
SENATE BILL 6009

State of Washington

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By Senators Rasmussen, Loveland, Finkbeiner, Morton, Bauer, McAuliffe, Drew and Kohl

Read first time 02/22/95. Referred to Committee on Agriculture & Agricultural Trade & Development.

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

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

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

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

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

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

17 (4) The general welfare of the people of the state will be served
18 by healthy development of the activities of growing and processing
19 hops, which development will improve the tax bases of local communities

1 in which agricultural land and processing facilities are located, and
2 obviate the need for state and federal funding of local services. The
3 industries are therefore affected with the public interest.

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

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

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

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

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

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

18 (6) "Grower" means a person who has a commercial production of
19 hops.

20 (7) "Growers' association" means a nonprofit association of
21 Washington producers of hops, whether or not incorporated, which the
22 director finds to comprise the interested persons affected by
23 appointment of members of the commission or, if the director finds that
24 no such association exists, a group of growers of hops within the state
25 identified by the director as fairly representing growers of hops
26 within the state.

27 (8) "Producer" means any person or other entity that grows within
28 the state hops or any person or other entity licensed under Title 66
29 RCW to produce within the state malt beverages made predominantly from
30 Washington hops.

31 (9) "Eastern Washington" means that portion of the state lying east
32 of the Cascade mountain range.

33 (10) "Western Washington" means that portion of the state lying
34 west of the Cascade mountain range.

35 (11) "Beer" and "malt beverage" for the purposes of this section
36 are as defined in RCW 66.04.010.

1 (12) "Handler" means any Washington hop processor, broker, agent,
2 or person buying or receiving hops to be passed on or exported as hops
3 or malt beverage.

4 NEW SECTION. **Sec. 3.** (1) There is created an agricultural
5 commodity commission to be known and designated as the Washington malt
6 beverage commission. The commission shall be composed of eleven voting
7 members; five voting members shall be growers, five voting members
8 shall be beer producers, and one voting member shall be a wholesaler
9 licensed under RCW 66.24.250. Of the grower members, at least one
10 shall be a person who does not have over fifty acres of hops in
11 production and at least one shall be a person who has over one hundred
12 acres of hops in production. Of the beer producer members, at least
13 two shall be located in western Washington and at least two shall be
14 located in eastern Washington.

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

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

19 (4) Each voting member of the commission shall be a citizen, and
20 resident of this state and over the age of twenty-one years. Each
21 voting member, except the member holding position eleven, must be or
22 must have been engaged in that phase of the grower or beer producer
23 industry that he or she is appointed to represent, and must during his
24 or her term of office derive a substantial portion of income therefrom,
25 or have a substantial investment in the growing of hops or the
26 production of beer from hops as an owner, lessee, partner, or a
27 stockholder owning at least ten percent of the voting stock in a
28 corporation engaged in the growing of hops or beer production; or the
29 manager or executive officer of such a corporation. These
30 qualifications apply throughout each member's term of office.

31 NEW SECTION. **Sec. 4.** The appointive voting positions on the
32 commission shall be designated as follows: The beer producers shall be
33 designated positions one, two, three, four, and five; the growers shall
34 be designated positions six, seven, eight, nine, and ten; and the
35 wholesaler shall be position eleven. The member designated as filling
36 position one shall be a person producing over the largest volume of
37 beer annually, not to exceed one hundred thousand barrels per location

1 per year. The member designated as position one shall be the sole
2 representative, directly or indirectly, of the producer eligible to
3 hold position one and in no event shall that producer directly or
4 indirectly control more than fifty percent of the votes of the
5 commission.

6 The regular terms of office shall be three years from the date of
7 appointment and until their successors are appointed. However, the
8 first terms of the members appointed upon July 1, 1995, shall be as
9 follows: Positions one, six, and eleven shall terminate July 1, 1998;
10 positions two, four, seven, and nine shall terminate July 1, 1997; and
11 positions three, five, eight, and ten shall terminate July 1, 1996.

12 NEW SECTION. **Sec. 5.** The director shall appoint the members of
13 the commission. In making such appointments of the voting members, the
14 director shall take into consideration recommendations made by the
15 growers' association and by beer producers the persons recommended for
16 appointment as members of the commission. In appointing persons to the
17 commission, the director shall seek to ensure as nearly as possible a
18 balanced representation on the commission which would reflect the
19 composition of the growers and beer producers throughout the state as
20 to number of acres cultivated and amount of beer produced.

21 The appointment shall be carried out immediately subsequent to July
22 1, 1995, and members so appointed as set forth in this chapter shall
23 serve for the periods set forth for the original members of the
24 commission under section 4 of this act.

25 In the event a position on the commission becomes vacant due to
26 resignation, disqualification, death, or for any other reason, the
27 unexpired term of the position shall immediately be filled by
28 appointment by the director.

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

31 NEW SECTION. **Sec. 6.** Obligations incurred by the commission and
32 liabilities or claims against the commission shall be enforced only
33 against the assets of the commission in the same manner as if it were
34 a corporation and no liability for the debts or actions of the
35 commission shall exist against either the state of Washington or any
36 subdivision or instrumentality thereof or against any member, officer,
37 employee, or agent of the commission in his or her individual capacity.

