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Wine Sparks War Between the States

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A wine war between the states has erupted on a new front after Kentucky passed a law making it a felony for out-of-state shippers to send wine, beer or spirits directly to the state's consumers.

Kentucky, which some critics charge should be named the Bluenose instead of the Bluegrass state, will impose a sentence of up to five years in jail and a \$20,000 fine following the first offense.

More than 40 California winemakers are talking about boycotting Kentucky and at least three have already taken action. Kendall-Jackson Winery, one of the state's top 20 producers, announced on Tuesday that it has canceled its relationship with its Kentucky distributor.

Jess Jackson, co-owner of the Santa Rosa-based winery which this week also filed a trademark infringement suit against E.&J. Gallo Winery, calls Kentucky's legislation ``overkill." In a letter to Kentucky Governor Paul Patton, he wrote, ``Our family so resents being compared to violent criminals that, if this bill is signed, as a matter of principal we will not ship our wines into Kentucky."

Matanzas Creek Winery owner William MacIver sent off a similar diatribe to Patton to no avail and also canceled its Kentucky ties as did Laurel Glen Winery. ``Laws such as this kowtow to the deep pockets of the wholesale lobby at the expense of consumers and small-business owners," said MacIver.

Since the repeal of Prohibition in 1933 and passage of the 21st Amendment, which allowed each state to devise its own licensed beverage distribution laws, wineries have had to grapple with different shipping rules in every state. Most have three-tiered organizations, requiring licensed producers to distribute through licensed wholesalers who only sell to licensed retailers.



``The system that evolved gave power over importation and distribution of alcohol back to the states," said Ed Everett, president of New World Wines, a San Francisco wholesaler. ``The commerce clause of the Constitution, which forbids impeding the flow of interstate commerce, doesn't apply to us." The patchwork of laws is bewildering. ``Sending wine to another state is like dealing with a foreign country," added Pete Downs, director of governmental affairs for Kendall-Jackson.

During the past decade, California and 11 other states have signed ``reciprocal shipment" agreements, allowing direct shipments between producers and consumers. Another 17 states have passed more limited ``personal use" statutes, often allowing consumers to buy less than a quart per year, according to Steve Gross, state relations director for the Wine Institute.

The San Francisco-based trade organization reports that 21 states have an outright ban on out-of-state shipments of alcoholic beverages. Coupled with the consolidation of liquor wholesalers over the past 10 years, many wineries are effectively shut out of business in many states.

Nearly half of the 218 California wineries responding to a Wine Institute survey said they have been unable to find out-of-state sales representation because wholesalers tend to carry brands of the biggest producers. As a result of the distributor squeeze, many winemakers have come to rely on direct sales to attract and retain out-of-state customers.

``We've been selling through a distributor," said Matanzas Creek's MacIver. ``But hundreds of smaller producers don't have a way to get wine out of California unless they do it illegally." States apparently are cracking down on direct sales for two main reasons. Wholesalers and retailers in each state are howling about losing business and state revenue watchdogs are missing tax revenues.

Wholesaler Everett estimates that up to 5 million of the 200 million cases of wine that are sold annually in the United States are now shipped direct to consumers. Moreover, most of this is very high quality -- averaging about \$150 a case, according to Everett, which would make the total shipments worth perhaps \$750 million.



Florida is the third-largest U.S. wine market and charges a state excise tax of \$5.40 per case, which explains why it has been cracking down on direct wine shipments. Last November, after setting up a sophisticated sting operation, the state filed charges in federal court against seven out-of-state retailers, five from California and two from New York.

"Ninety percent of direct shipments are from retailers," said attorney John Hinman, who is representing three of the California defendants -- Wine Club, California Wine Club and Passport Wine. (The other two are St. Helena Wine Merchants and Stafford's Fine Wines.) If Florida wins its civil suit, which asks for \$10,000 in penalties per shipment, Hinman said his clients will be out of business. But he hopes to have the charges dismissed on jurisdictional grounds at a hearing April 29.

WINE WARS

Twelve states have reciprocal agreements allowing shipment of up to two cases of wine directly from wineries to consumers.

Map showing these states shaded: California, Colorado, Idaho, Illinois, Maine, Minnesota, Missouri, New Mexico, Oregon, Washington, West Virginia, Wisconsin.

Twenty-one states have made it illegal for outside wineries to ship wine directly to their residents. Some examples:

-- Kentucky just passed a law making it a felony for out-of-state shippers to send any wine, beer or spirits directly to consumers, punishable by five years in jail and/or a \$20,000 fine after the first offense.

-- Tennessee amended a broader illegal deliveries statute to make it a felony for unlicensed individuals to ship as little as a gallon of spirits to its residents.

-- Florida filed suit against five California and two New York wine retailers last November after a major sting operation designed to catch unauthorized shipments of alcoholic beverages.



-- New Jersey, Maryland and Indiana stepped up enforcement against direct shipments since late 1994 by sending out warnings and seizing shipments from more than 60 California wineries.

-- New York's governor vetoed a reciprocal shipment bill because of opposition from local wholesalers and retailers.

-- Last summer, Texas reaffirmed its prohibition of direct-to-consumer shipments. Source: Wine institute

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