

# Liquor Regulation in Washington State

## Liquor: Washington's Monopoly

The 21st Amendment to the U.S. Constitution ended federal prohibition and gave states broad authority to control intoxicating liquors. The Washington State Liquor Act (Act), enacted in 1933, created a government monopoly model in which the state is the only entity allowed to sell spirits to the public. Washington is one of 18 so-called "control" states in which the state is the sole wholesaler, and in some cases retailer, of spirits.

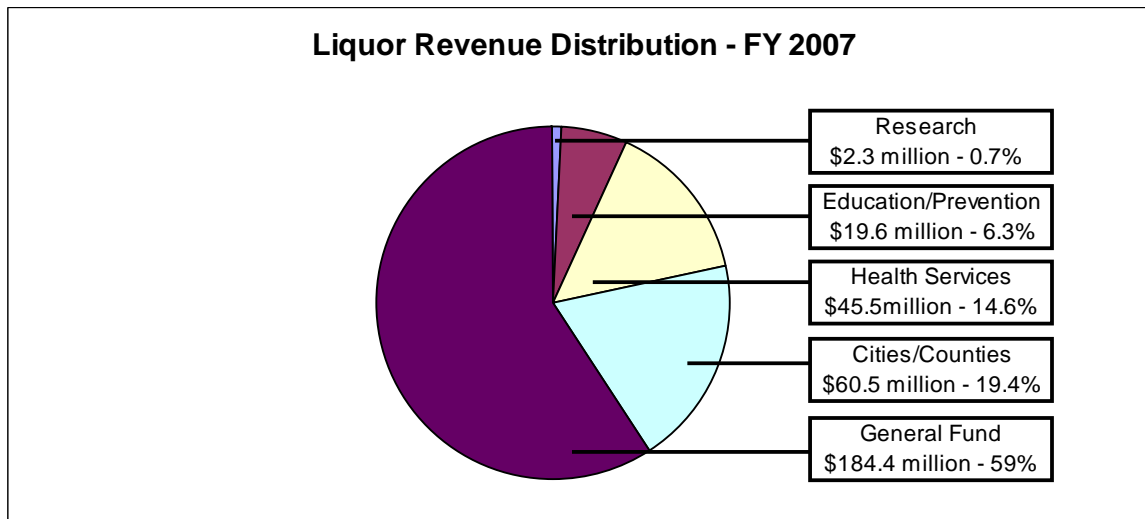
There is ongoing debate as to whether privatizing the sale and distribution of spirits would improve enforcement of existing liquor laws, reduce taxpayers' financial risk, potentially increase revenue to the state and enhance efficiency and service in the sale of liquor and wine.

## Washington State Liquor Control Board

The Liquor Control Board (Board) is a three-member panel appointed by the Governor with the consent of the Senate for six year terms. The Board prevents the misuse of alcohol through licensing, regulation, enforcement, education, and controlled distribution and merchandising systems.

## Liquor Revenue

The Board earns revenues primarily from markup, licensing fees, and taxes. The distribution of the revenue is set forth below:



## The Regulatory System: Three-Tier System, Tied-House, Pricing and Delivery

Like other states, Washington has established a "three-tier" system to regulate the distribution and sale of beer and wine. Under the three-tier system, producers are generally required to sell their products to licensed distributors, who in turn sell to licensed retailers, who in turn sell to consumers. "Tied house"

laws support the three-tier system by creating a financial separation between the tiers. In general, the tied-house laws prohibit a manufacturer and distributor from having a financial interest in a retailer or providing things of value to a retailer.

Several exceptions to the three-tier system have been enacted. For many years, in-state wineries and breweries had been able to self-distribute to retailers and in-state wineries had been able to ship wine directly to Washington residents. These same privileges did not apply to out-of-state wineries and breweries. In *Costco v. Hoen*, the U.S. District Court for the Western District of Washington, following a U.S. Supreme Court decision, held that the differential treatment of in-state and out-of-state wineries and breweries violated the Commerce Clause. In response to the court decision, the Legislature granted both in-state and out-of-state wineries and breweries the ability to distribute the beer and wine they produce to Washington retailers (2SSB 6823 – 2006). In a related bill, the Legislature allowed both in-state and out-of-state wineries to directly ship wine to Washington residents (ESB 6537 - 2006).

Washington also regulates the pricing and delivery of beer and wine. These laws include requirements for distributors to sell their products to all retailers at the same price, to deliver wine and beer to the individual licensed retailer, not to a central warehouse, and to provide no volume discounts to retailers. In the *Costco* case, the 9<sup>th</sup> Circuit Court of Appeals rejected the claim that several aspects of the pricing and delivery system violated antitrust laws but did strike a requirement that distributors post and hold prices for 30 days.

## **Recent Studies**

In recent years, several studies have been undertaken of the state's beer and wine laws. In 2006, at the direction of the Legislature, the Board convened a Three-Tier System Review Task Force to study the state's regulatory system for the distribution of beer and wine and make recommendations to the Board. The Task Force made eleven recommendations. One of the recommendations addressed the tied-house restrictions. In response, the Board convened an external and internal Tied House Review Team to evaluate the tied house law. The Board considered three options, ranging from minimal effect to more sweeping effect.

During 2008, pursuant to 2ESSCR 8407, an eight member Joint Legislative Committee on Beer and Wine Regulation will be studying laws related to the manufacture, distribution, and sale of beer and wine. Recommendations to the Legislature are due on December 1, 2008.

## **Other Recent Legislation**

Craft distilleries. Under SHB 2959 (2008), craft distilleries have a reduced license fee of \$100 (compared to a \$2,000 fee for distilleries) and also may exercise additional privileges. To qualify as a craft distillery, a distillery must produce 20,000 gallons or less of spirits with at least half of the raw materials grown in Washington. A craft distillery may sell at retail up to two liters of the spirits it produces per person per day and may also provide limited samples on its premises.

Grocery store beer and wine tastings. The Board will be selecting 30 grocery stores for a pilot project of beer and wine tastings under ESB 5751 (2008). Tastings are limited to samples of two ounces or less, up to a total of four ounces, per customer.

“Sunday Sales.” In 2005, the Legislature eliminated the prohibition on Sunday sales by state-owned and contract liquor stores and created a pilot project for Sunday sales in 20 stores. (HB 1379). The 2007-09 operating budget expanded Sunday sales to an additional 29 stores. (Section 147(2) of SHB 1128).

Privatization of Liquor Sales. Nearly every biennium, legislation is introduced to replace state-run liquor stores and liquor agencies with privately owned and operated retail liquor stores.

Wineries and breweries. Several bills have given wineries and breweries additional privileges. Wineries may provide pouring services at restaurants and link to retailers (and vice-versa) on the internet. (HB 2240 – 2007). In 2008, legislation passed allowing wineries to sell their wine by the glass at off-site tasting rooms and allowing microbreweries to have up to two off-site restaurants or taverns. (SSB 6770).