



Tied House Review - Summary

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Defining “Tied House”

- Washington’s cornerstone Tied House Statute RCW 66.28.010(1)(a) addresses the two fundamental aspects of tied house laws.
 1. The prohibition against manufacturers, importers, distributors, and authorized representatives from owning or having a financial interest in a retail license or owning property on which a retailer operates; and



Defining “Tied House”

2. The prohibition against manufacturers, importers, distributors, and authorized representatives from providing things of value (“money or money’s worth”) to retailers.
 - “Tied House” refers to statutes and rules adopted by virtually every state, and at the federal level, to regulate how alcoholic beverages are marketed and how the various tiers of the industry interact.



Defining “Tied House”

- Designed to prevent inappropriate or coercive business practices among the various sectors of the liquor industry, either through domination of one tier over another or through exclusion of competitor’s products.



Regulating Tied House

- The LCB regulates all three tiers
 - Manufacturer
 - Distributor
 - Retailer
- The Federal Alcohol Administration Act (FAAA) regulates distilled spirits, wine, and malt beverages
 - Manufacturer
 - Distributor



Three Tier Task Force

- In response to the 2006 Three Tier Task Force Recommendations #2 and #3 the LCB next steps were to:
 - “Convene a work group (internal and external) to evaluate the Tied House Statute. Key objectives will be to identify options and impacts for changing Tied House and to identify consistent criteria that can be used for “exceptions.”
 - “Assign the work group (internal and external) from Recommendation 2 to also evaluate the Tied House Ownership and Financial Interests.



Tied House Review

- In 2007, LCB convened an advisory workgroup of stakeholders and LCB staff to review Financial Interest and Money's Worth. The team was comprised of representatives from:
 - In-state and out-of state wineries and breweries.
 - Retailers (independent, large, and specialty).
 - Distributors.
 - Law enforcement.
 - Prevention/Treatment community.
 - Sports and Entertainment.
 - WSLCB.
 - Labor Union (WPEA).



Tied House Review

- Six meetings were conducted.
 - January 30, 2007
 - February 27, 2007
 - March 27, 2007
 - April 19, 2007
 - May 24, 2007
 - June 14, 2007
 - December 6, 2007
- LCB staff dedicated over 350 hours to collect and review material for the workgroup on topics such as:
 - Three Tier Task Force information and recommendations
 - Research data on other state practices
 - Federal laws/practices
 - Stakeholder feedback through various sources



