

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5394

Chapter 149, Laws of 2019

66th Legislature
2019 Regular Session

LIQUOR LICENSEES--PROMOTING EVENTS ONLINE

EFFECTIVE DATE: July 28, 2019

Passed by the Senate March 7, 2019
Yeas 45 Nays 2

KAREN KEISER

President of the Senate

Passed by the House April 12, 2019
Yeas 90 Nays 6

FRANK CHOPP

Speaker of the House of Representatives

Approved April 26, 2019 11:20 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5394** as passed by Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

April 29, 2019

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5394

Passed Legislature - 2019 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators King, Conway, Palumbo, and Keiser)

READ FIRST TIME 02/05/19.

1 AN ACT Relating to liquor licensees' use of web sites and social
2 media to promote events; 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) Manufacturers, distributors, or their licensed
15 representatives from using web sites or social media accounts in
16 their name to post, repost, or share promotional information or
17 images about events featuring a product of the manufacturer's own
18 production or a product sold by the distributor, held at an on-
19 premises licensed liquor retailer's location or a licensed special
20 occasion event. The promotional information may include links to
21 purchase event tickets. Manufacturers, distributors, or their
22 licensed representatives may not pay a third party to enhance
23 viewership of a specific post. Industry members, or their licensed
24 representatives, are not obligated to post, repost, or share
25 information or images on a web site or on social media. A licensed
26 liquor retailer may not require an industry member or their licensed
27 representative to post, repost, or share information or images on a
28 web site or on social media as a condition for selling any alcohol to
29 the retailer or participating in a retailer's event; or

30 (d) Industry members and retailers from producing, jointly or
31 together with regional, state, or local industry associations,
32 brochures and materials promoting tourism in Washington state which
33 contain information regarding retail licensees, industry members, and
34 their products.

35 (5) Nothing in RCW 66.28.305 prohibits the performance of
36 personal services offered from time to time by a domestic winery or
37 certificate of approval holder to retailers when the personal
38 services are (a) conducted at a licensed premises, and (b) intended
39 to inform, educate, or enhance customers' knowledge or experience of
40 the manufacturer's products. The performance of personal services may

1 include participation and pouring, bottle signing events, and other
2 similar informational or educational activities at the premises of a
3 retailer holding a spirits, beer, and wine restaurant license, a wine
4 and/or beer restaurant license, a specialty wine shop license, a
5 special occasion license, a grocery store license with a tasting
6 endorsement, or a private club license. A domestic winery or
7 certificate of approval holder is not obligated to perform any such
8 personal services, and a retail licensee may not require a domestic
9 winery or certificate of approval holder to conduct any personal
10 service as a condition for selling any alcohol to the retail
11 licensee, or as a condition for including any product of the domestic
12 winery or certificate of approval holder in any tasting conducted by
13 the licensee. Except as provided in RCW 66.28.150, the cost of
14 sampling may not be borne, directly or indirectly, by any domestic
15 winery or certificate of approval holder or any distributor. Nothing
16 in this section prohibits wineries, breweries, microbreweries,
17 certificate of approval holders, and retail licensees from
18 identifying the producers on private labels authorized under RCW
19 66.24.400, 66.24.425, 66.24.450, 66.24.360, and 66.24.371.

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

25 (7) Nothing in RCW 66.28.305 prohibits the performance of
26 personal services offered from time to time by a domestic brewery,
27 microbrewery, or beer certificate of approval holder to grocery store
28 licensees with a tasting endorsement when the personal services are
29 (a) conducted at a licensed premises in conjunction with a tasting
30 event, and (b) intended to inform, educate, or enhance customers'
31 knowledge or experience of the manufacturer's products. The
32 performance of personal services may include participation and
33 pouring, bottle signing events, and other similar informational or
34 educational activities. A domestic brewery, microbrewery, or beer
35 certificate of approval holder is not obligated to perform any such
36 personal services, and a grocery store licensee may not require the
37 performance of any personal service as a condition for including any
38 product in any tasting conducted by the licensee.

1 (8) Nothing in RCW 66.28.305 prohibits an arrangement between a
2 domestic winery and a restaurant licensed under RCW 66.24.320 or
3 66.24.400 to waive a corkage fee.

4 (9) Nothing in this section prohibits professional sports teams
5 who hold a retail liquor license or their agents from accepting bona
6 fide liquor advertising from manufacturers, importers, distributors,
7 or their agents for use in the sporting arena. Professional sports
8 teams who hold a retail liquor license or their agents may license
9 the manufacturer, importer, distributor, or their agents to use the
10 name and trademarks of the professional sports team in their
11 advertising and promotions, under the following conditions:

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

15 (b) Such advertising may carry with it no express or implied
16 offer on the part of the manufacturer, importer, distributor, or
17 their agent, or promise on the part of the retail licensee whose
18 operation is directly or indirectly part of the sporting arena, to
19 stock or list any particular brand of liquor to the total or partial
20 exclusion of any other brand.

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

Passed by the Senate March 7, 2019.

Passed by the House April 12, 2019.

Approved by the Governor April 26, 2019.

Filed in Office of Secretary of State April 29, 2019.

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