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ENGROSSED SENATE BILL 6737

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State of Washington

58th Legislature

2004 Regular Session

By Senators Hewitt and Honeyford

Read first time 02/06/2004. Referred to Committee on Commerce & Trade.

1 AN ACT Relating to distribution of liquor; and amending RCW  
2 66.08.010, 66.08.050, and 66.28.180.

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

4 **Sec. 1.** RCW 66.08.010 and 1933 ex.s. c 62 s 2 are each amended to  
5 read as follows:

6 (1) This entire title shall be deemed an exercise of the police  
7 power of the state, for the protection of the welfare, health, peace,  
8 morals, and safety of the people of the state, and all its provisions  
9 shall be liberally construed for the accomplishment of that purpose.

10 (2) This entire title is enacted, pursuant to the authority of this  
11 state under the twenty-first amendment to the United States  
12 Constitution, to promote the public's interest in fostering the orderly  
13 and responsible distribution of liquor as defined in RCW 66.04.010  
14 towards effective control of consumption.

15 **Sec. 2.** RCW 66.08.050 and 1997 c 228 s 1 are each amended to read  
16 as follows:

17 The board, subject to the provisions of this title and the rules,  
18 shall:

1 (1) Determine the localities within which state liquor stores shall  
2 be established throughout the state, and the number and situation of  
3 the stores within each locality;

4 (2) Appoint in cities and towns and other communities, in which no  
5 state liquor store is located, liquor vendors. In addition, the board  
6 may appoint, in its discretion, a manufacturer that also manufactures  
7 liquor products other than wine under a license under this title, as a  
8 vendor for the purpose of sale of liquor products of its own  
9 manufacture on the licensed premises only. Such liquor vendors shall  
10 be agents of the board and be authorized to sell liquor to such  
11 persons, firms or corporations as provided for the sale of liquor from  
12 a state liquor store, and such vendors shall be subject to such  
13 additional rules and regulations consistent with this title as the  
14 board may require;

15 (3) Establish all necessary warehouses for the storing and  
16 bottling, diluting and rectifying of stocks of liquors for the purposes  
17 of this title;

18 (4) Provide for the leasing for periods not to exceed ten years of  
19 all premises required for the conduct of the business; and for  
20 remodeling the same, and the procuring of their furnishings, fixtures,  
21 and supplies; and for obtaining options of renewal of such leases by  
22 the lessee. The terms of such leases in all other respects shall be  
23 subject to the direction of the board;

24 (5) Determine the nature, form and capacity of all packages to be  
25 used for containing liquor kept for sale under this title;

26 (6) Execute or cause to be executed, all contracts, papers, and  
27 documents in the name of the board, under such regulations as the board  
28 may fix;

29 (7) Pay all customs, duties, excises, charges and obligations  
30 whatsoever relating to the business of the board;

31 (8) Require bonds from all employees in the discretion of the  
32 board, and to determine the amount of fidelity bond of each such  
33 employee;

34 (9) Perform services for the state lottery commission to such  
35 extent, and for such compensation, as may be mutually agreed upon  
36 between the board and the commission;

37 (10) Accept and deposit into the general fund-local account and  
38 disburse, subject to appropriation, federal grants or other funds or

1 donations from any source for the purpose of improving public awareness  
2 of the health risks associated with alcohol consumption by youth and  
3 the abuse of alcohol by adults in Washington state. The board's  
4 alcohol awareness program shall cooperate with federal and state  
5 agencies, interested organizations, and individuals to effect an active  
6 public beverage alcohol awareness program;

7 (11) Perform investigation and analysis regarding the effectiveness  
8 of existing liquor controls and regulation, including whether they are  
9 achieving their intended goals. Such investigation and recommendations  
10 shall be conducted not less than once each biennium, and in the  
11 discretion of the board make recommendations to the legislature;

12 (12) Perform all other matters and things, whether similar to the  
13 foregoing or not, to carry out the provisions of this title, and shall  
14 have full power to do each and every act necessary to the conduct of  
15 its business, including all buying, selling, preparation and approval  
16 of forms, and every other function of the business whatsoever, subject  
17 only to audit by the state auditor: PROVIDED, That the board shall  
18 have no authority to regulate the content of spoken language on  
19 licensed premises where wine and other liquors are served and where  
20 there is not a clear and present danger of disorderly conduct being  
21 provoked by such language.

