

FINAL BILL REPORT

E2SSB 5549

C 238 L 20
Synopsis as Enacted

Brief Description: Modernizing resident distillery marketing and sales restrictions.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Liias, King, Hunt and Braun).

Senate Committee on Labor & Commerce
Senate Committee on Ways & Means
House Committee on Appropriations
House Committee on Commerce & Gaming

Background: License Privileges of Distilleries and Craft Distilleries. The Liquor and Cannabis Board (LCB) licenses people engaged in distilling under different license types, including:

- *Distiller License:* The license is for a person engaged in distilling, including blending, rectifying, and bottling. The license fee is \$2,000 per year, unless a person meets a different specific category.
- *Craft Distillery License:* The license is for distillers producing 150,000 gallons or less of spirits with at least half of the raw materials in the production grown in Washington. The license fee is \$100 per year.

The LCB also licenses commercial chemist stills, stills for educational purposes at universities, and fruit and wine distilleries. A person may alternatively manufacture spirits under a separate manufacturer's license, and a certificate of approval is available for out-of-state distilleries who sell spirits to purchasers in Washington.

A distillery or craft distillery may sell spirits of its own production for consumption off the premises. A distillery or craft distillery may also contract distilled spirits for, and sell contract distilled spirits to holders of distillers' or manufacturers' licenses, or for export. Additionally, distilleries and craft distilleries may sell or provide customers with free, 0.5 ounce or less samples of spirits, or sell adulterated samples of spirits of their own production to persons on the premises of the distillery. A person is limited to sampling no more than a total of two ounces of spirits on the distillery premises per day.

Any distillery or craft distillery may act as a retailer and distributor of spirits of its own production to retailers. A distillery or craft distillery acting as a distributor and retailer must comply with laws and rules applicable to distributors and retailers. A distillery or craft

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distillery may accept orders for spirits from customers in person at a licensed location, by mail, telephone, the Internet, or by similar methods, and deliver spirits to an adult age 21 years or over subject to certain restrictions. When selling spirits to consumers for off-premises consumption, the 17 percent spirits retail license issuance fee applies to spirits sales by distilleries, but not to spirits sales by craft distilleries.

A distillery or craft distillery may apply to the LCB for an endorsement to sell bottled spirits of its own production at a qualifying farmers' market. Before authorizing a farmers' market to allow an approved distillery or craft distillery to sell bottled spirits at retail, the LCB must notify appropriate local governments and certain nearby entities and public institutions. The LCB may withdraw any farmers' market authorization for any violation of liquor laws or rules.

Tied-House Laws and Exceptions. Business practices and financial interests of liquor licensees are restricted by the tied-house laws. These laws generally prohibit an industry member from advancing and a retailer from receiving moneys or moneys' worth under any type of agreement, practice, or arrangement. The tied-house laws also generally prohibit one industry member from having a direct or indirect financial interest in another industry member or retailer, except for specific exceptions. The term "industry member" is defined to include a licensed manufacturer, producer, supplier, importer, wholesaler, distributor, authorized representative, certificate of approval holder, warehouse, and any affiliates, subsidiaries, officers, agents, employees, and representatives of any industry member.

An exception to the tied-house laws authorizes a distillery to hold a spirits, beer, and wine restaurant license for selling liquor at a restaurant premises on the property on which the primary manufacturing facility of the distillery is located or on contiguous property owned or leased by the distillery. Another exception authorizes industry members to provide retailers branded promotional items of nominal value, singly or in the aggregate. Promotional items must be used exclusively by the retailer or its employees and may not be passed along to customers or be targeted to or appeal principally to youth. Also, domestic wineries and microbreweries may provide branded promotional items of nominal value, singly or in the aggregate, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) of the Internal Revenue Code, for use consistent with the purpose or purposes entitling the nonprofit to the exemption.

