

HOUSE BILL REPORT

HB 1389

As Reported by House Committee On: Commerce & Gaming

Title: An act relating to reporting requirements for common carriers who transport liquor into the state.

Brief Description: Concerning reporting requirements for common carriers who transport liquor into the state.

Sponsors: Representatives Morgan, Young, Jinkins, Entenman, Ormsby, Lekanoff, Thai, Reeves, Stonier, Kilduff and Stanford.

Brief History:

Committee Activity:

Commerce & Gaming: 1/29/19, 2/21/19 [DPS].

Brief Summary of Substitute Bill

- Requires the Washington State Liquor and Cannabis Board (LCB) to investigate illegal alcohol shipments made to Washington consumers and liquor licensees.
- Requires the LCB to submit a report of the investigation findings to the Legislature by December 31, 2019.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Stanford, Chair; Reeves, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Kloba, Morgan, Vick and Young.

Staff: Kyle Raymond (786-7190).

Background:

Consumers who purchase wine from either a domestic winery or a winery holding a certificate of approval may have their purchases shipped directly to them. Out-of-state

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wineries may obtain a wine shipper's permit from the Washington State Liquor and Cannabis Board (LCB) that allows the winery to ship directly to Washington residents. Private carriers used to deliver wine must obtain the signature of the person who receives the wine upon delivery, verify the age of the recipient, and verify the recipient does not appear intoxicated.

Out-of-state wineries, brewers, and distillers with a certificate of approval from the State of Washington are authorized to ship their products directly to an authorized retailer. Washington retailers that obtain an endorsement to receive direct shipments from an out-of-state distillery, winery, or brewery must file a monthly report with the LCB.

All varieties of liquor shipped to customers in Washington are subject to applicable state liquor taxes.

Summary of Substitute Bill:

The Washington State Liquor and Cannabis Board (LCB) is required to investigate illegal alcohol shipments made to Washington consumers and liquor licensees. The LCB investigation must include: (1) whether an illegal alcohol shipment problem exists in Washington; and (2) the extent of the illegal alcohol shipment problem in Washington, should it be determined a problem exists.

If determined necessary, the LCB may: (1) work with stakeholders to determine the most effective means to address the illegal shipment of alcohol problem; and (2) develop legislative proposals to stop and better enforce illegal shipments of alcohol.

The LCB must submit a report to the Legislature that contains the investigation's findings by December 31, 2019.

Substitute Bill Compared to Original Bill:

The substitute bill removes all provisions of the underlying bill and requires the LCB to investigate and submit a report to the Legislature on illegal alcohol shipments made to Washington consumers and liquor licensees.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is about fairness and supporting businesses that are playing by the rules. Common carriers have been authorized to ship alcohol in Washington for a number of years. Industry members in Washington pay significant taxes, obtain licenses, and abide by regulations for the privilege of doing business in Washington. Some individuals selling and shipping alcohol to Washington consumers undercut tax obligations. By doing this, these individuals gain an unfair advantage over businesses abiding by Washington's regulatory structure. Under this bill, common carriers would be required to share information already collected with the Department of Revenue about alcohol shipments into the state. Currently, 15 other states have similar common carrier reporting standards, so this bill would bring Washington in line with other states.

Given Washington's tax structure, there is a large incentive for people to purchase alcohol from out-of-state retailers and ship items into Washington, and this is especially true for high-value items. There is currently no mechanism to identify those from outside of the state who sell and ship alcohol to Washington consumers, and this bill creates that mechanism through gathering information from common carriers to help identify entities illegally shipping alcohol into the state. This bill would require common carriers who ship alcohol into the state to report the information already gathered from the consignee, which can then be compared against licensed businesses in the state to identify those who are competing unfairly. The Wine and Spirits Association projected that lost tax revenue for Washington due to illegal shipments could be as high as \$50 million. With online sales and orders increasing, the volume of alcohol shipments will likely increase over time. This bill is not intended to harm or create any burden for Washington businesses. This bill is a common sense approach to ensure taxes are paid, administration is accurate, and alcohol shipments are delivered to their intended destinations.

There are existing provisions in the law that require common carriers to make alcohol shipment records available upon request. Enforcement of illegal alcohol shipments is a challenge because the LCB has limited enforcement resources. By providing the reporting mechanism, the information is delivered to the LCB to better identify any losses or any discrepancies.

(Opposed) Washington is the second largest wine-producing state in the country. The industry's ability to direct ship wine is the lifeblood of the industry. Many wineries would not be in business today without the Legislature authorizing direct shipping privileges to wineries. Also, if penalties or difficult legislation is put into place, out-of-state wineries may stop shipping wine to Washington.

The Washington Wine Institute (Institute) has concerns around any proposed legislation that impacts direct-to-consumer shipping. The Institute is concerned about illegal alcohol shipments coming into our state, and we are open to working with the bill's proponents. Licensed wineries pay taxes, play by the rules, and care about the safety and health of our communities. The Institute believes the LCB should investigate the problems and explore potential solutions. Carriers like the United Parcel Service may be willing to share data with the LCB directly, so they can begin to figure out whether there are illegal shipments coming into the state. The fiscal note is low and does not include LCB enforcement to address the problem.

The \$50 million projection in lost state revenue seems high because last year's tax revenue from shipping from out-of-state wineries was only \$14 million.

(Other) In the bill, railroad companies are defined as a common carrier. Railroad companies routinely deliver for other freight carriers who are also considered a common carriers. Some companies aggregate hundreds of boxes of shipments into a single container for delivery in Washington, and a separate common carrier delivers the goods to a distribution center for retail delivery.

The BNSF Railway Company (BNSF) does not support an obligation for a common carrier to have documentation for another common carrier's retail shipment, so the BNSF would like the bill amended to clarify that when one common carrier uses a secondary common carrier to deliver its orders, the secondary common carrier is not responsible for the reporting obligation. Rather, the common carrier delivering the shipment for retail, or the customer, would have the reporting obligation.

Persons Testifying: (In support) Representative Morgan, prime sponsor; Andrea McNeely and Ron Main, Association of Washington Spirits and Wine Distributors; Scott Hazlegrove, Washington Beer & Wine Distributors Association; and Brad Tower, Washington Liquor Store Association.

(Opposed) Josh McDonald, Washington Wine Institute.

(Other) Bill Stauffacher, BNSF Railway; and Katie Jacoy, The Wine Institute.

Persons Signed In To Testify But Not Testifying: None.