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ENGROSSED SUBSTITUTE SENATE BILL 6009

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

18 (4) The general welfare of the people of the state will be served  
19 by continued development of the production of malt beverages, which

1 development will improve the tax bases of local communities in which  
2 processing facilities are located, and reduce the need for state and  
3 federal funding of local services. The industries are therefore  
4 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" means any person or other entity licensed under  
9 Title 66 RCW, to produce within the state, beer or malt beverage, and  
10 who produces under one hundred thousand barrels of beer annually per  
11 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) "Eastern Washington" means that portion of the state lying east  
20 of the Cascade mountain range.

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

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

25 NEW SECTION. **Sec. 3.** (1) The agricultural commodity commission,  
26 authorized by referendum under section 12 of this act, shall be known  
27 and designated as the Washington malt beverage commission. The  
28 commission shall be composed of nine voting members; eight voting  
29 members shall be beer producers and one voting member shall be a  
30 wholesaler licensed under RCW 66.24.250. Of the beer producer members,  
31 at least three shall be located in western Washington and at least  
32 three shall be located in eastern Washington.

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

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

1 (4) Each voting member of the commission shall be a citizen, and  
2 resident of this state and over the age of twenty-one years. Each  
3 voting member, except the member holding position nine, must be or must  
4 have been engaged in that phase of the industry that he or she is  
5 appointed to represent, and must during his or her term of office  
6 derive a substantial portion of income therefrom, or have a substantial  
7 investment in the production of beer as an owner, lessee, partner, or  
8 a stockholder owning at least ten percent of the voting stock in a  
9 corporation engaged in the production; or the manager or executive  
10 officer of such a corporation. These qualifications apply throughout  
11 each member's term of office.

12 NEW SECTION. **Sec. 4.** The appointive voting positions on the  
13 commission shall be designated as follows: The beer producers shall be  
14 designated positions one, two, three, four, five, six, seven, and  
15 eight; and the wholesaler shall be position nine. The member  
16 designated as filling position one shall be a beer producer producing  
17 the largest volume of beer annually, not to exceed one hundred thousand  
18 barrels per location per year. The member designated as position one  
19 shall be the sole representative, directly or indirectly, of the beer  
20 producer eligible to hold position one.

21 The regular terms of office shall be three years from the date of  
22 appointment and until their successors are appointed. However, the  
23 first terms of the members appointed after July 1, 1995, shall be as  
24 follows: Positions one, six, and nine shall terminate July 1, 1998;  
25 positions two, four, and seven shall terminate July 1, 1997; and  
26 positions three, five, and eight shall terminate July 1, 1996.

27 NEW SECTION. **Sec. 5.** Within ninety days after approval of the  
28 referendum held pursuant to section 12 of this act, the director shall  
29 appoint the members of the commission. In making such appointments of  
30 the voting members, the director shall take into consideration  
31 recommendations made by the beer producers the persons recommended for  
32 appointment as members of the commission. In appointing persons to the  
33 commission, the director shall seek to ensure as nearly as possible a  
34 balanced representation on the commission that would reflect the  
35 composition of the beer producers throughout the state as to amount of  
36 malt beverage produced.

1 In the event a position on the commission becomes vacant due to  
2 resignation, disqualification, death, or for any other reason, the  
3 unexpired term of the position shall immediately be filled by  
4 appointment by the director.

5 After approval of the referendum held pursuant to section 12 of  
6 this act, each member of the commission shall be entitled to  
7 reimbursement for travel expenses in accordance with RCW 43.03.050 and  
8 43.03.060.

9 NEW SECTION. **Sec. 6.** Obligations incurred by the commission and  
10 liabilities or claims against the commission shall be enforced only  
11 against the assets of the commission in the same manner as if it were  
12 a corporation and no liability for the debts or actions of the  
13 commission shall exist against either the state of Washington or any  
14 subdivision or instrumentality thereof or against any member, officer,  
15 employee, or agent of the commission in his or her individual capacity.  
16 The members of the commission, including employees of the commission,  
17 shall not be held responsible individually or any way whatsoever to any  
18 person for errors in judgment, mistakes, or other acts, either of  
19 commission or omission, as principal, agent, person, or employees,  
20 except for their own individual acts of dishonesty or crime. No such  
21 person or employee shall be held responsible individually for any act  
22 or omission of any other members of the commission.

