
Commerce & Labor Committee

HB 3166

Brief Description: Permitting wine and beer sales from manufacturers to retailers.

Sponsors: Representatives Hunter, Jarrett, Clibborn, Kagi and Tom.

Brief Summary of Bill
<ul style="list-style-type: none">Allows out-of-state wineries and breweries, like Washington wineries and breweries, to distribute an unlimited amount of wine and beer of their own production to Washington retailers.

Hearing Date: 1/30/06

Staff: Jill Reinmuth (786-7134).

Background:

Constitutional Provisions

Article I, Section 8, of the U.S. Constitution, commonly referred to as the Commerce Clause, prohibits states from protecting in-state businesses from out-of-state competition, and also from imposing undue burdens on interstate commerce.

The Twenty-First Amendment to the U.S. Constitution ended federal prohibition of the manufacture and sale of intoxicating liquors. It gives states broad authority to control intoxicating liquors.

Three-Tier Systems

Washington and many other states enacted laws establishing "three-tier" systems to regulate the distribution and sale of liquor following ratification of the Twenty-First Amendment.

The general rule of a three-tier system is that producers are prohibited from selling directly to retailers and consumers. They are required to sell their products to licensed distributors, who in turn sell to licensed retailers, who in turn sell to consumers.

An exception to the general rule allows wineries and breweries in Washington to act as distributors and retailers of wine and beer of their own production. There is no limit on the amount of wine and beer that they may distribute to Washington retailers. They may not use common carriers to deliver their wine and beer to Washington retailers. They must comply with applicable laws and rules relating to distributors and retailers.

In contrast, wineries and breweries in other states that hold certificates of approval in Washington must sell their products to licensed distributors, who in turn sell to retailers. Authorized representatives of out-of-state wineries and breweries that hold certificates of approval in Washington are similarly required to operate within the three-tier system. Out-of-state wineries and breweries, as well as authorized representatives, must agree to comply with laws and rules pertaining liquor sales.

Direct Sale to Consumers

In *Granholm v. Heald* (2005), the U.S. 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 Supreme 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. The Supreme Court noted that its decision to strike down these laws does not call into question the constitutionality of three-tier systems, and explained that the Twenty-First Amendment protects state policies when they treat liquor produced by in-state producers and out-of-state producers in the same manner.

Direct Distribution to Retailers

In *Costco Wholesale Corp v. Hoen, et al* (2005), Judge Marsha Pechman of the U.S. District Court for the Western District of Washington struck down the Washington laws that allow in-state, but not out-of-state, wineries and breweries to distribute their products directly to retailers. Relying on the Supreme Court's decision in *Granholm*, the District Court concluded that these laws discriminate against out-of-state wineries and breweries in violation of the Commerce Clause. In crafting a remedy, the District Court declined to extend the distribution privilege to out-of-state wineries and breweries or withdraw the distribution privilege from Washington producers. Instead, the District Court stayed the entry of judgment until April 14, 2006, to provide the Legislature with sufficient time to act.

Summary of Bill:

The express purpose is to grant out-of-state wineries and breweries and authorized representatives of out-of-state wineries and breweries the same distribution rights granted to Washington wineries and breweries.

Out-of-state wineries and breweries, like Washington wineries and breweries, may distribute wine and beer of their own production to Washington retailers. Authorized representatives of out-of-state wineries and breweries also may ship wine and beer produced elsewhere in the United States or in foreign countries by the wineries and breweries they represent directly to Washington retailers. There is no limit on the amount of wine and beer that they may distribute to Washington retailers.

Out-of-state wineries and breweries, as well as authorized representatives, are required to report monthly to the Liquor Control Board as to the quantity of wine and beer sold or delivered to Washington retailers. They may use common carriers to deliver wine and beer of their own production to Washington retailers. They must comply with applicable laws and rules relating to distributors and retailers, and pay the same taxes on wine and beer that are paid by distributors.

Washington retailers may purchase wine and beer only from out-of-state wineries and breweries, distributors, and the Liquor Control Board.

Rulemaking Authority: The bill does not contain provisions addressing the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Requested on January 26, 2006.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.