

SENATE BILL REPORT

SB 6799

As of January 30, 2006

Title: An act relating to the shipment of wine and beer from wine and beer manufacturers directly to Washington retailers.

Brief Description: Permitting wine and beer sales from manufacturers to retailers.

Sponsors: Senators Kohl-Welles and Franklin.

Brief History:

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

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Staff: Jennifer Strus (786-7316)

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. Along with the report, the distributors must remit the tax required.

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.

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: Out of state wineries and breweries that hold a certificate of approval issued by the LCB may ship their products directly to licensed in-state retailers. Any

authorized representative holding a valid certificate of approval may also distribute directly to the retailer any wine or beer produced by the winery or brewery it represents.

A certificate of approval holder operating as a beer or wine distributor may use a common carrier to deliver beer or wine of its own production to licensed Washington retailers. The certificate of approval holder must also comply with all applicable laws and rules relating to distributors.

Certificate of approval holders and domestic wineries acting as distributors shall collect and remit the taxes required.

Appropriation: None.

Fiscal Note: Requested on January 25, 2005..

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: Beer and wine distribution in this state has been run in such a way that has stifled competition in this state and allowed an artificial and unfair profit margin to benefit just a few favored but very well-organized businesses in the state at the expense of every citizen who purchases a bottle of beer or wine. The state has allowed a private tax to be levied by distributors in the form of a government-mandated profit but profits are in excess of what is a reasonable return for their services. Every consumer pays this tax. The tax doesn't go to support state programs; it stays in the hands of a few who profit as part of a state sanctioned system. SB 6799 takes a system that's been in existence for more than 20 years that allowed manufacturers in WA to self-distribute and extends it to out-of-state manufacturers of beer and wine. There is no logic in complicating the system by burdening in-state wine and beer producers the same as out-of-state producers. It benefits no one except the distributors.

There are concerns that the bill does not allow the domestic wineries to use a common carrier. Thirty to fifty percent of wineries would go out of business if the judge's ruling is allowed to take place. Most important is the Legislature passing some form of self-distribution for all Washington wineries.

Testimony Against: Direct shipping would apply not only to fine wine and beer but to all other beer and wine including strong beer and fortified wine. The state need not regulate fine Washington wines because they are not the problem. Regulation is needed for MD 20/20, high test malt liquor, stuff that's cheap and abundant. If the Legislature opens up the system as fully as this bill allows, then products can go from unscrupulous suppliers directly to maybe a marginal retailer.

Who Testified: PRO: Joel Benoiel, Costco; Jean Leonard, Tim Hightower, Marty Clubb, Lloyd Anderson, Washington Wine Institute; Michael Transue, Washington Restaurant Association; Katie Jacoy, Wine Institute.

CON: Jim Scharf, Everett Police Dept.; Mike Hale, Hale's Brewery; Ron Main, Lance Kahn, Paul Romain, Washington Beer and Wine Wholesaler's Association.