CHAPTER 4.3
Policy Summaries

Laws Addressing Minors in Possession of Alcohol

1. Underage Possession, Internal Possession, and Consumption *(data current as of 1/1/12)*

Policy Description

As of January 1, 2012, all U.S. states and the District of Columbia prohibit possession of alcoholic beverages (with certain exceptions) by those under age 21. In addition, most but not all jurisdictions have statutes that specifically prohibit consumption of alcoholic beverages by those under age 21.

In recent years, a number of jurisdictions have passed laws prohibiting "internal possession" of alcohol by persons less than 21 years old. These provisions typically require evidence of alcohol in the minor's body, but do not require any specific evidence of possession or consumption. Internal possession laws are especially useful to law enforcement in making arrests or issuing citations when breaking up underage drinking parties. Internal possession laws allow officers to bring charges against underage persons who are neither holding nor drinking alcoholic beverages in the presence of law enforcement officers. As with laws prohibiting underage possession and consumption, jurisdictions that prohibit internal possession may apply various statutory exceptions to these provisions.

Although all jurisdictions prohibit possession of alcohol by minors, some jurisdictions do not specifically prohibit underage alcohol consumption. In addition, some jurisdictions that do prohibit underage consumption allow different exceptions for consumption than those that apply to underage possession. Jurisdictions that may prohibit underage possession and/or consumption may or may not address the issue of internal possession.

Some jurisdictions allow exceptions to possession, consumption, or internal possession prohibitions when a family member consents and/or is present. Jurisdictions vary widely in terms of which relatives may consent or must be present for this exception to apply and in what circumstances the exception applies. Sometimes a reference is made simply to "family" or "family member" without further elaboration.

Some jurisdictions allow exceptions to possession, consumption, or internal possession prohibitions on private property. Jurisdictions vary in the extent of the private property exception, which may extend to all private locations, private residences only, or in the home of a parent or guardian only. In some, a location exception is conditional on the presence and/or consent of a parent, legal guardian, or spouse.

With respect specifically to consumption laws, some jurisdictions prohibit underage consumption only on licensed premises.

Status of Underage Possession Policies

As of January 1, 2012, all 50 states and the District of Columbia prohibit possession of alcoholic beverages by those under age 21.

Twenty-six jurisdictions have some type of family exception, 21 have some type of location exception, and 19 have neither (see Exhibit 4.3.1). Four of these limit the location to the parent/guardian's residence, eight pertain to any private residence, and nine concern any private location.

Trends in Underage Possession Policies

During the period between 1998 and 2012, the number of jurisdictions with family exceptions rose from 23 to 26, the number with location exceptions rose from 20 to 21, and the number of jurisdictions with neither exception decreased from 21 to 19 (see Exhibit 4.3.2).

Status of Underage Consumption Policies

As of January 1, 2012, 35 jurisdictions prohibit consumption of alcoholic beverages by those under age 21. Of those, 17 permit family exceptions to the law, 13 permit location exceptions, and 15 permit neither type of exception (see Exhibit 4.3.3). Seven states (Montana, Ohio, South Dakota, Texas, Washington, Wisconsin, and Wyoming) only permit family exceptions; three states (Hawaii, New Jersey, and Nebraska) permit only location exceptions; 10 states had both types of exceptions, with 9 of the states permitting underage consumption only if both family and location criteria are met.

Exhibit 4.3.1: Exceptions to Minimum Age of 21 for Possession of Alcohol as of January 1, 2012

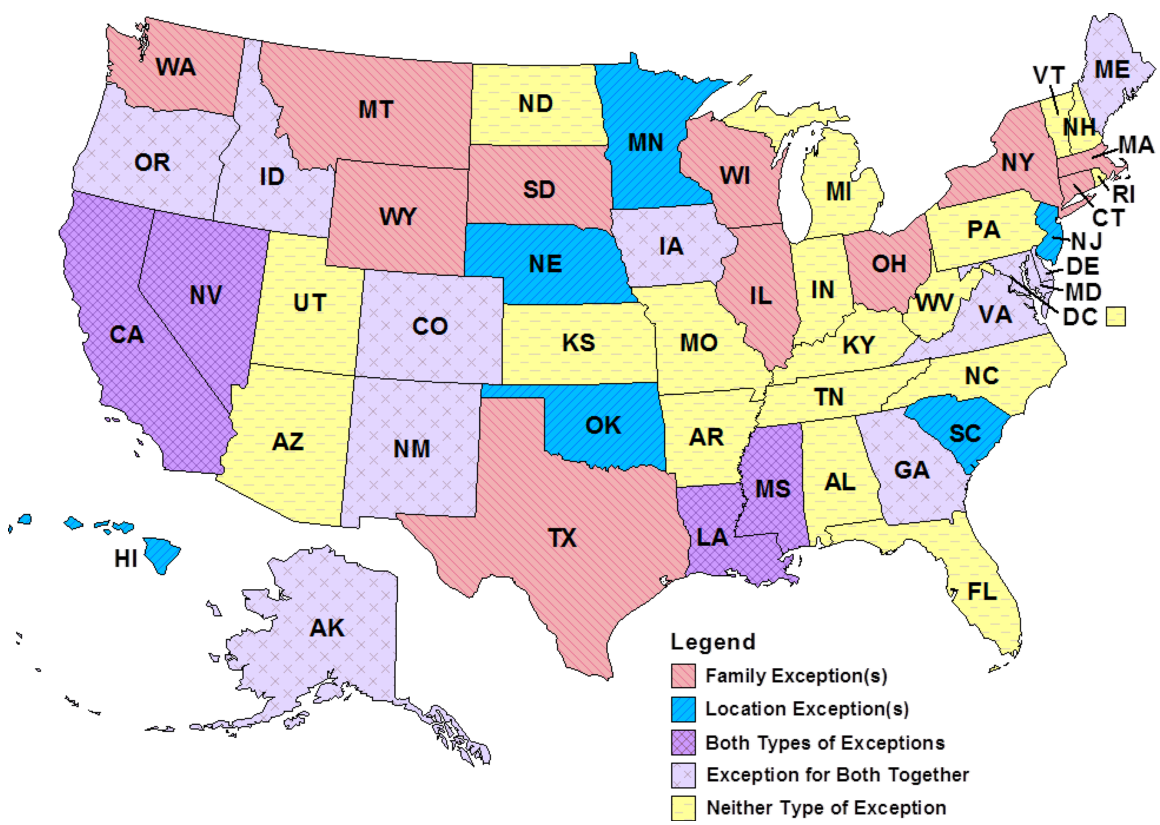


Exhibit 4.3.2: Number of States with Family and Location Exceptions to Minimum Age of 21 for Possession of Alcohol, January 1, 1998, through January 1, 2012

