
HOUSE BILL 1171

State of Washington

61st Legislature

2009 Regular Session

By Representatives Sullivan and Newhouse

Read first time 01/14/09. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the Washington beer commission; and amending RCW
2 15.89.020, 15.89.040, 15.89.050, 15.89.070, 15.89.100, 15.89.110, and
3 66.28.010.

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

5 **Sec. 1.** RCW 15.89.020 and 2006 c 330 s 2 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) (~~"Affected producer" means any producer who is subject to this~~
10 ~~chapter.~~

11 ~~(2))~~ "Beer" means any malt beverage or malt liquor as the terms
12 are defined in chapter 66.04 RCW.

13 ~~((3))~~ (2) "Commission" means the Washington beer commission.

14 ~~((4))~~ (3) "Department" means the department of agriculture.

15 ~~((5))~~ (4) "Director" means the director of the department or the
16 director's duly authorized representative.

17 ~~((6))~~ (5) "Fiscal year" means the twelve-month period beginning
18 with January 1st of any year and ending December 31st.

1 ~~((+7))~~ (6) "Producer" means any person or other entity licensed
2 under Title 66 RCW to produce beer within Washington ~~((state and who~~
3 ~~produces less than one hundred thousand barrels of beer annually per~~
4 ~~location))~~.

5 ~~((+8))~~ (7) "Referendum" means a vote by ~~((affected))~~ producers
6 that is conducted by secret ballot.

7 **Sec. 2.** RCW 15.89.040 and 2006 c 330 s 5 are each amended to read
8 as follows:

9 (1) Upon receipt of a petition containing the signatures of five
10 beer producers from a statewide Washington state craft brewing trade
11 association or from other ~~((affected))~~ producers to implement this
12 chapter and to determine producer participation in the commission and
13 assessment under this chapter, the director shall:

14 (a) Conduct a referendum of beer producers. The requirements of
15 assent or approval of the referendum are met if:

16 (i) At least fifty-one percent by numbers of ~~((affected))~~ producers
17 participating in the referendum vote affirmatively; and

18 (ii) Thirty percent of the ~~((affected))~~ producers and thirty
19 percent of the production have been represented in the referendum to
20 determine assent or approval of participation and assessment. The
21 referendum shall be conducted within sixty days of receipt of the
22 petition; and

23 (b) Establish a list of beer producers from information provided by
24 the petitioners, by obtaining information on beer producers from
25 applicable producer organizations or associations or other sources
26 identified as maintaining the information. In establishing a current
27 list of beer producers and their individual production, the director
28 shall use the beer producer's name, mailing address, and production by
29 the producer in the preceding fiscal year. Information on each
30 producer shall be mailed to each beer producer on record with the
31 director for verification. All corrections shall be filed with the
32 director within twenty days from the date of mailing. The list of
33 ~~((affected))~~ producers shall be kept in a file by the director. The
34 list shall be certified as a true representation of the referendum
35 mailing list. Inadvertent failure to notify ~~((an affected))~~ a producer
36 does not invalidate a proceeding conducted under this chapter. The

1 director shall provide the commission the list of ((affected))
2 producers after assent in a referendum as provided in this section.

3 (2) If the director determines that the requisite assent has been
4 given in the referendum conducted under subsection (1) of this section,
5 the director shall:

6 (a) Within sixty days after assent of the referendum held, appoint
7 the members of the commission; and

8 (b) Direct the commission to put into force the assessment as
9 provided for in RCW 15.89.110.

10 (3) If the director determines that the requisite assent has not
11 been given in the referendum conducted under subsection (1) of this
12 section, the director shall take no further action to implement or
13 enforce this chapter.

14 (4) Upon completion of the referendum conducted under subsection
15 (1) of this section, the department shall tally the results of the vote
16 and provide the results to ((affected)) producers. If ((an-affected))
17 a producer disputes the results of a vote, that producer within sixty
18 days from the announced results, shall provide in writing a statement
19 of why the vote is disputed and request a recount. Once the vote is
20 tallied and distributed, all disputes are resolved, and all matters in
21 a vote are finalized, the individual ballots may be destroyed.

