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**SUBSTITUTE SENATE BILL 5417**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators King, Conway, Nguyen, Randall, and Wilson, C.; by request of Liquor and Cannabis Board)

AN ACT Relating to extending certain privileges granted to liquor licensees to mitigate the impact of the coronavirus pandemic; amending RCW 66.24.175, 66.24.630, and 82.08.150; adding a new section to chapter 66.08 RCW; creating new sections; making an appropriation; providing expiration dates; and declaring an emergency.

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

NEW SECTION. **Sec.**  The COVID-19 pandemic that arrived in Washington in 2020 led to historic economic disruptions and devastating health impacts in the state. In an effort to assist businesses and employees whose assets and livelihoods have been impacted by the strategies used to protect the public's health, the legislature finds that steps must be taken in the public interest to support the most severely impacted industries. The hospitality industry has suffered some of the most devastating impacts of any sector of the state's economy. The legislature finds that assisting this sector of the state's economy to survive and recover from the effects of the pandemic and the steps taken to combat its spread are an urgent priority that is in the best interests of the state and its residents. The legislature intends that these revisions at the same time continue to promote regulation of an orderly market for liquor sales while maintaining protection of public health and efficient collection of taxes and fees.

NEW SECTION. **Sec.**  (1) The board must implement the provisions of this section as expeditiously as possible. Liquor licensees may conduct activities authorized under this section before completion by the board of actions the board plans to take in order to implement this act, such as adoption of rules or completion of information system changes necessary to allow licensees to apply for required endorsements. However, licensees must comply with board rules when they take effect.

(2) The following licensees may sell alcohol products at retail for curbside and takeout service or delivery or both under liquor and cannabis board licenses and endorsements: Beer and wine restaurants; spirits, beer, and wine restaurants; taverns; domestic wineries; domestic breweries and microbreweries; distilleries; snack bars; nonprofit arts licensees; and caterers.

(3) Spirits, beer, and wine restaurant licensees may sell premixed cocktails and cocktail kits for takeout or curbside service and for delivery. The board may establish by rule the manner in which cocktails for off-premises consumption must be provided. This subsection does not authorize sale of full bottles of spirits by licensees for off-premises consumption, with the exception of mini-bottles as part of cocktail kits. Mini-bottle sales authorized under this subsection as part of cocktail kits are exempt from the spirits license issuance fee under RCW 66.24.630(4)(a) and the tax on each retail sale of spirits under RCW 82.08.150.

(4) Spirits, beer, and wine restaurant licensees may sell wine by the glass or premixed wine and spirits cocktails for takeout or curbside service and delivery. Beer and wine restaurant licensees may sell wine or premixed wine drinks by the glass for takeout or curbside service and for delivery. The board may establish by rule the manner in which wine by the glass for off-premises consumption must be provided.

(5) Licensees that were authorized by statute or rule before January 1, 2020, to sell growlers for on-premises consumption may sell growlers for off-premises consumption through curbside, takeout, or delivery service. Sale of growlers under this subsection must meet federal alcohol and tobacco tax and trade bureau requirements.

(6) Licensees must obtain from the board an endorsement to their license in order to conduct activities authorized under subsections (2) through (5) of this section. The board may adopt rules governing the manner in which the activities authorized under this section must be conducted. Licensees must not be charged a fee in order to obtain an endorsement required under this section.

(7) Beer and wine specialty shops licensed under RCW 66.24.371 and domestic breweries and microbreweries may sell prefilled growlers for off-premises consumption through takeout or curbside service and delivery, provided that prefilled growlers are sold the same day they are prepared for sale and not stored overnight for sale on future days.

(8) The board must adopt or revise current rules to allow for outdoor service of alcohol by on-premises licensees holding licenses issued by the board for the following license types: Beer and wine restaurants; spirits, beer, and wine restaurants; taverns; domestic wineries; domestic breweries and microbreweries; distilleries; snack bars; and private clubs licensed under RCW 66.24.450 and 66.24.452. The board may adopt requirements providing for clear accountability at locations where multiple licensees use a shared space for serving customers.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the liquor and cannabis board.

(b) "Growlers" means sanitary containers brought to the premises by the purchaser or furnished by the licensee and filled by the retailer at the time of sale.

(c) "Mini-bottles" means original factory-sealed containers holding not more than 50 milliliters of a spirituous beverage.

(10) This section expires July 1, 2023.

NEW SECTION. **Sec.**  A new section is added to chapter 66.08 RCW to read as follows:

(1) The board must adopt rules authorizing licensees with a delivery endorsement to photograph or scan customer identification in lieu of obtaining a physical signature to document liquor product delivery and verify the age of customers.