Exceptions Carved Out

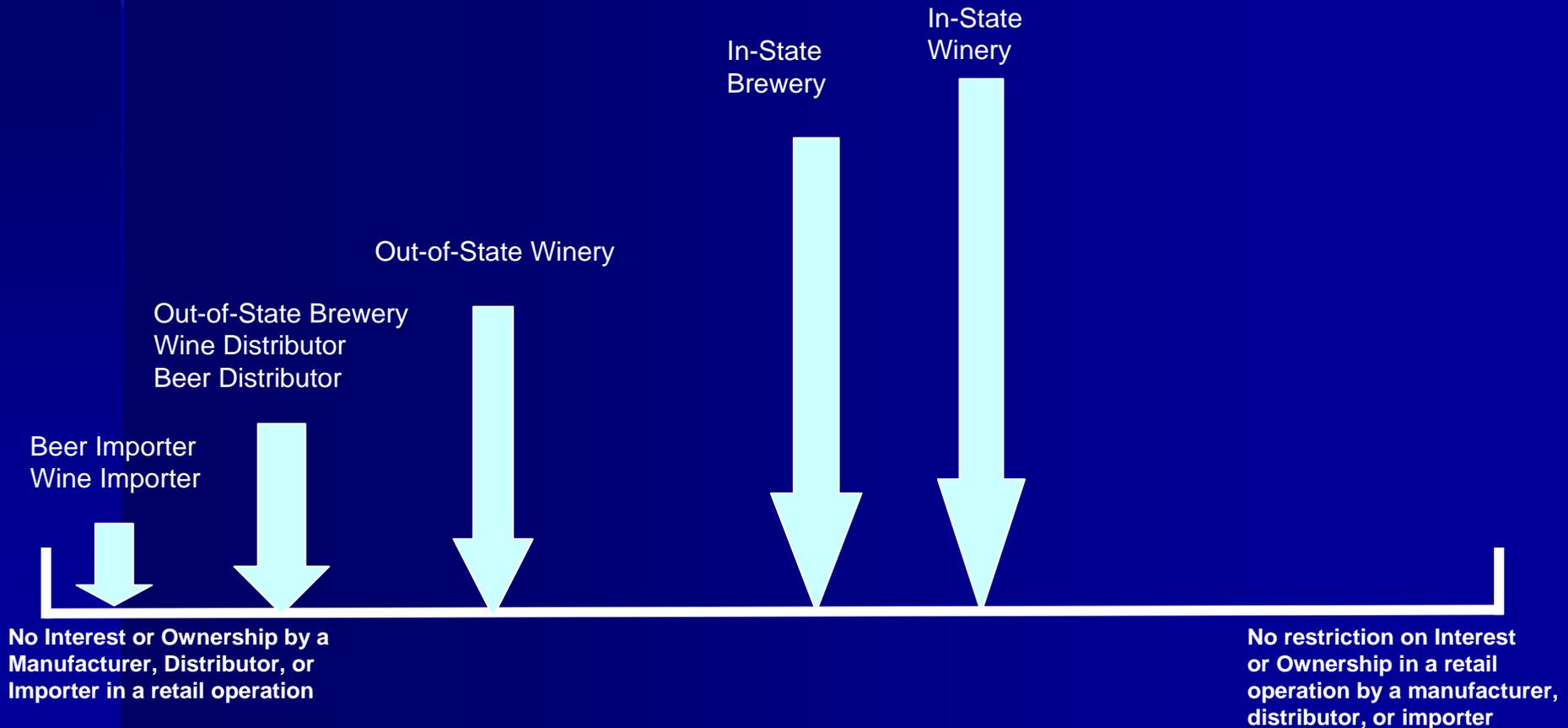
- Since 1933, many exceptions have been carved out of the tied house statute to meet the growing in-state wine and beer business needs.
 - Financial Interest
 - An in-state winery/brewery is allowed to have up to two off-site retail sales locations.
 - A manufacturer, importer, or distributor may have a joint advertising arrangement with a sports/entertainment facility.
 - Money's Worth
 - Allow manufacturer, importer, or distributor to stock/rotate beer and wine inventories for retailer.
 - Allow wineries and certificate of approval holders to perform personal services such as bottle signing, pouring at events, and similar activities.



Washington State Liquor Control Board

Continuum of Change – Financial Interest

Financial Interest / Ownership Tied House Exceptions (as of March 16, 2007)

