
ENGROSSED SUBSTITUTE SENATE BILL 6095

State of Washington 66th Legislature 2020 Regular Session

By Senate Labor & Commerce (originally sponsored by Senator Keiser)

READ FIRST TIME 02/05/20.

1 AN ACT Relating to common carrier activities that are not
2 prohibited under the three-tier system; and amending RCW 66.28.310
3 and 66.24.395.

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

5 **Sec. 1.** RCW 66.28.310 and 2019 c 149 s 1 are each amended to
6 read as follows:

7 (1)(a) Nothing in RCW 66.28.305 prohibits an industry member from
8 providing retailers, including common carriers licensed under RCW
9 66.24.395, branded promotional items which are of nominal value,
10 singly or in the aggregate. Such items include but are not limited
11 to: Trays, lighters, blotters, postcards, pencils, coasters, menu
12 cards, meal checks, napkins, clocks, mugs, glasses, bottles or can
13 openers, corkscrews, matches, printed recipes, shirts, hats, visors,
14 and other similar items. Branded promotional items:

15 (i) Must be used exclusively by the retailer, including common
16 carriers licensed under RCW 66.24.395, or its employees in a manner
17 consistent with its license;

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

1 (iii) May be provided by industry members (~~only~~) to: (A) Common
2 carriers licensed under RCW 66.24.395 for use by their employees or
3 ticketed passengers; or (B) retailers, other than common carriers
4 licensed under RCW 66.24.395, and their employees and may not be
5 provided by or through retailers or their employees to retail
6 customers; and

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

8 (b) An industry member is not obligated to provide any such
9 branded promotional items, and a retailer, including common carriers
10 licensed under RCW 66.24.395, may not require an industry member to
11 provide such branded promotional items as a condition for selling any
12 alcohol to the retailer, including common carriers licensed under RCW
13 66.24.395.

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

29 (2) Nothing in RCW 66.28.305 prohibits:

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

32 (i) Installation of draft beer dispensing equipment or
33 advertising;

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

36 (iii) Pouring or dispensing of spirits by a licensed domestic
37 distiller or the accredited representative of a distiller,
38 manufacturer, importer, or distributor of spirituous liquor licensed
39 under RCW 66.24.310; or

1 (b) Special occasion licensees from paying for beer, wine, or
2 spirits immediately following the end of the special occasion event;
3 or

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

7 (3) Nothing in RCW 66.28.305 prohibits industry members from
8 performing, and retailers from accepting the service of building,
9 rotating, and restocking displays and stockroom inventories; rotating
10 and rearranging can and bottle displays of their own products;
11 providing point of sale material and brand signs; pricing case goods
12 of their own brands; and performing such similar business services
13 consistent with board rules, or personal services as described in
14 subsection (5) of this section.

15 (4) Nothing in RCW 66.28.305 prohibits:

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

19 (b) Retailers from listing on their internet web sites
20 information related to industry members whose products those
21 retailers sell or promote, including direct links to the industry
22 members' web sites;

23 (c) Manufacturers, distributors, or their licensed
24 representatives from using web sites or social media accounts in
25 their name to post, repost, or share promotional information or
26 images about events featuring a product of the manufacturer's own
27 production or a product sold by the distributor, held at an on-
28 premises licensed liquor retailer's location or a licensed special
29 occasion event. The promotional information may include links to
30 purchase event tickets. Manufacturers, distributors, or their
31 licensed representatives may not pay a third party to enhance
32 viewership of a specific post. Industry members, or their licensed
33 representatives, are not obligated to post, repost, or share
34 information or images on a web site or on social media. A licensed
35 liquor retailer may not require an industry member or their licensed
36 representative to post, repost, or share information or images on a
37 web site or on social media as a condition for selling any alcohol to
38 the retailer or participating in a retailer's event; or

39 (d) Industry members and retailers from producing, jointly or
40 together with regional, state, or local industry associations,

1 brochures and materials promoting tourism in Washington state which
2 contain information regarding retail licensees, industry members, and
3 their products.

