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Heard it Through the Grapevine: Chapter 28 Saves California Wine Competitions from Prohibition-Era Law

Christopher Stipes

Code Sections Affected

Business and Professions Code §§ 23013, 23356.2 (amended).
SB 607 (Wiggins); 2008 STAT. Ch. 28 (*Effective June 6, 2008*).

I. INTRODUCTION

Joel Sommer, an Illinois resident and organizer of home winemaking competitions, was stunned when the California Department of Alcoholic Beverage Control (DABC) informed him that, based on its interpretation of the law, sharing homemade wine with others was illegal in California.¹ In fact, while Sommer was organizing a wine festival in California, the DABC notified him that if he proceeded with the festival it would “be without [the DABC’s] consent or authorization and could result in criminal prosecution.”²

The California home winemaking community was similarly surprised to learn that these competitions and festivals, a staple for generations throughout California, were illegal according to the DABC.³ This illegality stems from outdated prohibition-era legislation that severely limits sharing homemade wine with others and essentially eliminates wine tasting from all California fairs.⁴ With major annual festivals rapidly approaching, such as the Sonoma County Harvest Fair and the California Exposition and State Fair in Sacramento, the Legislature promptly enacted Chapter 28 to remodel the law and allow the festivals to proceed.⁵

1. Kevin McCallum, *Home Wine Ruling a Shock: Organizers and Others Stunned That State ABC Would Say Events Like Harvest Fair are Against the Law*, PRESS DEMOCRAT, May 1, 2008, <http://www.pressdemocrat.com/article/20080501/NEWS/805010333> (on file with the *McGeorge Law Review*).

2. E-mail from David Wright, Investigator, Dep’t of Alcoholic Beverage Control Trade Enforcement Div., to Joel Sommer (May 7, 2008, 03:32:00 PST) (on file with the *McGeorge Law Review*).

3. Emily Charrier, *Home Winemaking Contests Now Legal*, SONOMA INDEX-TRIB., June 12, 2008, <http://www.sonomanews.com/articles/2008/06/16/news/doc484dd72ef3def962810455.txt> (on file with the *McGeorge Law Review*); *Home Wine: Whether It’s a Lousy Law or a Bad Interpretation, It Must Go*, PRESS DEMOCRAT, May 3, 2008, <http://www.pressdemocrat.com/article/20080503/NEWS/805030315> [hereinafter *Home Wine*] (on file with the *McGeorge Law Review*).

4. McCallum, *supra* note 1; *Home Winemakers Bill Ok’d*, NAPA VALLEY REG., June 6, 2008, <http://www.napavalleyregister.com/articles/2008/06/06/wine/doc4848e9338f5a2414591376.txt> (on file with the *McGeorge Law Review*).

5. *Home Wine*, *supra* note 3; see also Letter from Mike Falasco, Dir., Cal. State Relations, to Arnold Schwarzenegger, Governor, Cal. State (May 30, 2008) [hereinafter *Falasco Letter*] (on file with the *McGeorge Law Review*) (stating that “enactment [of SB 607] is time sensitive” because there are over forty scheduled fairs in California that feature amateur winemaking competitions).

II. BACKGROUND

Under federal law, home winemakers may produce up to 200 gallons of wine per year and can share their product with others.⁶ Similar provisions exist for home beer-brewers.⁷ Since the repeal of prohibition, the states are largely free to regulate alcoholic beverages,⁸ and California's DABC is an example of a state-level agency charged with such regulation.⁹ The DABC's primary responsibilities are licensing and regulating the manufacturing, importation, and sale of alcoholic beverages in California.¹⁰ Additionally, it interprets state laws regarding alcoholic beverages, and may deny, suspend, or revoke alcohol licenses.¹¹ In fact, it was the DABC's interpretation of the state home winemaking laws that served as the direct catalyst for Chapter 28.¹²

Prior state law excluded individuals "who produce less than 200 gallons of wine per year for their personal consumption" from the definition of a "winegrower."¹³ In response to the repeal of prohibition, the Legislature changed California law to allow a home winemaker producing 200 gallons or less to use the wine for personal consumption on the premises where the wine was made. However, the home winemaker could not remove the wine from the premises or share the wine with others.¹⁴ This meant that a wine hobbyist could not share his or her product with a family member or compete in contests, tastings, or judgments of any sort.¹⁵ However, winemakers producing more than 200 gallons fell within the definition of a winegrower and therefore were not similarly restricted to personal consumption of wine.¹⁶ Additionally, all home winemakers were required to obtain a license in order

6. 27 C.F.R. §§ 24.75(b)(1), (f) (2008).

