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**Commerce & Labor Committee**

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**ESB 6537**

**Brief Description:** Modifying requirements for the direct sale of wine to Washington state consumers.

**Sponsors:** Senators Kohl-Welles, Parlette, Hewitt, Honeyford, Keiser and McAuliffe; by request of Liquor Control Board.

**Brief Summary of Engrossed Bill**

- Repeals reciprocity law that allows out-of-state wineries to ship wine directly to Washington residents so long as domestic wineries may ship wine directly to residents of other states.
- Allows both domestic wineries and out-of-state wineries to ship wine to Washington residents who are 21 or older for personal use and not for resale.

**Hearing Date:**

**Staff:** Jill Reinmuth (786-7134).

**Background:**

Wineries licensed in Washington ("domestic wineries") may act as distributors and retailers of wine of their own production. Domestic wineries must comply with applicable laws and rules relating to distributors and retailers.

Wineries licensed in other states ("out-of-state wineries") may ship wine directly to Washington residents so long as domestic wineries may ship wine directly to residents of other states. Out-of-state wineries are limited in the amount that may be shipped to a Washington resident. They may ship no more than two cases of wine of their own production per year to a Washington resident who is 21 or older. Out-of-state wineries are also required to obtain licenses from the Liquor Control Board. Wine shipments from out-of-state wineries to Washington residents are not considered to be sales subject to taxation.

In *Granholm v. Heald* (2005), the United States 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 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.

Although not directly at issue in Granholm, the Court criticized reciprocity laws in place in 13 states, including Washington. The Court explained that these laws "risk generating the trade rivalries and animosities, the alliances and exclusivity, that the Constitution and the Commerce Clause were designed to avoid."

### **Summary of Bill:**

Both wineries licensed in Washington ("domestic wineries") and wineries licensed in other states ("out-of-state wineries") may ship wine to Washington residents who are 21 or older for personal use and not for resale. Washington's reciprocity law is repealed.

### Licensing Requirements

Wineries that wish to ship wine to Washington residents must obtain either a domestic winery license or a wine shipper's permit from the Liquor Control Board ("Board").

An applicant for a wine shipper's permit must: (1) operate a winery in the United States; (2) provide a copy of a valid state license to manufacture wine; (3) certify that it holds all federal and state licenses and permits to operate a winery; and (4) register with the Department of Revenue. A winery certificate of approval holder is deemed to hold a wine shipper's permit if it meets the requirements for the permit. The Board may establish a fee for the wine shipper's permit.

### Other Requirements

Both domestic wineries and wine shipper's permit holders must clearly label cases and packages of wine sent into or out of Washington to indicate that the cases and packages cannot be delivered to a person who is under 21 or intoxicated. They must ensure that the private carriers used to delivery wine obtain signatures of a person receiving wine, and that the private carriers verify that the recipient is 21 or older and not intoxicated.

Both domestic wineries and wine shipper's permit holders must report monthly to the Board as to wine shipped directly to Washington consumers. If they advertise or offer to ship wine directly to Washington customers, they must conspicuously display their license or permit number in their advertising. A winery certificate of approval holder must notify the Board before shipping wine to a Washington consumer.

Wine shipper's permit holders are deemed to have consented to jurisdiction concerning laws and rules related to the shipment of wine directly to consumers. A wine shipper's permit must be suspended or revoked if the permit holder fails to comply with direct shipping provisions. Likewise, the privilege to ship wine directly to Washington consumers must be suspended or revoked if the domestic winery fails to comply with direct shipping provisions.

A wine shipper's permit holder must pay taxes on wine sold to Washington residents, and must collect and remit to the Department of Revenue state and local sales taxes on wine shipped to Washington residents. Out-of-state wineries must pay the same taxes on wine that are paid by distributors, but only on wine sold and shipped directly to Washington residents.

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

**Appropriation:** None.

**Fiscal Note:** Available.

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