
JOINT SELECT COMMITTEE ON BEER AND WINE REGULATION

FINAL REPORT

February 6, 2009

Co-Chairs

Senator Janéa Holmquist
Senator Jeanne Kohl-Welles
Representative Cary Condotta
Representative Steve Conway

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Senator Margarita Prentice
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Joint Select Committee on Beer and Wine Regulation

February 6, 2009

Members, Senate Labor, Commerce and Consumer Protection Committee
Members, House Commerce and Labor Committee

Dear Committee Members:

We are pleased to present the Final Report of the Joint Select Committee on Beer and Wine Regulation.

During the 2008 interim, the Select Committee reviewed laws relating to the manufacture, distribution, and sale of beer and wine. We solicited and received input from a broad range of stakeholders, including representatives of the three tiers of the industry, the prevention community, and the Washington State Liquor Control Board. Our recommendations address several areas of regulation, including the minimum mark-up charged by manufacturers and distributors, advertising, ownership in multiple tiers, and sales by out-of-state online retailers. As noted in the report, discussions about the details of two recommendations are ongoing.

We believe these recommendations will assist the beer and wine industry in our state while protecting public safety.

Sincerely,



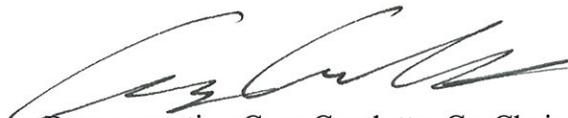
Senator Jeanne Kohl-Welles, Co-Chair



Representative Steve Conway, Co-Chair



Senator Janéa Holmquist, Co-Chair



Representative Cary Condotta, Co-Chair



Senator Mike Hewitt



Representative Bruce Chandler

PART I
BACKGROUND ON THE SELECT COMMITTEE

In 2008 the Legislature enacted Second Engrossed Substitute Senate Concurrent Resolution 8407, which established the Joint Select Committee on Beer and Wine Regulation. See Appendix. The Final Bill Report is available online at <http://apps.leg.wa.gov/billinfo/>.

The Select Committee was directed to review laws relating to the manufacture, distribution, and sale of beer and wine to determine whether the laws should be continued in their present form or reformulated to decrease the number of bills introduced in the Legislature each year.

The Select Committee consisted of eight members: the chairs and the ranking members of the Senate Labor, Commerce, Research and Development Committee and the House Commerce and Labor Committee; and four members from the two largest caucuses of the Senate and the House of Representatives.

The Select Committee chose its co-chairs from among its membership. The co-chairs were the chairs and the ranking members of the Senate and House committees.

The Select Committee is required to report its findings and recommendations to the appropriate committees of the Legislature.

PART II ACTIVITIES OF THE SELECT COMMITTEE

Starting in June 2008 and continuing through the fall, the Select Committee reviewed laws relating to the manufacture, distribution, and sale of beer and wine to determine whether the laws should be continued in their present form or reformulated to decrease the number of bills introduced in the Legislature each year. The Select Committee solicited the participation of and received input from various stakeholder groups, including representatives of manufacturers, distributors, and retailers of beer and wine; representatives of the prevention community; and the Washington State Liquor Control Board (LCB). (Dates in parentheses are dates of the meetings at which particular issues were discussed.)

Select Committee meeting materials are available online at <http://www.leg.wa.gov/Joint/Committees/SCBW/>.

Preliminary Matters

Before beginning its review of various beer and wine laws, the Select Committee addressed the following preliminary matters:

1. Procedures (June 10)

The Select Committee established procedures addressing the organization and conduct of the Select Committee, subcommittees and advisory committees, the decision making process, and the participation of alternates.

2. Schedule (June 10)

The Select Committee reviewed, revised, and approved its schedule. The Select Committee planned to meet four times (June 10, September 9, September 30, and November 14). The Select Committee later scheduled an additional meeting on December 17 to adopt recommendations.

Review of Beer and Wine Laws

After addressing various preliminary matters, the Select Committee briefly reviewed the history of beer and wine regulation in Washington. Its review included a report on recent liquor regulation studies (the Three-Tier Task Force in 2006 and the Tied House Review Team in 2007), and an overview of the Costco litigation.¹ (June 10.)

Following the initial meeting, the Select Committee developed a plan to review beer and wine laws in an organized manner. The Select Committee selected general subjects of regulation to

¹ Costco v. Maleng, 522 F.3d 874 (9th Cir. 2008), *aff'g in part and rev'g in part* Costco v. Hoen, 2006 U.S. Dist. LEXIS 27141 (W.D. Wash. 2006).

review at subsequent meetings and was briefed on specific beer and wine laws related to the general subject. The Select Committee then received public comment on each subject.

