

# HOUSE BILL REPORT

## HB 2561

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### As Reported by House Committee On:

Commerce & Labor

Appropriations

**Title:** An act relating to the shipment of wine from wine manufacturers directly to Washington consumers.

**Brief Description:** Modifying requirements for the direct shipment of wine to Washington state consumers.

**Sponsors:** Representatives Conway, Wood, Kessler, Hunter, Simpson, Fromhold and Condotta; by request of Liquor Control Board.

### Brief History:

#### Committee Activity:

Commerce & Labor: 1/18/06, 1/26/06 [DPS];

Appropriations: 2/2/06, 2/3/06 [DPS(CL)].

#### Brief Summary of Substitute Bill

- Repeals reciprocity law that allows out-of-state wineries to ship wine directly to Washington residents so long as domestic wineries may ship wine directly to residents of other states.
- Allows both domestic wineries and out-of-state wineries to ship wine to Washington residents who are 21 or older for personal use and not for resale.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse, Holmquist, Hudgins, Kenney and McCoy.

**Staff:** Jill Reinmuth (786-7134).

#### Background:

Wineries licensed in Washington ("domestic wineries") may act as distributors and retailers of wine of their own production. Domestic wineries must comply with applicable laws and rules relating to distributors and retailers.

Wineries licensed in other states ("out-of-state wineries") may ship wine directly to Washington residents so long as domestic wineries may ship wine directly to residents of other states. Out-of-state wineries are limited in the amount that may be shipped to a Washington resident. They may ship no more than two cases of wine of their own production per year to a Washington resident who is 21 or older. Out-of-state wineries are also required to obtain licenses from the Liquor Control Board. Wine shipments from out-of-state wineries to Washington residents are not considered to be sales subject to taxation.

In *Granholm v. Heald* (2005), the United States Supreme Court struck down laws in Michigan and New York that allowed in-state, but not out-of-state, wineries to make direct sales to consumers. The Court concluded that: (1) the Commerce Clause prohibits laws that regulate direct shipment of wine on terms that discriminate in favor of in-state producers; (2) the Twenty-First Amendment does not allow such laws; and (3) such laws do not advance a legitimate local purpose that cannot be adequately served by nondiscriminatory alternatives.

Although not directly at issue in *Granholm*, the Court criticized reciprocity laws in place in 13 states, including Washington. The Court explained that these laws "risk generating the trade rivalries and animosities, the alliances and exclusivity, that the Constitution and the Commerce Clause were designed to avoid."

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### **Summary of Substitute Bill:**

Both wineries licensed in Washington ("domestic wineries") and wineries licensed in other states ("out-of-state wineries") may ship wine to Washington residents who are 21 or older for personal use and not for resale. Washington's reciprocity law is repealed.

#### Licensing Requirements

Wineries that wish to ship wine to Washington residents must obtain either a domestic winery license or a wine shipper's permit from the Liquor Control Board (Board).

An applicant for a wine shipper's permit must: (1) operate a winery in the United States; (2) provide a copy of a valid state license to manufacture wine; (3) certify that it holds all federal and state licenses and permits to operate a winery; and (4) register with the Department of Revenue. A winery certificate of approval holder is deemed to hold a wine shipper's permit if it meets the requirements for the permit. The Board may establish a fee for the wine shipper's permit.

#### Other Requirements

Both domestic wineries and wine shipper's permit holders must clearly label cases and packages of wine sent into or out of Washington to indicate that the cases and packages cannot be delivered to a person who is under 21 or intoxicated. They must ensure that the private carriers used to deliver wine obtain signatures of a person receiving wine, and that the private carriers verify that the recipient is 21 or older and not intoxicated.

Both domestic wineries and wine shipper's permit holders must report monthly to the Board as to wine shipped directly to Washington consumers. If they advertise or offer to ship wine directly to Washington customers, they must conspicuously display their license or permit number in their advertising. A winery certificate of approval holder must notify the Board before shipping wine to a Washington consumer.