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

25 (1) To elect a chair and such officers as the commission deems  
26 advisable. The officers shall include a treasurer who is responsible  
27 for all receipts and disbursements by the commission and the faithful  
28 discharge of whose duties shall be guaranteed by a bond at the sole  
29 expense of the commission. The commission shall adopt rules for its  
30 own governance, which shall provide for the holding of an annual  
31 meeting for the election of officers and transaction of other business  
32 and for such other meetings as the commission may direct;

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

35 (3) At the pleasure of the commission, to employ and discharge  
36 managers, secretaries, agents, attorneys, and employees and to engage

1 the services of independent contractors as the commission deems  
2 necessary, to prescribe their duties, and to fix their compensation;

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

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

7 (6) To engage directly or indirectly in the promotion of Washington  
8 beer, including without limitation the acquisition in any lawful manner  
9 and the dissemination without charge of beer, which dissemination shall  
10 not be deemed a sale for any purpose and in which dissemination the  
11 commission shall not be deemed a beer producer, supplier, or  
12 manufacturer of any kind or the clerk, servant, or agent of a beer  
13 producer, supplier, or manufacturer of any kind. Such dissemination  
14 shall be for agricultural development or trade promotion, which may  
15 include promotional hosting and shall in the good faith judgment of the  
16 commission be in aid of the marketing, advertising, or sale of beer, or  
17 of research related to such marketing, advertising, or sale;

18 (7) To acquire and transfer personal and real property, establish  
19 offices, incur expense, enter into contracts, including contracts for  
20 creation and printing of promotional literature, which contracts shall  
21 not be subject to chapter 43.78 RCW, but which shall be cancelable by  
22 the commission unless performed under conditions of employment which  
23 substantially conform to the laws of this state and the rules of the  
24 department of labor and industries. The commission may create such  
25 debt and other liabilities as may be reasonable for proper discharge of  
26 its duties under this chapter;

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

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

36 (10) To create and maintain a list of beer producers and to  
37 disseminate information among and solicit the opinions of beer  
38 producers with respect to the discharge of the duties of the

1 commission, directly or by arrangement with trade associations or other  
2 instrumentalities;

3 (11) To employ, designate as agent, act in concert with, and enter  
4 into contracts with any person, council, commission, or other entity  
5 for the purpose of promoting the general welfare of the malt beverage  
6 industry and particularly for the purpose of assisting in the sale and  
7 distribution of Washington beer in domestic and foreign commerce,  
8 expending moneys as it may deem necessary or advisable for such purpose  
9 and for the purpose of paying its proportionate share of the cost of  
10 any program providing direct or indirect assistance to the sale and  
11 distribution of Washington beer in domestic or foreign commerce,  
12 employing and paying for vendors of professional services of all kinds;

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

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

17 NEW SECTION. **Sec. 8.** The commission shall create, provide for,  
18 and conduct a comprehensive and extensive research, promotional, and  
19 educational campaign as sales and market conditions reasonably require.  
20 It shall investigate and ascertain the needs of beer producers,  
21 conditions of markets, and degree of public awareness of products, and  
22 take into account the information adduced thereby in the discharge of  
23 its duties under this chapter.

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

28 (1) Establish Washington beer as a major factor in markets  
29 everywhere;

30 (2) Promote Washington breweries as tourist attractions;

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

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

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

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

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

18 NEW SECTION. **Sec. 11.** (1) Pursuant to approval by referendum in  
19 accordance with section 12 of this act, commencing on July 1, 1996,  
20 there shall be levied, and the commission shall collect, upon all beer  
21 produced within this state an annual assessment of one dollar per  
22 barrel of beer produced, on up to thirty thousand barrels per location,  
23 to be paid by the beer producer as defined in section 2(1) of this act.  
24 The commission may increase the amount of assessment above one dollar  
25 per barrel but not to exceed the fiscal growth factor as provided in  
26 RCW 43.135.055.

