

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6737

58th Legislature
2004 Regular Session

Passed by the Senate March 11, 2004
YEAS 45 NAYS 0

President of the Senate

Passed by the House March 11, 2004
YEAS 96 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
ENGROSSED SENATE BILL 6737 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6737

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Senators Hewitt and Honeyford

Read first time 02/06/2004. Referred to Committee on Commerce & Trade.

1 AN ACT Relating to distribution of liquor; amending RCW 66.28.180;
2 and declaring an emergency.

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

1 existing board rules as the clear expression of state policy to
2 regulate the manner of selling and pricing of wine and malt beverages
3 by licensed suppliers and distributors.

4 (2) Beer and wine distributor price posting.

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

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

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

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

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

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

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

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

1 or does not tend to disrupt the orderly sale and distribution of beer
2 and wine. If the posting is accepted, it shall become effective at the
3 time fixed by the board. If the posting is rejected, the last
4 effective posting shall remain in effect until such time as an amended
5 posting is filed and approved, in accordance with the provisions of
6 this section.

7 (g) Prior to the effective date of the posted prices, all price
8 postings filed as required by this section constitute investigative
9 information and shall (~~at all times be open to inspection to all trade~~
10 ~~buyers within the state of Washington and shall not in any sense be~~
11 ~~considered confidential~~) not be subject to disclosure, pursuant to RCW
12 42.17.310(1)(d).

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

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

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

28 (3) Beer and wine suppliers' price filings, contracts, and
29 memoranda.

30 (a) Every brewery and winery offering beer and/or wine for sale
31 within the state shall file with the board at its office in Olympia a
32 copy of every written contract and a memorandum of every oral agreement
33 which such brewery or winery may have with any beer or wine
34 distributor, which contracts or memoranda shall contain a schedule of
35 prices charged to distributors for all items and all terms of sale,
36 including all regular and special discounts; all advertising, sales and
37 trade allowances, and incentive programs; and all commissions, bonuses
38 or gifts, and any and all other discounts or allowances. Whenever

1 changed or modified, such revised contracts or memoranda shall
2 forthwith be filed with the board as provided for by rule. The
3 provisions of this section also apply to certificate of approval
4 holders, beer and/or wine importers, and beer and/or wine distributors
5 who sell to other beer and/or wine distributors.

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

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

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

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

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

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

13 (f) Prior to the effective date of the posted prices, all prices,
14 contracts, and memoranda filed as required by this section constitute
15 investigative information and shall (~~at all times be open to~~
16 ~~inspection to all trade buyers within the state of Washington and shall~~
17 ~~not in any sense be considered confidential~~) not be subject to
18 disclosure, pursuant to RCW 42.17.310(1)(d).

19 NEW SECTION. Sec. 2. This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and takes effect
22 immediately.

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