22 (5) Before conducting the referendum provided for in subsection (1)
23 of this section, the director may require the petitioners to deposit
24 with him or her an amount of money as the director deems necessary to
25 defray the expenses of conducting the referendum. The director shall
26 provide the petitioners an estimate of expenses that may be incurred to
27 conduct a referendum before any service takes place. Petitioners shall
28 deposit funds with the director to pay for expenses incurred by the
29 department. The commission shall reimburse petitioners the amount paid
30 to the department when funds become available. However, if for any
31 reason the referendum process is discontinued, the petitioners shall
32 reimburse the department for expenses incurred by the department up
33 until the time the process is discontinued.

34 (6) The director is not required to hold a referendum under
35 subsection (1) of this section more than once in any twelve-month
36 period.

1 **Sec. 3.** RCW 15.89.050 and 2006 c 330 s 6 are each amended to read
2 as follows:

3 (1) The director shall appoint the producer members of the
4 commission. In making appointments, no later than ninety days before
5 an expiration of a commission member's term, the director shall call
6 for recommendations for commission member positions, and the director
7 shall take into consideration recommendations made by a statewide
8 Washington state craft brewing trade association or other (~~affected~~)
9 producers. In appointing persons to the commission, the director shall
10 seek a balanced representation on the commission that reflects the
11 composition of the beer producers throughout the state on the basis of
12 beer produced and geographic location. Information on beer production
13 by geographic location shall be provided by the commission upon the
14 director's request.

15 (2) If a position on the commission becomes vacant due to
16 resignation, disqualification, death, or for any other reason, the
17 commission shall notify the director and the unexpired term shall
18 immediately be filled by appointment by the director.

19 (3) Each member or employee of the commission shall be reimbursed
20 for actual travel expenses incurred in carrying out this chapter as
21 defined by the commission in rule. Otherwise if not defined in rule,
22 reimbursement for travel expenses shall be at the rates allowed by RCW
23 43.03.050 and 43.03.060.

24 **Sec. 4.** RCW 15.89.070 and 2007 c 211 s 1 are each amended to read
25 as follows:

26 The commission shall:

27 (1) Elect a chair and officers. The officers must include a
28 treasurer who is responsible for all receipts and disbursements by the
29 commission and the faithful discharge of whose duties shall be
30 guaranteed by a bond at the sole expense of the commission. The
31 commission must adopt rules for its own governance that provide for the
32 holding of an annual meeting for the election of officers and the
33 transaction of other business and for other meetings the commission may
34 direct;

35 (2) Do all things reasonably necessary to effect the purposes of
36 this chapter. However, the commission has no rule-making power except
37 as provided in this chapter;

1 (3) Employ and discharge managers, secretaries, agents, attorneys,
2 and employees and engage the services of independent contractors;

3 (4) Retain, as necessary, the services of private legal counsel to
4 conduct legal actions on behalf of the commission. The retention of a
5 private attorney is subject to review by the office of the attorney
6 general;

7 (5) Receive donations of beer from producers for promotional
8 purposes under subsections (6) and (7) of this section and for fund-
9 raising purposes under subsection (8) of this section. Donations of
10 beer for promotional purposes may only be disseminated without charge;

11 (6) Engage directly or indirectly in the promotion of Washington
12 beer, including, without limitation, the acquisition in any lawful
13 manner and the dissemination without charge of beer. This
14 dissemination is not deemed a sale for any purpose and the commission
15 is not deemed a producer, supplier, or manufacturer, or the clerk,
16 servant, or agent of a producer, supplier, distributor, or
17 manufacturer. This dissemination without charge shall be for
18 agricultural development or trade promotion, and not for fund-raising
19 purposes under subsection (8) of this section. Dissemination for
20 promotional purposes may include promotional hosting and must in the
21 good faith judgment of the commission be in the aid of the marketing,
22 advertising, sale of beer, or of research related to such marketing,
23 advertising, or sale;

24 (7) Promote Washington beer by conducting unique beer tastings
25 without charge;

