
SUBSTITUTE SENATE BILL 6009

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Agriculture & Agricultural Trade & Development
(originally sponsored by Senators Rasmussen, Loveland, Finkbeiner,
Morton, Bauer, McAuliffe, Drew and Kohl)

Read first time 03/01/95.

1 AN ACT Relating to the malt beverage commission; amending RCW
2 66.44.800 and 66.28.040; adding a new section to chapter 66.12 RCW;
3 adding a new chapter to Title 15 RCW; providing an effective date; and
4 declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature declares that:

7 (1) Marketing is a dynamic and changing part of Washington
8 agriculture and business economy and a vital element in expanding the
9 state economy.

10 (2) The sale in the state and export to other states of malt
11 beverages made in the state contribute substantial benefits to the
12 economy of the state and provide a large number of jobs and sizeable
13 tax revenues.

14 (3) The production of hops and the production of malt beverages in
15 the state is an important segment of Washington agriculture that has
16 potential for greater contribution to the economy of the state if it
17 undergoes healthy development.

18 (4) The general welfare of the people of the state will be served
19 by healthy development of the activities of growing and processing

1 hops, which development will improve the tax bases of local communities
2 in which agricultural land and processing facilities are located, and
3 obviate the need for state and federal funding of local services. The
4 industries are therefore affected with the public interest.

5 NEW SECTION. **Sec. 2.** Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter.

8 (1) "Beer producer" or "malt beverage producer" means any person or
9 other entity licensed under Title 66 RCW, to produce within the state,
10 beer or malt beverage, and who produces under one hundred thousand
11 barrels of beer annually per location.

12 (2) "Commission" means the Washington malt beverage commission.

13 (3) "Director" means the director of agriculture or the director's
14 duly appointed representative.

15 (4) "Department" means the department of agriculture.

16 (5) "Person" includes any individual, firm, corporation, trust,
17 association, partnership, society, or any other organization of
18 individuals.

19 (6) "Hop grower" means a person who has a commercial production of
20 hops.

21 (7) "Producer" means any person or other entity licensed under
22 Title 66 RCW to produce within the state malt beverages.

23 (8) "Eastern Washington" means that portion of the state lying east
24 of the Cascade mountain range.

25 (9) "Western Washington" means that portion of the state lying west
26 of the Cascade mountain range.

27 (10) "Beer" and "malt beverage" for the purposes of this section
28 are as defined in RCW 66.04.010.

29 (11) "Grain grower" means a person, or other entity that grows
30 grain that is subsequently malted for the use in the making of beer.

31 (12) "Malt producer" means a person, or other entity that purchases
32 grain from a grower or dealer, with the intent of processing it so that
33 it can be used in the production of beer.

34 NEW SECTION. **Sec. 3.** (1) There is created an agricultural
35 commodity commission to be known and designated as the Washington malt
36 beverage commission. The commission shall be composed of eleven voting
37 members; seven voting members shall be malt beverage producers, one

1 voting member shall be a grain grower, one voting member shall be a hop
2 grower, one voting member shall be a malt producer, and one voting
3 member shall be a wholesaler licensed under RCW 66.24.250. Of the malt
4 beverage producer members, at least three shall be located in western
5 Washington and at least three shall be located in eastern Washington.

6 (2) The director of agriculture, or the director's designee, shall
7 serve as an ex officio, nonvoting member.

8 (3) Seven voting members of the commission constitute a quorum for
9 the transaction of any business of the commission.

10 (4) Each voting member of the commission shall be a citizen, and
11 resident of this state and over the age of twenty-one years. Each
12 voting member, except the member holding position eleven, must be or
13 must have been engaged in that phase of the industry that he or she is
14 appointed to represent, and must during his or her term of office
15 derive a substantial portion of income therefrom, or have a substantial
16 investment in the growing of hops, growing of grain, producing of malt,
17 or the production of beer as an owner, lessee, partner, or a
18 stockholder owning at least ten percent of the voting stock in a
19 corporation engaged in the production; or the manager or executive
20 officer of such a corporation. These qualifications apply throughout
21 each member's term of office.

22 NEW SECTION. **Sec. 4.** The appointive voting positions on the
23 commission shall be designated as follows: The malt beverage producers
24 shall be designated positions one, two, three, four, five, six, and
25 seven; the grain grower shall be designated position eight; the hop
26 grower shall be designated position nine; the malt producer shall be
27 designated position ten; and the wholesaler shall be position eleven.
28 The member designated as filling position one shall be a person
29 producing over the largest volume of beer annually, not to exceed one
30 hundred thousand barrels per location per year. The member designated
31 as position one shall be the sole representative, directly or
32 indirectly, of the producer eligible to hold position one and in no
33 event shall that producer directly or indirectly control more than
34 fifty percent of the votes of the commission.