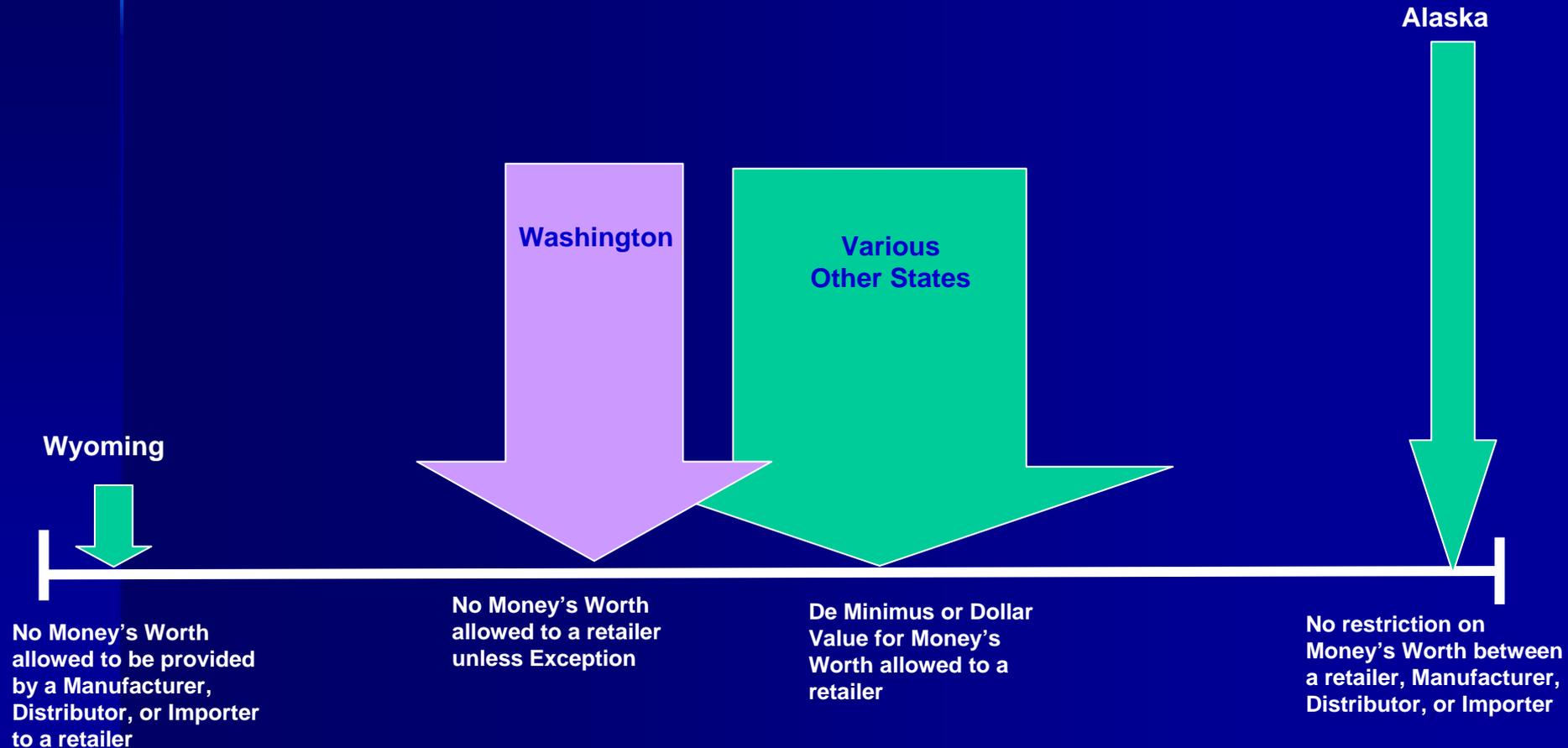




Washington State Liquor Control Board

Continuum of Change – Money's Worth

Money/Money's Worth Tied House (as of April 11, 2007)





Options Considered

- Three options were considered ranging from minimal effect to more sweeping effect.
 - Board Authority – rule-making authority to approve exceptions based on standard criteria (public safety, prevent youth access).
 - Minimal Changes – allow partial ownership (with stated requirements) and attach dollar limits to certain allowed money's worth activities.
 - Broad Changes – allow 100% ownership and allow money's worth except activities that might harm the public or youth.