26 (8) Beginning July 1, 2007, fund the Washington beer commission
27 through sponsorship of up to twelve beer festivals annually at which
28 beer may be sold to festival participants. For this purpose, the
29 commission would qualify for issue of a special occasion license as an
30 exception to WAC 314-05-020 but must comply with laws under Title 66
31 RCW and rules adopted by the liquor control board under which such
32 events may be conducted;

33 (9) Participate in international, federal, state, and local
34 hearings, meetings, and other proceedings relating to the production,
35 regulation, distribution, sale, or use of beer including activities
36 authorized under RCW 42.17.190, including the reporting of those
37 activities to the public disclosure commission;

1 (10) Acquire and transfer personal and real property, establish
2 offices, incur expenses, and enter into contracts, including contracts
3 for the creation and printing of promotional literature. The contracts
4 are not subject to chapter 43.78 RCW, and are cancelable by the
5 commission unless performed under conditions of employment that
6 substantially conform to the laws of this state and the rules of the
7 department of labor and industries. The commission may create debt and
8 other liabilities that are reasonable for proper discharge of its
9 duties under this chapter;

10 (11) Maintain accounts with one or more qualified public
11 depositories as the commission may direct, for the deposit of money,
12 and expend money for purposes authorized by this chapter by drafts made
13 by the commission upon such institutions or by other means;

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

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

22 (14) Employ, designate as an agent, act in concert with, and enter
23 into contracts with any person, council, commission, or other entity to
24 promote the general welfare of the beer industry and particularly to
25 assist in the sale and distribution of Washington beer in domestic and
26 foreign commerce. The commission shall expend money necessary or
27 advisable for this purpose and to pay its proportionate share of the
28 cost of any program providing direct or indirect assistance to the sale
29 and distribution of Washington beer in domestic or foreign commerce,
30 employing and paying for vendors of professional services of all kinds;

31 (15) Sue and be sued as a commission, without individual liability
32 for acts of the commission within the scope of the powers conferred
33 upon it by this chapter;

34 (16) Serve as liaison with the liquor control board on behalf of
35 the commission and not for any individual producer;

36 (17) ~~((Until July 1, 2009,))~~ Receive such gifts, grants, and
37 endowments from public or private sources as may be made from time to

1 time, in trust or otherwise, for the use and benefit of the purposes of
2 the commission and expend the same or any income therefrom according to
3 the terms of the gifts, grants, or endowments.

4 **Sec. 5.** RCW 15.89.100 and 2006 c 330 s 13 are each amended to read
5 as follows:

6 (1) The commission shall prepare a list of all ~~((affected))~~
7 producers from information available from the liquor control board, the
8 department, or the producers' association. This list must contain the
9 names and addresses of ~~((affected))~~ producers within this state and the
10 amount, by barrelage, of beer produced during the period designated by
11 the commission. A qualified person may, at any time, have his or her
12 name placed upon the list by delivering or mailing the information to
13 the commission. This list shall be corrected and brought up-to-date in
14 accordance with evidence and information available to the commission by
15 December 31st of each year. For the purposes of giving notice and
16 holding referendums, the list updated before the date for issuing
17 notices or ballots is the list of all producers entitled to notice, to
18 assent or dissent, or to vote. Inadvertent failure to notify a
19 producer does not invalidate a proceeding conducted under this chapter.

20 (2) It is the responsibility of ~~((affected))~~ producers to ensure
21 that their correct address is filed with the commission. It is also
22 the responsibility of ~~((affected))~~ producers to submit production data
23 to the commission as prescribed by this chapter.

24 (3) The commission shall develop a reporting system to document
25 that the ~~((affected))~~ producers in this state are reporting quantities
26 of beer produced and are paying the assessment as provided in RCW
27 15.89.110.

28 **Sec. 6.** RCW 15.89.110 and 2006 c 330 s 14 are each amended to read
29 as follows:

30 (1) Pursuant to referendum in accordance with RCW 15.89.040, there
31 is levied, and the commission shall collect, upon beer produced by ~~((an~~
32 ~~affected))~~ a producer, an annual assessment of ten cents per barrel of
33 beer produced, up to ten thousand barrels per location.

