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Illinois Shipping Questions Answered

—HB 429 Set to Strip Illinois Consumers of Right to Buy Wine from Out-of-State Wine Shops—

Sacramento, Calif—While Illinois House Bill 429, as currently written, would strip consumers of a right to buy wine that has existed for 15 years, an amendment offered to the bill by Representative Julie Hamos would keep this right in the hands of Illinois consumers. Specialty Wine Retailers Association applauds Rep. Hamos' concern for and action on behalf of Illinois consumers. SWRA also recognizes that wine shipping regulations is a complex issue that results in many questions.

Q. Where does Illinois wine shipping law stand now?

- Shipping wine to Illinois residents operates under a "reciprocity" agreement in which wine sellers in states that allow Illinois wine sellers to ship may in turn ship into Illinois
- Illinois Wineries, Out-of-state wineries, Illinois wine retailers and out-of-state wine retailers may ship up to 2 cases per year of wine to a resident of Illinois (235 ILCS 5/6-29) (from Ch. 43, par. 144e)

Q. What did the U.S. Supreme Court say about wine shipping?

- States have the right to regulate the sale of alcohol
- In regulating the sale of alcohol state law must treat in-state and out-of-state wine shippers equally.
- The "Reciprocity" laws under which Illinois and a number of other states operate must be changed because they discriminate against wine sellers in non-reciprocal states
Granholm v. Heald (2005)

Q. What does HB 429 do?

- Creates a Permit system whereby only wineries and in-state wine shops may have the right to sell and ship wine to Illinois consumers, but excludes out-of-state wine shops from continuing to ship wine to Illinois consumers
- Allows 12 cases per year to be shipped by a wine shipping permit holder to an Illinois resident
- Assures that out-of-state shippers of wine pay all applicable Illinois taxes
- Assures that all wine shipping permit holders are subject to Illinois jurisdiction

Q. What are the problems with H 429?

- It prevents Illinois residents from continuing to do business with out-of-state wine shops in the fashion they've been allowed to for 15 years and despite the fact that no consumers have objected to this right
- It excludes out-of-state retailers from continuing to serve a market that they were encouraged to based on the policy of the State of Illinois for 15 years.
- It is unconstitutional as it treats in-state wine shops shipping wine different than out-of-state wine shops.
- It invites a likely lawsuit to be filed against the state of Illinois.

Q. How does REP. Julie Hamos' "AMENDMENT 3" make HB 429 a good bill?:

- Allows out-of-state retailers to obtain a permit to ship wine to Illinois residents
- Allows the Illinois Liquor Control Commission to put of a cap of no less than 2000 retail permits to be issued to out-of-state wine shops.
- Allows Illinois consumers to continue to use out-of-state retailers to procure wine when they can't find it at home.
- Assures more state income based on the taxes and fees wine shops will pay for the permit and for the sale of wine to Illinois residents.

Q. How many "Wine Shipper Permits" are likely to be issued to out-of-state wine shops if HB 429 passes?

A. It is unknown. However, other states have worked under a permit system for many years. New Hampshire has issued about 650 out-of-state wine shipper permits to wineries and retailers in the past 10 years. Oregon has issued roughly 700 permits in the past 10 years

Q. Would out-of-state wineries or retailers apply for more permits?

A. In both New Hampshire and Oregon wineries have outnumbered retailers 9-1 in permit applications. This makes sense because far more wineries operate under a business plan that includes "direct sales" to consumers than retailers do.

Q. Why are Illinois alcohol wholesalers attempting to use HB 429 to exclude out-of-state wine shops from doing business in Illinois after 15 years of doing so legally?

A. To date, little in the way of a public statement has been made by Illinois wholesalers on this issue beyond "because we can". However, if out-of-state wine shops are excluded from operating in Illinois, wine wholesalers will have less competition in Illinois. Wines sold at an Illinois wine shop must be purchased from wholesalers by the shop owner. Out-of-state wine shops don't buy wine from Illinois wholesalers.

Q. Are those who favor excluding out-of-state retailers from the Illinois market concerned about minors getting wines over the Internet and via mail order?

A. No. HB 429 explicitly allows out-of-state wineries, in-state wineries and in-state retailers to take sales over the Internet and ship the wine directly to homes.

Q. Does the Granholm v. Heald U.S. Supreme Court decision apply to wine retailers as well as wineries?

A. Yes. The principle that the dormant commerce clause prevents states from discriminating between resident and out-of-state businesses is embedded in that decision. In addition, a federal court judge in Washington State ruled that the "Granholm" Supreme Court decision applied to the retail tier when it ruled a state may not allow in-state wineries to sell to Washington retailers but exclude out-of-state wineries from selling to Washington retailers. (Costco v. Hoen, 2005)

Q. Is there a financial benefit to to the state by including out-of-state wine retailers in HB 429

Yes. The Illinois Department of Revenue estimates with just wineries being allowed to obtain a wine shipping permit \$662,000 to \$1,213,000 per year will be raised for state coffers. Under HB 429 amended to allow wine shops to ship into Illinois, wine shops would also be required to pay the Illinois Liquor Gallonage tax on all sales of wine into Illinois. In addition, the retailer would be paying an annual permit fee of between \$150 and \$1000.

ABOUT SPECIALTY WINE RETAILERS ASSOCIATION

Specialty Wine Retailers Association is a national organization that works on behalf of all types of wine retailers and consumers to assure that state laws do not create barriers to trade or unfairly restrict consumer access to wine. More information about Specialty Wine Retailers Association is available on the Internet at www.specialtywineretailers.org.

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