(2) The board must consider revising current rules in order to provide greater flexibility regarding food service menu requirements that businesses holding a license issued by the board under Title 66 RCW must provide in conjunction with alcohol sales. This subsection does not apply to licensees that were not required to provide food service under rules in effect on January 1, 2020. The purpose of this subsection is to ease food menu requirements to make it more feasible financially for licensees to comply with the board's food service requirements but not replace food safety requirements in rule adopted by the department of health in chapter 246-215 WAC.

**Sec.**  RCW 66.24.175 and 2014 c 105 s 2 are each amended to read as follows:

(1) A qualifying farmers market authorized to allow wineries to sell bottled wine at retail under RCW 66.24.170 or microbreweries to sell bottled beer at retail under RCW 66.24.244, or both, may apply to the ((~~liquor control~~)) board for an endorsement to allow sampling of wine or beer or both. A winery or microbrewery offering samples under this section must have an endorsement from the board to sell wine or beer, as the case may be, of its own production at a qualifying farmers market under RCW 66.24.170 or 66.24.244, respectively.

(2) Samples may be offered only under the following conditions:

(a) No more than three wineries or microbreweries combined may offer samples at a qualifying farmers market per day.

(b) Samples must be two ounces or less. A winery or microbrewery may provide a maximum of two ounces of wine or beer to a customer per day.

(c) A winery or microbrewery may advertise that it offers samples only at its designated booth, stall, or other designated location at the farmers market.

(d) Customers must remain at the designated booth, stall, or other designated location while sampling beer or wine.

(e) Winery and microbrewery licensees and employees who are involved in sampling activities under this section must hold a class 12 or class 13 alcohol server permit.

((~~(f) A winery or microbrewery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.~~))

(3) The board may establish additional requirements to ensure that persons under twenty-one years of age and apparently intoxicated persons may not possess or consume alcohol under the authority granted in this section.

(4) The board may prohibit sampling at a farmers market that is within the boundaries of an alcohol impact area recognized by resolution of the board if the board finds that the sampling activities at the farmers market have an adverse effect on the reduction of chronic public inebriation in the area.

(5) If a winery or microbrewery is found to have committed a public safety violation in conjunction with tasting activities, the board may suspend the licensee's farmers market endorsement and not reissue the endorsement for up to two years from the date of the violation. If mitigating circumstances exist, the board may offer a monetary penalty in lieu of suspension during a settlement conference.

(6) For the purposes of this section, a "qualifying farmers market" has the same meaning as defined in RCW 66.24.170.

NEW SECTION. **Sec.**  (1) The liquor and cannabis board must contract with an independent entity to conduct a study of the impacts of privileges granted by this act to businesses licensed by the board under Title 66 RCW. The study must examine relevant issues including, but not limited to, the following:

(a) Quantitative measures of impact such as liquor sales data, licensee locations, enforcement activity, hospital and other health provider visits for alcohol-related causes, underage drinking, alcohol dependence treatment, alcohol-related traffic violations, and motor vehicle crash deaths or injuries;

(b) Qualitative investigation of relevant impacts using methods such as key informant interviews and supplemental data collection with licensees, law enforcement, behavioral health service providers, youth prevention and intervention specialists, and revenue stakeholders; and

(c) Additional issues deemed relevant to the goals and results of this act.

(2) The study authorized by this section must be started by January 1, 2022. A report with findings and any recommendations must be provided to the legislature and the governor by December 1, 2022.

(3) This section expires July 1, 2023.

NEW SECTION. **Sec.**  The sum of $150,000, or as much thereof as may be necessary, is appropriated for the fiscal biennium ending June 30, 2023, from the liquor revolving fund to the liquor and cannabis board for the purposes of section 5 of this act.

**Sec.**  RCW 66.24.630 and 2020 c 238 s 9 are each amended to read as follows:

(1) There is a spirits retail license to: Sell spirits in original containers to consumers for consumption off the licensed premises and to permit holders; sell spirits in original containers to retailers licensed to sell spirits for consumption on the premises, for resale at their licensed premises according to the terms of their licenses, although no single sale may exceed twenty-four liters, unless the sale is by a licensee that was a contract liquor store manager of a contract liquor store at the location of its spirits retail licensed premises from which it makes such sales; and export spirits.