34 (2) The commission shall adopt rules prescribing the time, place,
35 and method for payment and collection of this assessment and provide

1 for the collection of assessments from ((affected)) producers who ship
2 directly out-of-state.

3 (3) The commission may reduce the assessment per ((affected))
4 producer based upon in-kind contributions to the commission.

5 **Sec. 7.** RCW 66.28.010 and 2008 c 94 s 5 are each amended to read
6 as follows:

7 (1)(a) No manufacturer, importer, distributor, or authorized
8 representative, or person financially interested, directly or
9 indirectly, in such business; whether resident or nonresident, shall
10 have any financial interest, direct or indirect, in any licensed retail
11 business, unless the retail business is owned by a corporation in which
12 a manufacturer or importer has no direct stock ownership and there are
13 no interlocking officers and directors, the retail license is held by
14 a corporation that is not owned directly or indirectly by a
15 manufacturer or importer, the sales of liquor are incidental to the
16 primary activity of operating the property as a hotel, alcoholic
17 beverages produced by the manufacturer or importer or their
18 subsidiaries are not sold at the licensed premises, and the board
19 reviews the ownership and proposed method of operation of all involved
20 entities and determines that there will not be an unacceptable level of
21 control or undue influence over the operation or the retail licensee;
22 nor shall any manufacturer, importer, distributor, or authorized
23 representative own any of the property upon which such licensed persons
24 conduct their business; nor shall any such licensed person, under any
25 arrangement whatsoever, conduct his or her business upon property in
26 which any manufacturer, importer, distributor, or authorized
27 representative has any interest unless title to that property is owned
28 by a corporation in which a manufacturer has no direct stock ownership
29 and there are no interlocking officers or directors, the retail license
30 is held by a corporation that is not owned directly or indirectly by
31 the manufacturer, the sales of liquor are incidental to the primary
32 activity of operating the property either as a hotel or as an
33 amphitheater offering live musical and similar live entertainment
34 activities to the public, alcoholic beverages produced by the
35 manufacturer or any of its subsidiaries are not sold at the licensed
36 premises, and the board reviews the ownership and proposed method of
37 operation of all involved entities and determines that there will not

1 be an unacceptable level of control or undue influence over the
2 operation of the retail licensee. Except as provided in subsection (3)
3 of this section, no manufacturer, importer, distributor, or authorized
4 representative shall advance moneys or moneys' worth to a licensed
5 person under an arrangement, nor shall such licensed person receive,
6 under an arrangement, an advance of moneys or moneys' worth. "Person"
7 as used in this section only shall not include those state or federally
8 chartered banks, state or federally chartered savings and loan
9 associations, state or federally chartered mutual savings banks, or
10 institutional investors which are not controlled directly or indirectly
11 by a manufacturer, importer, distributor, or authorized representative
12 as long as the bank, savings and loan association, or institutional
13 investor does not influence or attempt to influence the purchasing
14 practices of the retailer with respect to alcoholic beverages. Except
15 as otherwise provided in this section, no manufacturer, importer,
16 distributor, or authorized representative shall be eligible to receive
17 or hold a retail license under this title, nor shall such manufacturer,
18 importer, distributor, or authorized representative sell at retail any
19 liquor as herein defined. A corporation granted an exemption under
20 this subsection may use debt instruments issued in connection with
21 financing construction or operations of its facilities.

