

Chapter 15.89 RCW
WASHINGTON BEER COMMISSION

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RCW 15.89.010 Legislative declaration. The legislature declares that:

- (1) Marketing is a dynamic and changing part of Washington agriculture and a vital element in expanding the state economy;
- (2) The sale in this state and export to other states and abroad of beer made in this state contribute substantial benefits to the economy of the state and provide a large number of jobs and sizeable tax revenues;
- (3) The production of beer in this state is a new and important segment of Washington agriculture that has potential for greater contribution to the economy of the state if it undergoes continued development; and
- (4) The general welfare of the people of this state will be served by continued development of the activities of the production of beer, that will improve the tax bases of local communities where agricultural land and processing facilities are located, and reduce the need for state and federal funding of local services. The industries are therefore affected with the public interest. [2006 c 330 § 1.]

RCW 15.89.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Commission" means the Washington beer commission.

(3) "Department" means the department of agriculture.

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

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

(6) "Producer" means any person or other entity licensed under Title 66 RCW to produce beer within Washington.

(7) "Referendum" means a vote by producers that is conducted by secret ballot. [2011 c 54 § 1; 2006 c 330 § 2.]

RCW 15.89.025 Regulating beer—Existing comprehensive scheme—Applicable laws. The history, economy, culture, and future of Washington state's agriculture involve the beer industry. In order to develop and promote beer as part of an existing comprehensive scheme to regulate those products, the legislature declares that:

(1) It is vital to the continued economic well-being of the citizens of this state and their general welfare that beer produced in Washington state be properly promoted;

(2) It is in the overriding public interest that support for the Washington beer industry be clearly expressed and that beer be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Protect the public by educating the public in reference to the quality, care, and methods used in the production of beer;

(c) Increase the knowledge of the qualities and value of Washington's beer; and

(d) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of beer;

(3) This chapter is enacted in the exercise of the police powers of this state to protect the health, peace, safety, and general welfare of the people of this state; and

(4) The production and marketing of beer is a highly regulated industry and this chapter and the rules adopted under it are only one aspect of the regulated industry. Other laws applicable to the beer industry include:

(a) The organic products act, chapter 15.86 RCW;

(b) The food safety and security act under chapter 15.130 RCW;

(c) The wholesale distributors and suppliers of malt beverages, chapter 19.126 RCW;

(d) Weights and measures, chapter 19.94 RCW;

(e) Title 66 RCW, alcoholic beverage control;

(f) 21 C.F.R. as it relates to general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(g) Chapter 69.07 RCW, Washington food processing act;

(h) 27 U.S.C. Secs. 201 through 211, 213 through 219a, and 122A;

(i) 27 C.F.R. Parts 1, 6, 9, 10, 12, 16, 240, 251, and 252; and

(j) Rules under Title 314 WAC. [2018 c 236 § 709; 2011 c 103 § 31; 2006 c 330 § 3.]

Purpose—2011 c 103: See note following RCW 15.26.120.

RCW 15.89.030 Washington beer commission created—Composition.

(1) Subject to the referendum conducted under RCW 15.89.040, there is created an agricultural commodity commission, to be known as the Washington beer commission. The commission shall be comprised of seven voting members; six members shall be producers and one voting member shall be the director.

(2) Five voting members of the commission constitute a quorum for the transaction of any commission business.

(3) Each producer member shall be a citizen and resident of this state and over the age of twenty-one. Each producer member must be engaged in producing beer, and must, during his or her term of office, derive a substantial portion of income from the production of beer, or have a substantial investment in the production of beer as an owner, lessee, partner, or the manager or executive officer of such a corporation. No more than one board member may be part of the same person as defined by RCW 15.04.010. These qualifications apply throughout each member's term of office but do not apply to the director.

(4) The producer members shall serve three-year terms. Of the initial voting members, two members shall be appointed for a one-year term, two members shall be appointed for a two-year term, and two members shall be appointed for a three-year term. [2006 c 330 § 4.]

RCW 15.89.040 Director's duties—Referendum of beer producers.