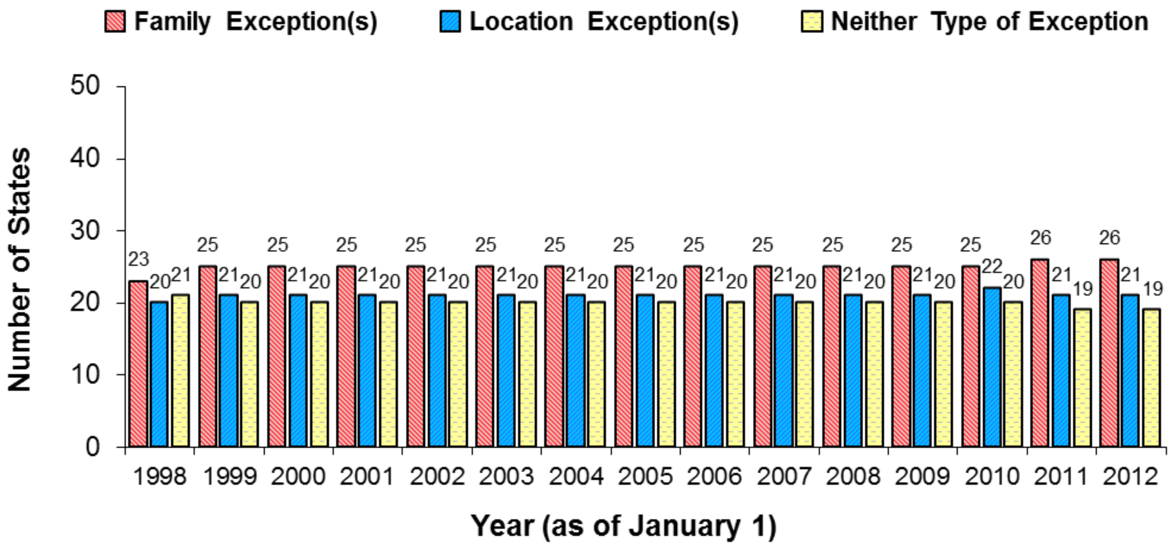
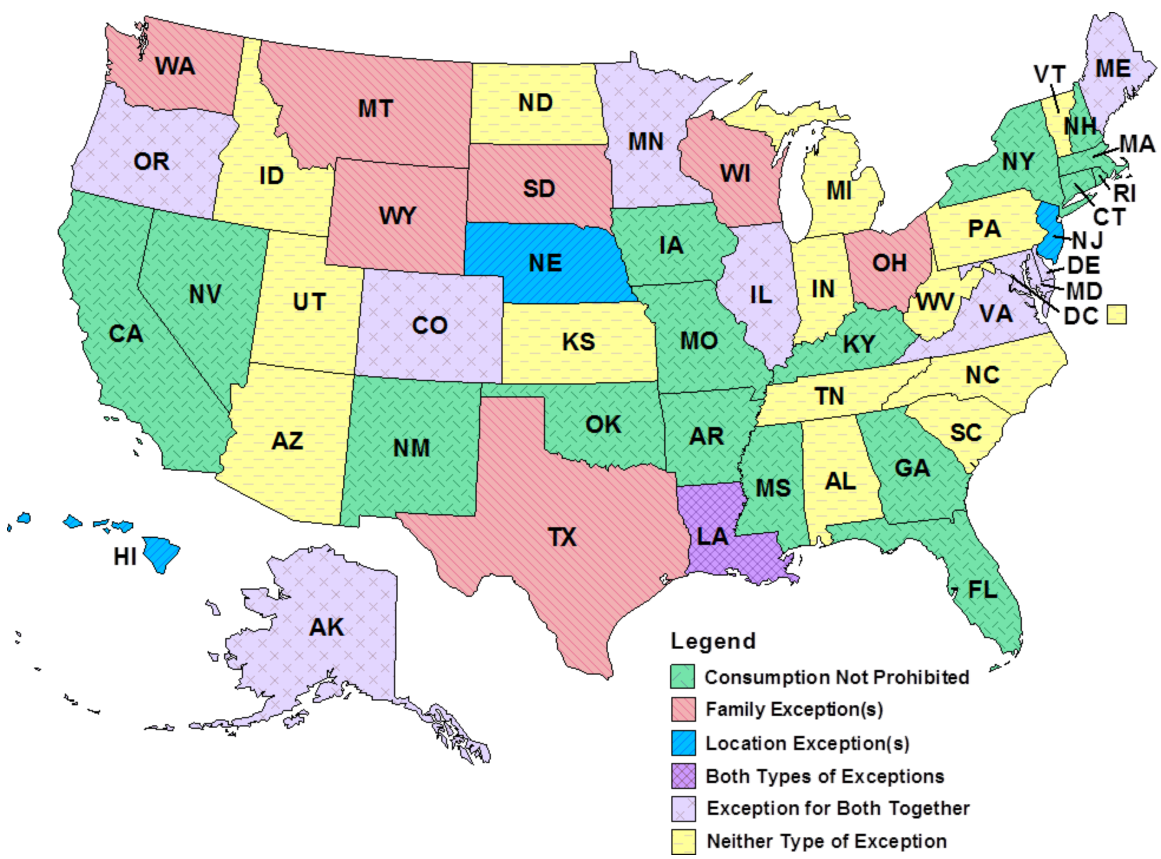


Exhibit 4.3.3: Exceptions to Minimum Age of 21 for Consumption of Alcohol as of January 1, 2012



Trends in Underage Consumption Policies

As Exhibit 4.3.4 illustrates, during the period between 1998 and 2012, the number of jurisdictions that did not prohibit underage consumption decreased from 24 to 17. Location exceptions rose from 9 to 13; family exceptions rose from 13 to 17; and the number of jurisdictions with neither type of exception rose from 13 to 14.

Status of Underage Internal Possession Policies

As of January 1, 2012, nine states prohibit internal possession of alcoholic beverages for anyone under age 21 (see Exhibit 4.3.5). Of the nine states that prohibit internal possession, six do not make any exceptions. In contrast, Colorado has exceptions for situations in which parents or guardians are present and give consent and the possession occurs in any private location. South Carolina's law makes an exception for internal possession in the homes only of parents or guardians. Wyoming makes exceptions for situations in which parents, guardians, and spouses are present.

Trends in Underage Internal Possession Policies

As Exhibit 4.3.6 illustrates, during the period between 1998 and 2012, the number of states that prohibit underage internal possession has grown steadily from two to nine. The most recent state to enact a prohibition on internal possession is Wyoming.

Exhibit 4.3.4: Number of States with Family and Location Exceptions to Minimum Age of 21 for Consumption of Alcohol, January 1, 1998, through January 1, 2012

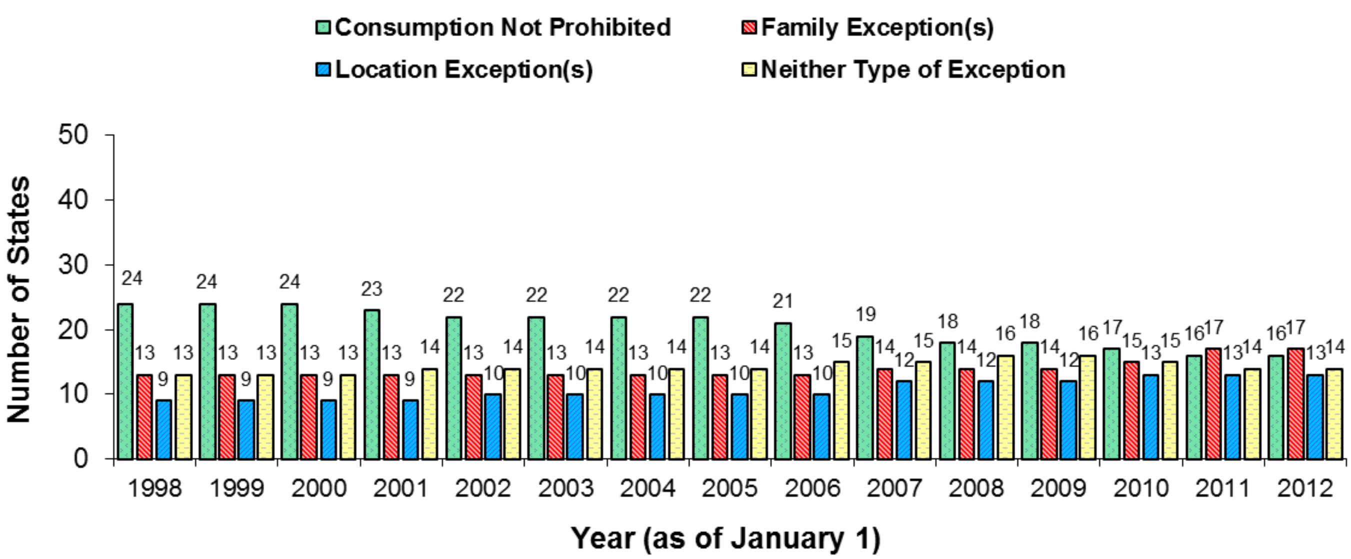


Exhibit 4.3.5: Prohibition of Internal Possession of Alcohol by Persons Under Age 21 as of January 1, 2012

