

Assembly Joint Resolution

No. 11

Introduced by Assembly Members Chesbro, Achadjian, Allen, Bill Berryhill, Conway, Dickinson, Huber, Huffman, Bonnie Lowenthal, Monning, Olsen, and Smyth

May 16, 2011

Assembly Joint Resolution No. 11—Relative to California wines.

LEGISLATIVE COUNSEL'S DIGEST

AJR 11, as introduced, Chesbro. California wines: sales.

This measure would urge Congress to defeat H.R. 1161 in order to protect and preserve the ability of California wineries, and all wineries in the United States, to ship wine directly to consumers without discrimination or unnecessary limitation between in-state and out-of-state wine producers.

Fiscal committee: no.

- 1 WHEREAS, California is the fourth largest wine producing
2 region in the world, after France, Italy, and Spain; and
3 WHEREAS, California has 3,400 bonded wineries; and
4 WHEREAS, California has 4,600 winegrape growers; and
5 WHEREAS, California has 535,000 acres of winegrapes; and
6 WHEREAS, California winegrowers ship over 199.6 million
7 cases, representing some 475 million gallons of wine, to the United
8 States' wine market; and
9 WHEREAS, The California wine industry creates more than
10 330,000 jobs, billions of dollars in economic impact, and preserves
11 agricultural land and family farms; and

1 WHEREAS, The California wine industry generates higher
2 taxes than most industries because, as a regulated industry, it pays
3 excise taxes to the state and federal government on every gallon
4 of wine; and

5 WHEREAS, The California wine industry has an annual impact
6 of \$61.5 billion on the state's economy and produces the number
7 one finished agricultural product in the state; and

8 WHEREAS, The economic impact of the United States' wine
9 industry on the national economy is \$121.8 billion annually; and

10 WHEREAS, California's wine industry attracts 20.7 million
11 tourists annually to all regions of California and generates
12 wine-related tourism expenditures of \$2.1 billion; and

13 WHEREAS, Currently 37 states and the District of Columbia
14 allow direct shipping of wine from winegrowers to consumers;
15 and

16 WHEREAS, The innovation and entrepreneurial spirit of small
17 California wineries drives the entire industry to improve and
18 progress; and

19 WHEREAS, In order to reach consumers in other states, many
20 California wineries have turned to direct marketing and shipping
21 of their wines; and

22 WHEREAS, Since 1985 California has pioneered consumer
23 access to wine through reciprocal and permit shipping to alleviate
24 scarcity at the retail level of California wines; and

25 WHEREAS, Over the past 11 years, consolidation trends within
26 the wholesale tier have made it difficult for California wineries to
27 achieve adequate distribution, and, as a result, have limited
28 consumer choice; and

29 WHEREAS, California wineries have offered voluntarily to
30 have their direct marketing and shipping permitted and regulated
31 by other states to ensure that those states collect the same taxes
32 that wines sold through the three-tier system must pay, that direct
33 deliveries would be made only to adults, and that direct deliveries
34 are not made in "dry" areas, as defined under the laws of each
35 state; and

36 WHEREAS, The California wine industry has developed
37 comprehensive model direct shipping legislation to address all of
38 the concerns expressed by state alcohol regulators across the
39 country, which has been validated by Federal Trade Commission
40 studies and a law report by the Maryland Comptroller; and

1 WHEREAS, California has enacted a law to open direct shipping
2 of wine from other states to its own residents without limitation
3 through a simple permit system to comply with the decision in
4 *Granholm v. Heald* (2005) 544 U.S. 460; and

5 WHEREAS, States' rights to regulate wine and alcohol granted
6 by the 21st Amendment to the United States Constitution have
7 always been subject to constitutional limitation and judicial review;
8 and

9 WHEREAS, Court decisions over the last 40 years balance state
10 authority to regulate alcohol with the framer's belief that the nation
11 would only succeed if interstate commerce thrived; and

12 WHEREAS, The Commerce Clause has been applied judiciously
13 by the courts to foster national economic goals while preserving
14 nondiscriminatory state authority; and

15 WHEREAS, The landmark 2005 United States Supreme Court
16 case, *Granholm v. Heald* (2005) 544 U.S. 460, reaffirmed states'
17 rights under the 21st Amendment to the United States Constitution
18 to regulate wine as long as they do not discriminate between
19 in-state producers and out-of-state producers, and correctly ruled
20 that these rights do not supersede other provisions of the
21 Constitution; and

22 WHEREAS, H.R. 1161 would severely limit consumer choice
23 in California wine throughout the nation as direct-to-consumer
24 laws are narrowed or repealed; and

25 WHEREAS, H.R. 1161 would imperil market access for
26 California wineries that cannot secure effective wholesale
27 distribution; and

28 WHEREAS, H.R. 1161 would stunt competition among the
29 nation's over 7,000 wine producers as markets are artificially
30 constrained and access is limited; and

31 WHEREAS, H.R. 1161 would reverse decades of
32 long-established jurisprudence that has balanced interstate
33 commerce concerns with state regulatory authority and fostered a
34 dramatic growth in wine production, sales, and tax revenue; and

35 WHEREAS, H.R. 1161 would damage markets by sanctioning
36 discriminatory state laws that would require judicial challenges
37 spanning several years; and

38 WHEREAS, H.R. 1161 would frustrate legitimate challenges
39 to facially neutral, but nonetheless discriminatory, state laws like

1 the landmark Massachusetts production cap case, Family
2 Winemakers of California v. Jenkins (2010) 592 F.3d 1; and
3 WHEREAS, H.R. 1161 would be an unprecedented shift in the
4 relationship between federal and state authority over wine; now,
5 therefore, be it

6 *Resolved by the Assembly and the Senate of the State of*
7 *California, jointly*, That the Legislature hereby respectfully urges
8 Congress to protect and preserve the ability of California wineries,
9 as well as all American wineries, to ship wine directly to consumers
10 without discrimination or unnecessary limitation between in-state
11 and out-of-state wine producers; and be it further

12 *Resolved*, That the Legislature urges the defeat of H.R. 1161;
13 and be it further

14 *Resolved*, That the Chief Clerk of the Assembly transmit copies
15 of this resolution to the President and Vice President of the United
16 States, to the Speaker of the House of Representatives, to the
17 President pro Tempore of the United States Senate, and to each
18 Senator and Representative from California in the Congress of the
19 United States.