4 (5) Nothing in RCW 66.28.305 prohibits the performance of
5 personal services offered from time to time by a domestic winery or
6 certificate of approval holder to retailers, including common
7 carriers licensed under RCW 66.24.395, when the personal services are
8 (a) conducted at a licensed premises, and (b) intended to inform,
9 educate, or enhance customers' knowledge or experience of the
10 manufacturer's products. The performance of personal services may
11 include participation and pouring, bottle signing events, and other
12 similar informational or educational activities at the premises of a
13 retailer holding a spirits, beer, and wine restaurant license, a wine
14 and/or beer restaurant license, a specialty wine shop license, a
15 special occasion license, a grocery store license with a tasting
16 endorsement, a common carrier license under RCW 66.24.395, or a
17 private club license. A domestic winery or certificate of approval
18 holder is not obligated to perform any such personal services, and a
19 retail licensee, including common carrier licensees under RCW
20 66.24.395, may not require a domestic winery or certificate of
21 approval holder to conduct any personal service as a condition for
22 selling any alcohol to the retail licensee, or as a condition for
23 including any product of the domestic winery or certificate of
24 approval holder in any tasting conducted by the licensee. Except as
25 provided in RCW 66.28.150, the cost of sampling may not be borne,
26 directly or indirectly, by any domestic winery or certificate of
27 approval holder or any distributor. Nothing in this section prohibits
28 wineries, breweries, microbreweries, certificate of approval holders,
29 and retail licensees from identifying the producers on private labels
30 authorized under RCW 66.24.400, 66.24.425, 66.24.450, 66.24.360, and
31 66.24.371.

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

37 (7) Nothing in RCW 66.28.305 prohibits the performance of
38 personal services offered from time to time by a domestic brewery,
39 microbrewery, or beer certificate of approval holder to grocery store
40 licensees with a tasting endorsement, or common carrier licensees

1 under RCW 66.24.395, when the personal services are (a) conducted at
2 a licensed premises in conjunction with a tasting event, and (b)
3 intended to inform, educate, or enhance customers' knowledge or
4 experience of the manufacturer's products. The performance of
5 personal services may include participation and pouring, bottle
6 signing events, and other similar informational or educational
7 activities. A domestic brewery, microbrewery, or beer certificate of
8 approval holder is not obligated to perform any such personal
9 services, and a grocery store licensee may not require the
10 performance of any personal service as a condition for including any
11 product in any tasting conducted by the licensee.

12 (8) Nothing in RCW 66.28.305 prohibits an arrangement between a
13 domestic winery and a restaurant licensed under RCW 66.24.320 or
14 66.24.400 to waive a corkage fee.

15 (9) Nothing in this section prohibits professional sports teams
16 who hold a retail liquor license or their agents from accepting bona
17 fide liquor advertising from manufacturers, importers, distributors,
18 or their agents for use in the sporting arena. Professional sports
19 teams who hold a retail liquor license or their agents may license
20 the manufacturer, importer, distributor, or their agents to use the
21 name and trademarks of the professional sports team in their
22 advertising and promotions, under the following conditions:

23 (a) Such advertising must be paid for by said manufacturer,
24 importer, distributor, or their agent at the published advertising
25 rate or at a reasonable fair market value.

26 (b) Such advertising may carry with it no express or implied
27 offer on the part of the manufacturer, importer, distributor, or
28 their agent, or promise on the part of the retail licensee whose
29 operation is directly or indirectly part of the sporting arena, to
30 stock or list any particular brand of liquor to the total or partial
31 exclusion of any other brand.

32 (10) Nothing in RCW 66.28.305 prohibits a licensed domestic
33 brewery or microbrewery from providing branded promotional items
34 which are of nominal value, singly or in the aggregate, to a
35 nonprofit charitable corporation or association exempt from taxation
36 under 26 U.S.C. Sec. 501(c)(3) of the internal revenue code as it
37 existed on July 24, 2015, for use consistent with the purpose or
38 purposes entitling it to such exemption.