7. *Id.* §§ 25.205, 25.206.

8. *Compare* U.S. CONST. amend. XVIII, § 1 (repealed 1933) (prohibiting "the manufacture, sale, or transportation of intoxicating liquors" in the United States), *with* U.S. CONST. amend. XXI, §§ 1, 2 (repealing the Eighteenth Amendment thereby granting the states control of the manufacture, sale, or transportation of alcohol). *See also* Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97, 110 (1980) ("The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system.").

9. *See* CAL. CONST. art. XX, § 22 (designating the Department of Alcoholic Beverage Control as the agency with the power to regulate alcoholic beverages in California).

10. *Id.*

11. *Id.*

12. McCallum, *supra* note 1.

13. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 607, at 2 (May 29, 2008); *see also* CAL. BUS. & PROF. CODE § 23013 (West 1997) ("'Winegrower' means any person who has facilities and equipment for the conversion of grapes, berries, or other fruit into wine and is engaged in the production of wine, except that any person who produces not to exceed 200 gallons of wine per year for his own consumption shall not, because of such production, be considered a winegrower within the meaning of this division.").

14. *See* SENATE FLOOR, COMMITTEE ANALYSIS OF SB 607, at 2 (May 29, 2008). *Compare* CAL. BUS. & PROF. CODE § 23013 (excluding persons who produce less than 200 gallons from definition of a winegrower), *with* CAL. BUS. & PROF. CODE § 23356.1(a) (allowing only "winegrowers" with a winegrower's license "to conduct winetastings . . . either on or off the winegrower's premises").

15. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 607, at 3 (May 29, 2008).

16. *See* CAL. BUS. & PROF. CODE § 23356(a) ("Any manufacturer's or wine grower's license authorizes

to manufacture their product,¹⁷ despite the fact that those producing less than 200 gallons would be the only persons legally allowed to drink the wine.¹⁸

Conversely, California law permits home beer-brewers to produce up to 100 gallons of beer if there is one adult in the household and 200 gallons if there are two or more adults in the household.¹⁹ Furthermore, they are allowed to share their product at contests and fairs.²⁰ As long as the home beer-brewer is over twenty-one, he or she does not need to obtain a license to manufacture his or her product.²¹ Unlike home winemakers, home beer-brewers recognized how the law limited their competitions and successfully petitioned to alter California's home beer-brewing legislation to mimic federal law.²² Home winemakers, largely unaware of the legislation, failed to take the same precautions and were thus restricted by the exception contained in the definition of a winegrower.²³ Consequently, the California Legislature enacted Chapter 28 to eliminate this inconsistency.²⁴

III. CHAPTER 28

Chapter 28 updates home winemaking laws.²⁵ By removing the exception from the original statute, Chapter 28 defines a "winegrower" as individuals producing less than 200 gallons of wine for personal use.²⁶ Chapter 28 also provides that such individuals are not required to obtain a license or permit to manufacture their wine.²⁷ Finally, Chapter 28 allows a home winemaker to remove the product from his or her home to participate in "contests, tastings, or judgments," so long as the wine is not "sold or offered for sale."²⁸

the person to whom issued to . . . become a manufacturer or producer of the alcoholic beverage specified in the license . . .").

17. *See id.* § 23300 ("No person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division."); CAL. BUS. & PROF. CODE § 23356.1(a) ("A winegrower's license . . . authorizes the person . . . to conduct winetastings . . .").

18. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 607, at 2 (May 29, 2008); *see also* CAL. BUS. & PROF. CODE § 23356.2 (providing an exemption for home beer-brewers, but failing to provide a similar exemption for home winemakers).

19. CAL. BUS. & PROF. CODE § 23356.2.

20. *Id.*

21. *Id.*

22. Elizabeth Larson, *Governor Signs Winemaker Bill: Home Vintners Can Now Legally Take Wines to Competition*, CAPITAL PRESS, June 12, 2008, <http://www.capitalpress.info/main.asp?Search=1&ArticleID=42231&SectionID=67&SubSectionID=616&S=1> (on file with the *McGeorge Law Review*); *see also* 27 C.F.R. §§ 25.205, 25.206 (providing basic structural framework for amended § 23356.2).

