SENATE BILL REPORT
ESB 6537

As Passed Senate, February 9, 2006

Title: An act relating to the shipment of wine from wine manufacturers directly to Washington consumers.

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 History:
Committee Activity: Labor, Commerce, Research & Development: 1/17/06, 1/23/06 [DP].
Passed Senate: 2/9/06, 47-0.

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: Do pass.
Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Parlette, Ranking Minority Member; Honeyford and Prentice.

Staff: Jennifer Strus (786-7316)

Background: Out-of-state wineries can ship two cases of wine per year to a Washington resident who is 21 or older but only if the state in which the winery is located has a reciprocal shipping agreement with Washington. Out-of-state wineries must first obtain a license from the Liquor Control Board (LCB) before they can ship wine to Washington residents. No taxes are collected on these shipments.

The shipping container used to ship wine from an out-of-state winery must be clearly labeled to indicate that the package cannot be delivered to a person under 21 years of age or to an intoxicated person.

The LCB must revoke an out-of-state winery's shipper license if the winery, shipper, or person in this state advertises for or solicits consumers to buy their wine.

In May 2005, the United States Supreme Court, in *Granholm v. Heald*, ruled that a state cannot prohibit out-of-state wineries from delivering wine to its consumers if it allows in-state wineries to do so. To allow otherwise violates the Commerce Clause of the U.S. Constitution.

Summary of Bill: Any properly licensed wine manufacturer, whether licensed by Washington or another state, may ship its wine to a Washington resident who is 21 or older. However, before the wine can be shipped, the winery must obtain a wine shipper's permit or be licensed as a domestic winery.

To qualify for a wine shipper's permit, the winery must meet the following requirements: a) operate a winery located in the United States; b) provide the LCB a copy of its valid license to manufacture wine; c) certify that it holds all necessary state and federal licenses; and d) register with the Department of Revenue (DOR). The LCB may charge a fee to issue the permit. Wineries that hold a certificate of approval are deemed to hold a wine shipper's permit.

Wine shippers permit holders must pay the wine liter tax and collect and remit to DOR all applicable state and local taxes on all sales of wine delivered to buyers in this state. The prior requirements regarding packaging are continued for holders of wine shippers permits. Out-of-state wineries selling to Washington residents must pay the same taxes on wine that are paid by distributors, but only on wine sold and shipped directly to Washington residents.

Domestic wineries are included in the requirement that out-of-state wineries must file a monthly report with LCB on the previous month's shipments. Wineries may advertise but the advertisement must include either the shipper's permit number, the certificate of approval number, or the in-state winery's license number.

Appropriation: None.

Fiscal Note: Partial fiscal note available.

Committee/Commission/Task Force Created: No.

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

Testimony For: This bill eliminates the wine reciprocity laws that were questioned by the Supreme Court in the *Granholm* case. The LCB received few complaints about the provision in the bill that allows for unlimited shipment of wine to consumers. Since the state has never put a limit on how much wine domestic wineries can ship to Washington residents, they cannot then put a limit on the amount of wine that out of state wineries can ship to state consumers. The state needs to direct shipping permit portion of the bill to open up the New York market to Washington wineries. Less then 2 percent of wine sold to consumers is purchased through direct shipping. It is unlikely that this bill will cause any serious competition for either Washington wineries or distributors.

Testimony Against: None.

Testimony Other: The unlimited number of wine that can be shipped from out of state wineries under this bill will cause increased competition for retailers. While retailers must comply with markups wineries do not. The penalty imposed for resale of shipped wine should be extended to consumers. The fee to obtain a wine shippers permit should be high to decrease the level of competition. There is concern that big wineries like Chateau Ste Michelle would lose their market share under this bill because of the pressure from California wineries.

Who Testified: PRO: Rick Garza, Liquor Control Board; Jean Leonard & Robin Pollard, Washington Wine Institute; Katie Jacoy, California Wine Institute.

OTHER: Phil Wagt, Washington Beer and Wine Wholesalers Association; Clif Finch, Washington Food Industry; Owen Linch, Teamsters.