

SENATE BILL REPORT

SB 6027

As of February 19, 2009

Title: An act relating to the work of the joint select committee on beer and wine regulation.

Brief Description: Concerning the work of the joint select committee on beer and wine regulation.

Sponsors: Senators Hewitt, Kohl-Welles and Holmquist.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/19/09.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Mac Nicholson (786-7445)

Background: In 2008 the Legislature established a Joint Select Committee on Beer and Wine Regulation (Select Committee) to review the laws relating to the manufacturer, distribution, and sale of beer and wine (2ESSCR 8407). The Select Committee met during the 2008 interim and produced a final report with recommendations.

Tied House Law. The tied house law prohibits certain relationships between the liquor manufacturer, distributor, and retailer tiers. The financial interest part of the tied house law prohibits a manufacturer, importer, distributor, or any person directly or indirectly financially interested in such a business from having any direct or indirect financial interest in a licensed retailer. In addition, a manufacturer, importer, or distributor may not own any of the property on which a licensed retailer conducts business, and may not hold a retail license. A number of exceptions to the financial interest part of the tied house law have been enacted, including the following: wineries and breweries may sell at retail on their premises; a brewery may hold up to two licenses for a restaurant and/or tavern on its premises or at separate locations; and a nonprofit association or a wine industry association with an officer, director, owner, or employee of a winery on its board of directors may hold a special occasion license.

The moneys' worth part of the tied house law prohibits a manufacturer, importer, or distributor from advancing to a licensed retailer, and a retailer from receiving, money or moneys' worth. A number of exceptions to the moneys' worth prohibition have been enacted, including the following:

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- manufacturers, distributors, and importers may provide display and stocking services, price case goods, and perform other normal business services for retailers;
- wineries may provide certain personal services at certain retail licensees;
- wineries and breweries and retailers may provide information about and link to each other on their websites;
- manufacturers, distributors, and importers may enter arrangements with sports/entertainment facility licensees or affiliated businesses for brand advertising and promotion of events; and
- manufacturers, distributors, and importers may provide point of sale materials and brand signs to retailers and provide advertising and pouring of beer or wine at tasting or judging events.

Post and Hold. It is unlawful for a beer or wine manufacturer, importer, or distributor to modify prices without notifying and obtaining Liquor Control Board (LCB) approval. Beer and wine suppliers and distributors must post the prices at which beer and wine are sold to distributors and retailers. Until recently, a rule required suppliers and distributors to adhere to posted prices for at least 30 days. These provisions were known as the "post and hold" requirement. In 2008 the "post and hold" requirements were struck down by the Ninth Circuit Court of Appeals in the *Costco v. Hoen* litigation.

Minimum Mark-up. Beer and wine manufacturers and distributors must mark-up the price of their product to a distributor or retailer, as the case may be, by at least 10 percent above the acquisition/production cost.

Summary of Bill: The legislation makes a number of legislative recognitions and findings.

Tied House Law. The tied house law is repealed and new provisions are adopted. Generally, financial interests between industry members and retailers are permitted as long as the financial interest doesn't result in undue influence or have an adverse impact on public health and safety. A complaint process is established whereby any person may file a complaint with the LCB asserting undue influence or an adverse impact on public health or safety. The LCB may investigate and issue an administrative violation notice. Any financial interest allowed as of the effective date of the act is presumed lawful.

"Industry member" is defined as a manufacturer, producer, supplier, importer, wholesaler, distributor, authorized representative, certificate of approval holder, warehouse, and any affiliates, subsidiaries, officers, directors, partners, agents, employees, and representatives of any industry member.

"Undue influence over the purchasing, marketing, or sales decisions of one retailer or industry member over another industry member or retailer" is defined as any agreement or other business practices or arrangements which results directly or indirectly in circumstances including but not limited to:

- a retailer on an involuntary basis purchasing less than it would have of another industry member's product;
- purchases made by a retailer or industry member as a prerequisite for purchase of other items;

- a retailer purchasing a specific or minimum quantity or type of a product from an industry member;
- an industry member requiring a retailer to take and dispose of a certain product type or quota of the industry member's products;
- a retailer having a continuing obligation to purchase or otherwise promote or display an industry member's product;
- an industry member having a continuing obligation to sell a product to a retailer;
- a retailer or an industry member having a commitment not to terminate its relationship with the other party with respect to sale and purchase of a particular product;
- an industry member or retailer being involved in each other's day-to-day operations in a manner that violates the provisions; and
- discriminatory pricing practices prohibited by law or other practices that are discriminatory if the product is not offered to all retailers in the local market on the same terms.

Industry members generally continue to be prohibited from advancing, and retailers continue to be prohibited from accepting, moneys' worth. The exceptions to the moneys' worth prohibition are retained with some changes, and an additional exception for branded promotional items is added. Branded promotional items are items of nominal value and may be given to a retailer by an industry member. Examples of branded promotional items include trays, lighters, blotters, postcards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, hats, visors, and other items of similar nominal value, whether a single item or in the aggregate. The items must be used exclusively by the retailer or the retailer's employees in a manner consistent with the liquor license, must bear imprinted matter of the industry member only, may not be provided to retail consumers, and may not be targeted to or appeal to youth.

The provisions apply to industry members and retailers.

The personal services exception is broadened to allow wineries to provide personal services for special occasion licensees and private club licensees. The exception for jointly produced brochures and materials is no longer limited to domestic wineries. The exceptions apply to all industry members.

A complaint process is established similar to the complaint process for financial interests. Any person may file a complaint with the Board asserting undue influence, an adverse impact on public health or safety, or that the provision of the items is otherwise inconsistent with the requirements for promotional items. The Board may investigate and issue an administrative violation notice.

Industry members and retailers must keep records for three years of things of value furnished or received and financial ownership interests.

Post and Hold. Intent language in the pricing provisions is deleted. The prohibition against modifying prices at the manufacturer or distributor level without notification to and approval of the LCB is deleted. The requirement for beer and wine distributors to file a price posting

with the LCB is deleted. Manufacturers and distributors must maintain a list of prices at their licensed location.

Minimum Mark-up. The requirement that suppliers mark up prices to distributors or retailers and that distributors mark-up prices to retailers by 10 percent of acquisition/production cost is removed. The prohibition against sales below cost is retained.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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