

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

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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a staple for generations throughout California, were illegal according to the DABC.³ This illegality stems from outdated prohibition-era legislation that severely limits sharing homemade wine with others and essentially eliminates wine tasting from all California fairs.⁴ With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).

Patriotic Inebriation: Reducing Alcohol-Related Issues on the Truckee River During the Fourth of July

Rebecca Rabovsky

Code Section Affected

Business and Professions Code § 25608.10 (new).
SB 1159 (Cox); 2008 STAT. Ch. 44 (*Effective June 30, 2008*).

I. INTRODUCTION

In a two-hour period during the Fourth of July weekend in 2006, 1,115 rafters floated down the Truckee River.¹ During this same period one year later, 2,023 rafters floated down the Truckee River—nearly twice the number from the previous year.² Law enforcement officials reported numerous problems related to alcohol, ranging from excessive drunkenness to violence and injuries.³ One intoxicated individual misjudged the release on a rope swing, hit his head on a rock, and had to be life-flighted to a hospital in Reno.⁴ According to business owners and local residents, the emerging “party atmosphere” on the Truckee River was driving away families and tourists who wanted a relaxing experience.⁵ To curb these alcohol-related issues, the Placer County Board of Supervisors passed an ordinance banning alcohol on the land next to portions of the Truckee River during holiday periods.⁶ Because this ordinance only applied to the land around the Truckee River, Chapter 44 was introduced to ban alcohol on the water itself.⁷

1. Andrew Cristancho, *Truckee River Alcohol Ban Closer*, UNION.COM, Apr. 8, 2008, <http://theunion.com/apps/pbcs.dll/article?AID=/20080408/BREAKINGNEWS/157853904&parentprofile=search> (on file with the *McGeorge Law Review*).

2. *Id.*

3. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 3 (June 20, 2008).

4. Julie Brown, *Truckee River Hit by Fourth Madness: Holiday Sees Massive Crowds, Alcohol, and a Near-death Accident*, SIERRA SUN, July 5, 2007, <http://www.sierrasun.com/article/20070705/NEWS/70705003> (on file with the *McGeorge Law Review*).

5. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 3 (June 20, 2008).

6. *Truckee River Alcohol Ban Signed into Law*, ROCKLIN & ROSEVILLE TODAY, July 1, 2008, http://www.rocklintoday.com/news/templates/community_news.asp?articleid=6326&zoneid=4 (on file with the *McGeorge Law Review*). The Board also requested a ban on alcohol during these periods on the waterway itself. *Id.*

7. *See generally* CAL. BUS. & PROF. CODE § 25608.10 (enacted by Chapter 44) (making it unlawful to have alcohol on the Truckee River during certain times).

II. EXISTING LAW

A. Legislative Efforts

In 2000, Assembly Member Sam Aanestad introduced AB 2187, which then-Governor Davis signed into law (enacted as Chapter 381).⁸ This statute gave local governments the authority to prohibit open containers of alcohol in parks or public places owned by the city or county.⁹ This authority only applied “if the respective local government ha[d] enacted an ordinance prohibiting the possession or consumption of alcoholic beverages in those areas.”¹⁰

In 2007, Assembly Member Dave Jones introduced AB 951, which Governor Schwarzenegger signed into law (enacted as Chapter 19).¹¹ Chapter 19 prohibited the possession of all alcoholic beverages, open or closed, on non-motorized vessels on the American River, between the Hazel Avenue and Watt Avenue bridges, during the summer holiday periods of Memorial Day, 4th of July, and Labor Day.¹² Notice must be provided along the portions of the American River where the prohibition applies, and violations can result in an infraction, pursuant to California Government Code section 25132.¹³ Chapter 19’s purpose was to “prevent excessive levels of public drunkenness, fights with oars, public nudity, and littering on the American River.”¹⁴

B. The Alcoholic Beverage Control Act and Laws Relating to Boating While Under the Influence of Alcohol

The Department of Alcoholic Beverage Control (ABC) administers the provisions of the ABC Act, which regulates the manufacture, sale, and importation of alcoholic beverages.¹⁵ Any violation of the ABC Act, unless stated otherwise in statute, is a misdemeanor and must be enforced by California peace officers.¹⁶ If the violation is reduced to an infraction by county ordinance, it is punishable by “(1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2) a fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance within one year; (3) a fine not exceeding five

8. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1159, at 2 (June 18, 2008).

9. *Id.*

10. *Id.*

11. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 3 (June 20, 2008).