The following subjects were reviewed:

1. Post and Hold Requirements (September 9)

Distributors are required to file a price posting with the LCB, showing the prices at which products will be sold to retailers. The price postings are not public and changes may be made at any time. Prior LCB regulation subjected prices to a 30 day "hold" requirement; however, that regulation has been eliminated as part of the Costco litigation.

2. Minimum Mark-Up Requirements (September 9)

Manufacturers are required to mark-up the price of their product to a distributor by at least ten percent above the cost of production. Distributors, in turn, are required to mark-up the price of their product to retailers by at least ten percent above the cost of acquisition.

3. Quantity Discounts (September 30)

Manufacturers and distributors are explicitly prohibited from offering quantity discounts.

4. Moneys' Worth; Ban on Credit With Respect to Electronic Fund Transfers (September 9)

The tied-house law prohibits manufacturers, importers, and distributors from advancing "moneys or moneys' worth" to a licensed person. Likewise, no licensed person may receive moneys' worth. Under this law, retailers are required to pay "cash" for beer and wine prior to or at the time of delivery and manufacturers, importers, and distributors are prohibited from extending credit to retailers. Checks and credit/debit cards are considered cash under specified conditions. Electronic fund transfers are also considered cash under specified conditions.

5. Moneys' Worth; Advertising (September 9)

As noted above, advancing or receiving moneys or moneys' worth is prohibited. There are a number of statutory exemptions for various types of advertising (e.g., brochures/web links, sports/entertainment advertising, special occasion advertising, and point of sale materials). In addition, the LCB has adopted rules on advertising (e.g., novelty items, sporting arena brochures, premiums and prizes, services to retailers, and joint advertising/information).

6. Other Moneys' Worth Issues (September 30)

The prohibition on advancing or receiving moneys or moneys' worth governs other activities in addition to credit and advertising. Manufacturers, importers and distributors may not give to a retailer (and no retailer may receive) any "gifts, discounts, loans of money, premiums, rebates, free liquor of any kind, treats or services of any nature" except as authorized.

Manufacturers, importers, and distributors may not give or lend to retailers (and retailers may not give or lend to manufacturers, importers, and distributors), any equipment, fixtures, supplies or property of any kind unless otherwise authorized. A number of exemptions have been enacted (e.g., specified services, gifts of liquor and business entertainment, and courses of instruction).

7. Financial Interest/Ownership Issues (September 30)

Manufacturers, distributors, and importers, or persons financially interested, "directly or indirectly," in such a business are prohibited from having any "direct or indirect" financial interest in a retail licensee. In addition, they may not own any of the property upon which a retail licensee conducts business, and may not hold a retail license or sell at retail. A number of exemptions have been enacted (e.g., breweries and wineries may hold certain retail licenses and some specified partial ownership and property ownership interests are permitted).

8. Retailer to Retailer Product Transfers (September 9)

Retail licensees may not sell or deliver beer or wine to, or purchase beer or wine from, other retail licensees. These prohibitions apply regardless of whether there is common ownership of the retail licensees.

9. Central Warehousing (September 30)

Retailers are prohibited from storing or taking delivery of beer and wine at a central warehouse. Beer and wine may only be delivered to the retail store where it will be sold to the consumer, or directly to the retailer at the distributor's licensed premises.

10. Sales by Out-of-State Retailers to Washington Residents (September 30)

Retailers located out of Washington, including on-line retailers, are not authorized to sell or ship wine directly to Washington residents unless the retailer has a warehouse or other physical presence in the state. Out-of-state wineries do have the ability to sell and ship wine directly to Washington residents.

Consideration of Recommendations

In anticipation of making recommendations to the Legislature, the co-chairs of the Select Committee asked stakeholders to make recommendations on whether the laws should be continued or reformulated. Stakeholders recommending changes in the laws were asked to provide specific proposals. The Select Committee then took comment on stakeholder recommendations (November 14). Stakeholders were given an opportunity to submit additional detail on their proposals, and the Select Committee reviewed all proposals and adopted recommendations at its final meeting (December 17).

PART III RECOMMENDATIONS OF THE SELECT COMMITTEE

The majority of the Select Committee recommends the items listed below. Items marked "pending" were agreed to in concept.

1. Post and Hold Requirements

The Select Committee recommends that the post and hold requirement be amended to reflect the Costco decision.

2. Minimum Mark-Up Requirements

Pending. The Select Committee agrees in concept that the minimum mark-up be eliminated. The details of a recommendation are pending discussions about allowing the Liquor Control Board (LCB) to require a minimum mark-up for some products. Representative O'Brien does not agree that the minimum mark-up should be eliminated.