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

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

35 NEW SECTION. **Sec. 12.** (1) Upon receipt by July 15, 1995, of a  
36 petition to form a commission signed by one or more beer producers, the

1 director shall conduct a referendum among all beer producers within the  
2 state for purposes of determining beer producer participation in the  
3 commission and assessment under section 11 of this act. The  
4 requirements of assent or approval of the referendum will be held to be  
5 complied with if at least sixty percent of the beer producers reply to  
6 the referendum and that at least fifty-one percent by numbers of beer  
7 producers replying in the referendum vote affirmatively. The  
8 referendum process shall be initiated on or before September 15, 1995.

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

12 (3) If the director determines that the requisite assent has not  
13 been given, the director shall not appoint the commission nor commence  
14 action to levy the assessment provided in section 11 of this act. If  
15 the requisite assent has not been given, the commission shall not be  
16 activated to specifically foster the interests of beer producers.

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

25 NEW SECTION. **Sec. 14.** A due and payable assessment levied in such  
26 specified amount as determined by the commission under section 11 of  
27 this act constitutes a personal debt of every person so assessed or who  
28 otherwise owes the assessment, and the assessment is due and payable to  
29 the commission when payment is called for by the commission. If a  
30 person fails to pay the commission the full amount of the assessment by  
31 the date due, the commission may add to the unpaid assessment an amount  
32 not exceeding ten percent of the assessment to defray the cost of  
33 enforcing its collection. If the person fails to pay any such due and  
34 payable assessment or other such sum, the commission may bring a civil  
35 action for collection against the person or persons in a court of  
36 competent jurisdiction. The action shall be tried and judgment  
37 rendered as in any other cause of action for a debt due and payable.

1        NEW SECTION.    **Sec. 15.**    (1) Prior to conducting the referendum as  
2 provided in section 12 of this act, the director may require the  
3 petitioners to deposit with him or her such amount of money the  
4 director may deem necessary to defray the expenses of conducting the  
5 referendum. If the referendum is approved, the petitioners shall be  
6 entitled to receive reimbursement from the commission the amount of the  
7 deposit provided to hold the referendum.

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

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

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

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

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

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

22        Except as permitted by the board under RCW 66.20.010, no brewer,  
23 wholesaler, distiller, winery, importer, rectifier, or other  
24 manufacturer of liquor shall, within the state, by himself, his or her  
25 clerk, servant, or agent, give to any person any liquor; but nothing in  
26 this section nor in RCW 66.28.010 shall prevent a brewer, wholesaler,  
27 winery, or importer from furnishing samples of beer, malt beverages, or  
28 wine to authorized licensees for the purpose of negotiating a sale, in  
29 accordance with regulations adopted by the liquor control board,  
30 provided that the samples are subject to taxes imposed by RCW 66.24.290  
31 and 66.24.210; nothing in this section shall prevent the furnishing of  
32 samples of liquor to the board for the purpose of negotiating the sale  
33 of liquor to the state liquor control board; nothing in this section  
34 shall prevent a brewery, winery, or wholesaler from furnishing beer or  
35 wine for instructional purposes under RCW 66.28.150; nothing in this  
36 section shall prevent a winery or wholesaler from furnishing wine

1 without charge to a not-for-profit group organized and operated solely  
2 for the purpose of enology or the study of viticulture which has been  
3 in existence for at least six months and any wine so furnished shall be  
4 used solely for such educational purposes, provided that the wine  
5 furnished shall be subject to the taxes imposed by RCW 66.24.210;  
6 nothing in this section shall prevent a brewer from serving beer or  
7 malt beverages without charge, on the brewery premises; nothing in this  
8 section shall prevent donations of wine for the purposes of RCW  
9 66.12.180; and nothing in this section shall prevent a domestic winery  
10 from serving wine without charge, on the winery premises.

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

13 The Washington malt beverage commission created under section 3 of  
14 this act may purchase or receive donations of malt beverages from  
15 breweries and may use such malt beverages for promotional purposes.  
16 Malt beverages furnished to the commission under this section that is  
17 used within the state is subject to the taxes imposed under RCW  
18 66.24.290. No license, permit, or bond is required of the Washington  
19 malt beverage commission under this title for promotional activities  
20 conducted under sections 1 through 16 of this act.

21 NEW SECTION. **Sec. 20.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

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

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

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