22 **Sec. 3.** RCW 66.28.180 and 1997 c 321 s 51 are each amended to read  
23 as follows:

24 It is unlawful for a person, firm, or corporation holding a  
25 certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer  
26 distributor's license, a domestic brewer's license, a microbrewer's  
27 license, a beer importer's license, a beer distributor's license, a  
28 domestic winery license, a wine importer's license, or a wine  
29 distributor's license within the state of Washington to modify any  
30 prices without prior notification to and approval of the board.

31 (1) Intent. This section is enacted, pursuant to the authority of  
32 this state under the twenty-first amendment to the United States  
33 Constitution, to promote the public's interest in fostering the orderly  
34 and responsible distribution of malt beverages and wine towards  
35 effective control of consumption; to promote the fair and efficient  
36 three-tier system of distribution of such beverages; and to confirm

1 existing board rules as the clear expression of state policy to  
2 regulate the manner of selling and pricing of wine and malt beverages  
3 by licensed suppliers and distributors.

4 (2) Beer and wine distributor price posting.

5 (a) Every beer or wine distributor shall file with the board at its  
6 office in Olympia a price posting showing the wholesale prices at which  
7 any and all brands of beer and wine sold by such beer and/or wine  
8 distributor shall be sold to retailers within the state.

9 (b) Each price posting shall be made on a form prepared and  
10 furnished by the board, or a reasonable facsimile thereof, and shall  
11 set forth:

12 (i) All brands, types, packages, and containers of beer offered for  
13 sale by such beer and/or wine distributor;

14 (ii) The wholesale prices thereof to retail licensees, including  
15 allowances, if any, for returned empty containers.

16 (c) No beer and/or wine distributor may sell or offer to sell any  
17 package or container of beer or wine to any retail licensee at a price  
18 differing from the price for such package or container as shown in the  
19 price posting filed by the beer and/or wine distributor and then in  
20 effect, according to rules adopted by the board.

21 (d) Quantity discounts are prohibited. No price may be posted that  
22 is below acquisition cost plus ten percent of acquisition cost.  
23 However, the board is empowered to review periodically, as it may deem  
24 appropriate, the amount of the percentage of acquisition cost as a  
25 minimum mark-up over cost and to modify such percentage by rule of the  
26 board, except such percentage shall be not less than ten percent.

27 (e) Distributor prices on a "close-out" item shall be accepted by  
28 the board if the item to be discontinued has been listed on the state  
29 market for a period of at least six months, and upon the further  
30 condition that the distributor who posts such a close-out price shall  
31 not restock the item for a period of one year following the first  
32 effective date of such close-out price.

33 (f) The board may reject any price posting that it deems to be in  
34 violation of this section or any rule, or portion thereof, or that  
35 would tend to disrupt the orderly sale and distribution of beer and  
36 wine. Whenever the board rejects any posting, the licensee submitting  
37 the posting may be heard by the board and shall have the burden of  
38 showing that the posting is not in violation of this section or a rule

1 or does not tend to disrupt the orderly sale and distribution of beer  
2 and wine. If the posting is accepted, it shall become effective at the  
3 time fixed by the board. If the posting is rejected, the last  
4 effective posting shall remain in effect until such time as an amended  
5 posting is filed and approved, in accordance with the provisions of  
6 this section.

7 (g) Prior to the effective date of the posted prices, all price  
8 postings filed as required by this section constitute investigative  
9 information and shall (~~at all times be open to inspection to all trade~~  
10 ~~buyers within the state of Washington and shall not in any sense be~~  
11 ~~considered confidential~~) not be subject to disclosure, pursuant to RCW  
12 42.17.310(1)(d).

13 (h) Any beer and/or wine distributor or employee authorized by the  
14 distributor-employer may sell beer and/or wine at the distributor's  
15 posted prices to any annual or special occasion retail licensee upon  
16 presentation to the distributor or employee at the time of purchase of  
17 a special permit issued by the board to such licensee.

18 (i) Every annual or special occasion retail licensee, upon  
19 purchasing any beer and/or wine from a distributor, shall immediately  
20 cause such beer or wine to be delivered to the licensed premises, and  
21 the licensee shall not thereafter permit such beer to be disposed of in  
22 any manner except as authorized by the license.