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

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

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

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

(b) Establish a list of beer producers from information provided by the petitioners, by obtaining information on beer producers from applicable producer organizations or associations or other sources identified as maintaining the information. In establishing a current list of beer producers and their individual production, the director shall use the beer producer's name, mailing address, and production by the producer in the preceding fiscal year. Information on each producer shall be mailed to each beer producer on record with the director for verification. All corrections shall be filed with the director within twenty days from the date of mailing. The list of producers shall be kept in a file by the director. The list shall be certified as a true representation of the referendum mailing list.

Inadvertent failure to notify a producer does not invalidate a proceeding conducted under this chapter. The director shall provide the commission the list of producers after assent in a referendum as provided in this section.

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

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

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

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

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

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

(6) The director is not required to hold a referendum under subsection (1) of this section more than once in any twelve-month period. [2011 c 54 § 2; 2006 c 330 § 5.]

RCW 15.89.050 Appointment of members—Terms, travel expenses.

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

(2) If a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the

commission shall notify the director and the unexpired term shall immediately be filled by appointment by the director.

(3) Each member or employee of the commission shall be reimbursed for actual travel expenses incurred in carrying out this chapter as defined by the commission in rule. Otherwise if not defined in rule, reimbursement for travel expenses shall be at the rates allowed by RCW 43.03.050 and 43.03.060. [2011 c 54 § 3; 2006 c 330 § 6.]

RCW 15.89.060 Enforcement of commission obligations against commission assets—Liability of commission members and employees.

Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission and, except to the extent of such assets, no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof or against any member, employee, or agent of the commission or the state of Washington in his or her individual capacity. Except as otherwise provided in this chapter, neither the commission members, nor its employees, may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No person or employee may be held individually responsible for any act or omission of any other commission members. The liability of the commission members shall be several and not joint, and no member is liable for the default of any other member. This provision confirms that commission members have been and continue to be, state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW. [2006 c 330 § 7.]

RCW 15.89.070 Commission powers and duties. The commission shall:

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

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

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

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

(5) Receive donations of beer from producers for promotional purposes under subsections (6) and (7) of this section and for fund-

raising purposes under subsection (8) of this section. Donations of beer for promotional purposes may only be disseminated without charge;

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

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

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

(9) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, regulation, distribution, sale, or use of beer including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(10) Acquire and transfer personal and real property, establish offices, incur expenses, and enter into contracts, including contracts for the creation and printing of promotional literature. The contracts are not subject to chapter 43.19 RCW, and are cancelable by the commission unless performed under conditions of employment that substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create debt and other liabilities that are reasonable for proper discharge of its duties under this chapter;

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

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

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

(14) Employ, designate as an agent, act in concert with, and enter into contracts with any person, council, commission, or other entity to promote the general welfare of the beer industry and particularly to assist in the sale and distribution of Washington beer in domestic and foreign commerce. The commission shall expend money necessary or advisable for this purpose and to pay its proportionate share of the cost of any program providing direct or indirect

assistance to the sale and distribution of Washington beer in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds;

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

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

(17) Receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [2015 c 225 § 13; 2011 c 103 § 16; 2011 c 60 § 3; 2009 c 373 § 9; 2007 c 211 § 1; 2006 c 330 § 8.]

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

RCW 15.89.073 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising, promotion, and education programs related to beer; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing of beer may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning beer.

(3) The commission, before the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2006 c 330 § 9.]

RCW 15.89.075 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington state government with regard to the marketing and promotion of Washington produced beer. [2006 c 330 § 10.]

RCW 15.89.080 Research, promotional, and educational campaign. The commission may create, provide for, and conduct a comprehensive and extensive research, promotional, and educational campaign as sales

and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of markets, and degree of public awareness of products, and take into account this information in the discharge of its duties under this chapter. [2006 c 330 § 11.]

