

2 SSB 6009 - S AMD - 186  
3 By Senators Rasmussen and Morton

4 ADOPTED 3/13/95

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature declares that:

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

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

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

19 (4) The general welfare of the people of the state will be served  
20 by continued development of the production of malt beverages, which  
21 development will improve the tax bases of local communities in which  
22 processing facilities are located, and reduce the need for state and  
23 federal funding of local services. The industries are therefore  
24 affected with the public interest.

25 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
26 otherwise, the definitions in this section apply throughout this  
27 chapter.

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

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

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

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

1 (5) "Person" includes any individual, firm, corporation, trust,  
2 association, partnership, society, or any other organization of  
3 individuals.

4 (6) "Eastern Washington" means that portion of the state lying east  
5 of the Cascade mountain range.

6 (7) "Western Washington" means that portion of the state lying west  
7 of the Cascade mountain range.

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

10 NEW SECTION. **Sec. 3.** (1) The agricultural commodity commission,  
11 authorized by referendum under section 12 of this act, shall be known  
12 and designated as the Washington malt beverage commission. The  
13 commission shall be composed of nine voting members; eight voting  
14 members shall be beer producers and one voting member shall be a  
15 wholesaler licensed under RCW 66.24.250. Of the beer producer members,  
16 at least three shall be located in western Washington and at least  
17 three shall be located in eastern Washington.

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

20 (3) Six voting members of the commission constitute a quorum for  
21 the transaction of any business of the commission.

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

33 NEW SECTION. **Sec. 4.** The appointive voting positions on the  
34 commission shall be designated as follows: The beer producers shall be  
35 designated positions one, two, three, four, five, six, seven, and  
36 eight; and the wholesaler shall be position nine. The member  
37 designated as filling position one shall be a beer producer producing

1 the largest volume of beer annually, not to exceed one hundred thousand  
2 barrels per location per year. The member designated as position one  
3 shall be the sole representative, directly or indirectly, of the beer  
4 producer eligible to hold position one.

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

11 NEW SECTION. **Sec. 5.** Within ninety days after approval of the  
12 referendum held pursuant to section 12 of this act, the director shall  
13 appoint the members of the commission. In making such appointments of  
14 the voting members, the director shall take into consideration  
15 recommendations made by the 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 that would reflect the  
19 composition of the beer producers throughout the state as to amount of  
20 malt beverage produced.

21 In the event a position on the commission becomes vacant due to  
22 resignation, disqualification, death, or for any other reason, the  
23 unexpired term of the position shall immediately be filled by  
24 appointment by the director.

25 After approval of the referendum held pursuant to section 12 of  
26 this act, each member of the commission shall be entitled to  
27 reimbursement for travel expenses in accordance with RCW 43.03.050 and  
28 43.03.060.

29 NEW SECTION. **Sec. 6.** Obligations incurred by the commission and  
30 liabilities or claims against the commission shall be enforced only  
31 against the assets of the commission in the same manner as if it were  
32 a corporation and no liability for the debts or actions of the  
33 commission shall exist against either the state of Washington or any  
34 subdivision or instrumentality thereof or against any member, officer,  
35 employee, or agent of the commission in his or her individual capacity.  
36 The members of the commission, including employees of the commission,  
37 shall not be held responsible individually or any way whatsoever to any

1 person for errors in judgment, mistakes, or other acts, either of  
2 commission or omission, as principal, agent, person, or employees,  
3 except for their own individual acts of dishonesty or crime. No such  
4 person or employee shall be held responsible individually for any act  
5 or omission of any other members of the commission.

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

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

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

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

22 (4) To receive donations of beer from breweries for promotional  
23 purposes;

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

26 (6) 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 beer  
32 producer, supplier, or manufacturer of any kind. Such dissemination  
33 shall be for agricultural development or trade promotion, which may  
34 include 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 (7) 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 (8) 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 (9) 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 (10) To create and maintain a list of beer producers and to  
18 disseminate information among and solicit the opinions of beer  
19 producers with respect to the discharge of the duties of the  
20 commission, directly or by arrangement with trade associations or other  
21 instrumentalities;

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

32 (12) 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; and

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

36 NEW SECTION. **Sec. 8.** The commission shall create, provide for,  
37 and conduct a comprehensive and extensive research, promotional, and  
38 educational campaign as sales and market conditions reasonably require.

1 It shall investigate and ascertain the needs of beer producers,  
2 conditions of markets, and degree of public awareness of products, and  
3 take into account the information adduced thereby in the discharge of  
4 its duties under this chapter.