22 (b) Nothing in this section shall prohibit a licensed domestic
23 brewery or microbrewery from being licensed as a retailer pursuant to
24 chapter 66.24 RCW for the purpose of selling beer or wine at retail on
25 the brewery premises and at one additional off-site retail only
26 location and nothing in this section shall prohibit a domestic winery
27 from being licensed as a retailer pursuant to chapter 66.24 RCW for the
28 purpose of selling beer or wine at retail on the winery premises. Such
29 beer and wine so sold at retail shall be subject to the taxes imposed
30 by RCW 66.24.290 and 66.24.210 and to reporting and bonding
31 requirements as prescribed by regulations adopted by the board pursuant
32 to chapter 34.05 RCW, and beer and wine that is not produced by the
33 brewery or winery shall be purchased from a licensed beer or wine
34 distributor. Nothing in this section shall prohibit a microbrewery
35 holding a beer and/or wine restaurant license under RCW 66.24.320 from
36 holding the same privileges and endorsements attached to the beer
37 and/or wine restaurant license. Nothing in this section shall prohibit

1 a licensed craft distillery from selling spirits of its own production
2 under RCW 66.24.145.

3 (c) Nothing in this section shall prohibit a licensed distiller,
4 domestic brewery, microbrewery, domestic winery, or a lessee of a
5 licensed domestic brewer, microbrewery, or domestic winery, from being
6 licensed as a spirits, beer, and wine restaurant pursuant to chapter
7 66.24 RCW for the purpose of selling liquor at a spirits, beer, and
8 wine restaurant premises on the property on which the primary
9 manufacturing facility of the licensed distiller, domestic brewer,
10 microbrewery, or domestic winery is located or on contiguous property
11 owned or leased by the licensed distiller, domestic brewer,
12 microbrewery, or domestic winery as prescribed by rules adopted by the
13 board pursuant to chapter 34.05 RCW. Nothing in this section shall
14 prohibit a microbrewery holding a spirits, beer, and wine restaurant
15 license under RCW 66.24.420 from holding the same privileges and
16 endorsements attached to the spirits, beer, and wine restaurant
17 license. This section does not prohibit a brewery or microbrewery
18 holding a spirits, beer, and wine restaurant license or a beer and/or
19 wine license under chapter 66.24 RCW operated on the premises of the
20 brewery or microbrewery from holding a second retail only license at a
21 location separate from the premises of the brewery or microbrewery.

22 (d) Nothing in this section prohibits retail licensees with a
23 caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from
24 operating on a domestic winery premises.

25 (e) Nothing in this section prohibits an organization qualifying
26 under RCW 66.24.375 formed for the purpose of constructing and
27 operating a facility to promote Washington wines from holding retail
28 licenses on the facility property or leasing all or any portion of such
29 facility property to a retail licensee on the facility property if the
30 members of the board of directors or officers of the board for the
31 organization include officers, directors, owners, or employees of a
32 licensed domestic winery. Financing for the construction of the
33 facility must include both public and private money.

34 (f) Nothing in this section prohibits a bona fide charitable
35 nonprofit society or association registered under section 501(c)(3) of
36 the internal revenue code, or a local wine industry association
37 registered under section 501(c)(6) of the internal revenue code as it
38 exists on July 22, 2007, and having an officer, director, owner, or

1 employee of a licensed domestic winery or a wine certificate of
2 approval holder on its board of directors from holding a special
3 occasion license under RCW 66.24.380.

4 (g)(i) Nothing in this section prohibits domestic wineries and
5 retailers licensed under chapter 66.24 RCW from producing, jointly or
6 together with regional, state, or local wine industry associations,
7 brochures and materials promoting tourism in Washington state which
8 contain information regarding retail licensees, domestic wineries, and
9 their products.

10 (ii) Nothing in this section prohibits: (A) Domestic wineries,
11 domestic breweries, microbreweries, and certificate of approval holders
12 licensed under this chapter from listing on their internet web sites
13 information related to retailers who sell or promote their products,
14 including direct links to the retailers' internet web sites; and (B)
15 retailers licensed under this chapter from listing on their internet
16 web sites information related to domestic wineries, domestic breweries,
17 microbreweries, and certificate of approval holders whose products
18 those retailers sell or promote, including direct links to the domestic
19 wineries', domestic breweries', microbreweries', and certificate of
20 approval holders' web sites.

