

SENATE BILL REPORT

SB 5007

As of January 29, 2024

Title: An act relating to creating a wine retailer shipper's permit.

Brief Description: Establishing a wine retailer shipper's permit.

Sponsors: Senators Short, Dhingra, Kuderer, Muzzall, Torres and Wilson, L..

Brief History:

Committee Activity: Labor & Commerce: 2/02/23; 1/29/24.

Brief Summary of Bill

- Establishes a wine retailer shipper's permit authorizing the shipment of wine by an out-of-state wine retailer to consumers in Washington.
- Imposes requirements related to the sale and shipment of wine to customers by wine retailers that are licensed in another state to sell wine at retail and obtain the new wine retailer shipper's permit; or are in-state wine retailers licensed in Washington.
- Grants the Liquor and Cannabis Board and the Department of Revenue rule-making authority to implement the new permit and requirements.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Madeline Ralstin (786-7356)

Background: Direct Shipping Laws. State law allows certain in-state and out-of-state liquor licensees to ship alcohol directly to consumers. Before wine may be shipped by an in-state winery directly to a Washington consumer, the winery must be licensed by the Liquor and Cannabis Board (LCB), and pay a \$100 annual license fee. Before wine may be shipped by an out-of-state winery directly to a Washington consumer, the winery must obtain a wine shipper's permit and pay a \$100 annual fee, unless the winery holds a valid

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certificate of approval (COA) issued by LCB. An applicant for a wine shipper's permit must operate a winery in the U.S., provide LCB a valid copy of its license to manufacture wine issued by another state, certify it holds all necessary state and federal licenses and permits regarding winery operation, and register with the Department of Revenue (DOR) for tax collection. Wine shipper permit holders must pay wine excise and sales and use taxes on sales to Washington consumers, regardless of whether the permit holder has a physical presence in the state. There are additional requirements of wine shipper permit holders in statute regarding labeling, private carrier requirements, and reporting.

Additional liquor licensees in Washington with the privilege to sell and ship alcohol products directly to consumers under LCB rules include, without limitation, breweries, distilleries, grocery stores, beer and wine specialty shops, spirits retailers, and beer and wine gift delivery licensees. LCB rules include requirements on which individuals may accept and process orders and payments, permissible delivery locations, hours of delivery, age verification requirements for the delivery person, a prohibition on delivering liquor to any person showing signs of intoxication, permissible containers, packaging, labeling, record retention, and licensee accountability. LCB may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges if a licensee violates a requirement.

Wine Taxes. Wine is taxed when sold by wineries to distributors, when sold directly to consumers on the winery premises, and on direct shipments to consumers and retailers. LCB administers excise taxes relating to wine. DOR administers retail sales and use taxes on wine when purchased in the original container and when consumed on the seller's premises. For table wine—less than or equal to 14 percent alcohol by volume (ABV), the total tax rate per liter is \$0.2292, which includes a base tax and additional taxes. For fortified wine—greater than 14 percent ABV, the total tax rate per liter is \$0.4536. For cider, the total tax rate per liter is \$0.0814. Cider is classified as table wine with between 0.5 to 8.5 percent ABV and is made from fermented apples or pears.

Wine Retailers. Washington retailers may receive direct shipments of beer and wine from an out-of-state winery or brewery that holds a COA, or a licensed Washington winery or brewery. Beer and wine specialty shop licensees with a wine retailer reseller endorsement may accept delivery of wine at their licensed premises or at one or more warehouse facilities registered with the board. Facilities may also warehouse and distribute nonliquor items, deliver to their own licensed premises and, when permitted, sell to other licensed premises, registered facilities, or lawful purchasers outside the state.

Summary of Bill: Wine Retailer Shipper's Permit. A wine retailer shipper's permit (retailer permit) is established as a new liquor permit to be issued by LCB. The annual permit fee is \$100. LCB may adopt rules with procedures for obtaining the permit. Before wine may be shipped by a retailer authorized to sell wine at retail in Washington or any other state, the retailer must either be licensed to sell wine at retail in Washington or obtain the newly-established wine retailer shipper's permit. An applicant for a retailer permit must

annually provide LCB with a copy of the applicant's valid license to sell wine at retail issued by the other state and must register with DOR.