Public Records Act. The Public Records Act (PRA) requires state and local agencies to disclose requested written records to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions under the PRA or as otherwise provided in law. For example, certain financial, commercial, and proprietary information is exempt from public inspection and copying. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

Summary: License Privileges of Distilleries and Craft Distilleries. In addition to their own spirits, distilleries and craft distilleries may sell, for off-premises consumption, spirits produced by another distillery or craft distillery licensed in Washington, and vermouth or sparkling wine products produced by a licensee in Washington. For craft distilleries, when selling spirits produced by another distillery or craft distillery for off-premises consumption, the craft distillery must pay the 17 percent fee on sales of these products.

Distilleries and craft distilleries may serve samples of spirits, free or for a charge, and sell servings of spirits, vermouth, and sparkling wine to customers for on-premises consumption, at the premises of the distillery indoors, outdoors, or in a combined indoor-outdoor area, and at the distillery's off-site tasting rooms. When spirits samples are unadulterated, samples must be 0.5 ounce or less of spirits, and a person is limited to receiving or purchasing, for on-premises consumption, no more than two ounces total of unadulterated spirits.

Regarding sales of spirits and alcohol products for on-premises consumption, distilleries and craft distilleries may sell servings of spirits of the distillery's own production, or spirits produced by another distillery or craft distillery licensed in Washington, which must be adulterated with water, ice, other alcohol entitled to be sold or served on the licensed premises, or nonalcoholic mixers. Servings of vermouth and other sparkling wine products may also be sold for on-premises consumption at a distillery or craft distillery.

Revenue derived from the sale of spirits for on-premises consumption may not comprise more than 30 percent of the overall gross revenue earned in the tasting room during the calendar year. A distillery or craft distillery that sells adulterated products to consumers must file an annual report with the LCB summarizing the distillery's revenue sources. If a distillery or craft distillery provides or sells spirits or other alcohol products that are produced by another distillery, craft distillery, or licensee in Washington, then at any one time no more than 25 percent of the alcohol stock-keeping units offered or sold by the distillery or craft distillery at its distillery premises and at any licensed off-site tasting rooms may be vermouth, sparkling wine, or spirits made by another distilled spirits producer or licensee. If a distillery or craft distillery sells fewer than 20 alcohol stock-keeping units of products of its own production, it may sell up to five alcohol stock-keeping units of another distillery, craft distillery, or licensee in Washington.

No person under age 21 may be on the premises of a distillery or craft distillery tasting room, including an off-site tasting room, unless they are accompanied by their parent or legal guardian. Every tasting room, including off-site tasting rooms, must include a designated area where persons under age 21 are allowed to enter. The area may be a separate room or a designated area within the tasting room separated from the remainder of the tasting room space as authorized by the LCB.

Except for an event for which a private party has secured a banquet permit, after 9:00 p.m. no person under age 21 may be in an area of a distillery or craft tasting room where alcohol is sold, sampled, or served, including off-site tasting rooms. Persons under 21 years of age who are children of owners, operators, or managers of a distillery or an off-site tasting room may be in any area of a distillery, tasting room, or an off-site tasting room, including past 9:00 p.m., provided they are under the direct supervision of their parent or legal guardian while on the premises.

Any person serving or selling spirits or other alcohol authorized to be served or sold by a distillery or craft distillery must obtain a class 12 alcohol server permit. A distillery or craft distillery may also sell nonalcoholic products at retail.

The existing endorsement authorizing sales of spirits by a distillery or craft distillery at a qualifying farmers' market is eliminated.

New License for Off-Site Tasting Rooms. A tasting room license is established and available to distillery and craft distillery licensees. The new license authorizes the operation of an off-site tasting room at which the distillery may sample, serve, and sell spirits and alcohol products to adults age 21 and over, subject to the same limits as when conducted on the distillery production facility's premises. A distillery or craft distillery licensed production facility is eligible for up to two tasting room licenses in Washington, and each tasting room requires its own license. Tasting rooms may be indoors, outdoors, or a combined indoor-outdoor area, and are administratively tied to a licensed production facility.

