

RCW 66.28.350 Theft prevention—Regulating spirits retailers.

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

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

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

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

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

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

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

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

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

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

(b) Following the initial consultation between the law enforcement agency and the licensee as required under (a) of this subsection, the law enforcement agency is granted the discretionary authority to forego any further consultation with the licensee and may terminate its investigation of the theft allegation. However, if the

law enforcement agency opts to continue the consultation process with the licensee and proceed with its investigation, the law enforcement agency must endeavor to work with the licensee to identify theft issues and reach cooperative agreements regarding measures that should be taken to eliminate spirits theft problems.

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

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

(e) At the consultation, the board must provide the licensee with any information or evidence pertinent to any allegation that the retailer has an unacceptable spirits theft rate. The licensee must be provided with a reasonable opportunity to respond and present evidence, and, if necessary, the consultation may be continued at the discretion of the board to allow adequate time for the licensee to prepare such response.

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

(g) Not more than thirty days after the filing and service of the original corrective action plan, the board must schedule one or more

follow-up consultations with the licensee. The purpose of these consultations is to review the licensee's performance with respect to the requirements of the corrective action plan and to generally assess the licensee's progress in addressing spirits theft issues. If the licensee is following the corrective action plan but is continuing to experience an unacceptable spirits theft rate, then the board and the licensee may review and revise the plan as deemed necessary by the board. Following the filing of a revised plan, the board may schedule one or more follow-up consultations at its discretion.

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

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

(ii) If the licensee's noncompliance is deemed to be willful, suspend the retailer's spirits retail license for a period to be determined by the board by rule.

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

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

(5) If the board suspends or revokes a licensee's spirits retail license under this section, the licensee may appeal and request a hearing under chapter 34.05 RCW, the administrative procedure act. [2014 c 63 § 1.]