23 (ii) Beer and wine sold as provided in this section shall be  
24 delivered by the distributor or an authorized employee either to the  
25 retailer's licensed premises or directly to the retailer at the  
26 distributor's licensed premises. A distributor's prices to retail  
27 licensees shall be the same at both such places of delivery.

28 (3) Beer and wine suppliers' price filings, contracts, and  
29 memoranda.

30 (a) Every brewery and winery offering beer and/or wine for sale  
31 within the state shall file with the board at its office in Olympia a  
32 copy of every written contract and a memorandum of every oral agreement  
33 which such brewery or winery may have with any beer or wine  
34 distributor, which contracts or memoranda shall contain a schedule of  
35 prices charged to distributors for all items and all terms of sale,  
36 including all regular and special discounts; all advertising, sales and  
37 trade allowances, and incentive programs; and all commissions, bonuses  
38 or gifts, and any and all other discounts or allowances. Whenever

1 changed or modified, such revised contracts or memoranda shall  
2 forthwith be filed with the board as provided for by rule. The  
3 provisions of this section also apply to certificate of approval  
4 holders, beer and/or wine importers, and beer and/or wine distributors  
5 who sell to other beer and/or wine distributors.

6 Each price schedule shall be made on a form prepared and furnished  
7 by the board, or a reasonable facsimile thereof, and shall set forth  
8 all brands, types, packages, and containers of beer or wine offered for  
9 sale by such licensed brewery or winery; all additional information  
10 required may be filed as a supplement to the price schedule forms.

11 (b) Prices filed by a brewery or winery shall be uniform prices to  
12 all distributors on a statewide basis less bona fide allowances for  
13 freight differentials. Quantity discounts are prohibited. No price  
14 shall be filed that is below acquisition/production cost plus ten  
15 percent of that cost, except that acquisition cost plus ten percent of  
16 acquisition cost does not apply to sales of beer or wine between a beer  
17 or wine importer who sells beer or wine to another beer or wine  
18 importer or to a beer or wine distributor, or to a beer or wine  
19 distributor who sells beer or wine to another beer or wine distributor.  
20 However, the board is empowered to review periodically, as it may deem  
21 appropriate, the amount of the percentage of acquisition/production  
22 cost as a minimum mark-up over cost and to modify such percentage by  
23 rule of the board, except such percentage shall be not less than ten  
24 percent.

25 (c) No brewery, winery, certificate of approval holder, beer or  
26 wine importer, or beer or wine distributor may sell or offer to sell  
27 any beer or wine to any persons whatsoever in this state until copies  
28 of such written contracts or memoranda of such oral agreements are on  
29 file with the board.

30 (d) No brewery or winery may sell or offer to sell any package or  
31 container of beer or wine to any distributor at a price differing from  
32 the price for such package or container as shown in the schedule of  
33 prices filed by the brewery or winery and then in effect, according to  
34 rules adopted by the board.

35 (e) The board may reject any supplier's price filing, contract, or  
36 memorandum of oral agreement, or portion thereof that it deems to be in  
37 violation of this section or any rule or that would tend to disrupt the  
38 orderly sale and distribution of beer or wine. Whenever the board

1 rejects any such price filing, contract, or memorandum, the licensee  
2 submitting the price filing, contract, or memorandum may be heard by  
3 the board and shall have the burden of showing that the price filing,  
4 contract, or memorandum is not in violation of this section or a rule  
5 or does not tend to disrupt the orderly sale and distribution of beer  
6 or wine. If the price filing, contract, or memorandum is accepted, it  
7 shall become effective at a time fixed by the board. If the price  
8 filing, contract, or memorandum, or portion thereof, is rejected, the  
9 last effective price filing, contract, or memorandum shall remain in  
10 effect until such time as an amended price filing, contract, or  
11 memorandum is filed and approved, in accordance with the provisions of  
12 this section.

13 (f) Prior to the effective date of the posted prices, all prices,  
14 contracts, and memoranda filed as required by this section constitute  
15 investigative information and shall (~~(at all times be open to~~  
16 ~~inspection to all trade buyers within the state of Washington and shall~~  
17 ~~not in any sense be considered confidential)) not be subject to  
18 disclosure, pursuant to RCW 42.17.310(1)(d).~~

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