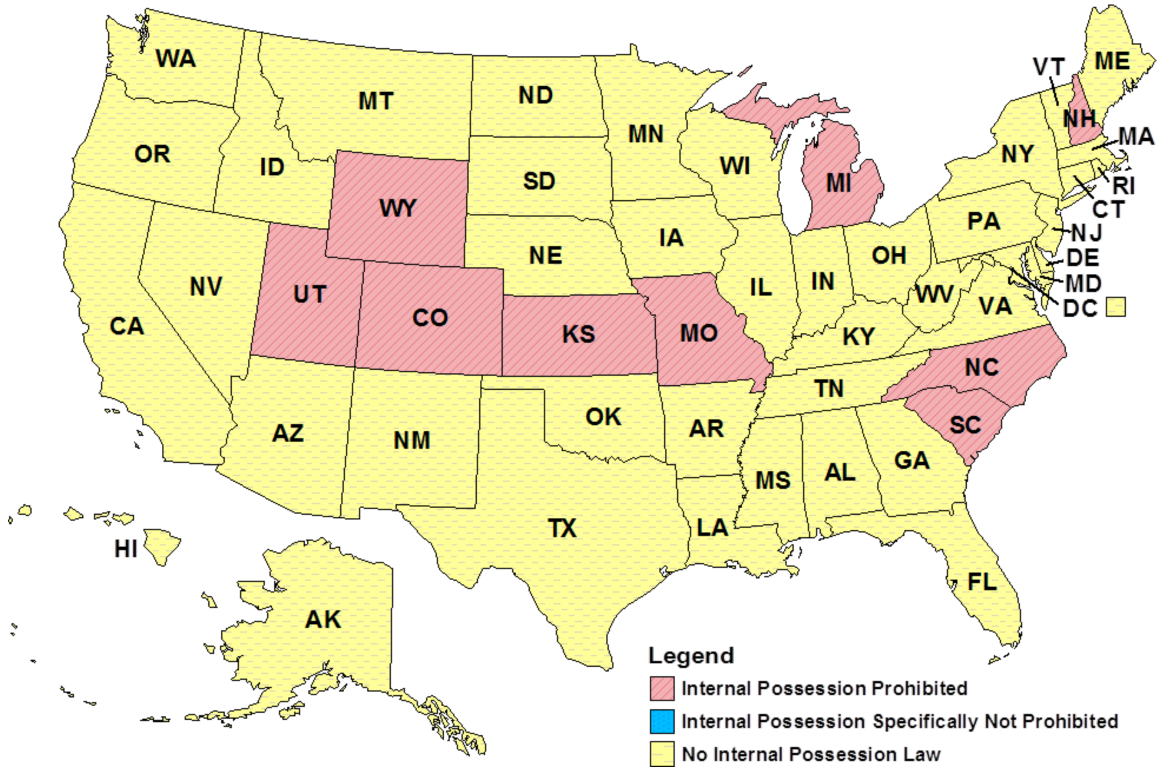
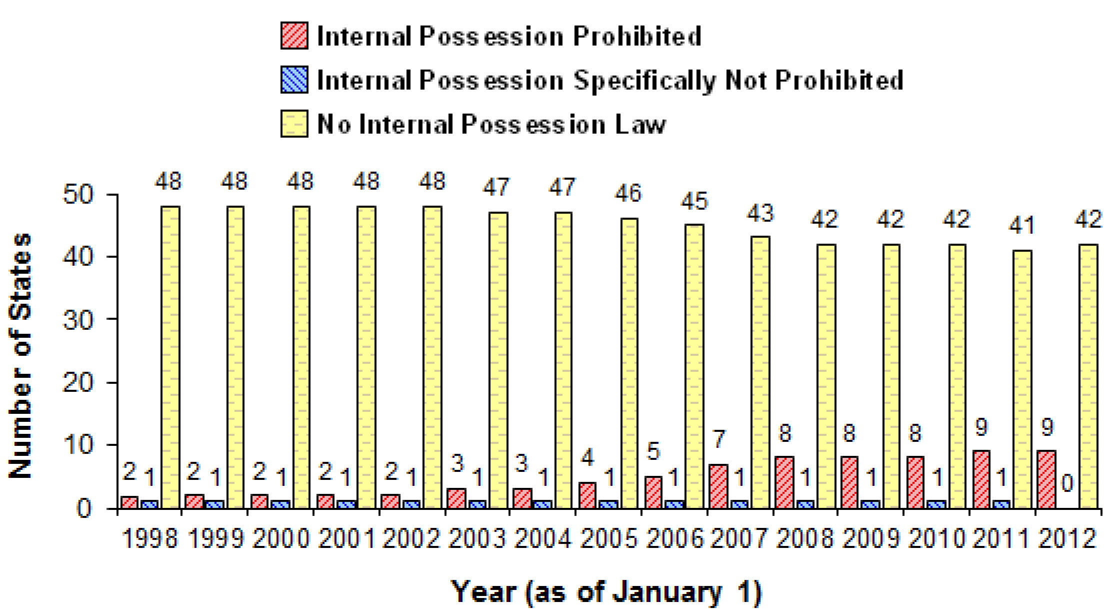


Exhibit 4.3.6: Distribution of States with Laws Prohibiting Internal Possession of Alcohol by Persons Under 21 Years of Age, January 1, 1998, through January 1, 2012



References and Further Information

All data for Underage Possession, Consumption, and Internal Possession policy topics were obtained from the Alcohol Policy Information System (APIS) at www.alcoholpolicy.niaaa.nih.gov. Follow links to the policy entitled "Underage Possession/Consumption/Internal Possession of Alcohol." APIS provides further descriptions of this set of policies and its variables, details regarding state policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

2. Underage Purchase and Attempted Purchase *(data current as of 1/1/12)*

Policy Description

Most states, but not all, prohibit minors from purchasing or attempting to purchase alcoholic beverages. A minor purchasing alcoholic beverages can be prosecuted for possession because, arguably, a sale cannot be completed until there is possession on the part of the purchaser. Purchase and possession are nevertheless separate offenses. A minor who purchases alcoholic beverages is potentially liable for two offenses in states that have both prohibitions. See the "Underage Possession/Internal Possession/Consumption" section of this report for further discussion.[31] A significant minority of youths purchase or attempt to purchase alcohol for themselves, sometimes using falsified identification (see the "False Identification" section of this report).

Such purchases increase the availability of alcohol to underage persons, which, in turn, increases underage consumption. Prohibitions and associated sanctions on alcohol purchases by underage persons can be expected to depress rates of purchase and attempted purchase by raising the monetary and social costs of this behavior. Such laws provide a primary deterrent (preventing attempted purchases) and a secondary deterrent (reducing the probability that persons sanctioned under these laws will attempt to purchase in the future).

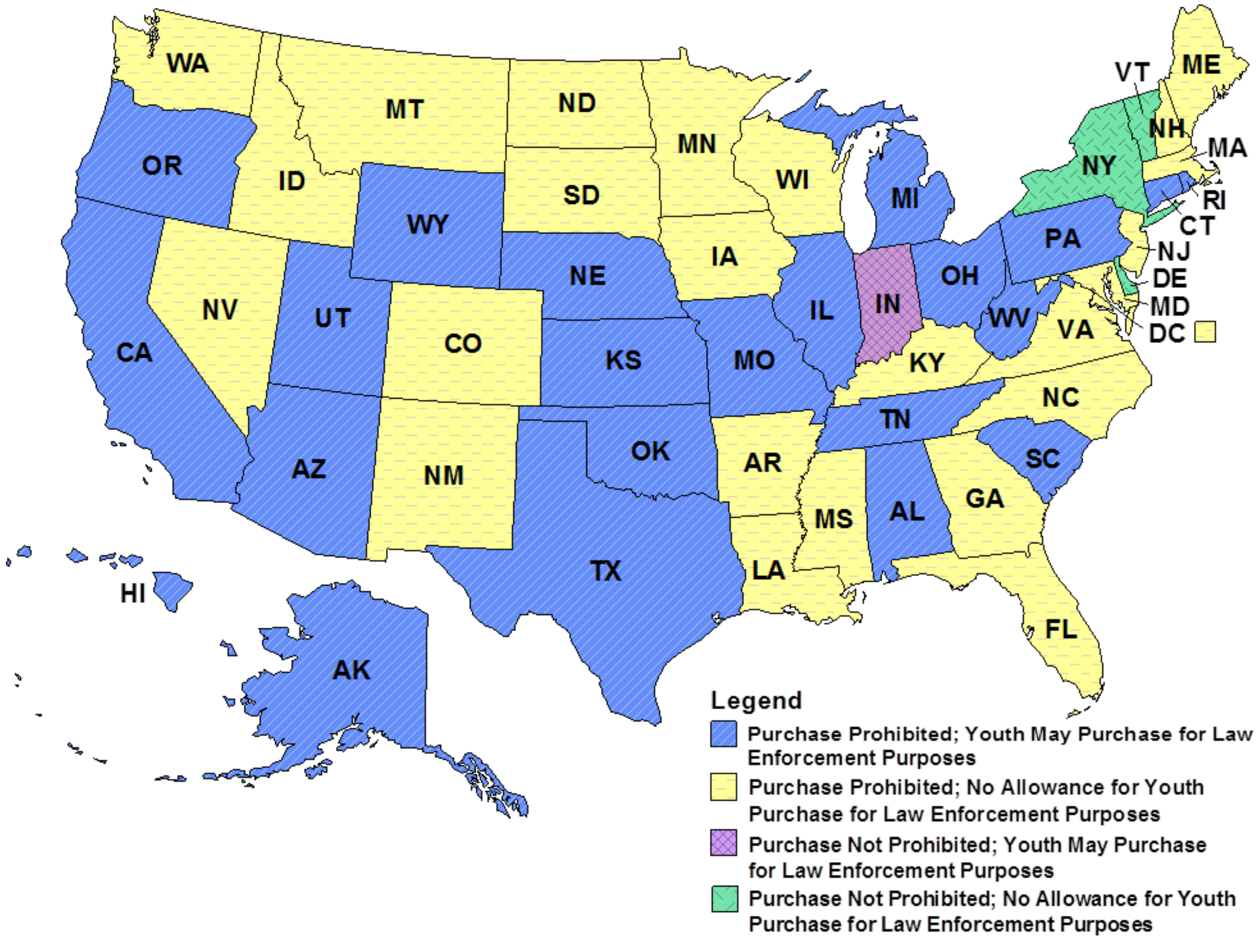
In some states, a person under age 21 is allowed to purchase alcoholic beverages as part of a law enforcement action. Most commonly, these actions are checks on merchant compliance or stings to identify merchants who illegally sell alcoholic beverages to minors. This allowance for purchase in the law enforcement context may exist even though a state does not have a law specifically prohibiting underage purchase.