3. Moneys' Worth; Ban on Credit With Respect to Electronic Fund Transfers

The Select Committee recommends that electronic fund transfers be permitted, so long as transfers are completed no later than five business days following delivery. The five day requirement may need to be modified to specify "as soon as possible, but no later than five business days following delivery."

4. Moneys' Worth; Advertising

The Select Committee recommends that manufacturers, importers, and distributors be permitted to provide to retailers certain branded promotional items of nominal value. Items should be used exclusively by the retailer or employees in a manner consistent with its license. Items should bear imprinted advertising matter. Items should be provided only to retail licensees and their employees and should not be provided by or through retail licensees or their employees to retail customers. Upon application, the LCB should approve additional items unless the LCB identifies substantial reasons for concluding an item does not meet the requirements or is of a value significantly greater than the value of items already qualified. Licensees should be prohibited from using branded promotional items to target youth.

The Select Committee also recommends that the LCB consider youth access issues when reviewing advertising rules.

5. Financial Interest/Ownership Issues

Pending. The Select Committee agrees in concept that ownership in multiple tiers should be permitted. The details of a recommendation are pending further discussion.

6. Retailer to Retailer Product Transfers

The Select Committee recommends allowing wine to be transferred from one retail licensee to another retail licensee so long as both licensees are under common ownership. A licensed site should be permitted to transfer up to a total of twenty cases of wine per calendar year.

7. Sales by Out-of-State Retailers to Washington Residents

The Select Committee recommends that out-of-state online retailers be required to obtain a wine shipper's permit. The out-of-state online retailer should be limited to shipping not more than eighteen liters per month to a Washington resident. Holders of the wine shipper's permit should be subject to LCB regulation and enforcement.

Part IV
Minority Report

I do not agree with Recommendation 2 that in concept the minimum mark-up should be eliminated. I believe that the minimum mark-up should be retained on less expensive beer and wine products as a deterrent to youth obtaining access to alcohol.

Submitted by Representative Al O'Brien

**APPENDIX
2ESSCR 8407 (2008)**

SECOND ENGROSSED SUBSTITUTE SENATE CONCURRENT RESOLUTION 8407

Passed Legislature - 2008 Regular Session

State of Washington

60th Legislature

2008 Regular Session

By Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Kohl-Welles, Clements, Keiser and Parlette)

READ FIRST TIME 03/12/07.

WHEREAS, The Liquor Control Board was established in 1933 to oversee the sale, manufacture, and distribution of liquor in this state; and

WHEREAS, Many of the laws relating to the manufacture, distribution, and sale of beer and wine have either not been substantially amended or been amended in a disjointed piecemeal manner since 1933; and

WHEREAS, Since 1993 there have been 91 bills introduced in the legislature dealing with the sale, distribution, or manufacture of beer and wine in this state, 16 of those bills being introduced during the 2007 session; and

WHEREAS, The legislature has spent countless hours dealing with bills that create many small exemptions from provisions governing beer and wine sales and tied house;

NOW, THEREFORE, BE IT RESOLVED, By the Senate of the state of Washington, the House of Representatives concurring, That the laws

dealing with the sale and manufacture of beer and wine be thoroughly reviewed; and

BE IT FURTHER RESOLVED, That a joint select committee on beer and wine regulation be established to review laws relating to the manufacture, distribution, and sale of beer and wine to determine whether the laws should be continued in their present form or reformulated to decrease the number of bills introduced in the legislature each year; and

BE IT FURTHER RESOLVED, That the committee shall consist of eight members; and

BE IT FURTHER RESOLVED, That the chair and ranking minority member of the Senate labor, commerce, research and development committee and the chair and ranking minority member of the House commerce and labor committee shall each be appointed to the committee; and

BE IT FURTHER RESOLVED, That the leaders of the two largest caucuses in the Senate shall each appoint one member of their respective caucuses to the committee; and

BE IT FURTHER RESOLVED, That the leaders of the two largest caucuses in the House of Representatives shall each appoint one member of their respective caucuses to the committee; and

BE IT FURTHER RESOLVED, That Legislative members of the committee must be reimbursed for travel expenses in accordance with RCW 44.04.120; that expenses of the committee must be paid jointly by the Senate and the House of Representatives, and that committee expenditures are subject to approval by the Senate facilities and operations committee and the House of Representatives executive rules committee, or their successor committees; and

BE IT FURTHER RESOLVED, That the committee shall choose its cochairs from among its membership, and that the chair of the

Senate labor, commerce, research and development committee and the chair of the House commerce and labor committee shall convene the initial meeting of the committee; and

BE IT FURTHER RESOLVED, That the committee report its findings and recommendations to the appropriate committees of the legislature by December 1, 2008; and

BE IT FURTHER RESOLVED, That the committee shall expire July 1, 2009.

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