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**SUBSTITUTE SENATE BILL 6812**

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**State of Washington**

**56th Legislature**

**2000 Regular Session**

**By** Senate Committee on Commerce, Trade, Housing & Financial  
Institutions (originally sponsored by Senator Prentice)

Read first time 02/04/2000.

1 AN ACT Relating to contract brewing by domestic brewers; and  
2 amending RCW 66.28.180.

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

4 **Sec. 1.** RCW 66.28.180 and 1997 c 321 s 51 are each amended to read  
5 as follows:

6 It is unlawful for a person, firm, or corporation holding a  
7 certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer  
8 distributor's license, a domestic brewer's license, a microbrewer's  
9 license, a beer importer's license, a beer distributor's license, a  
10 domestic winery license, a wine importer's license, or a wine  
11 distributor's license within the state of Washington to modify any  
12 prices without prior notification to and approval of the board.

13 (1) Intent. This section is enacted, pursuant to the authority of  
14 this state under the twenty-first amendment to the United States  
15 Constitution, to promote the public's interest in fostering the orderly  
16 and responsible distribution of malt beverages and wine towards  
17 effective control of consumption; to promote the fair and efficient  
18 three-tier system of distribution of such beverages; and to confirm  
19 existing board rules as the clear expression of state policy to

1 regulate the manner of selling and pricing of wine and malt beverages  
2 by licensed suppliers and distributors.

3 (2) Beer and wine distributor price posting.

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

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

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

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

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

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

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

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

1 time fixed by the board. If the posting is rejected, the last  
2 effective posting shall remain in effect until such time as an amended  
3 posting is filed and approved, in accordance with the provisions of  
4 this section.

5 (g) All price postings filed as required by this section shall at  
6 all times be open to inspection to all trade buyers within the state of  
7 Washington and shall not in any sense be considered confidential.

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

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

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

23 (3) Beer and wine suppliers' price filings, contracts, and  
24 memoranda.

25 (a) Every brewery and winery offering beer and/or wine for sale  
26 within the state shall file with the board at its office in Olympia a  
27 copy of every written contract and a memorandum of every oral agreement  
28 which such brewery or winery may have with any beer or wine  
29 distributor, which contracts or memoranda shall contain a schedule of  
30 prices charged to distributors for all items and all terms of sale,  
31 including all regular and special discounts; all advertising, sales and  
32 trade allowances, and incentive programs; and all commissions, bonuses  
33 or gifts, and any and all other discounts or allowances. Whenever  
34 changed or modified, such revised contracts or memoranda shall  
35 forthwith be filed with the board as provided for by rule. The  
36 provisions of this section also apply to certificate of approval  
37 holders, beer and/or wine importers, and beer and/or wine distributors  
38 who sell to other beer and/or wine distributors. However, this section  
39 does not apply to domestic breweries with respect to contract

1 manufacturing arrangements with beer distributors that: (i) Are also  
2 breweries or manufacturers of beer located outside the state of  
3 Washington; and (ii) in the state of Washington sell only to other beer  
4 distributors.

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

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

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

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

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

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

11 (f) All prices, contracts, and memoranda filed as required by this  
12 section shall at all times be open to inspection to all trade buyers  
13 within the state of Washington and shall not in any sense be considered  
14 confidential.

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