23. *See* Larson, *supra* note 22 (noting that home winemakers became aware of the illegality last spring).

24. *See generally* 2008 Cal. Stat. ch. 28 ("An act to amend Sections 23013 and 23356.2 of the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.").

25. Falasco Letter, *supra* note 5; CAL. BUS. & PROF. CODE §§ 23013, 23356.2 (amended by Chapter 28).

26. CAL. BUS. & PROF. CODE § 23013 (amended by Chapter 28).

27. *Id.* § 23356.2(b) (amended by Chapter 28).

28. *Id.* § 23356.2(d) (amended by Chapter 28).

IV. ANALYSIS

Chapter 28 modernizes California's home winemaking laws to mirror federal home winemaking laws²⁹ and state beer-brewing laws.³⁰ In fact, the homemade wines shared during the 2008 summer festivals were the first technically legal "tastings" since the pre-prohibition era.³¹ After prohibition's repeal, states had the authority to regulate alcohol.³² However, California's regulation of home winemaking remained more restrictive than federal law.³³ Worse, it left the golden state's wine hobbyists unable to share their wine with others.³⁴ Economic considerations³⁵ and notions of basic fairness motivated the Legislature's enactment of Chapter 28.³⁶ There is no recorded opposition to the legislation, which explains why it passed through both houses and was signed by the Governor in a matter of weeks.³⁷

California is a "global leader"³⁸ in the wine industry and produces the vast majority of American wine.³⁹ California is the fourth leading wine producer in the world behind France, Italy, and Spain, and its dominance in the industry is

29. See 27 C.F.R. § 24.75 (2008).

30. See CAL. BUS. & PROF. CODE § 23356.2.

31. See Ross A. Christensen, *Home Winemakers Bring Out Their Best Saturday*, LAKE COUNTY NEWS, June 29, 2008, <http://lakeconews.com/content/view/4751/764/> (on file with the *McGeorge Law Review*) ("Even though the provision banning home winemaker competitions had not been widely enforced in practice, the growing legions of home winemakers did not deserve to have an arcane section of state law hanging over them" (quoting Senator Patricia Wiggins)); Elizabeth Larson, *Bill Legalizes Home Winemakers Festivals*, LAKE COUNTY NEWS, June 9, 2008, <http://lakeconews.com/content/view/4494/764/> (on file with the *McGeorge Law Review*) ("The bill's signing resolves the issue in time for the peak season of county fairs . . .").

32. See e.g., CAL. CONST. art. XX, § 22 ("The State of California . . . shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State . . ."); *Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 110 (1980) (reinforcing that states have nearly exclusive power to regulate alcohol).

33. See 27 C.F.R. § 24.75(f) (allowing wine to be removed under federal law "for personal or family use including use at organized affairs, exhibitions or competitions, such as home winemaker's contests, tastings or judgments").

34. See McCallum, *supra* note 1 (discussing Chapter 28's impact on households).

35. See CAL. WINE INST., A SIGNATURE CALIFORNIA INDUSTRY: CALIFORNIA WINE 2 (2008), available at <http://www.wineinstitute.org/files/EIR%20Flyer%202008.pdf> (on file with the *McGeorge Law Review*) (providing statistics on the California wine industry, which creates \$51.8 billion in revenue in California, \$125.3 billion in revenue nationwide, 309,000 jobs in California, 875,000 jobs nationwide, \$10.1 billion in wages in California, \$25.2 billion in wages nationwide, and pays \$13 billion in state and federal taxes).

36. See generally Falasco Letter, *supra* note 5 (speaking for "businesses responsible for 85% of the nation's wine production," and noting that hobbyist winemakers are limited to personal consumption only, while home beer-brewers can share their product with their families and compete in tastings and judgments).

37. See ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF SB 607, at 3 (May 15, 2008) (noting that there is no opposition to SB 607 on file); Charrier, *supra* note 3 ("The legislation . . . sailed through the Assembly and Senate with no opposition . . .").

38. Letter from Paul Kronenberg, President, Family Winemakers of Cal., to Alberto Torrico, Assembly Member, Cal. State Assembly (May 12, 2008) [hereinafter Kronenberg Letter] (on file with the *McGeorge Law Review*).