Board Authority - Comments

- Many stakeholders supported the concept of granting the Board rule-making authority to grant exceptions.
 - *“...we strongly believe that the Liquor Control Board should have broad rule-making authority when it comes to protecting public safety. However, that authority should be more limited in situations pertaining to market access and market forces.”*
 - *“...our members believe that the Liquor Control Board should have some rule-making authority....In an effort to address this, any delegation of authority to the Board should probably be limited in scope at first—maybe to licensing, money/money’s worth and/or tied house laws.”*
 - *“In Washington State we have regulations that work, and a process of practical change via intelligent conversation with the legislature that also works.”*



Minimal Changes Financial Interest Comments

- Many stakeholders supported the idea of giving the LCB “de minimus” discretion to allow some financial interest.
 - *“It is a step forward without “throwing out the baby and the bathwater...”*
 - *“Allows the system to grow as business environments change....”*
 - *“Still maintains control.”*



Minimal Changes Money's Worth Comments

- Many stakeholders supported the concept to remove restrictions on money's worth and have LCB define prohibited practices.
 - *“Only things that are problematic would be brought to the LCB for action.”*
 - *“This option would be a reversal of presumptions which means that activities are allowed....”*
 - *This would put the LCB's current exceptions into broad categories and makes it easier to determine what is really important.”*



Broad Changes

Financial Interest Comments

- The general theme from stakeholders was that financial interest should remain separate between the tiers. In addition, there was concern that TTB does not have adequate staffing to monitor and enforce activities between manufacturers and distributors.
 - *“...there would be a conflict between state and federal law as it relates to partial ownership of a retailer by an industry member.”*
 - *“...big distributors within the state could establish retail outlets or purchase existing retail outlets....and have a negative impact on established small retailers, distributors, and grocery chains. Small retailers may not be able to shift their business strategy quickly enough to survive the change.”*
 - *“The distinction between cooperative business practices and financial interests that can result in the manufacturer exercising undo control over retail business can be difficult to determine....Blanket regulations cannot cover every potential manufacturer/retail relationship that will evolve in the future.”*
 - *“...overlapping ownership and other financial relationships between suppliers or distributors and retailers....would make coercion a fact of life in the industry because it would put large retailers in position to demand lower prices....”*



Broad Changes Financial Interest Comments

- A few minority opinions suggested that the LCB should adopt the concept.
 - *“The changes outlined by the Liquor Board are bold and dramatic. If adopted, they will change the way wine is made and sold in Washington State. In sum, Washington will become the best state in the nation to make, distribute, sell and enjoy wine.”*
 - *“We encourage the Board to proceed expeditiously with implementing the Concept.”*



Broad Changes Money's Worth Comments

- The general theme across the tiers was that the Liquor Control Board should continue to prohibit and enforce exchange of money's worth between a manufacturer, distributor, importer, and a retailer. Many stakeholders felt that what has been allowed under current exceptions should continue to be allowed.
 - *"I strongly oppose manufacturer payment to the retailer for exclusive brand advertisement. This change would discourage competition and encourage development of monopolies, eroding the separate (separation) of the tiers."*
 - *"...oppose requirement of manufacturers to pay all or part of cooperative product advertising."*



Broad Changes Money's Worth Comments

- *“These changes will reduce choice for the consumer.... The long-term for the consumer will be higher prices to compensate for the possible slotting allowances and other bribes to retailers.”*
- *“If slotting fees or exchanges of more than “money’s worth” are allowed, the effect would squeeze many companies out of business.”*



Broad Changes Money's Worth Comments

- A few minority opinions supported the concept.
 - *We believe that the movement toward allowing all activities – even if currently exempted and putting renewed emphasis on controls in areas that negatively impact public safety...will create a more enforceable system and result in greater efficiencies in the collection of taxes.”*
 - *“...the Liquor Board would no longer be an “economic policeman” limiting the operation of the free market. Instead it would focus on its prime missions of protecting public safety and collection of taxes....”*



Summary

- The Board did not take a formal position on the options pending the 9th Circuit Court of Appeals ruling.
- The last ruling which validated these regulations in April 2008, gives the legislature the ability to explore options to keep or change tied house.
- June 30, 2008 is the deadline for Costco parties to appeal to the U.S. Supreme Court for review. If no request is filed, the 9th Circuit Court ruling stands.