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

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

11 (2) Promote Washington breweries as tourist attractions;

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

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

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

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

20 NEW SECTION. **Sec. 10.** The commission shall cause a list to be  
21 prepared of all Washington beer producers from any information  
22 available from the department. This list shall contain the names and  
23 addresses of all persons who produce beer within this state and the  
24 amount (by barrellage) of malt beverage produced during the period  
25 designated by the commission. A qualified person may, at any time,  
26 have his or her name placed upon the list by delivering or mailing the  
27 information to the commission. This list shall be corrected and  
28 brought up to date in accordance with evidence and information  
29 available to the commission on or before December 31st of each year.  
30 For all purposes of giving notice and holding referendums, the list on  
31 hand, corrected up to the day next preceding the date for issuing  
32 notices or ballots as the case may be, is, for purposes of this  
33 chapter, deemed to be the list of all beer producers entitled to notice  
34 or to assent or dissent or to vote.

35 NEW SECTION. **Sec. 11.** (1) Pursuant to approval by referendum in  
36 accordance with section 12 of this act, commencing on July 1, 1996,

1 there shall be levied, and the commission shall collect, upon all beer  
2 produced within this state an annual assessment of one dollar per  
3 barrel of beer produced, on up to thirty thousand barrels per location,  
4 to be paid by the beer producer as defined in section 2(1) of this act.  
5 The commission may increase the amount of assessment above one dollar  
6 per barrel but not to exceed the fiscal growth factor as provided in  
7 RCW 43.135.055.

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

11 (3) After considering any recommendations made under subsection (2)  
12 of this section, the director shall adopt rules, in accordance with  
13 chapter 34.05 RCW, prescribing the time, place, and method for the  
14 payment and collection of the assessment levied under this section and  
15 approved under section 12 of this act.

16 NEW SECTION. **Sec. 12.** (1) Upon receipt by July 15, 1995, of a  
17 petition to form a commission signed by one or more beer producers, the  
18 director shall conduct a referendum among all beer producers within the  
19 state for purposes of determining beer producer participation in the  
20 commission and assessment under section 11 of this act. The  
21 requirements of assent or approval of the referendum will be held to be  
22 complied with if at least sixty percent of the beer producers reply to  
23 the referendum and that at least fifty-one percent by numbers of beer  
24 producers replying in the referendum vote affirmatively. The  
25 referendum process shall be initiated on or before September 15, 1995.

26 (2) If the director determines that the requisite assent has been  
27 given, the director shall direct the commission to put into force the  
28 assessment in section 11 of this act.

29 (3) If the director determines that the requisite assent has not  
30 been given, the director shall not appoint the commission nor commence  
31 action to levy the assessment provided in section 11 of this act. If  
32 the requisite assent has not been given, the commission shall not be  
33 activated to specifically foster the interests of beer producers.

34 NEW SECTION. **Sec. 13.** The commission shall deposit moneys  
35 collected under section 11 of this act in a separate account in the  
36 name of the commission in any bank that is a state depository. All  
37 expenditures and disbursements made from this account under this

1 chapter may be made without the necessity of a specific legislative  
2 appropriation. None of the provisions of RCW 43.01.050 apply to this  
3 account or to the moneys received, collected, or expended as provided  
4 in sections 10 through 14 of this act.

5 NEW SECTION. **Sec. 14.** A due and payable assessment levied in such  
6 specified amount as determined by the commission under section 11 of  
7 this act constitutes a personal debt of every person so assessed or who  
8 otherwise owes the assessment, and the assessment is due and payable to  
9 the commission when payment is called for by the commission. If a  
10 person fails to pay the commission the full amount of the assessment by  
11 the date due, the commission may add to the unpaid assessment an amount  
12 not exceeding ten percent of the assessment to defray the cost of  
13 enforcing its collection. If the person fails to pay any such due and  
14 payable assessment or other such sum, the commission may bring a civil  
15 action for collection against the person or persons in a court of  
16 competent jurisdiction. The action shall be tried and judgment  
17 rendered as in any other cause of action for a debt due and payable.

18 NEW SECTION. **Sec. 15.** (1) Prior to conducting the referendum as  
19 provided in section 12 of this act, the director may require the  
20 petitioners to deposit with him or her such amount of money the  
21 director may deem necessary to defray the expenses of conducting the  
22 referendum. If the referendum is approved, the petitioners shall be  
23 entitled to receive reimbursement from the commission the amount of the  
24 deposit provided to hold the referendum.

25 (2) All costs incurred by the department, including the adoption of  
26 rules and other actions necessary to carry out the provisions of this  
27 chapter, shall be reimbursed by the commission.

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

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

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

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



1 this chapter.

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

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

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

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

1 conducted under sections 1 through 16 of this act.

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

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

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

12 **SSB 6009** - S AMD - 186  
13 By Senators Rasmussen and Morton

14 ADOPTED 3/13/95

15 On page 1, line 1 of the title, after "commission;" strike the  
16 remainder of the title and insert "amending RCW 66.44.800 and  
17 66.28.040; adding a new section to chapter 66.12 RCW; adding a new  
18 chapter to Title 15 RCW; providing an effective date; and declaring an  
19 emergency."

--- END ---