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**Commerce & Labor Committee**

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**HB 3213**

**Brief Description:** Modifying provisions relating to the distribution of beer and wine.

**Sponsors:** Representative Conway; by request of Liquor Control Board.

**Brief Summary of Bill**

- Allows United States wineries and breweries, whether located in Washington or in other states, to distribute a limited 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:**

United States wineries and breweries, whether in Washington or in other states, may distribute a limited amount of wine and beer of their own production to Washington retailers. (Authorized representatives of wineries and breweries in other states and foreign countries are not allowed to distribute wine and beer to Washington retailers.) The amounts that may be distributed directly are limited to 5,000 cases or less per year of wine, and 2,500 barrels or less per year of beer.

United States wineries and breweries are required to pay the same taxes on wine and beer that are paid by distributors. They also must report monthly to the Liquor Control Board as to the quantity of wine and beer sold or delivered to Washington retailers. Likewise, Washington retailers are required to report monthly to the Board as to the wine and beer purchased from wineries and breweries. United States wineries and breweries may use common carriers to deliver wine and beer of their own production to Washington retailers.

Wineries and breweries in other states are deemed to have consented to jurisdiction of Washington concerning enforcement of laws relating to liquor licenses, stamp taxes, and sales and shipments of wine and beer.

Washington retailers may purchase wine and beer from distributors, United States wineries and breweries, and the Liquor Control Board (Board). Wineries, brewers, and distributors may purchase wine and beer from distributors, importers, and wineries and breweries in other states.

Washington retailers with multiple in-state locations that are receiving shipments from wineries and breweries in other states may accept delivery at their warehouses or at a single retail location upon approval from the Board.

Prices posted by wineries and breweries must be uniform to distributors and retailers less bona fide allowances for freight differentials.

Certain information is exempt from public inspection and copying. This information includes financial or proprietary information, data, trade secrets, and contractual agreements supplied to the Board in connection with price posting obligations, purchase and sale reporting requirements, and research and evaluation purposes.

**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.