
Commerce & Labor Committee

2SSB 6823

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

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Kohl-Welles; by request of Liquor Control Board).

Brief Summary of Second Substitute Bill

- Allows wineries, breweries, and microbreweries in Washington and other states to distribute an unlimited amount of wine and beer of their own production to Washington retailers.
- Allows Washington retailers to contract with common carriers to obtain products directly from wineries, breweries, and microbreweries in Washington and other states.
- Requires the Liquor Control Board to convene a task force to review the current regulatory system controlling the sale and distribution of beer and wine, and make recommendations about any proposed changes to the system by December 15, 2006.
- Sets an expiration date of June 30, 2008, for the provisions on direct shipment of wine and beer.

Hearing Date: 2/16/06

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:

Direct Shipment to Retailers

The following may distribute an unlimited amount of wine and beer of their own production to Washington retailers: domestic wineries, domestic breweries, and microbreweries, and with

direct shipment endorsements, certificate of approval holders. (Certificate of approval holders are wineries and breweries in other states.)

Authorized representatives are not allowed to distribute wine and beer to Washington retailers. (Authorized representatives are representatives of wineries and breweries in other states and in foreign countries.)

Washington retailers may purchase wine and beer from distributors, domestic wineries, domestic breweries, certificate of approval holders with direct shipment endorsements, and the Liquor Control Board (Board).

Use of Common Carriers

Washington retailers may contract with common carriers to obtain products directly from domestic wineries, breweries, microbreweries, and certificate of approval holders with direct shipping endorsements.

Jurisdiction

Certificate of approval holders 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.

Price Posting, Reports, and Taxes

Prices posted by domestic wineries, domestic breweries, microbreweries, and certificate of approval holders must be uniform to distributors and retailers on a statewide basis less bona fide allowances for freight differentials.

Certificate of approval holders must report monthly to the 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.

Domestic wineries, domestic breweries, microbreweries, and certificate of approval holders that are distributing wine and beer of their own production must pay the same taxes on wine and beer that distributors pay.

Public Disclosure

Certain information is exempt from public inspection and copying. This information includes financial or proprietary information supplied to the Board, including: (1) the amount of wine and beer distributed to Washington retailers by domestic wineries, breweries, microbreweries, and certificate of approval holders; and (2) the amount purchased from domestic wineries, breweries, microbreweries, and certificate of approval holders by Washington retailers.

Task Force

The Board must convene a task force to review the current regulatory system controlling the sale and distribution of beer and wine, and make recommendations about any proposed changes to the system by December 15, 2006. The provisions on direct shipment of wine and beer expire June 30, 2008.

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

Appropriation: None.

Fiscal Note: Available for Substitute Senate Bill 6823.

Effective Date: Except for sections 10 and 12, the bill contains an emergency clause and takes effect April 14, 2006. (Sections 10 and 12 are double amendments to the common carrier and price posting provisions and the public disclosure provision, and take effect July 1, 2006.)