35 The regular terms of office shall be three years from the date of
36 appointment and until their successors are appointed. However, the
37 first terms of the members appointed upon July 1, 1995, shall be as
38 follows: Positions one, six, and eleven shall terminate July 1, 1998;

1 positions two, four, seven, and nine shall terminate July 1, 1997; and
2 positions three, five, eight, and ten shall terminate July 1, 1996.

3 NEW SECTION. **Sec. 5.** The director shall appoint the members of
4 the commission. In making such appointments of the voting members, the
5 director shall take into consideration recommendations made by the malt
6 beverage producers the persons recommended for appointment as members
7 of the commission. In appointing persons to the commission, the
8 director shall seek to ensure as nearly as possible a balanced
9 representation on the commission that would reflect the composition of
10 the malt beverage producers throughout the state as to amount of malt
11 beverage produced.

12 The appointment shall be carried out immediately subsequent to July
13 1, 1995, and members so appointed as set forth in this chapter shall
14 serve for the periods set forth for the original members of the
15 commission under section 4 of this act.

16 In the event a position on the commission becomes vacant due to
17 resignation, disqualification, death, or for any other reason, the
18 unexpired term of the position shall immediately be filled by
19 appointment by the director.

20 Each member of the commission shall be reimbursed for travel
21 expenses in accordance with RCW 43.03.050 and 43.03.060.

22 NEW SECTION. **Sec. 6.** Obligations incurred by the commission and
23 liabilities or claims against the commission shall be enforced only
24 against the assets of the commission in the same manner as if it were
25 a corporation and no liability for the debts or actions of the
26 commission shall exist against either the state of Washington or any
27 subdivision or instrumentality thereof or against any member, officer,
28 employee, or agent of the commission in his or her individual capacity.
29 The members of the commission, including employees of the commission,
30 shall not be held responsible individually or any way whatsoever to any
31 person for errors in judgment, mistakes, or other acts, either of
32 commission or omission, as principal, agent, person, or employees,
33 except for their own individual acts of dishonesty or crime. No such
34 person or employee shall be held responsible individually for any act
35 or omission of any other members of the commission.

1 NEW SECTION. **Sec. 7.** The powers and duties of the commission
2 include:

3 (1) To elect a chair and such officers as the commission deems
4 advisable. The officers shall include a treasurer who is responsible
5 for all receipts and disbursements by the commission and the faithful
6 discharge of whose duties shall be guaranteed by a bond at the sole
7 expense of the commission. The commission shall adopt rules for its
8 own governance, which shall provide for the holding of an annual
9 meeting for the election of officers and transaction of other business
10 and for such other meetings as the commission may direct;

11 (2) To do all things reasonably necessary to effect the purposes of
12 this chapter. However, the commission shall have no legislative power;

13 (3) At the pleasure of the commission, to employ and discharge
14 managers, secretaries, agents, attorneys, and employees and to engage
15 the services of independent contractors as the commission deems
16 necessary, to prescribe their duties, and to fix their compensation;

17 (4) To receive donations of beer from breweries for promotional
18 purposes;

19 (5) To receive beer or cash or in-kind contributions from breweries
20 and beverage industry associations;

21 (6) To engage directly or indirectly in the promotion of Washington
22 beer, including without limitation the acquisition in any lawful manner
23 and the dissemination without charge of beer, which dissemination shall
24 not be deemed a sale for any purpose and in which dissemination the
25 commission shall not be deemed a beer producer, supplier, or
26 manufacturer of any kind or the clerk, servant, or agent of a producer,
27 supplier, or manufacturer of any kind. Such dissemination shall be for
28 agricultural development or trade promotion, which may include
29 promotional hosting and shall in the good faith judgment of the
30 commission be in aid of the marketing, advertising, or sale of beer, or
31 of research related to such marketing, advertising, or sale;

32 (7) To acquire and transfer personal and real property, establish
33 offices, incur expense, enter into contracts (including contracts for
34 creation and printing of promotional literature, which contracts shall
35 not be subject to chapter 43.78 RCW, but which shall be cancelable by
36 the commission unless performed under conditions of employment which
37 substantially conform to the laws of this state and the rules of the
38 department of labor and industries). The commission may create such

1 debt and other liabilities as may be reasonable for proper discharge of
2 its duties under this chapter;

3 (8) To maintain such account or accounts with one or more qualified
4 public depositaries as the commission may direct, to cause moneys to be
5 deposited therein, and to expend moneys for purposes authorized by this
6 chapter by drafts made by the commission upon such institutions or by
7 other means;

8 (9) To cause to be kept and annually closed, in accordance with
9 generally accepted accounting principles, accurate records of all
10 receipts, disbursements, and other financial transactions, available
11 for audit by the state auditor;

