualifications for
28 receiving a permit or license issued under this title, including a
29 criminal history record information check. The board may submit the
30 criminal history record information check to the Washington state
31 patrol and to the identification division of the federal bureau of
32 investigation in order that these agencies may search their records for
33 prior arrests and convictions of the individual or individuals who
34 filled out the forms. The board must require fingerprinting of any
35 applicant whose criminal history record information check is submitted
36 to the federal bureau of investigation;

1 (4) Prescribing the fees payable in respect of permits and licenses
2 issued under this title for which no fees are prescribed in this title,
3 and prescribing the fees for anything done or permitted to be done
4 under the regulations;

5 (5) Prescribing the kinds and quantities of liquor which may be
6 kept on hand by the holder of a special permit for the purposes named
7 in the permit, regulating the manner in which the same is kept and
8 disposed of, and providing for the inspection of the same at any time
9 at the instance of the board;

10 (6) Regulating the sale of liquor kept by the holders of licenses
11 which entitle the holder to purchase and keep liquor for sale;

12 (7) Prescribing the records of purchases or sales of liquor kept by
13 the holders of licenses, and the reports to be made thereon to the
14 board, and providing for inspection of the records so kept;

15 (8) Prescribing the kinds and quantities of liquor for which a
16 prescription may be given, and the number of prescriptions which may be
17 given to the same patient within a stated period;

18 (9) Prescribing the manner of giving and serving notices required
19 by this title or the regulations, where not otherwise provided for in
20 this title;

21 (10) Regulating premises in which liquor is kept for export from
22 the state, or from which liquor is exported, prescribing the books and
23 records to be kept therein and the reports to be made thereon to the
24 board, and providing for the inspection of the premises and the books,
25 records and the liquor so kept;

26 (11) Prescribing the conditions and qualifications requisite for
27 the obtaining of club licenses and the books and records to be kept and
28 the returns to be made by clubs, prescribing the manner of licensing
29 clubs in any municipality or other locality, and providing for the
30 inspection of clubs;

31 (12) Prescribing the conditions, accommodations, and qualifications
32 requisite for the obtaining of licenses to sell beer, wines, and
33 spirits, and regulating the sale of beer, wines, and spirits
34 thereunder;

35 (13) Specifying and regulating the time and periods when, and the
36 manner, methods and means by which manufacturers must deliver liquor
37 within the state; and the time and periods when, and the manner,

1 methods and means by which liquor may lawfully be conveyed or carried
2 within the state;

3 (14) Providing for the making of returns by brewers of their sales
4 of beer shipped within the state, or from the state, showing the gross
5 amount of such sales and providing for the inspection of brewers' books
6 and records, and for the checking of the accuracy of any such returns;

7 (15) Providing for the making of returns by the wholesalers of beer
8 whose breweries are located beyond the boundaries of the state;

9 (16) Providing for the making of returns by any other liquor
10 manufacturers, showing the gross amount of liquor produced or
11 purchased, the amount sold within and exported from the state, and to
12 whom so sold or exported, and providing for the inspection of the
13 premises of any such liquor manufacturers, their books and records, and
14 for the checking of any such return;

15 (17) Providing for the giving of fidelity bonds by any or all of
16 the employees of the board. However, the premiums therefor must be
17 paid by the board;

18 (18) Providing for the shipment of liquor to any person holding a
19 permit and residing in any unit which has, by election pursuant to this
20 title, prohibited the sale of liquor therein;

21 (19) Prescribing methods of manufacture, conditions of sanitation,
22 standards of ingredients, quality and identity of alcoholic beverages
23 manufactured, sold, bottled, or handled by licensees and the board; and
24 conducting from time to time, in the interest of the public health and
25 general welfare, scientific studies and research relating to alcoholic
26 beverages and the use and effect thereof;

27 (20) Seizing, confiscating and destroying all alcoholic beverages
28 manufactured, sold or offered for sale within this state which do not
29 conform in all respects to the standards prescribed by this title or
30 the regulations of the board. However, nothing herein contained may be
31 construed as authorizing the liquor board to prescribe, alter, limit or
32 in any way change the present law as to the quantity or percentage of
33 alcohol used in the manufacturing of wine or other alcoholic beverages;

34 (21) Monitoring and regulating the practices of license holders as
35 necessary in order to prevent the theft and illegal trafficking of
36 liquor pursuant to section 1 of this act.

1 **Sec. 3.** RCW 66.08.050 and 2012 c 2 s 107 are each amended to read
2 as follows:

3 The board, subject to the provisions of this title and the rules,
4 must:

5 (1) Determine the nature, form and capacity of all packages to be
6 used for containing liquor kept for sale under this title;

7 (2) Execute or cause to be executed, all contracts, papers, and
8 documents in the name of the board, under such regulations as the board
9 may fix;

10 (3) Pay all customs, duties, excises, charges and obligations
11 whatsoever relating to the business of the board;

12 (4) Require bonds from all employees in the discretion of the
13 board, and to determine the amount of fidelity bond of each such
14 employee;

15 (5) Perform services for the state lottery commission to such
16 extent, and for such compensation, as may be mutually agreed upon
17 between the board and the commission;

18 (6) Accept and deposit into the general fund-local account and
19 disburse, subject to appropriation, federal grants or other funds or
20 donations from any source for the purpose of improving public awareness
21 of the health risks associated with alcohol consumption by youth and
22 the abuse of alcohol by adults in Washington state. The board's
23 alcohol awareness program must cooperate with federal and state
24 agencies, interested organizations, and individuals to effect an active
25 public beverage alcohol awareness program;

26 (7) Monitor and regulate the practices of licensees as necessary in
27 order to prevent the theft and illegal trafficking of liquor pursuant
28 to section 1 of this act;

29 (8) Perform all other matters and things, whether similar to the
30 foregoing or not, to carry out the provisions of this title, and has
31 full power to do each and every act necessary to the conduct of its
32 regulatory functions, including all supplies procurement, preparation
33 and approval of forms, and every other undertaking necessary to perform
34 its regulatory functions whatsoever, subject only to audit by the state
35 auditor. However, the board has no authority to regulate the content
36 of spoken language on licensed premises where wine and other liquors
37 are served and where there is not a clear and present danger of

1 disorderly conduct being provoked by such language or to restrict
2 advertising of lawful prices.

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