(2) For the purposes of this title, a spirits retail license is a retail license, and a sale by a spirits retailer is a retail sale only if not for resale. Nothing in this title authorizes sales by on-sale licensees to other retail licensees. The board must establish by rule an obligation of on-sale spirits retailers to:

(a) Maintain a schedule by stock-keeping unit of all their purchases of spirits from spirits retail licensees, including combination spirits, beer, and wine licensees holding a license issued pursuant to RCW 66.24.035, indicating the identity of the seller and the quantities purchased; and

(b) Provide, not more frequently than quarterly, a report for each scheduled item containing the identity of the purchasing on-premises licensee and the quantities of that scheduled item purchased since any preceding report to:

(i) A distributor authorized by the distiller to distribute a scheduled item in the on-sale licensee's geographic area; or

(ii) A distiller acting as distributor of the scheduled item in the area.

(3)(a) Except as otherwise provided in (c) of this subsection, the board may issue spirits retail licenses only for premises comprising at least ten thousand square feet of fully enclosed retail space within a single structure, including storerooms and other interior auxiliary areas but excluding covered or fenced exterior areas, whether or not attached to the structure, and only to applicants that the board determines will maintain systems for inventory management, employee training, employee supervision, and physical security of the product substantially as effective as those of stores currently operated by the board with respect to preventing sales to or pilferage by underage or inebriated persons.

(b) License issuances and renewals are subject to RCW 66.24.010 and the regulations adopted thereunder, including without limitation rights of cities, towns, county legislative authorities, the public, churches, schools, and public institutions to object to or prevent issuance of local liquor licenses. However, existing grocery premises licensed to sell beer and/or wine are deemed to be premises "now licensed" under RCW 66.24.010(9)(a) for the purpose of processing applications for spirits retail licenses.

(c) The board may not deny a spirits retail license to an otherwise qualified contract liquor store at its contract location or to the holder of former state liquor store operating rights sold at auction under RCW 66.24.620 on the grounds of location, nature, or size of the premises to be licensed. The board may not deny a spirits retail license to applicants that are not contract liquor stores or operating rights holders on the grounds of the size of the premises to be licensed, if such applicant is otherwise qualified and the board determines that:

(i) There is no spirits retail license holder in the trade area that the applicant proposes to serve;

(ii) The applicant meets, or upon licensure will meet, the operational requirements established by the board by rule; and

(iii) The licensee has not committed more than one public safety violation within the three years preceding application.

(d) A retailer authorized to sell spirits for consumption on or off the licensed premises may accept delivery of spirits at its licensed premises, at another licensed premises as designated by the retailer, or at one or more warehouse facilities registered with the board, which facilities may also warehouse and distribute nonliquor items, and from which the retailer may deliver to its own licensed premises and, pursuant to sales permitted under subsection (1) of this section:

(i) To other retailer premises licensed to sell spirits for consumption on the licensed premises;

(ii) To other registered facilities; or

(iii) To lawful purchasers outside the state. The facilities may be registered and utilized by associations, cooperatives, or comparable groups of retailers, including at least one retailer licensed to sell spirits.

(e) For purposes of negotiating volume discounts, a group of individual retailers authorized to sell spirits for consumption off the licensed premises may accept delivery of spirits at their individual licensed premises or at any one of the individual licensee's premises, or at a warehouse facility registered with the board.

(4)(a) Except as otherwise provided in RCW 66.24.632, section 2 of this act, or in (b) of this subsection, each spirits retail licensee must pay to the board, for deposit into the liquor revolving fund, a license issuance fee equivalent to seventeen percent of all spirits sales revenues under the license, exclusive of taxes collected by the licensee and of sales of items on which a license fee payable under this section has otherwise been incurred. The board must establish rules setting forth the timing of such payments and reporting of sales dollar volume by the licensee, with payments required quarterly in arrears. The first payment is due October 1, 2012.

(b) This subsection (4) does not apply to craft distilleries for sales of spirits of the craft distillery's own production.

(5) In addition to the payment required under subsection (4) of this section, each licensee must pay an annual license renewal fee of one hundred sixty-six dollars. The board must periodically review and adjust the renewal fee as may be required to maintain it as comparable to annual license renewal fees for licenses to sell beer and wine not for consumption on the licensed premises. If required by law at the time, any increase of the annual renewal fee becomes effective only upon ratification by the legislature.

(6) As a condition to receiving and renewing a spirits retail license the licensee must provide training as prescribed by the board by rule for individuals who sell spirits or who manage others who sell spirits regarding compliance with laws and regulations regarding sale of spirits, including without limitation the prohibitions against sale of spirits to individuals who are underage or visibly intoxicated. The training must be provided before the individual first engages in the sale of spirits and must be renewed at least every five years. The licensee must maintain records documenting the nature and frequency of the training provided. An employee training program is presumptively sufficient if it incorporates a "responsible vendor program" adopted by the board.

(7) The maximum penalties prescribed by the board in WAC 314-29-020 through 314-29-040 relating to fines and suspensions are doubled for violations relating to the sale of spirits by spirits retail licensees.