39. See CAL. WINE INST., *supra* note 35, at 2 (stating that California produces 90% of all wine in the United States).

unlikely to waiver considering its “ideal climate, topography, and soil for winegrapes.”⁴⁰ Every summer “over 40 fairs host amateur wine judging and consider it a component of their mission to support agriculture.”⁴¹ The judging also provides home winemakers the opportunity to gain feedback from experts, many of whom began as hobbyists themselves.⁴² The Family Winemakers of California, one of Chapter 28’s supporters, stated that “home winemaking can be the incubator for tomorrow’s entrepreneurial producers.”⁴³ It is clear that a restriction on sharing homemade wine would have a significant negative impact on a major American industry.⁴⁴

Once word spread through the winemaking community as to the DABC’s interpretation of current winemaking laws, the California wine industry promptly took action to correct what was widely considered to be a mistake.⁴⁵ Timing was critical because the start of the year’s festivals was quickly approaching.⁴⁶ Chapter 28 allows California’s fairs to proceed without the lingering threat of legal repercussions.⁴⁷

In addition to the important economic considerations, Chapter 28 also seems appropriate based on notions of basic fairness. California exempts home beer-brewing from the same restrictions as home winemaking,⁴⁸ and federal law does not impose similar restrictions on home winemakers.⁴⁹ Additionally, there is no legitimate reason for California to inhibit home winemaking more than home beer-brewing. As Senator Pat Wiggins stated: “home winemaking competitions can be safe . . . and . . . can add greatly to the experience that is California wine. Our state and county fairs have had a long tradition of competitions for everything from homemade cakes and quilts to homemade beer and wine.”⁵⁰ If

40. *Id.*

41. Letter from Louie A. Brown, Jr., Att’y, Kahn, Soares, & Conway, LLP, to Alberto Torrico, Assembly Member, Cal. State Assembly (May 13, 2008) [hereinafter Brown Letter] (on file with the *McGeorge Law Review*); see also Letter from Karen Ross, President, Cal. Ass’n of Winegrowers, to Arnold Schwarzenegger, Governor, Cal. State (June 2, 2008) (on file with the *McGeorge Law Review*) (“This kind of competition will continue a great tradition of agriculture . . .”).

42. McCallum, *supra* note 1; see also Kronenberg Letter, *supra* note 38 (stating that home winemaking “foster[s] the innovative spirit that makes California wine a global leader”).

43. Kronenberg Letter, *supra* note 38.

44. See generally CAL. WINE INST., *supra* note 35 (outlining the significant economic impacts of the California wine industry).

45. McCallum, *supra* note 1; see also Brown Letter, *supra* note 41 (referring to SB 607 as “correct[ing] an oversight”).

46. See *Home Wine*, *supra* note 3 (“Given all the wine-making contests planned for this summer and fall, it’s important that [SB 607] stays on the fast track.”).

47. See ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF SB 607, at 2 (May 15, 2008) (“[T]he California Exposition and State Fair in Sacramento and the state’s amateur wine clubs [are] at risk of violating the law if they hold home winemaker competitions.”).

48. CAL. BUS. & PROF. CODE § 23356.2 (amended by Chapter 28).

49. 27 C.F.R. § 24.75(f) (2005).

50. David W. Miller, *Legislature Gives Final Approval to Bill Clarifying Legality of Home Winemaker Competitions*, May 29, 2008, <http://dist02.casen.govoffice.com> (archived under the newsroom tab) (on file with the *McGeorge Law Review*).

home beer-brewers can have their product judged by others, it seems unfair to prohibit home winemakers from having the same opportunity.⁵¹

V. CONCLUSION

Home winemaking competitions are now officially legal in California.⁵² Chapter 28 offers a straightforward solution for an outdated law and protects the economic interests of a major industry, as well as the personal interests of thousands of winemaking hobbyists.⁵³ Home winemakers—like home beer-brewers—can now have their product legally judged by others.⁵⁴ Most importantly, Chapter 28's prompt enactment avoided any disruption of the long-standing tradition of California's festival season.⁵⁵

51. See Falasco Letter, *supra* note 5 ("SB 607 . . . puts hobbyist winemakers on par with home [beer] brewers.").

52. See Larson, *supra* note 22 (discussing the bill's impact in legalizing home winemaking); CAL. BUS. & PROF. CODE §§ 23013, 23356.2(b), (d) (amended by Chapter 28).

53. See McCallum, *supra* note 1 (noting the potential negative impact of the outdated law).

54. CAL. BUS. & PROF. CODE § 23356.2(d) (amended by Chapter 28).

55. See Larson, *supra* note 22 (stressing the importance of resolving the issue quickly).