12. *Id.*

13. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 951, at 3 (Sept. 20, 2007).

14. *Id.*

15. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 2 (June 20, 2008). For the full text of the ABC Act and related statutes, see CAL. DEP’T OF ALCOHOLIC BEVERAGE CONTROL, ALCOHOL BEVERAGE CONTROL ACT & RELATED STATUTES (2007), http://www.abc.ca.gov/forms/ABCAct_2007.pdf (on file with the *McGeorge Law Review*).

16. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 2-3 (June 20, 2008).

hundred dollars (\$500) for each additional violation of the same ordinance within one year.”¹⁷

Additionally, the California Harbor and Navigation Code (CHNC) regulates laws related to boating under the influence of alcohol.¹⁸ According to the CHNC, “no person shall operate any vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, any drug, or the combined influence of an alcoholic beverage and any drug.”¹⁹ In addition, no one may operate any of the above listed vessels with a blood-alcohol concentration greater than 0.08.²⁰ Chapter 44 reduces the likelihood of individuals boating under the influence of alcohol by prohibiting alcohol on the Truckee River.²¹

III. CHAPTER 44

Chapter 44, which enacted California Business and Professions Code section 25608.10, prohibits persons in vessels²² on the river or bathers²³ in the river from possessing open or closed alcoholic beverage containers during certain summer holiday periods.²⁴ Chapter 44 defines a “container” as a bottle, can, or other receptacle.²⁵ It affects the portion of the Truckee River from the Highway 89 Bridge in Tahoe City to the Alpine Meadows Bridge.²⁶ Furthermore, Placer

17. CAL. GOV'T CODE § 25132 (West 2004).

18. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 2 (June 20, 2008) (describing existing prohibitions against operating watercraft while under the influence).

19. CAL. HARB. & NAV. CODE § 655(b) (West 2001).

20. *Id.* § 655(c).

21. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 3 (June 20, 2008) (noting that the bill responds to issues of intoxication on the river and is intended to address related safety issues).

22. “Vessels” is defined by to include “every description of watercraft used or capable of being used as a means of transportation on water.” CAL. HARB. & NAV. CODE § 651 (West 2001); see also CAL. BUS. & PROF. CODE § 25608.10(a) (enacted by Chapter 44) (referring to CAL. HARB. & NAV. CODE § 651 for the definition of “vessel”).

23. A “bather” is defined as:

a person floating, swimming, wading, or bodysurfing, with or without the use of a flotation device, including, but not limited to, floating upon or with the aid of a surfboard, paddle board, surfmat, innertube, life preserver, or air mattress, except a flotation device which is designed to be propelled by sail, mechanical means, power, oars, or paddle.

CAL. HARB. & NAV. CODE § 651.1 (West 1990); see also CAL. BUS. & PROF. CODE § 25608.10(a) (enacted by Chapter 44) (referring to CAL. HARB. & NAV. CODE § 651.1 for the definition of bather).

24. CAL. BUS. & PROF. CODE § 25608.10(a) (enacted by Chapter 44). The Placer County Board of Supervisors prohibits alcohol along the land portions of the Truckee River during these “summer holiday periods.” *Id.*

25. *Id.* § 25608.10(b) (enacted by Chapter 44). Violations of this section may be punishable as an infraction. *Id.* § 25608.10(c) (enacted by Chapter 44).

26. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF SB 1159, at 1 (May 15, 2008).

County must provide notice of the alcohol prohibition on appropriate portions of the Truckee River, and that a violation is punishable as an infraction.²⁷

IV. ANALYSIS

Because it applies to alcohol possession and consumption on the waterway itself, Chapter 44 will almost certainly decrease the number of alcohol-related incidents on and near the Truckee River.²⁸ The Placer County Board of Supervisors, concerned by the increasing number of intoxicated people on the Truckee River during holiday periods, sponsored Chapter 44.²⁹ Indeed, Chapter 44's intent is to "assist in resolving excessive public drunkenness and related public health and safety and environmental degradation issues along the Truckee River" during summer holiday periods.³⁰ The number of people "floating down" the Truckee River during the Fourth of July almost doubled from 2006 to 2007.³¹ In past years, excessive alcohol consumption has caused numerous problems in the area around the Truckee River.³²

The Truckee River remains a Fourth of July holiday destination, leading to many alcohol-related arrests on or near the Truckee River.³³ These include offenses such as driving under the influence (DUI), indecent exposure, and minors in possession of alcohol.³⁴ Excessive drunkenness has also caused many automobile collisions and at least one alcohol-related death.³⁵ In 2007, officials reported four injuries, several alcohol-fueled fights, drunk driving, and an enormous amount of underage drinking.³⁶ Both local businesses and residents contend that the atmosphere on the Truckee River during these periods has become undesirable for families who seek a relaxing holiday experience.³⁷ There are also concerns that the prevalence of alcohol during the summer holidays has "degraded the tourism experience."³⁸ Furthermore, emergency-services personnel are concerned that the amount of resources spent on "drunken revelers" will divert attention away from the local area should an emergency develop.³⁹ There

27. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 3 (June 20, 2008).