21 (h) Nothing in this section prohibits the performance of personal
22 services offered from time to time by a domestic winery or certificate
23 of approval holder licensed under RCW 66.24.206(1)(a) for or on behalf
24 of a licensed retail business when the personal services are (i)
25 conducted at a licensed premises, and (ii) intended to inform, educate,
26 or enhance customers' knowledge or experience of the manufacturer's
27 products. The performance of personal services may include
28 participation and pouring at the premises of a retailer holding a
29 spirits, beer, and wine restaurant license, a wine and/or beer
30 restaurant license, or a specialty wine shop license; bottle signings;
31 and other similar informational or educational activities. A domestic
32 winery or certificate of approval holder is not obligated to perform
33 any such personal services, and a retail licensee may not require a
34 domestic winery or certificate of approval holder to conduct any
35 personal service as a condition for selling any alcohol to the retail
36 licensee. Except as provided in RCW 66.28.150, the cost of sampling
37 may not be borne, directly or indirectly, by any liquor manufacturer,
38 importer, or distributor. Nothing in this section prohibits domestic

1 wineries and retail licensees from identifying the wineries on private
2 labels authorized under RCW ((66.24.400,)) 66.24.425((,)) and
3 66.24.450.

4 (i) (~~Until July 1, 2007, nothing in this section prohibits a~~
5 ~~nonprofit statewide organization of microbreweries formed for the~~
6 ~~purpose of promoting Washington's craft beer industry as a trade~~
7 ~~association registered as a 501(c) with the internal revenue service~~
8 ~~from holding a special occasion license to conduct up to six beer~~
9 ~~festivals.~~

10 (j)) Nothing in this section shall prohibit a manufacturer,
11 importer, or distributor from entering into an arrangement with any
12 holder of a sports/entertainment facility license or an affiliated
13 business for brand advertising at the licensed facility or promoting
14 events held at the sports entertainment facility as authorized under
15 RCW 66.24.570.

16 (2) Financial interest, direct or indirect, as used in this
17 section, shall include any interest, whether by stock ownership,
18 mortgage, lien, or through interlocking directors, or otherwise.
19 Pursuant to rules promulgated by the board in accordance with chapter
20 34.05 RCW manufacturers, distributors, and importers may perform, and
21 retailers may accept the service of building, rotating and restocking
22 case displays and stock room inventories; rotating and rearranging can
23 and bottle displays of their own products; provide point of sale
24 material and brand signs; price case goods of their own brands; and
25 perform such similar normal business services as the board may by
26 regulation prescribe.

27 (3)(a) This section does not prohibit a manufacturer, importer, or
28 distributor from providing services to a special occasion licensee for:
29 (i) Installation of draft beer dispensing equipment or advertising,
30 (ii) advertising, pouring, or dispensing of beer or wine at a beer or
31 wine tasting exhibition or judging event, or (iii) a special occasion
32 licensee from receiving any such services as may be provided by a
33 manufacturer, importer, or distributor. Nothing in this section shall
34 prohibit a retail licensee, or any person financially interested,
35 directly or indirectly, in such a retail licensee from having a
36 financial interest, direct or indirect, in a business which provides,
37 for a compensation commensurate in value to the services provided,

1 bottling, canning or other services to a manufacturer, so long as the
2 retail licensee or person interested therein has no direct financial
3 interest in or control of said manufacturer.

4 (b) A person holding contractual rights to payment from selling a
5 liquor distributor's business and transferring the license shall not be
6 deemed to have a financial interest under this section if the person
7 (i) lacks any ownership in or control of the distributor, (ii) is not
8 employed by the distributor, and (iii) does not influence or attempt to
9 influence liquor purchases by retail liquor licensees from the
10 distributor.

11 (c) The board shall adopt such rules as are deemed necessary to
12 carry out the purposes and provisions of subsections (1)(g) and (h) and
13 (3)(a) of this section in accordance with the administrative procedure
14 act, chapter 34.05 RCW.

15 (4) A license issued under RCW 66.24.395 does not constitute a
16 retail license for the purposes of this section.

17 (5) A public house license issued under RCW 66.24.580 does not
18 violate the provisions of this section as to a retailer having an
19 interest directly or indirectly in a liquor-licensed manufacturer.

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