

A Toast to Proposed Changes in the Pennsylvania Liquor Control System

BY KIM R. JESSUM

It is very difficult to be a wine enthusiast in Pennsylvania. I have spent several vacations touring renowned wine regions, such as Napa Valley and Sonoma Valley in California and Champagne and Burgundy in France, to find some of the best wines I have ever tasted. Unfortunately, whenever I have asked the tasting room attendant if the winery ships to Pennsylvania, without hesitation, the attendant has always said “no.”

During a recent visit in Northern California, at one winery, I was told that the general thought among many California wineries is that Pennsylvania laws are arcane and the representatives from the Pennsylvania Liquor Control Board (LCB) should not be choosing wine for all of Pennsylvania’s consumers. One attendant said that the LCB representatives who were there a few months earlier had no idea how to taste wine and certainly were not an authority in choosing wines for anyone.

The alcohol laws of Pennsylvania are some of the most restrictive and confusing in the United States. Pennsylvania has a three-tier system for alcohol distribution that was established after the repeal of the Prohibition, where the producer sells to the distributor who sells to the retailer who sells to consumers. Unlike many states, the LCB controls the distribution and retail tiers. More specifically, wines and spirits are to be sold only in the state-owned Wine and Spirits shops, also known as state or liquor stores, where all prices are the same throughout the state. Beer may be purchased from a restaurant, bar, licensed beer store or distributor. Restaurants that are licensed to serve or sell drinks in Pennsylvania must purchase their liquor from the LCB. A consumer is limited to 192 ounces of beer per purchase at a restaurant or bar, but may buy cases or kegs at a distributor. The distributors are also allowed to sell malt liquor, but cannot sell wine or hard liquor.

Growing up in Pennsylvania, I am accustomed to buying wines and hard liquor in the state store and cases and kegs of beer from a distributor. To visitors or people who recently moved to Pennsylvania, and especially those who are used to buying wine and beer in a local convenience store, the system is totally confusing.

Now comes the real confusion. Many states, including Pennsylvania, had for many years prohibited the shipment of wine from out-of-state wineries. In 2005, the Supreme Court

of the United States held in *Granholm v. Heald*, 544 U.S. 460, that these types of laws are unconstitutional and decided that states cannot treat out-of-state wineries differently than in-state wineries, i.e., states must either permit direct shipment from all wineries to its citizens or prohibit it for all.

In Pennsylvania, the statute addressing wine shipments, 47 P.S. § 4-488, reads that “[t]he shipment of wine from out-of-State to residents of this Commonwealth is prohibited.” This statute, however, is unenforceable. Following the Supreme Court’s decision in *Granholm*, the Eastern District of Pennsylvania held that state officials were enjoined from enforcing the Pennsylvania law in *Cutner v. Newman*, 398 F.Supp.2d 389 (E.D.Pa. 2005) (prohibiting out-of-state wineries from selling and shipping wine directly to Pennsylvania consumers because the statutory scheme discriminating against out-of-state wineries and favoring in-state wineries was unconstitutional). According to Keith Wallace, the founder of the Wine School in Philadelphia (www.vinology.com), the law governing shipment of wine into Pennsylvania is summarized as “if it is not illegal, then it’s legal,” but that pertains only to the shipper.

That turns us to 47 P.S. § 491, which makes it illegal to possess or transport any liquor within Pennsylvania that was not lawfully acquired or has not been purchased from a Pennsylvania liquor store or licensed winery. The statute also prohibits any attempt to directly or indirectly purchase any liquor or alcohol from any person or source other than a Pennsylvania liquor store or licensed winery, or to import liquor into Pennsylvania without a license. Under *Cutner*, this statute is unenforceable to the extent that it prohibits out-of-state wineries from shipping wine directly to Pennsylvania consumers, but the question remains whether it is enforceable against the consumers who receive the shipments.

Is that statute enforced? Wallace explains that the law has not been enforced against consumers because it would involve a state official knocking on your door and asking for your receipts to prove that you purchased your alcohol from a state liquor store. He does know of some instances though where the law has been enforced against bars and reminded me of how it has been enforced in the past where Pennsylvania state officials loitered at liquor stores in New Jersey to radio Pennsylvania license plates of cars in the parking lot to the state police.





The state police would then wait for the driver to cross the border back into Pennsylvania, stop them, and confiscate the just-bought liquor and issue fines.

The LCB touts that it more or less allows consumers to buy wines not carried by the state stores. Consumers may order online up to nine liters per month from wineries that have obtained a shipping permit, but the wines must be sent to a state store for pickup and payment of extremely high taxes (26 percent of the cost of the wine in Philadelphia), the winery's shipping charge, and a handling fee of \$4.50. The winery must be licensed with the state and the wine must not be available in any state store. This hardly seems worth the trouble or the expense.

The quality and selection offered at the state stores has definitely improved over recent years. As the largest wine buyer in the world, Pennsylvania has strong negotiating power and is able to obtain some great deals on wine purchased in volumes. Yet, there are still so many great wines that are not available to Pennsylvania consumers. The Corbett administration has pledged to privatize the state liquor stores as a way to generate revenue. Is privatization the answer? Wallace thinks that privatization would be good for the state. Proponents of privatization argue that selling the state liquor stores will help to solve the state's budget crisis and give consumers better

choices, more convenience and lower prices. Opponents argue that the public monopoly ensures middle-class wages for about 4,000 employees, responsible alcohol sales, and full collection of state liquor taxes. Wallace explained that there is still much conservatism against alcohol.

There is no doubt that the liquor control laws in Pennsylvania need to be clarified and modernized. At least with the Corbett administration's promotion of privatization, the system is being discussed. The fact that a majority of states allow direct wine shipments suggests that a law allowing direct shipments does not result in a state full of alcohol abusers and underage drinking. It is important to have consistent laws that allow consumers to responsibly enjoy a good wine to accompany a nice dinner or for a social gathering in their home. With the recent attention to the privatization issue, hopefully, Pennsylvania is on its way to providing such a rational system of laws for Pennsylvania residents. For updates on the laws in Pennsylvania and throughout the United States, go to www.freethegrapes.org or www.wineinstitute.org. ■

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