

SENATE BILL REPORT

2SSB 6823

As Passed Senate, February 9, 2006

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

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 History:

Committee Activity: Labor, Commerce, Research & Development: 1/26/06 [DPS].

Ways & Means: 2/7/06 [DP2S].

Passed Senate: 2/9/06, 48-0.

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6823 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Parlette, Ranking Minority Member; Brown, Hewitt, Honeyford, Keiser and Prentice.

Staff: Jennifer Strus (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6823 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Thibaudeau.

Staff: Dean Carlson (786-7305)

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. Retail beer and wine licensees may purchase beer or wine only from licensed distributors or the LCB. Distributors may only purchase beer or wine from other licensed distributors or importers.

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.

The prices filed by the brewery or winery or certificate of approval holder must be uniform prices to all distributors. All in-state wineries and breweries who distribute their products to retailers must pay required taxes.

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: An in-state or out-of-state winery, brewery or microbrewery may act as a distributor of its production. Out of state producers may distribute their product directly to the retailer, use a distributor or a retailer may hire a common carrier to pick up the product from the producer and deliver it to the retailer (these are the current delivery options permitted for in-state producers).

Out-of-state wineries and breweries who distribute their products directly to retailers are responsible to pay the same taxes that in-state wineries and breweries currently pay when they distribute their products directly to retailers.

A retailer who is authorized to purchase wine or beer from an out-of-state winery must make monthly reports to the LCB on wine or beer purchased 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.

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

The Public Disclosure Act is amended to exempt from disclosure financial or proprietary information relating to sales to retailers from producers and amounts producers have shipped to Washington.

The LCB must conduct a study of the current 3 tier and tiered house systems and whether the system should be modified or updated. The LCB must work closely with stakeholders in

conducting the study, and report to the Legislature on its findings and recommendations by December 15, 2006.

The act expires on June 30, 2008.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: There is an emergency clause and the bill takes effect April 14, 2006.

Testimony For (Labor, Commerce, Research & Development): LCB legislation puts in-state and out-of-state wineries and breweries on the same footing. The limits placed allow LCB to maintain the 3 tier system and meet legislative intent to provide small wineries/breweries with self-distribution rights. LCB believes the bill will have minimal impact on WA wineries/breweries. Three hundred and fifty of the four hundred and six wineries in-state produce fewer than 5000 cases. The four largest wineries produce between 75-80 percent of all the wine produced in our state; they use distributors exclusively.

Only 10 of in-state breweries produce more than 2500 barrels a year. LCB proposal allows most wineries/breweries to continue to self-distribute and leaves much of the 3 tier system in place.

Testimony Against (Labor, Commerce, Research & Development): For 20 years, the state has had a system that allowed certain manufacturers to self-distribute. They got the lion's share of business and they will continue to. LCB's solution is to complicate the system with limits that are artificial.

The 3 tier system is a fine system for large producers and it was designed to control large producers, but it has the opposite effect on small producers because the distributor is allowed to control the product. As a result, small producers can't get the market share from distributors (if trying to use one) because the distributor represents 30-40 other producers. Self-distribution is key to small producers' survival and to having leverage at all with other producers. The 2500 barrel limit is woefully low and small producers will lose business under this cap. A 10,000 barrel limit is suggested.

The amendment to the public disclosure law would exempt from disclosure all information about the 3 tier system that retailers would be required to report to the LCB. Just because the Legislature has had this crisis thrust upon them is not a good reason to cut the public's access to information.

Testimony Other (Labor, Commerce, Research & Development): Individual grocery retailers believe the language in any bill must allow individual grocers the same warehousing opportunity as large chain retailers for the distribution of products. There should be no limitations on how much a winery/brewery can self-distribute. Retailers should be able to buy directly from the producer and store it in their warehouses.

The LCB has created a regulatory structure that is workable and sound but there are concerns about the 5000 case limit. Some wineries are concerned that the LCB has raised production costs in the bill, which continue to be an unsettled issue in the Costco litigation.

Who Testified (Labor, Commerce, Research & Development): PRO: Jean Leonard, Tim Hightower, Marty Clubb, Washington Wine Institute; Cherie Myers, Safeway; Robert Broderick, Northwest Grocers; Jan Gee, Washington Retail Association; Rick Garza, LCB.

CON: Mike Hale, Hale's Brewery; Joel Benoliel, Costco; Ron Main, Lance Kahn, Paul Romain, Washington Beer and Wine Wholesaler's Association; Rowland Thompson, Allied Newspapers.

OTHER: Katie Jacoy, Wine Institute.

Testimony For (Ways & Means): This proposal eliminates the discrimination that brought the court decision. The fiscal note is large because instead of regulating a couple hundred businesses, this will require us to regulate thousands.

Testimony Against (Ways & Means): None.

Who Testified (Ways & Means): PRO: Rick Garza, Liquor Control Board.