28. *See id.* (explaining the problems associated with public drunkenness at the Truckee River).

29. *Id.*

30. *Id.*

31. Cristancho, *supra* note 1.

32. *Truckee River Alcohol Ban Signed into Law*, *supra* note 6.

33. *Id.*

34. *Id.*

35. *Id.*

36. Brown, *supra* note 4.

37. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 3 (June 20, 2008).

38. *Truckee River Alcohol Ban Signed into Law*, *supra* note 6.

39. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 4 (June 20, 2008).

are also environmental concerns, as rafters leave large amounts of litter along the banks of the Truckee River.⁴⁰

A Placer County ordinance, passed in May 2008, prohibits the possession of open or closed alcoholic beverages within three feet of the Truckee River on both sides, but not on the river itself.⁴¹ Because the Truckee River is considered a navigable waterway, only the State, not the County, has jurisdiction to ban alcohol on the river itself.⁴² Due to these jurisdictional issues, the legislature enacted Chapter 44, which in conjunction with the Placer County ordinance, will hopefully reduce the number of alcohol-related incidents during the summer holidays.⁴³ Together, the Placer County ordinance and Chapter 44 ban the possession of open or closed containers of alcohol on the river and within three feet of the high water mark on both sides of the Truckee River from its outflow at Tahoe City to the Alpine Meadows Bridge.⁴⁴

V. CONCLUSION

Along with the alcohol ban on the American River, Chapter 44 demonstrates a pattern of increasing concern over excessive alcohol consumption along waterways. Together with the Placer County ordinance, Chapter 44 reduces the possession and consumption of alcohol along the Truckee River during summer holiday periods.⁴⁵ Ideally, this will prevent alcohol related issues along the river such as violence, littering, and drivers under the influence of alcohol.⁴⁶ Reducing these undesirable occurrences will allow law enforcement to better allocate their resources and will encourage more families to utilize the Truckee River during the summer holidays.⁴⁷

40. *Truckee River Alcohol Ban Signed into Law*, *supra* note 6.

41. Placer County, *Truckee River Alcohol Ban Progresses*, Apr. 18, 2008, <http://www.placer.ca.gov/News/2008/April/TrukAlcoholBan.aspx> (on file with the *McGeorge Law Review*). This ban applies to the portion of the Truckee River “at the outfall of Lake Tahoe, upstream of Fanny Bridge in Tahoe City, and ends at the upstream edge of Alpine Meadows Bridge.” *Id.*

42. *Truckee River Alcohol Ban Signed into Law*, *supra* note 6; see also Ronald Rogers, *The Public’s Right to Navigate Waterways in California*, AM. WHITEWATER, Oct. 2, 2003, http://www.americanwhitewater.org/archive/article/966#_Toc52858593 (on file with the *McGeorge Law Review*) (describing what a “navigable waterway” is and why California has jurisdiction over navigable waterways).

43. See *Truckee River Alcohol Ban Progresses*, *supra* note 41 (“In a parallel action, California Senator Dave Cox has sponsored SB 1159, which would authorize Placer County to impose the alcohol ban on the Truckee River itself between Fanny Bridge and River Ranch during designated summer periods, a power the county would not otherwise have.”); SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 5 (June 20, 2008) (explaining how Chapter 44 protects the health and safety of the public).

44. *Truckee River Alcohol Ban Signed into Law*, *supra* note 6. This ban includes all islands and bridges in this portion of the Truckee River, with the exception of the Fanny Bridge in Tahoe City. *Id.*

45. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 5 (June 20, 2008) (explaining that Chapter 44, in conjunction with the County ordinance, will protect the health and safety of the public).

46. See *Truckee River Alcohol Ban Signed into Law*, *supra* note 6 (explaining the types of issues Chapter 44 was enacted to prevent).

47. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1159, at 5 (June 20, 2008) (discussing the negative impact the “party atmosphere” is having on tourism, as well as how it diverts emergency service resources away from more important areas).