1 The members of the commission, including employees of the commission,
2 shall not be held responsible individually or any way whatsoever to any
3 person for errors in judgment, mistakes, or other acts, either of
4 commission or omission, as principal, agent, person, or employees,
5 except for their own individual acts of dishonesty or crime. No such
6 person or employee shall be held responsible individually for any act
7 or omission of any other members of the commission.

8 NEW SECTION. **Sec. 7.** The powers and duties of the commission
9 include:

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

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

20 (3) At the pleasure of the commission, to employ and discharge
21 managers, secretaries, agents, attorneys, and employees and to engage
22 the services of independent contractors as the commission deems
23 necessary, to prescribe their duties, and to fix their compensation;

24 (4) To receive donations of beer from breweries for promotional
25 purposes;

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

37 (6) To acquire and transfer personal and real property, establish
38 offices, incur expense, enter into contracts (including contracts for

1 creation and printing of promotional literature, which contracts shall
2 not be subject to chapter 43.78 RCW, but which shall be cancelable by
3 the commission unless performed under conditions of employment which
4 substantially conform to the laws of this state and the rules of the
5 department of labor and industries). The commission may create such
6 debt and other liabilities as may be reasonable for proper discharge of
7 its duties under this chapter;

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

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

17 (9) To create and maintain a list of producers and to disseminate
18 information among and solicit the opinions of producers with respect to
19 the discharge of the duties of the commission, directly or by
20 arrangement with trade associations or other instrumentalities;

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

32 (11) To sue and be sued as a commission, without individual
33 liability for acts of the commission within the scope of the powers
34 conferred upon it by this chapter.

35 NEW SECTION. **Sec. 8.** The commission shall create, provide for,
36 and conduct a comprehensive and extensive research, promotional, and
37 educational campaign as crop, sales, and market conditions reasonably
38 require. It shall investigate and ascertain the needs of producers,

1 conditions of markets, and degree of public awareness of products, and
2 take into account the information adduced thereby in the discharge of
3 its duties under this chapter.

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

8 (1) Establish Washington beer as a major factor in markets
9 everywhere;

10 (2) Promote Washington breweries as tourist attractions;

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

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

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

17 (6) Foster economic conditions favorable to investment in the
18 production of hops and Washington beer;

19 (7) Advance knowledge and practice of production of hops in this
20 state;

21 (8) Discover and develop new and improved hops for the reliable and
22 economical production of hops in the state; and

23 (9) Advance knowledge and practice of the processing of hops in the
24 state.

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

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

6 NEW SECTION. **Sec. 11.** (1) The commission shall cause a list to be
7 prepared of all Washington growers from any information available from
8 the department, growers' association, or beer producers. This list
9 shall contain the names and addresses of all persons who grow hops for
10 sale or use by beer producers within this state and the amount (by
11 tonnage) of hops produced during the period designated by the
12 commission. A qualified person may, at any time, have his or her name
13 placed upon the list by delivering or mailing the information to the
14 commission. This list shall be corrected and brought up to date in
15 accordance with evidence and information available to the commission on
16 or before December 31st of each year. For all purposes of giving
17 notice and holding referendums, the list on hand, corrected up to the
18 day next preceding the date for issuing notices or ballots as the case
19 may be, is, for purposes of this chapter, deemed to be the list of all
20 growers entitled to notice or to assent or dissent or to vote.

21 (2) The commission shall develop a reporting system to document
22 that the hops growers in this state are reporting quantities of hops
23 grown and subject to the assessment as provided in section 12 of this
24 act.

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

31 (2) The commission shall recommend rules to the director
32 prescribing the time, place, and method for payment and collection of
33 this assessment. For such purpose, the commission may recommend that
34 the director, by rule, require the beer producers within this state to
35 allocate the assessments among growers or handlers whose hops they
36 purchase or accept delivery and remit the assessments to the
37 commission.

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

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

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

17 (3) If the director determines that the requisite assent has not
18 been given, the director shall direct the commission not to levy the
19 assessment provided in section 12 of this act. If the requisite assent
20 has not been given, the commission shall not continue to specifically
21 foster the interests of hop growers and beer producers.

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

30 NEW SECTION. **Sec. 15.** A due and payable assessment levied in such
31 specified amount as determined by the commission under section 12 of
32 this act constitutes a personal debt of every person so assessed or who
33 otherwise owes the assessment, and the assessment is due and payable to
34 the commission when payment is called for by the commission. If a
35 person fails to pay the commission the full amount of the assessment by
36 the date due, the commission may add to the unpaid assessment an amount

1 not exceeding ten percent of the assessment to defray the cost of
2 enforcing its collection. If the person fails to pay any such due and
3 payable assessment or other such sum, the commission may bring a civil
4 action for collection against the person or persons in a court of
5 competent jurisdiction. The action shall be tried and judgment
6 rendered as in any other cause of action for a debt due and payable.

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

9 NEW SECTION. **Sec. 17.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act shall
14 constitute a new chapter in Title 15 RCW.

15 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and shall take
18 effect July 1, 1995.

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