12 (10) To create and maintain a list of producers and to disseminate
13 information among and solicit the opinions of producers with respect to
14 the discharge of the duties of the commission, directly or by
15 arrangement with trade associations or other instrumentalities;

16 (11) To employ, designate as agent, act in concert with, and enter
17 into contracts with any person, council, commission, or other entity
18 for the purpose of promoting the general welfare of the malt beverage
19 industry and particularly for the purpose of assisting in the sale and
20 distribution of Washington beer in domestic and foreign commerce,
21 expending moneys as it may deem necessary or advisable for such purpose
22 and for the purpose of paying its proportionate share of the cost of
23 any program providing direct or indirect assistance to the sale and
24 distribution of Washington beer in domestic or foreign commerce,
25 employing and paying for vendors of professional services of all kinds;

26 (12) To sue and be sued as a commission, without individual
27 liability for acts of the commission within the scope of the powers
28 conferred upon it by this chapter; and

29 (13) To serve as a liaison with the liquor control board.

30 NEW SECTION. **Sec. 8.** The commission shall create, provide for,
31 and conduct a comprehensive and extensive research, promotional, and
32 educational campaign as crop, sales, and market conditions reasonably
33 require. It shall investigate and ascertain the needs of producers,
34 conditions of markets, and degree of public awareness of products, and
35 take into account the information adduced thereby in the discharge of
36 its duties under this chapter.

1 NEW SECTION. **Sec. 9.** The commission shall adopt as major
2 objectives of its research, promotional, and educational campaign such
3 goals as will serve the needs of producers, which may include, without
4 limitation, efforts to:

5 (1) Establish Washington beer as a major factor in markets
6 everywhere;

7 (2) Promote Washington breweries as tourist attractions;

8 (3) Encourage favorable reporting of Washington beer and breweries
9 in the press throughout the world;

10 (4) Establish the state in markets everywhere as a major source of
11 premium beer;

12 (5) Encourage favorable legislative and regulatory treatment of
13 Washington beer in markets everywhere; and

14 (6) Foster economic conditions favorable to investment in the
15 production of Washington beer.

16 NEW SECTION. **Sec. 10.** (1) Except as provided in subsection (2) of
17 this section, the vote of each of the voting members of the commission
18 shall be weighted as provided by this subsection for the transaction of
19 any of the business of the commission. The total voting strength of
20 the entire voting membership of the commission shall be eleven votes.
21 The vote of position one shall be equal to the lesser of the following:
22 Five and one-half votes; or eleven votes times the percentage of the
23 beer produced in the state that is produced by the person filling
24 position one. The percentage shall be based upon the amount of beer
25 produced in the previous calendar year and shall be rounded to the
26 nearest ten percent. The remaining votes of the membership of the
27 commission shall be divided equally among the remaining members of the
28 commission.

29 (2) In the event that the percentage of beer produced by the
30 producer represented by position one falls below twenty-five percent of
31 the beer produced in this state, the weighted voting mechanism provided
32 for in subsection (1) of this section shall cease to be effective. In
33 that case, the voting shall be based on one vote per position.

34 NEW SECTION. **Sec. 11.** The commission shall cause a list to be
35 prepared of all Washington beer producers from any information
36 available from the department. This list shall contain the names and
37 addresses of all persons who produce beer within this state and the

1 amount (by barrellage) of malt beverage produced during the period
2 designated by the commission. A qualified person may, at any time,
3 have his or her name placed upon the list by delivering or mailing the
4 information to the commission. This list shall be corrected and
5 brought up to date in accordance with evidence and information
6 available to the commission on or before December 31st of each year.
7 For all purposes of giving notice and holding referendums, the list on
8 hand, corrected up to the day next preceding the date for issuing
9 notices or ballots as the case may be, is, for purposes of this
10 chapter, deemed to be the list of all producers entitled to notice or
11 to assent or dissent or to vote.

12 NEW SECTION. **Sec. 12.** (1) Pursuant to approval by referendum in
13 accordance with section 13 of this act, commencing on July 1, 1996,
14 there shall be levied, and the commission shall collect, upon all beer
15 produced within this state an annual assessment of one dollar per
16 barrel of beer produced, to be paid by the producer, up to thirty
17 thousand barrels per location.

18 (2) The commission shall recommend rules to the director
19 prescribing the time, place, and method for payment and collection of
20 this assessment.

21 (3) After considering any recommendations made under subsection (2)
22 of this section, the director shall adopt rules, in accordance with
23 chapter 34.05 RCW, prescribing the time, place, and method for the
24 payment and collection of the assessment levied under this section and
25 approved under section 13 of this act.