RCW 15.89.090 Campaign goals. The commission shall adopt as major objectives of its research, promotional, and educational campaign goals that serve the needs of producers. The goals may include efforts to:

- (1) Establish Washington beer as a major factor in markets everywhere;
- (2) Promote Washington breweries as tourist attractions;
- (3) Encourage favorable reporting of Washington beer and breweries in the press throughout the world;
- (4) Establish Washington beer in markets everywhere as a major source of premium beer;
- (5) Encourage favorable legislative and regulatory treatment of Washington beer in markets everywhere;
- (6) Encourage promotion of Washington agriculture related to beer production, specifically hops, malting barley, and wheat grown in the state; and
- (7) Foster economic conditions favorable to investment in the production of Washington beer. [2006 c 330 § 12.]

RCW 15.89.100 List of producers of beer—Reporting system. (1) The commission shall prepare a list of all producers from information available from the *liquor control board, the department, or the producers' association. This list must contain the names and addresses of producers within this state and the amount, by barrelage, of beer produced during the period designated by the commission. A qualified person may, at any time, have his or her name placed upon the list by delivering or mailing the information to the commission. This list shall be corrected and brought up-to-date in accordance with evidence and information available to the commission by December 31st of each year. For the purposes of giving notice and holding referendums, the list updated before the date for issuing notices or ballots is the list of all producers entitled to notice, to assent or dissent, or to vote. Inadvertent failure to notify a producer does not invalidate a proceeding conducted under this chapter.

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

(3) The commission shall develop a reporting system to document that the producers in this state are reporting quantities of beer produced and are paying the assessment as provided in RCW 15.89.110. [2011 c 54 § 4; 2006 c 330 § 13.]

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

RCW 15.89.110 Annual assessment on beer production—Approval by referendum—Rules. (1) Pursuant to referendum in accordance with RCW 15.89.040, there is levied, and the commission shall collect, upon

beer produced by a producer, an annual assessment of ten cents per barrel of beer produced, up to ten thousand barrels per location.

(2) The commission shall adopt rules prescribing the time, place, and method for payment and collection of this assessment and provide for the collection of assessments from producers who ship directly out-of-state.

(3) The commission may reduce the assessment per producer based upon in-kind contributions to the commission. [2011 c 54 § 5; 2006 c 330 § 14.]

RCW 15.89.120 Deposit of money. The commission shall deposit money collected under RCW 15.89.110 in a separate account in the name of the commission in any bank that is a state depository. All expenditures and disbursements made from this account under this chapter may be made without the necessity of a specific legislative appropriation. RCW 43.01.050 does not apply to this account or to the money received, collected, or expended as provided in this chapter. [2006 c 330 § 15.]

RCW 15.89.130 Assessment constitutes debt—Penalty for nonpayment—Civil action. An assessment levied in an amount determined by the commission under RCW 15.89.110 constitutes a personal debt of every person assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission when payment is called for by the commission. If a producer fails to pay the commission the full amount of the assessment by the date due, the commission may add to the unpaid assessment an amount not exceeding ten percent of the assessment to defray the cost of enforcing its collection. If the person fails to pay an assessment, the commission may bring a civil action for collection against the person or persons in a court of competent jurisdiction. The action shall be tried and judgment rendered as in any other cause of action for a debt due and payable. [2006 c 330 § 16.]

RCW 15.89.140 Certain records exempt from public disclosure—Exceptions. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving this chapter.

(3) This section does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2006 c 330 § 17.]

RCW 15.89.150 Costs—Funding staff support—Rules. (1) All costs incurred by the department, including the adoption of rules and other actions necessary to carry out this chapter, shall be reimbursed by the commission.

(2) The director may provide by rule for a method to fund staff support for all commodity boards or commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs are related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2006 c 330 § 18.]

RCW 15.89.160 Enforcement. County and state law enforcement officers, the *liquor control board and its enforcement agents, and employees of the department shall enforce this chapter. [2006 c 330 § 19.]

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

RCW 15.89.170 Prosecution—Enforcement by superior courts. (1) Any prosecution brought under this chapter may be instituted in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

(2) The superior courts may enforce this chapter and the rules and regulations of the commission issued hereunder, and may prevent and restrain violations thereof. [2006 c 330 § 20.]

RCW 15.89.900 Construction—2006 c 330. This act shall be liberally construed to effectuate its purposes. [2006 c 330 § 21.]