

SENATE BILL REPORT

SB 6850

As of January 30, 2006

Title: An act relating to the distribution of beer and wine by wineries and breweries located inside and outside Washington state.

Brief Description: Modifying provisions concerning the distribution of beer and wine.

Sponsors: Senators Jacobsen and Keiser.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/30/06.

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Staff: Jennifer Strus (786-7316)

Background: Domestic wineries, breweries, and micro breweries can distribute their own products directly to retailers in this state; they do not have to use a distributor. Out-of-state wineries and breweries, on the other hand, must use a licensed distributor to distribute their products to retailers in this state.

In-state wineries, breweries, and micro breweries who choose to distribute their own products to retailers cannot use a common carrier to do so. Either the retailer must pick up the products directly from the manufacturer or the manufacturer must directly deliver the product to the retailer.

Any out-of-state winery or brewery must obtain a certificate of approval from the Liquor Control Board (LCB) before being able to sell its product to an in-state distributor.

Distributors of wine or beer must report to the LCB by the 20th of every month all purchases during the preceding calendar month. Along with the report, the distributors must remit the tax required.

The distributor must deliver beer and wine to the retailer by delivering it to either the retailer's licensed premises (the store) or by having the retailer pick up the product at the distributor's warehouse.

On December 21, 2005, in the matter of *Costco Wholesale Corp. v. Roger Hoen, et al.*, federal district court judge Marsha Pechman ruled that Washington's statute permitting in-state wineries and breweries to distribute their own products to in-state retailers while not allowing out-of-state wineries and breweries to do the same was unconstitutional as a violation of the Commerce Clause of the United States Constitution. Judge Pechman stayed her order until April 14, 2006, to allow the Legislature to take action.

Summary of Bill: Any domestic or out-of-state winery that produces less than 5000 cases of wine annually may distribute its products directly to retailers. Any in-state or out-of-state

winery that produces more than 5000 cases annually may distribute its products directly to retailers as long as it does so from a facility located within the state that is physically separate and distinct from its production facilities.

Any in-state or out-of-state brewery that produces less than 2500 barrels of beer annually may distribute its beer directly to retailers. Any in-state or out-of-state brewery that produces more than 2500 barrels annually may distribute its products directly to retailers but only if it does so from a facility located in the state that is physically separate and distinct from its production facilities.

The LCB is to adopt rules establishing the criteria for determining whether a distribution facility is physically separate and distinct from a production facility. Upon application by an in-state or out-of-state winery or brewery, the LCB must issue a license for any distribution facility that meets the criteria set forth by the LCB in rule.

By applying for and exercising its rights under a certificate of approval (issued to out of state wineries and breweries), the holder of the certificate consents to Washington's jurisdiction in enforcing the act and all laws and rules relating to the shipment and sale of wine and beer. The holder further consents to allowing a representative of the LCB to enter its premises even if not located in Washington State. If the LCB determines there has been a material discrepancy in record keeping of the holder, the holder is required to reimburse the LCB for the entire cost of determining that the discrepancy occurred.

All in-state and out-of-state wineries and breweries must pay the taxes imposed.

All licensed retailers authorized to purchase wine from an out of state winery or brewery must make monthly reports to the LCB on wine and beer purchases made during the preceding calendar month.

Beer or wine retail licensees may only purchase beer or wine from licensed distributors, in-state wineries or breweries, certificate of approval holders (out-of-state wineries or breweries) or the LCB. Breweries, wineries and beer or wine distributors may only buy beer or wine from another duly licensed distributor or importer or certificate of approval holder.

An in-state or out-of state winery or brewery acting as its own distributor may use a common carrier to deliver its product to a Washington retailer. The common carrier must be licensed by the LCB before delivering beer or wine to a retailer. Upon receiving such a license, the carrier consents that it will make sure any out-of-state winery or brewery holds a certificate of approval, makes its books and records available to the LCB; and complies with all statutes and rules governing the delivery of beer and wine products in Washington. If a carrier accepts a shipment of beer or wine without ensuring that the entity from which it accepts the shipment is a certificate of approval holder, its license to deliver beer and wine will be suspended for 6 months upon the first occurrence, 12 months upon the second occurrence, and revoked upon the third occurrence. Once revoked, the carrier cannot reapply for a new license for 5 years. The carrier is also subject to a fine set by the LCB not to exceed 10 times the invoice value of the offending shipment or \$10,000, whichever is greater.

Prices filed by an in-state brewery or winery or an out-of-state brewery or winery must be uniform to all distributors and retailers.

Appropriation: None.

Fiscal Note: Requested on January 25, 2005.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on April 14, 2006.

Testimony For: Making major changes in the current system will cause the loss of family wage jobs in distribution in small retail sectors which will allow big box stores to exert more power in the market. Beer and wine wholesalers employ more than 3000 people in Washington. Profit margins average about 2 percent; in rural markets, the profit margin is less than 2 percent. If direct shipping is allowed, the distributors will experience tremendous lay-offs and could be forced to close. In the meantime, Costco and other big box stores continue to post big earnings while selling beer and wine under the current system.

If you open up the system fully as Costco option would have you do, then products can go from unscrupulous suppliers directly to maybe a marginal retailer. Small family wineries should be allowed direct access to market because they have a hard time getting distributors to represent their products. That's why the bill says wineries that produce less than 5000 cases a year can self-distribute.

Testimony Against: Beer and wine distribution in this state has been run in such a way that has stifled competition in this state and allowed an artificial and unfair profit margin to benefit just a few favored but very well-organized businesses in the state at the expense of every citizen who purchases a bottle of beer or wine. The state has allowed a private tax to be levied by distributors in the form of a govt mandated profit but profits are in excess of what is a reasonable return for their services. Every consumer pays this tax. The tax doesn't go to support state programs; it stays in the hands of a few who profit as part of a state sanctioned system.

This bill discriminates against all wineries above the 5000 case capacity and the requirement that wineries have a warehouse in this state in order to self-distribute more than 5000 cases is an unconstitutional barrier to commerce.

Testimony Other: Production limit would raise barriers to getting WA wine since all restaurant association members currently enjoy getting wine directly from the producer.

Who Testified: PRO: Ron Main, Lance Kahn, Paul Romain, Washington Beer and Wine Wholesaler's Association.

CON: Mike Hale, Hale's Brewery; Joel Benoliel, Costco; Rick Garza, LCB; Jean Leonard, Tim Hightower, Marty Clubb, Lloyd Anderson, Washington Wine Institute; Katie Jacoy, California Wine Institute.

OTHER: Michael Transue, Washington Restaurant Assn.; Owen Linch, Teamsters.