The fee for each off-site tasting room license is \$2,000 per year. No separate license is required for a single on-site tasting room operated at their production facility. The number of off-site tasting room licenses issued to distilleries and craft distilleries may not exceed 150 total in Washington. This restriction does not apply when issuing an off-site tasting room license for a location also licensed as a spirits, beer, and wine restaurant. Off-site tasting rooms may have a section identified and separated as federally bonded spaces for storing bulk or packaged spirits. Products of the licensee's production may be bottled or packaged in the space.

New Food Service Requirements. New food service requirements apply to off-site tasting rooms of distilleries and craft distilleries, as well as to their on-site tasting rooms. A distillery or craft distillery operating a tasting room must provide, for free or for a charge, food offerings to customers during public service hours. Food offerings are defined to include a combination of small serving food items.

Additionally, distilleries and craft distilleries must post, in a conspicuous place within any tasting room, a list of at least five local restaurants or food trucks where customers can purchase food for consumption in the tasting room. The list must include names, addresses, contact information, and hours of operation for each restaurant or food truck named.

Requirements for food offerings must be further defined through rules and must:

- include the ability for food to be prepackaged for individual sale and consumption;
- allow food offerings to be prepared off-site for plating for the customer;
- not require any warming, cooking, or heating off-site or on-site prior to service; and
- not require installation, maintenance, or use of any food-heating device or apparatus to prepare any food offerings.

Authorization for Co-Operated Tasting Rooms and Conjoined Consumption Areas. The authorized off-site tasting rooms, of any distillery, craft distillery, domestic winery, or any combination of these licensees may jointly occupy and co-operate up to two off-site locations. The site may be indoors, outdoors, or in a combined indoor-outdoor location, at which the licensees may sample, serve, and sell products of their own production, and products authorized to be sampled, served, and sold under the terms of their licenses. The licensees must maintain separate storage of products and separate financials.

Any domestic brewery, microbrewery, domestic winery, distillery, or craft distillery, or any combination of these licensees, whose property parcels or buildings are located in direct physical proximity to one another may share a standing or seated tasting area for patrons to use, which may be indoors, outdoors, or a combined indoor-outdoor area. Each licensee may sample, serve, and sell products the licensee is authorized to sample, serve, and sell under the terms of their respective licenses, for on-premises consumption, in the jointly operated consumption area. Each licensee must use distinctly marked glassware or serving containers to identify the source of any product being consumed.

When operating a co-operated off-site tasting room or conjoined consumption area of production facilities, licensees must comply with the applicable laws and rules relating to retailers. All licensees who operate joint off-site tasting rooms or conjoined consumption areas at production facilities must share staffing resources, and all participating licensees are jointly responsible for a violation of enforcement issue unless it can be demonstrated that the violation or enforcement issue was due to one or more licensee's specific conduct or action, in which case the violation or enforcement applies only to those identified licensees. Every person who participates in any manner in the sale or service of samples or servings of spirits must obtain a class 12 alcohol server permit, and every person who participates in any manner in the sale or service of samples or servings of beer and wine must obtain a class 12 or class 13 alcohol server permit.

Tied-House Laws and Exceptions. Nothing in the "moneys' worth" prohibition in the liquor industry tied-house laws prohibits a distillery, craft distillery, or spirits certificate-of-approval holder from providing branded promotional items of nominal value, singly or in the aggregate, to a 501(c)(3) nonprofit charitable corporation or association, for use consistent with the purpose or purposes entitling the nonprofit to the exemption.

Public Records Act. An exemption is added to the Public Records Act to exempt from disclosure unaggregated financial, proprietary, or commercial information submitted to or obtained by the LCB in applications for distillery or craft distillery licenses, or in any reports or remittances submitted by a licensed distillery or craft distillery pursuant to the LCB's rules.

Votes on Final Passage:

2019 Regular Session

Senate 42 3

2020 Regular Session

Senate 40 6

House 89 8 (House amended)

Senate 48 1 (Senate concurred)

Effective: June 11, 2020

January 1, 2021 (Sections 3, 5 through 7, and 10)