Status of Underage Purchasing Policies

As of January 1, 2012, 46 states and the District of Columbia prohibit underage purchase or attempted purchase of alcohol; the remaining 4 states (Delaware, Indiana, New York, and Vermont) do not (see Exhibit 4.3.7). Underage persons are allowed to purchase alcohol for law enforcement purposes in 23 states including Indiana, even though Indiana does not have an

[31] Some states have laws that specifically prohibit both underage purchase and attempted purchase of alcohol. An attempted purchase occurs when a minor takes concrete steps toward committing the offense of purchasing whether or not the purchase is consummated. It is likely that courts in states that only include the purchase prohibition in their statutes would treat attempted purchase as a lesser included offense. It can, therefore, be assumed that all states that prohibit purchase also prohibit attempted purchases. The two offenses are therefore not treated separately in this Report.

Exhibit 4.3.7: Underage Purchase of Alcohol for Law Enforcement Purposes as of January 1, 2012



underage purchase statute. The three other states without underage purchase statutes have no allowances for such purchases made for law enforcement purposes.

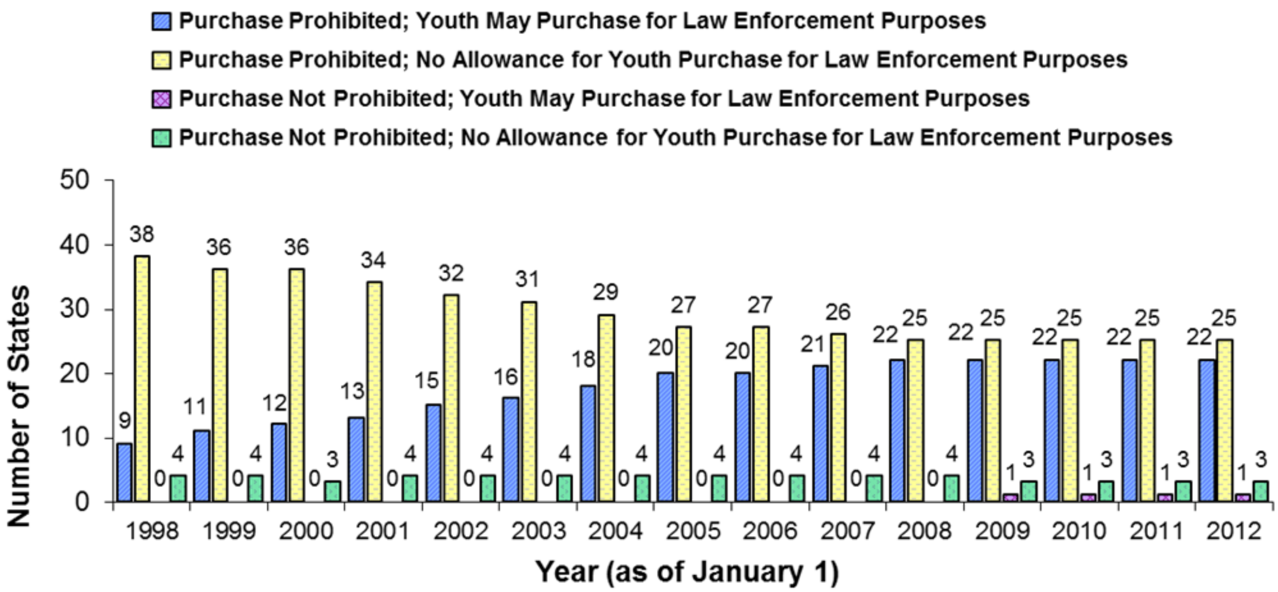
Trends in Underage Purchasing Policies

Since 1998, the number of jurisdictions prohibiting underage purchase of alcohol has remained the same (47). During that period, the number of states with allowances for underage purchase for enforcement purposes has steadily increased, from 9 in 1998 to 22 in 2012 (see Exhibit 4.3.8).

References and Further Information

All data for this policy were obtained from APIS at www.alcoholpolicy.niaaa.nih.gov. Follow links to the policy entitled “Underage Purchase of Alcohol.” APIS provides further descriptions of this policy and its variables, details regarding state policies, and a review of the limitations associated with the reported data. For definitions for the variables in this policy, go to Appendix B.

Exhibit 4.3.8: Underage Purchase of Alcohol for Law Enforcement Purposes, January 1, 1998, through January 1, 2012



3. False Identification ("False ID") *(data current as of 1/1/12)*

Policy Description

Alcohol retailers are responsible for ensuring that sales of alcoholic beverages are made only to persons who are legally permitted to purchase alcohol. Inspecting government-issued identification (driver's license, non–driver identification card, passport, and military identification) is one major mechanism for ensuring that buyers meet minimum age requirements. In attempting to circumvent these safeguards, minors may obtain and use apparently valid ID that falsely states their age as 21 or over. Age may be falsified by altering the birthdate on a valid ID, obtaining an invalid ID card that appears to be valid, or using someone else's ID.

Compliance check studies suggest that underage drinkers may have little need to use false ID because retailers often make sales without any ID inspection. However, concerns about false ID remain high among educators, law enforcement officials, retailers, and government officials. Current technology, including high-quality color copiers and printers, has made false ID easier to fabricate, and the internet provides ready access to a large number of false ID vendors.

All states prohibit use of false identification by minors to obtain alcohol. In addition to the basic prohibitions, states have adopted a variety of legal provisions pertaining to false ID for obtaining alcohol. These provisions can be divided into three basic categories:

- Provisions that target minors who possess and use false identification to obtain alcohol
- Provisions that target those who supply minors with false identification, either through lending of a valid ID or the production of invalid ("fake") IDs
- Provisions that assist retailers in avoiding sales to potential buyers who present false IDs

Government-issued IDs are used for a number of age-related purposes other than the purchase of alcohol: registering to vote, enlisting in the military, entering certain entertainment venues, and so on. APIS confines its analysis to statutes and regulations relating to the use of false identification for the purpose of obtaining alcohol.

For further discussion of policies pertaining to the purchase of alcohol by minors, see the "Underage Purchase and Attempted Purchase" section of this report; of policies that mandate training of servers to detect false identification, the "Responsible Beverage Service" section of this report; and of license suspension or revocation, the "Loss of Driving Privileges for Alcohol Violations by Minors" section of this report.

Status of False ID Policies

Provisions That Target Minors
As of January 1, 2012, all states and the District of Columbia prohibit minors from using false IDs to obtain alcohol (see Exhibit 4.3.9). All but eight states (Delaware, Kansas, Nebraska, Nevada, New Mexico, North Dakota, Vermont, and Wyoming) authorize suspension of minors' driver's licenses for using a false ID in the purchase of alcohol. In all but four states (Alaska, Illinois, Ohio, and West Virginia) the suspension is through judicial proceedings. Two states (Arizona and Iowa) allow for both judicial and administrative proceedings for license sanctions.