39 (11) Nothing in RCW 66.28.305 prohibits a common carrier licensed
40 under RCW 66.24.395 from:

1 (a) Transporting liquor without charge or at a discounted rate
2 when the liquor was purchased by a ticketed passenger and is not
3 intended to be sold for resale;

4 (b) Displaying or distributing information about an industry
5 member, provided the industry member did not pay the common carrier
6 to have the information displayed or distributed;

7 (c) Sponsoring any public or private event including those hosted
8 by or otherwise affiliated with an industry member;

9 (d) Engaging in joint promotional activities with an industry
10 member, provided the industry member does not pay the common carrier
11 or a third party to participate in the joint promotional activity and
12 any branded promotional items provided by the industry member are of
13 nominal value;

14 (e) Accepting payment from an industry member for advertising,
15 provided:

16 (i) The advertising appears in a publication produced and
17 distributed to passengers of the common carrier;

18 (ii) The amount of the payment is consistent with the advertising
19 rates paid by other advertisers purchasing similar advertisements in
20 the same publication; and

21 (iii) The payment is not used as an inducement to purchase the
22 products of the industry member paying for the advertising nor does
23 it result in the exclusion of products of other industry members.

24 (12) Nothing in RCW 66.28.305 prohibits an industry member,
25 subject to the requirements of its license, from entering into an
26 agreement to provide tastings with or without charge to passengers of
27 a common carrier holding a license under RCW 66.24.395.

28 **Sec. 2.** RCW 66.24.395 and 1997 c 321 s 25 are each amended to
29 read as follows:

30 (1)(a) There shall be a license that may be issued to
31 corporations, associations, or persons operating as federally
32 licensed commercial common passenger carriers engaged in interstate
33 commerce, in or over territorial limits of the state of Washington on
34 passenger trains, vessels, or airplanes. Such license shall permit
35 the sale of spirituous liquor, wine, and beer at retail for passenger
36 consumption within the state upon one such train passenger car,
37 vessel, or airplane, while in or over the territorial limits of the
38 state. Such license shall include the privilege of transporting into
39 and storing within the state such liquor for subsequent retail sale

1 to passengers in passenger train cars, vessels or airplanes. The fees
2 for such master license shall be seven hundred fifty dollars per
3 annum (class CCI-1): PROVIDED, That upon payment of an additional sum
4 of five dollars per annum per car, or vessel, or airplane, the
5 privileges authorized by such license classes shall extend to
6 additional cars, or vessels, or airplanes operated by the same
7 licensee within the state, and a duplicate license for each
8 additional car, or vessel, or airplane shall be issued: PROVIDED,
9 FURTHER, That such licensee may make such sales and/or service upon
10 cars, or vessels, or airplanes in emergency for not more than five
11 consecutive days without such license: AND PROVIDED, FURTHER, That
12 such license shall be valid only while such cars, or vessels, or
13 airplanes are actively operated as common carriers for hire in
14 interstate commerce and not while they are out of such common carrier
15 service.

16 (b) Alcoholic beverages sold and/or served for consumption by
17 such interstate common carriers while within or over the territorial
18 limits of this state shall be subject to such board markup and state
19 liquor taxes in an amount to approximate the revenue that would have
20 been realized from such markup and taxes had the alcoholic beverages
21 been purchased in Washington: PROVIDED, That the board's markup shall
22 be applied on spirituous liquor only. Such common carriers shall
23 report such sales and/or service and pay such markup and taxes in
24 accordance with procedures prescribed by the board.

25 (2) Alcoholic beverages sold and delivered in this state to
26 interstate common carriers for use under the provisions of this
27 section shall be considered exported from the state, subject to the
28 conditions provided in subsection (1)(b) of this section. Interstate
29 common carriers licensed under this section may purchase alcoholic
30 beverages outside the territorial limits of the state of Washington
31 and import such alcoholic beverages into the state of Washington for
32 sales and service aboard passenger trains, vessels, or airplanes. The
33 storage facilities for liquor within the state by common carriers
34 licensed under this section shall be subject to written approval by
35 the board.

36 (3) Interstate common carriers licensed under this section may
37 provide complimentary alcoholic beverages to passengers aboard
38 passenger trains, vessels, or airplanes.

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