(8)(a) The board must adopt regulations concerning the adoption and administration of a compliance training program for spirits retail licensees, to be known as a "responsible vendor program," to reduce underage drinking, encourage licensees to adopt specific best practices to prevent sales to minors, and provide licensees with an incentive to give their employees ongoing training in responsible alcohol sales and service.

(b) Licensees who join the responsible vendor program under this section and maintain all of the program's requirements are not subject to the doubling of penalties provided in this section for a single violation in any period of twelve calendar months.

(c) The responsible vendor program must be free, voluntary, and self-monitoring.

(d) To participate in the responsible vendor program, licensees must submit an application form to the board. If the application establishes that the licensee meets the qualifications to join the program, the board must send the licensee a membership certificate.

(e) A licensee participating in the responsible vendor program must at a minimum:

(i) Provide ongoing training to employees;

(ii) Accept only certain forms of identification for alcohol sales;

(iii) Adopt policies on alcohol sales and checking identification;

(iv) Post specific signs in the business; and

(v) Keep records verifying compliance with the program's requirements.

(f)(i) A spirits retail licensee that also holds a grocery store license under RCW 66.24.360 or a beer and/or wine specialty shop license under RCW 66.24.371 may, upon board approval and pursuant to board rules, transition to a combination spirits, beer, and wine license pursuant to RCW 66.24.035.

(ii) An applicant that would qualify for a spirits retail license under this section and that qualifies for a combination spirits, beer, and wine license pursuant to RCW 66.24.035 may apply for a license pursuant to RCW 66.24.035 instead of applying for a spirits retail license under this section.

**Sec.**  RCW 82.08.150 and 2012 c 2 s 106 are each amended to read as follows:

(1) There is levied and collected a tax upon each retail sale of spirits in the original package at the rate of fifteen percent of the selling price.

(2) There is levied and collected a tax upon each sale of spirits in the original package at the rate of ten percent of the selling price on sales by a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to restaurant spirits retailers.

(3) There is levied and collected an additional tax upon each sale of spirits in the original package by a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to a restaurant spirits retailer and upon each retail sale of spirits in the original package by a licensee of the board at the rate of one dollar and seventy-two cents per liter.

(4) An additional tax is imposed equal to fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each sale of spirits in the original package by a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to a restaurant spirits retailer and upon each retail sale of spirits in the original package by a licensee of the board at the rate of seven cents per liter. All revenues collected during any month from this additional tax must be deposited in the state general fund by the twenty-fifth day of the following month.

(6)(a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of three and four-tenths percent of the selling price.

(b) An additional tax is imposed upon retail sale of spirits in the original package to a restaurant spirits retailer at the rate of two and three-tenths percent of the selling price.

(c) An additional tax is imposed upon each sale of spirits in the original package by a spirits distributor licensee or other licensee acting as a spirits distributor pursuant to Title 66 RCW to a restaurant spirits retailer and upon each retail sale of spirits in the original package by a licensee of the board at the rate of forty-one cents per liter.

(d) All revenues collected during any month from additional taxes under this subsection must be deposited in the state general fund by the twenty-fifth day of the following month.

(7)(a) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of one dollar and thirty-three cents per liter.

(b) All revenues collected during any month from additional taxes under this subsection must be deposited by the twenty-fifth day of the following month into the general fund.

(8) The tax imposed in RCW 82.08.020 does not apply to sales of spirits in the original package.

(9) The taxes imposed in this section must be paid by the buyer to the seller, and each seller must collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller must be stated separately from the selling price, and for purposes of determining the tax due from the buyer to the seller, it is conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section. Sellers must report and return all taxes imposed in this section in accordance with rules adopted by the department.

(10) ((~~As used in this section~~)) (a) Except as otherwise provided in this subsection, the terms, "spirits" and "package" have the same meaning as provided in chapter 66.04 RCW.

(b) Until July 1, 2023, for the purposes of the taxes imposed under this section, the term "spirits" does not include mini-bottles of spirits sold by a person who possesses a valid endorsement under section 2(6) of this act and is licensed as a spirits, beer, and wine restaurant under RCW 66.24.400.

(c) For the purposes of this subsection, "mini-bottles of spirits" means an original factory-sealed container holding not more than 50 milliliters of spirits.

NEW SECTION. **Sec.**  (1) This act contains a temporary tax exemption for restaurants which sell cocktail kits containing mini-bottles of spirits. This temporary tax exemption is intended to avoid administrative costs for the state which are expected to exceed the value of the tax collected during the time until the exemption expires on July 1, 2023.

(2) This act is exempt from the provisions of RCW 82.32.805 and 82.32.808.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**