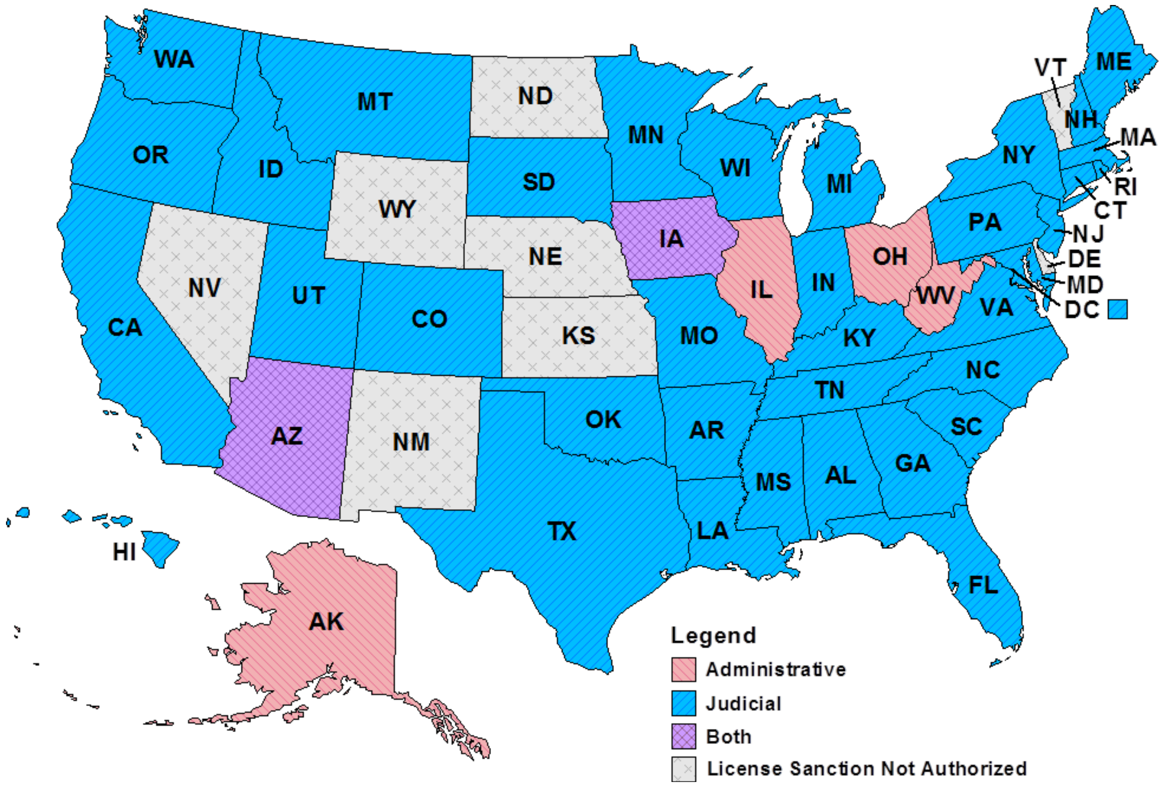
Provisions That Target Suppliers
As of January 1, 2012, 25 states have laws that target suppliers of false IDs; 24 prohibit lending, transferring, or selling false IDs to minors for the purpose of purchasing alcohol; and 13 prohibit manufacturing such licenses.

Retailer Support Provisions
Retailer support provisions vary widely across the states. In prosecution involving an illegal underage alcohol sale, 44 states and the District of Columbia provide for some type of affirmative defense (the retailer shows that he/she reached a good faith or reasonable conclusion that the false ID was valid); 43 states have laws requiring distinctive licenses for persons under age 21; 11 states permit retailers to seize apparently false IDs; 11 states provide incentives for the use of scanners; 4 states (Arkansas, Colorado, South Dakota, and Utah) allow retailers to detain minors; and 4 states (Alaska, Oregon, New Hampshire, and Utah) permit retailers to sue minors for damages.

Trends in False ID State Policies

State false ID policies that target minors and suppliers have been relatively stable for the last 11 years. During this period, Hawaii, Maine, Mississippi, and South Dakota implemented judicial license revocation, and Missouri enacted a law making it illegal to lend, transfer, or sell false IDs to minors.

Exhibit 4.3.9: Procedure for Imposing License Sanction for Use of False ID as of January 1, 2012

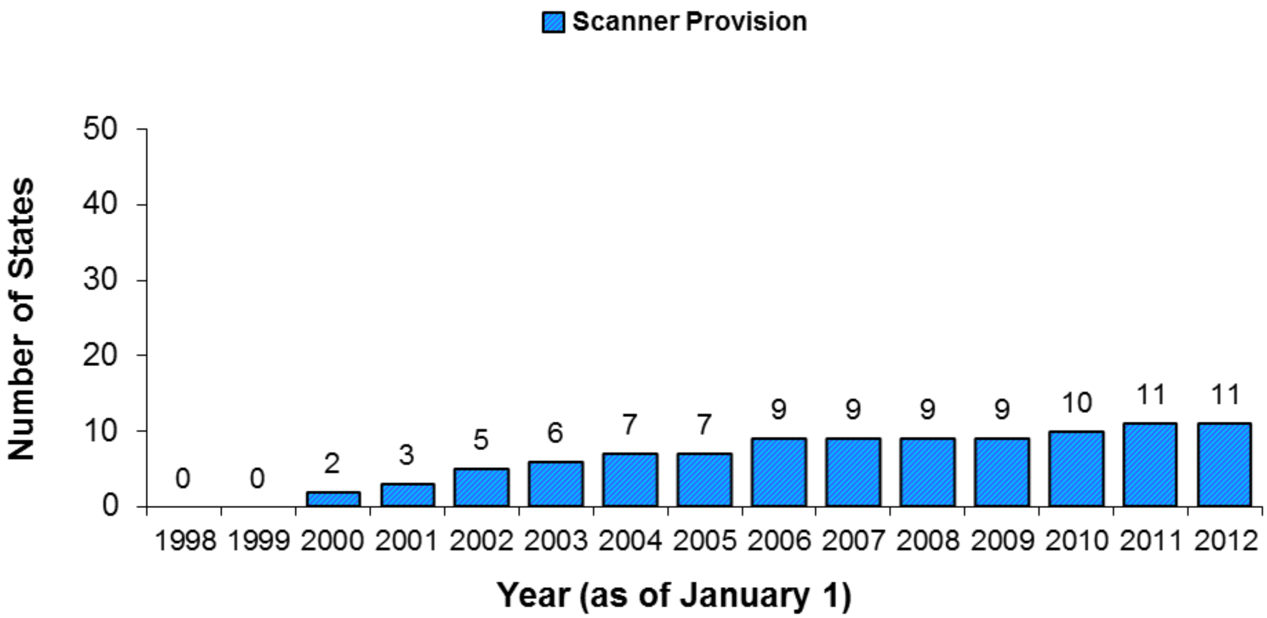


By contrast, states have been actively enacting four of the retailer support provisions. All 11 scanner provisions were enacted over the last 12 years (see Exhibit 4.3.10). Two of the specific affirmative defense laws (Arizona and Vermont), two of the right to detain minors laws (Arkansas and South Dakota), and three of the right to sue minors laws (Alaska, New Hampshire, and Utah) were enacted during this time period. Idaho is an exception to the general trend; in 2007, it rescinded its law permitting retailers to seize apparently false IDs.

References and Further Information

All data for this policy were obtained from APIS at www.alcoholpolicy.niaaa.nih.gov. Follow links to the policy entitled “False Identification for Obtaining Alcohol.” APIS provides further descriptions of this policy and its variables, details regarding state policies, and a review of the limitations associated with the reported data. Variables are defined in Appendix B.

Exhibit 4.3.10: Number of States with Scanner Provisions in False ID Laws, January 1, 1998, through January 1, 2012



Laws Targeting Underage Drinking and Driving

4. Youth Blood Alcohol Concentration Limits (Underage Operators of Noncommercial Motor Vehicles) *(data current as of 1/1/12)*

Policy Description

Blood alcohol concentration (BAC) limits policies establish the maximum amount of alcohol a minor can have in his/her bloodstream when operating a motor vehicle. BAC is commonly expressed as a percentage. For instance, a BAC of 0.08 percent means that a person has 8 parts alcohol per 10,000 parts blood in the body. State laws generally specify BAC levels in terms of grams of alcohol per 100 milliliters of blood (often abbreviated as grams per deciliter, or g/dL). BAC levels can be detected by breath, blood, or urine tests. The laws of each jurisdiction specify the preferred or required types of tests used for measurement.

There is strong scientific evidence that as BAC increases, the cognitive and motor skills needed to operate a motor vehicle are increasingly impaired. BAC statutes establish criteria for determining when the operator of a vehicle is sufficiently impaired to constitute a threat to public safety, and is therefore violating the law. Currently, all states and the District of Columbia mandate a BAC limit of 0.08 g/dL for adult drivers.

Owing to differences between young people and adults (e.g., body mass, physiological development, driving experience), young people's ability to safely operate a motor vehicle is impaired at a lower BAC than for adults. Partly as a result of financial incentives established by the federal government, all jurisdictions in the United States have enacted low BAC limits for underage drivers. Laws establishing very low legal BAC limits of 0.02 g/dL or less for drivers under the legal drinking age of 21 are widely referred to as zero-tolerance laws.

A per se BAC statute stipulates that if the operator has a BAC level at or above the per se limit, a violation has occurred without regard to other evidence of intoxication or sobriety (e.g., how well or poorly the individual is driving). In other words, exceeding the BAC limit established in a per se statute is itself a violation.

Status of Youth BAC Limit Policies

As of January 1, 2012, all states have per se youth BAC statutes (see Exhibit 4.3.11). Thirty-four states set the driving BAC limit for underage persons at 0.02 g/dL. The District of Columbia and 14 states consider any underage alcohol consumption while driving to be a violation of the law and have set the limit to 0.00 g/dL. Two states (California and New Jersey) have set the underage BAC limit to 0.01 g/dL.