Wine shipper's permit holders are deemed to have consented to jurisdiction concerning laws and rules related to the shipment of wine directly to consumers. A wine shipper's permit must be suspended or revoked if the permit holder fails to comply with direct shipping provisions. Likewise, the privilege to ship wine directly to Washington consumers must be suspended or revoked if the domestic winery fails to comply with direct shipping provisions. A wine shipper's permit holder must pay taxes on wine sold to Washington residents, and must collect and remit to the Department of Revenue state and local sales taxes on wine shipped to Washington residents. Out-of-state wineries must pay the same taxes on wine that are paid by distributors, but only on wine sold and shipped directly to Washington residents.

**Substitute Bill Compared to Original Bill:**

The tax obligations of out-of-state wineries are clarified. Out-of-state wineries selling to Washington residents must pay the same taxes on wine that are paid by distributors, but only on wine sold and shipped directly to Washington residents. An emergency clause, which specifies that the bill take effect immediately, is added.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** (In support) This bill eliminates discrimination between in-state and out-of-state wineries. It allows all wineries to ship directly to consumers, and makes all of them subject to reporting and tax provisions.

Our members have no problem with direct shipment of wine to consumers. This bill will not "open the floodgates." Direct shipments to consumers are a very small percentage of the overall wine market. With the strong parameters in the bill, direct shipments will be sufficiently controlled by the Liquor Control Board.

The wine industry is a significant part of Washington's economy. The industry contributes \$3&nbsp;\$billion to the economy and produces thousands of jobs. The state is the second largest premium wine producing state. Wineries depend on their ability to use multiple marketing strategies to ensure their success.

Adding an emergency clause to the bill would help Washington's wine industry by ensuring that direct shipment is available for the spring release.

California has already opened up the state for direct shipment of wines from out-of-state wineries to California residents. Direct shipments are less than 2 percent of the wine sold in the United States. Consolidation in the distribution industry has limited the availability of some products. Direct shipment provides a means of obtaining wines that are not otherwise available locally.

(With concerns) The status quo has been fine. In-state wineries were permitted to ship wine directly to Washington consumers on an unlimited basis. Out-of-state wineries were permitted, if there was a reciprocity agreement, to ship wine on a limited basis. Allowing unlimited shipping privileges and lifting related advertising bans sends a bad message, that liquor is unregulated. "Not for resale" language could be strengthened. The potential for black market wine clubs exists.

**Testimony Against:** (Opposed) Do not make it easier to obtain alcohol, especially for minors to obtain alcohol by purchasing it over the Internet. Keep strong regulations in place. Requiring face-to-face transactions is essential. Close the door on faceless sales.

In a sting operation, college students were able to successfully order alcohol from five different suppliers. Well-known delivery companies delivered the alcohol to the students without checking their identities and ages.

**Persons Testifying:** (In support) Rick Garza, Liquor Control Board; Jean Leonard, Washington Wine Institute; Robin Pollard, Washington Wine Institute and Washington Wine Commission; and Katie Jacoy, California Wine Institute.

(With concerns) Phil Wayt, Washington Beer and Wine Wholesalers Association.

(Opposed) Gerald Apple, Students Against Destructive Decisions (SADD).

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Commerce & Labor be substituted therefor and the substitute bill do pass. Signed by 30 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Chandler, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Pearson, Priest, Schual-Berke, P. Sullivan, Talcott and Walsh.

**Staff:** Elisabeth Donner (786-7137).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** There is a separate bill that is addressing direct shipment of wine in regards to the retail industry. This bill focuses on direct shipment for the individual. It will bring us into compliance with the U.S. Supreme Court *Granholm* decision. The bill creates a licensing scheme and collects new fees and taxes.

**Testimony Against:** None.

**Persons Testifying:** Jean Leonard, Washington Wine Institute; and Rick Garza, Liquor Control Board.

**Persons Signed In To Testify But Not Testifying:** None.