Retailer permit holders and Washington-licensed wine retailers must:

- pay the excise tax for sales of wine to Washington residents;
- collect and remit monthly to DOR, all applicable state and local sales taxes on all sales of wine shipped to buyers in Washington;
- not ship to an address in any area in Washington that prohibits the sale of alcohol;
- label the outside of all shipping boxes of wine shipped under the permit as follows, "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY";
- report annually to LCB, the total amount of wine shipped in Washington under its permit during the preceding calendar year;
- allow LCB to audit the permit holder's shipping records;
- consent to LCB jurisdiction or any other state agency, and to the Washington State courts concerning enforcement of this section; and
- require, upon delivery, an in-person signature from a person with valid identification showing the person is 21 or older.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Labor & Commerce) (Regular Session 2023):

PRO: This is an issue of fairness and consumer choice. Current law covers in-state wineries, out-of-state wineries, and in-state retailers shipping wine. Out-of-state retailers (retailers) are not able to ship wine into Washington. This bill targets wine not available in Washington. This bill requires retailers to follow Washington laws and pay the applicable taxes. This bill proposes to regulate shipments from retailers the same way others are regulated. Consumers almost always buy their wine locally. The majority of wine available in the U.S. is not available in Washington. This bill brings Washington into parity with many other states. We know this wine is already coming in and we are not collecting the taxes.

CON: The bill is a request by out-of-state retailers and is not needed because these wines either are available to Washington consumers or could be available to them. Wine is supposed to be signed for by someone 21 or older and that is not happening. We need to clean up our current laws before making new ones. This bill does not have enforcement of carrier shipments as other states do.

Persons Testifying (Labor & Commerce): PRO: Senator Shelly Short, Prime Sponsor; Tom Wark, National Association of Wine Retailers; David Parker; Paul Beveridge, Family Wineries of Washington State.

CON: Scott Hazlegrove, WA Beer & Wine Distributors Association; Andrea McNeely, Association of Washington Spirits and Wine Distributors.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony (Labor & Commerce) (Regular Session 2024):
PRO: Currently, Washington wineries, out-of-state wineries, and Washington retailers may ship wine to consumers. However, out-of-state retailers may not ship wine to Washington consumers. It is unfair that out-of-state wineries cannot ship wine to consumers, but this bill would fix that. Washington bars consumers from receiving shipments from out-of-state retailers, which means there are hundreds of thousands of wines that Washington consumers do not have access to. Washington consumers should be able to access the wines that they want, particularly those that are difficult to find locally. The Supreme Court has said that when it comes to alcohol, states may not pass laws that discriminate against out-of-state sellers or that interfere with interstate commerce, unless the state can show that only through discrimination, it is putting forward the health and safety interest of its citizens. However, Washington already allows out-of-state wineries, in-state wineries, and in-state retailers to ship. The current law is unconstitutional. If this bill passes, it should generate around \$12 million in sales tax. This estimate does not take into account the excise tax or the revenue raised from permit fees. This bill regulates wine for out-of-state retailers in the same way that out-of-state wineries are regulated now. Additionally, small retailers are harmed by not having out-of-state wine shipping available. Allowing out-of-state shipping will help consumers and open up the market for Washington retailers.

CON: This bill does not provide protections against alcohol access by minors, ensure legal delivery, or tax collection. Washington's current alcohol distribution and sales system works because it allows for regulated and responsible sale of alcohol in our state. This bill increases the risks of minors accessing alcohol products because these products would be shipped directly into homes with little to no oversight. The three tier system has been in place since prohibition was repealed. It mandates the separation between manufacturers, retailers, distributors, and retailers for the purpose of lawful tax collection and regulates against the delivery of alcohol to minors. This bill is problematic because it undercuts the system and provides a number of ways for sellers to avoid tax collection on wine and regulations regarding alcohol delivery to minors. This bill does not benefit consumers. Before extending new privileges, the current privileges need to be evaluated. At home deliveries have issues that are failing to be enforced by the LCB. Alcohol deliveries are being dropped at the steps of homes, which means there is no age verification at the time of the delivery or there is no interaction to evaluate if the deliverer is showing signs of intoxication. These are requirements that need to be enforced under the current privileges. Fees need to be in place to pay for the true cost of enforcement.

Persons Testifying (Labor & Commerce): PRO: Senator Shelly Short, Prime Sponsor; Tom Wark, National Association of Wine Retailers; PAUL BEVERIDGE, Wilridge Winery.

CON: Andrea McNeely, Association of Washington Spirits and Wine Distributors; Brandon High, Southern Glazer's Wine & Spirits; Bill Stauffacher, Washington Beer & Wine Distributors Association; Kelly Rhodes, Republic National Distributing Company.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.