Trends in Youth BAC Limit Policies

Since 1998, all states have had zero tolerance (0.02 g/dL or lower) youth BAC limit laws (see Exhibit 4.3.12). In the period between 1999 and 2012, the number of states mandating specific BAC limits for underage drivers remained constant with the exception of one state (Maryland), which lowered its underage BAC limit from 0.02 to 0.00 g/dL. Prior to 1998, three states (South Carolina, South Dakota, and Wyoming) had no youth BAC limits and one (Mississippi) set the limit to 0.08 g/dL.

References and Further Information

All data for this policy were obtained from APIS at www.alcoholpolicy.niaaa.nih.gov. Follow links to the policy entitled "Blood Alcohol Concentration Limits: Youth (Underage Operators of Noncommercial Motor Vehicles)." APIS provides further descriptions of this policy and its variables, details regarding state policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

5. Loss of Driving Privileges for Alcohol Violations by Minors ("Use/Lose" Laws) *(data current as of 1/1/12)*

Policy Description

Use/lose laws authorize suspension or revocation of driving privileges as a penalty for underage purchase, possession, or consumption of alcoholic beverages. States began enacting these statutes in the mid-1980s to deter underage drinking by imposing a punishment that young people would consider significant: the loss of a driver's license. In most states, use/lose laws make it mandatory to impose driver's license sanctions in response to underage alcohol violations. State laws vary as to the type of violation (purchase, possession, or consumption of alcohol) that leads to these sanctions and how long suspensions or revocations stay in effect.

State laws specific to minors (purchase, possession, and consumption of alcoholic beverages) are described in the "Underage Purchase and Attempted Purchase," "Underage Possession," "Underage Consumption," and "Internal Possession by Minors" sections of this report.

Exhibit 4.3.11: Youth Operators Blood Alcohol Concentration Limit Laws as of January 1, 2012

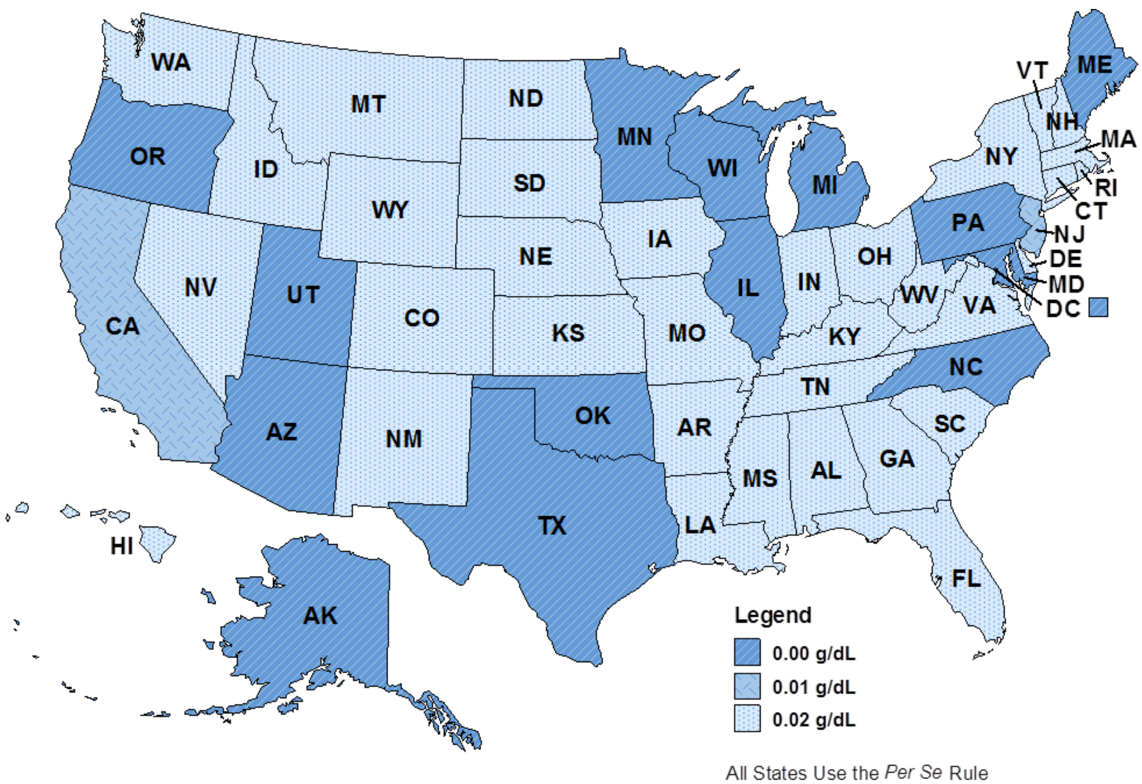
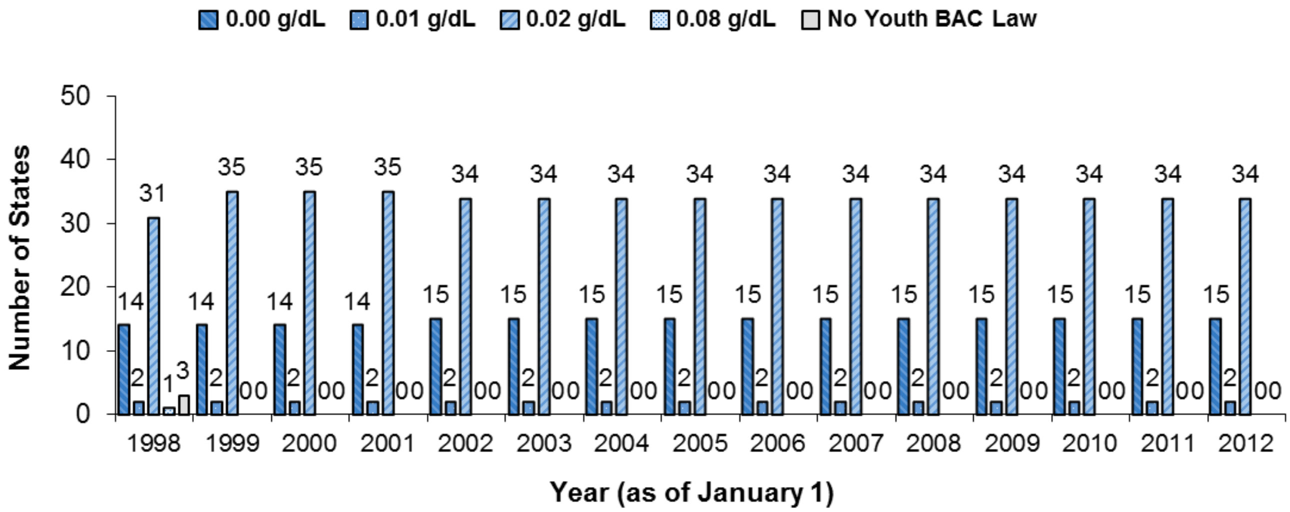


Exhibit 4.3.12: Distribution of Youth (Underage Operators of Noncommercial Motor Vehicles) BAC Limit Laws, January 1, 1998, through January 1, 2012



Status of Loss of Driving Privileges Policies

Upper Age Limit
Thirty states and the District of Columbia set age 21 as the upper limit for which use/lose laws apply. Fourteen states set the upper limit at age 18, and one state (Wyoming) sets the limit at age 19. In four states (Arkansas, Hawaii, Tennessee, and Virginia), some sanction conditions vary depending on whether the violator is under age 18 or under age 21.

Authority To Impose License Sanction
The vast majority of jurisdictions (36 states and the District of Columbia) have made license suspension or revocation mandatory in cases of underage alcohol violations (see Exhibit 4.3.13). Nine states have made this a discretionary penalty for such violations, and 10 states have no use/lose law. One state (Hawaii) makes this a discretionary penalty for minors below age 18, but mandatory for violators ages 18 through 20. (The total of states is greater than 51 because some have both mandatory and discretionary laws.)

Trends in Loss of Driving Privileges Policies
Between 1998 and 2012, the number of jurisdictions that made license suspension or revocation mandatory in cases of underage alcohol violations increased from 25 to 34 (see Exhibit 4.3.14). During this same time period, the number of jurisdictions with no use/lose laws decreased from 17 to 10, and the number with discretionary authority to impose use/lose sanctions dropped from 10 to 9.

