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HOUSE BILL 2342

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State of Washington

64th Legislature

2016 Regular Session

By Representative Hurst

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1 AN ACT Relating to performance of personal services by members of  
2 the liquor industry to retailers; and amending RCW 66.28.310.

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

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

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

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

15 (ii) Must bear imprinted advertising matter of the industry  
16 member only, except imprinted advertising matter of the industry  
17 member can include the logo of a professional sports team which the  
18 industry member is licensed to use;

19 (iii) May be provided by industry members only to retailers and  
20 their employees and may not be provided by or through retailers or  
21 their employees to retail customers; and

1 (iv) May not be targeted to or appeal principally to youth.

2 (b) An industry member is not obligated to provide any such  
3 branded promotional items, and a retailer may not require an industry  
4 member to provide such branded promotional items as a condition for  
5 selling any alcohol to the retailer.

6 (c) Any industry member or retailer or any other person asserting  
7 that the provision of branded promotional items as allowed in (a) of  
8 this subsection has resulted or is more likely than not to result in  
9 undue influence or an adverse impact on public health and safety, or  
10 is otherwise inconsistent with the criteria in (a) of this subsection  
11 may file a complaint with the board. Upon receipt of a complaint the  
12 board may conduct such investigation as it deems appropriate in the  
13 circumstances. If the investigation reveals the provision of branded  
14 promotional items has resulted in or is more likely than not to  
15 result in undue influence or has resulted or is more likely than not  
16 to result in an adverse impact on public health and safety or is  
17 otherwise inconsistent with (a) of this subsection the board may  
18 issue an administrative violation notice to the industry member, to  
19 the retailer, or both. The recipient of the administrative violation  
20 notice may request a hearing under chapter 34.05 RCW.

21 (2) Nothing in RCW 66.28.305 prohibits:

22 (a) An industry member from providing to a special occasion  
23 licensee and a special occasion licensee from receiving services for:

24 (i) Installation of draft beer dispensing equipment or  
25 advertising;

26 (ii) Advertising, pouring, or dispensing of beer or wine at a  
27 beer or wine tasting exhibition or judging event; or

28 (iii) Pouring or dispensing of spirits by a licensed domestic  
29 distiller or the accredited representative of a distiller,  
30 manufacturer, importer, or distributor of spirituous liquor licensed  
31 under RCW 66.24.310; or

32 (b) Special occasion licensees from paying for beer, wine, or  
33 spirits immediately following the end of the special occasion event;  
34 or

35 (c) Wineries, breweries, or distilleries that are participating  
36 in a special occasion event from paying reasonable booth fees to the  
37 special occasion licensee.

38 (3) Nothing in RCW 66.28.305 prohibits industry members from  
39 performing, and retailers from accepting the service of building,  
40 rotating, and restocking displays and stockroom inventories; rotating

1 and rearranging can and bottle displays of their own products;  
2 providing point of sale material and brand signs; pricing case goods  
3 of their own brands; and performing such similar business services  
4 consistent with board rules, or personal services as described in  
5 subsection (5) of this section.

6 (4) Nothing in RCW 66.28.305 prohibits:

7 (a) Industry members from listing on their internet web sites  
8 information related to retailers who sell or promote their products,  
9 including direct links to the retailers' internet web sites; and

10 (b) Retailers from listing on their internet web sites  
11 information related to industry members whose products those  
12 retailers sell or promote, including direct links to the industry  
13 members' web sites; or

14 (c) Industry members and retailers from producing, jointly or  
15 together with regional, state, or local industry associations,  
16 brochures and materials promoting tourism in Washington state which  
17 contain information regarding retail licensees, industry members, and  
18 their products.

19 (5) Nothing in RCW 66.28.305 prohibits the performance of  
20 personal services offered from time to time by a domestic winery or  
21 certificate of approval holder to retailers when the personal  
22 services are (a) conducted at a licensed premises, and (b) intended  
23 to inform, educate, or enhance customers' knowledge or experience of  
24 the manufacturer's products. The performance of personal services may  
25 include participation and pouring, bottle signing events, enhanced  
26 packaging promotions, and other similar informational or educational  
27 activities at the premises of a retailer holding a spirits, beer, and  
28 wine restaurant license, a wine and/or beer restaurant license, a  
29 specialty wine shop license, a special occasion license, a grocery  
30 store license with a tasting endorsement, or a private club license.  
31 A domestic winery or certificate of approval holder is not obligated  
32 to perform any such personal services, and a retail licensee may not  
33 require a domestic winery or certificate of approval holder to  
34 conduct any personal service as a condition for selling any alcohol  
35 to the retail licensee, or as a condition for including any product  
36 of the domestic winery or certificate of approval holder in any  
37 tasting conducted by the licensee. Except as provided in RCW  
38 66.28.150, the cost of sampling may not be borne, directly or  
39 indirectly, by any domestic winery or certificate of approval holder  
40 or any distributor. Nothing in this section prohibits wineries,

1 breweries, microbreweries, certificate of approval holders, and  
2 retail licensees from identifying the producers on private labels  
3 authorized under RCW 66.24.400, 66.24.425, 66.24.450, 66.24.360, and  
4 66.24.371.

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

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

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

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

37 (a) Such advertising must be paid for by said manufacturer,  
38 importer, distributor, or their agent at the published advertising  
39 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) Nothing in RCW 66.28.305 prohibits a licensed domestic  
8 brewery or microbrewery from providing branded promotional items  
9 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 (11) Nothing in RCW 66.28.305 prohibits the performance of  
15 personal services offered from time to time by a distiller, importer,  
16 manufacturer of spirits, or spirits importer to a beer and/or wine  
17 specialty shop with a spirits retail license when the personal  
18 services are (a) conducted at a licensed premises, and (b) intended  
19 to inform, educate, or enhance customers' knowledge or experience of  
20 the manufacturer's products. The performance of personal services may  
21 include participation in pouring for tastings, bottle signing events,  
22 enhanced packaging promotions, and other similar informational or  
23 educational activities at the premises of a beer and/or wine  
24 specialty shop with a spirits retail license. Any spirit sampling at  
25 such an event must be conducted pursuant to RCW 66.24.670. A  
26 distiller, importer, manufacturer of spirits, or spirits importer is  
27 not obligated to perform any such personal services, and a retail  
28 licensee may not require a distiller, importer, manufacturer of  
29 spirits, or spirits importer to conduct any personal service as a  
30 condition for selling any alcohol to the retail licensee, or as a  
31 condition for including any product of the distiller, importer,  
32 manufacturer of spirits, or spirits importer in any tasting conducted  
33 by the licensee. Except as provided in RCW 66.28.150, the cost of  
34 sampling may not be borne, directly or indirectly, by any distiller,  
35 importer, manufacturer of spirits, or spirits importer. Nothing in  
36 this section prohibits a certificate of approval holder, distiller,  
37 importer, manufacturer of spirits, or spirits importer from  
38 identifying the producers on private labels authorized under RCW  
39 66.24.360, 66.24.371, 66.24.400, 66.24.425, and 66.24.450.

1       (12) The personal services provided by an industry member to a  
2 retailer under subsection (5), (7), or (11) of this section may be  
3 provided by an agent of the industry member.

4       (13) Any enhanced promotional packaging must meet state and  
5 federal requirements for labeling, pricing, moneys' worth under RCW  
6 66.28.305, and undue influence under this section.

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