26 NEW SECTION. **Sec. 13.** (1) For purposes of determining beer
27 producer participation in the commission and assessment under section
28 12 of this act, the director shall conduct a referendum among all beer
29 producers within the state. The requirements of assent or approval of
30 the referendum will be held to be complied with if at least fifty-one
31 percent by numbers of producers replying in the referendum vote
32 affirmatively. The referendum shall be conducted on or before
33 September 15, 1995.

34 (2) If the director determines that the requisite assent has been
35 given, the director shall direct the commission to put into force the
36 assessment in section 12 of this act.

1 (3) If the director determines that the requisite assent has not
2 been given, the director shall direct the commission not to levy the
3 assessment provided in section 12 of this act. If the requisite assent
4 has not been given, the commission shall not continue to specifically
5 foster the interests of beer producers.

6 NEW SECTION. **Sec. 14.** The commission shall deposit moneys
7 collected under section 12 of this act in a separate account in the
8 name of the commission in any bank that is a state depository. All
9 expenditures and disbursements made from this account under this
10 chapter may be made without the necessity of a specific legislative
11 appropriation. None of the provisions of RCW 43.01.050 apply to this
12 account or to the moneys received, collected, or expended as provided
13 in sections 11 through 15 of this act.

14 NEW SECTION. **Sec. 15.** A due and payable assessment levied in such
15 specified amount as determined by the commission under section 12 of
16 this act constitutes a personal debt of every person so assessed or who
17 otherwise owes the assessment, and the assessment is due and payable to
18 the commission when payment is called for by the commission. If a
19 person fails to pay the commission the full amount of the assessment by
20 the date due, the commission may add to the unpaid assessment an amount
21 not exceeding ten percent of the assessment to defray the cost of
22 enforcing its collection. If the person fails to pay any such due and
23 payable assessment or other such sum, the commission may bring a civil
24 action for collection against the person or persons in a court of
25 competent jurisdiction. The action shall be tried and judgment
26 rendered as in any other cause of action for a debt due and payable.

27 NEW SECTION. **Sec. 16.** This act shall be liberally construed to
28 effectuate its purposes.

29 **Sec. 17.** RCW 66.44.800 and 1987 c 452 s 17 are each amended to
30 read as follows:

31 (1) Nothing contained in chapter 15.88 RCW shall affect the
32 compliance by the Washington wine commission with this chapter.

33 (2) Nothing contained in sections 1 through 16 of this act shall
34 affect the compliance by the Washington malt beverage commission with
35 this chapter.

1 **Sec. 18.** RCW 66.28.040 and 1987 c 452 s 15 are each amended to
2 read as follows:

3 Except as permitted by the board under RCW 66.20.010, no brewer,
4 wholesaler, distiller, winery, importer, rectifier, or other
5 manufacturer of liquor shall, within the state, by himself, his or her
6 clerk, servant, or agent, give to any person any liquor; but nothing in
7 this section nor in RCW 66.28.010 shall prevent a brewer, wholesaler,
8 winery, or importer from furnishing samples of beer, malt beverages, or
9 wine to authorized licensees for the purpose of negotiating a sale, in
10 accordance with regulations adopted by the liquor control board,
11 provided that the samples are subject to taxes imposed by RCW 66.24.290
12 and 66.24.210; nothing in this section shall prevent the furnishing of
13 samples of liquor to the board for the purpose of negotiating the sale
14 of liquor to the state liquor control board; nothing in this section
15 shall prevent a brewery, winery, or wholesaler from furnishing beer or
16 wine for instructional purposes under RCW 66.28.150; nothing in this
17 section shall prevent a winery or wholesaler from furnishing wine
18 without charge to a not-for-profit group organized and operated solely
19 for the purpose of enology or the study of viticulture which has been
20 in existence for at least six months and any wine so furnished shall be
21 used solely for such educational purposes, provided that the wine
22 furnished shall be subject to the taxes imposed by RCW 66.24.210;
23 nothing in this section shall prevent a brewer from serving beer or
24 malt beverages without charge, on the brewery premises; nothing in this
25 section shall prevent donations of wine for the purposes of RCW
26 66.12.180; and nothing in this section shall prevent a domestic winery
27 from serving wine without charge, on the winery premises.

28 NEW SECTION. **Sec. 19.** A new section is added to chapter 66.12 RCW
29 to read as follows:

30 The Washington malt beverage commission created under section 3 of
31 this act may purchase or receive donations of malt beverages from
32 breweries and may use such malt beverages for promotional purposes.
33 Malt beverages furnished to the commission under this section that is
34 used within the state is subject to the taxes imposed under RCW
35 66.24.290. No license, permit, or bond is required of the Washington
36 malt beverage commission under this title for promotional activities
37 conducted under sections 1 through 16 of this act.

1 NEW SECTION. **Sec. 20.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 21.** Sections 1 through 16 of this act shall
6 constitute a new chapter in Title 15 RCW.

7 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and shall take
10 effect July 1, 1995.

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