References and Further Information

Data for this policy were obtained from APIS at www.alcoholpolicy.niaaa.nih.gov. Follow links to the policy entitled "Loss of Driving Privileges for Alcohol Violations by Minors ("Use/Lose"

Laws)." APIS provides further descriptions of this policy and its variables, details regarding state policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

6. Graduated Driver's Licenses (data current as of 1/1/12)

Policy Description

Graduated driver licensing (GDL) is a system designed to delay full licensure for teenage automobile drivers, thus allowing beginning drivers to gain experience under less risky conditions. Teenagers are targeted because they are at the highest risk for motor vehicle crashes, including alcohol-related crashes. By imposing restrictions on driving privileges, GDL reduces the chances of teenagers driving while intoxicated.

A fully developed GDL system has three stages: a minimum supervised learner's period, an intermediate license (once the driving test is passed) that limits unsupervised driving in high-risk situations, and a full-privilege driver's license available after completion of the first two stages. Beginners must remain in each of the first two stages for set minimum time periods.

Exhibit 4.3.13: License Suspension/Revocation for Alcohol Violations by Minors as of January 1, 2012

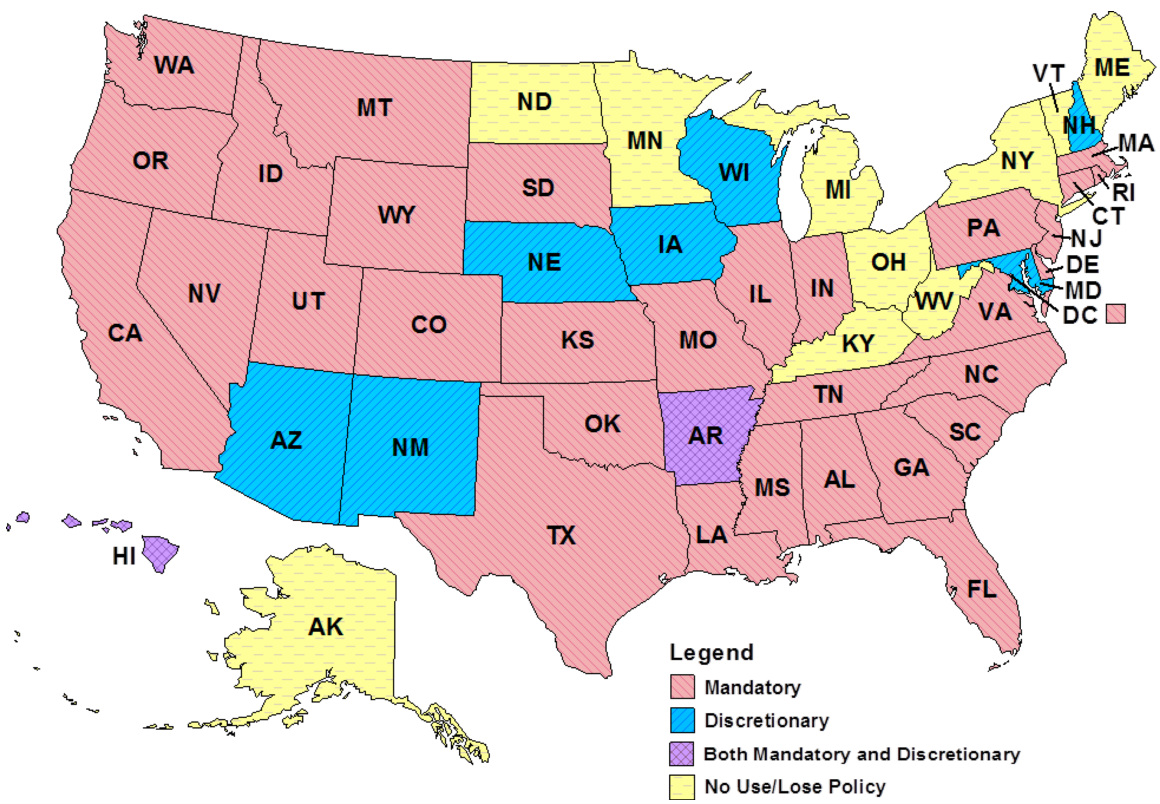
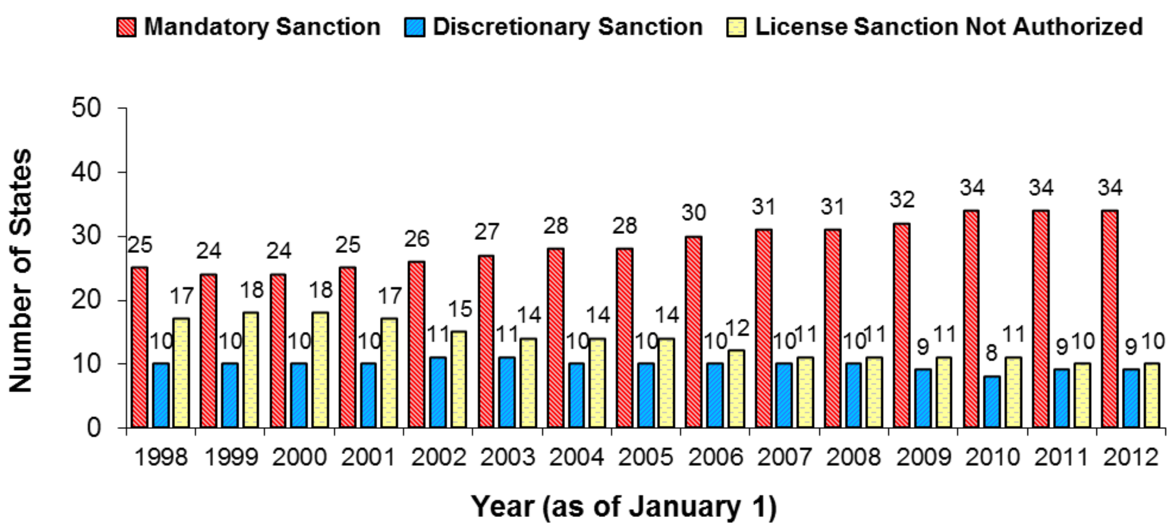


Exhibit 4.3.14: Distribution of License Suspension/Revocation Procedures for Alcohol Violations by Minors, January 1, 1998, through January 1, 2012



The learner's stage has three components:

- Minimum age at which drivers can operate vehicles in the presence of parents, guardians, or other adults
- Minimum holding periods during which learner's permits must be held before drivers advance to the intermediate stage of the licensing process
- Minimum age at which drivers become eligible to drive without adult supervision

The intermediate stage of GDL law has five components:

- Minimum age at which drivers become eligible to drive without adult supervision
- Unsupervised night-driving prohibitions
- Primary enforcement of night-driving provisions
- Passenger restrictions, which set the total number of passengers allowed in vehicles driven by intermediate-stage drivers
- Primary enforcement of passenger restrictions

"Primary enforcement" refers to the authority given to law enforcement officers to stop drivers for the sole purpose of investigating potential violations of night-driving or passenger restrictions. Law enforcement officers in states without primary enforcement can investigate potential violations of these provisions only as part of an investigation of some other offense. Primary enforcement greatly increases the chance that violators will be detected.

The single component for the license stage of GDL is the minimum age at which full licensure occurs and both passenger and night-driving restrictions are lifted.

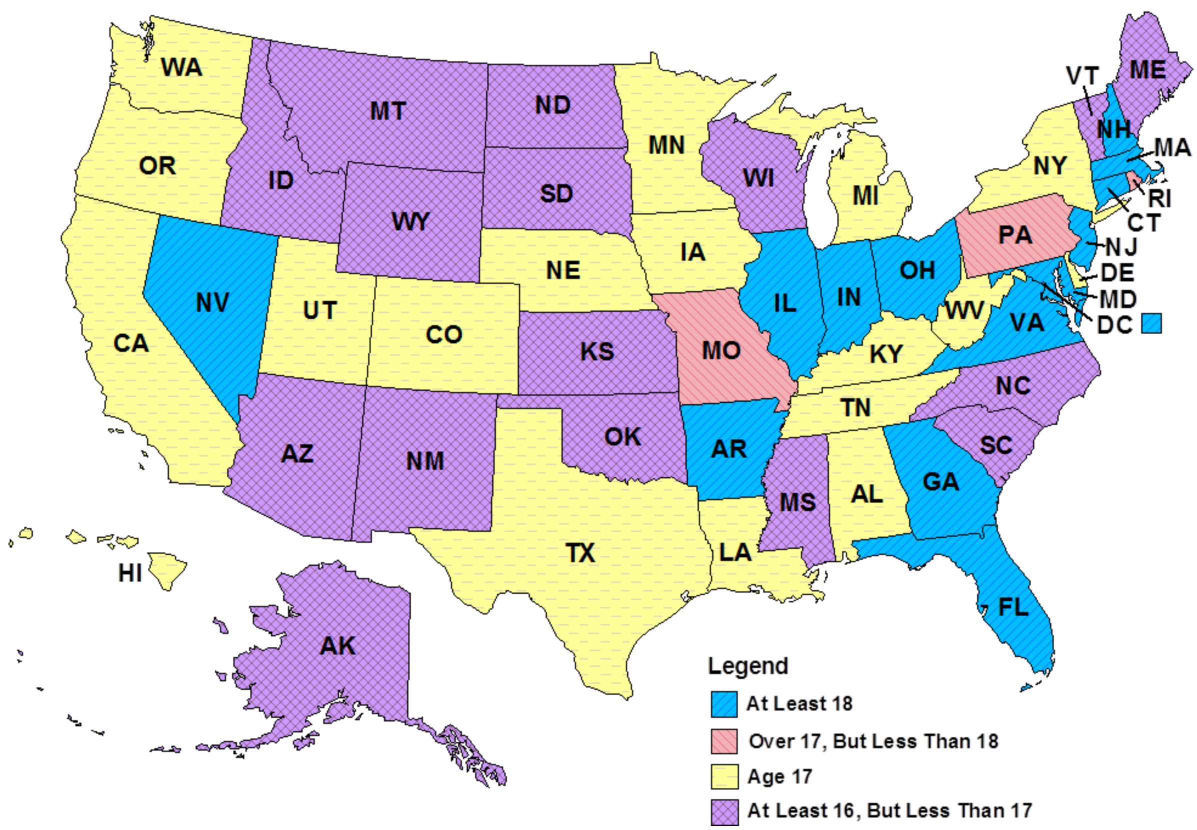
Status of Graduated Driver Licensing Policies

Currently, all 51 jurisdictions have some form of GDL policy and all states have full three-stage criteria (see Exhibit 4.3.15).

The minimum ages established for each stage and the extent to which the other restrictions are imposed vary across jurisdictions. Among the most important GDL provisions related to traffic safety is the minimum age for full licensure. Fourteen jurisdictions allow full licensure on the 18th birthday; three jurisdictions permit it at ages above 17 but under 18; and 18 permit it on the 17th birthday. The remaining 16 jurisdictions permit full licensure to those who are under 17 but at least 16 years old.

All but one jurisdiction has night-driving restrictions; the hours during which these restrictions apply vary widely among jurisdictions, but fall largely between the hours of 6 p.m. and 1 a.m. Thirty-eight jurisdictions have primary enforcement of night-driving restrictions. Forty-six jurisdictions place passenger restrictions on drivers with less than full licensure, and 31 of those have primary enforcement of these restrictions.

Exhibit 4.3.15: Minimum Age of Full Driving Privileges Laws as of January 1, 2012



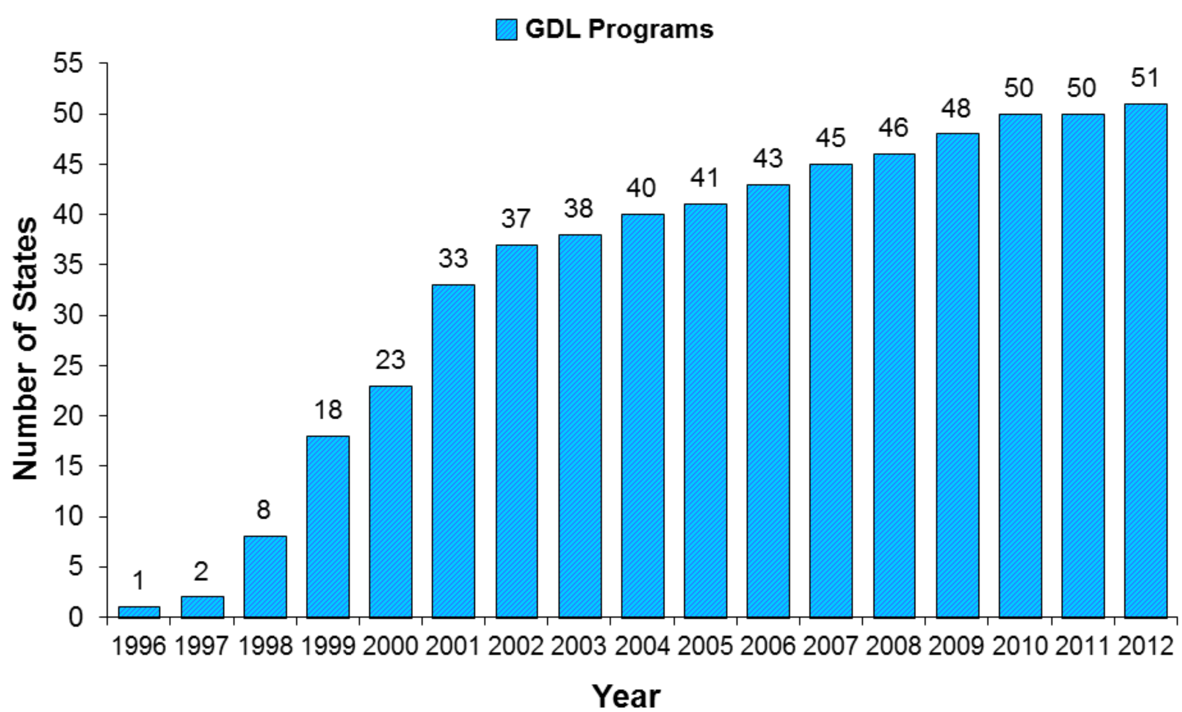
Trends in Graduated Driver Licensing Policies

Since the mid-1990s, states enacting three-stage GDL laws have steadily increased (see Exhibit 4.3.16). On January 1, 1996, only one state (Maryland) had such a law, but by 2000, 23 jurisdictions had enacted three-stage GDL laws and by 2012, that number had risen to 51.

References and Further Information

Legal research for this topic is planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. Historical data for the years 1996 through 2004 were obtained from "Graduated Driver Licensing Programs and Fatal Crashes of 16 year old Drivers: A National Evaluation" (Baker, S. P., Chen, L.-H., & Li, G. (2006); National Highway Transportation Safety Administration DOT HS 810 614). Data from January 1, 2005, until December 31, 2008, were obtained from the Insurance Institute for Highway Safety (www.iihs.org/laws/pdf/us_licensing_systems.pdf). Data through January 1, 2012, were collected by SAMHSA. To see definitions of the variables for this policy, go to Appendix B.

Exhibit 4.3.16: Number of States (and District of Columbia) with Three-Stage Graduated Driver Licensing Policies, July 1, 1996, through January 1, 2012



Laws Targeting Alcohol Suppliers

7. Furnishing Alcohol to Minors *(data current as of 1/1/12)*

Policy Description

All states prohibit furnishing alcoholic beverages to minors by both commercial (bars, restaurants, retail sales outlets) and noncommercial servers. However, examination of case law would be required to determine with certainty that the prohibition applies to both commercial and noncommercial servers in all states. Additionally, most states include some type of exception to their furnishing laws of the types listed below.

Most underage persons obtain alcohol from adults including parents, older siblings and peers, or strangers solicited to purchase alcohol for the minor. Smaller numbers of youths purchase alcohol for themselves from merchants who fail to comply with laws prohibiting sale to minors or by using false identification (see the "False Identification" section of this report). These sources increase the availability of alcohol to underage persons, which, in turn, increases underage consumption. Prohibitions and associated sanctions on furnishing to underage persons can be expected to depress rates of furnishing by raising the monetary and social costs of this behavior. Such laws provide a primary deterrent (preventing furnishing) and a secondary deterrent (reducing the chances of persons sanctioned under these laws furnishing in the future).

Two types of exceptions to underage furnishing laws are discussed in this analysis:

- Family exceptions permit parents, guardians, or spouses to furnish alcohol to minors; some states specify that the spouse must be of legal age and others do not.
- Location exceptions permit furnishing alcohol in specified locations and may limit the extent to which family members can furnish minors. No state has an exception for furnishing on private property by anyone other than a family member.

Some states provide sellers and licensees with one or more defenses against a charge of furnishing alcoholic beverages to a minor. Under these provisions, a retailer who provides alcohol to a minor will not be found in violation of the furnishing law if he or she can establish one of these defenses. This policy topic tracks one such defense: some states require that the minor who initiated a transaction be charged for possessing or purchasing the alcohol before the retailer can be found in violation of the furnishing law. (Defenses associated with minors using false ID can be found in the "False Identification" section of this report.) Many states also have provisions that mitigate or reduce the penalties imposed on retailers if they have participated in responsible beverage service (RBS) programs; see the RBS section of this report for further discussion.

In some states, furnishing laws are closely associated with laws that prohibit hosting underage drinking parties. These laws target hosts who allow underage drinking on property they own, lease, or otherwise control. (See the "Hosting Underage Drinking Parties" section of this report for further discussion.) Hosts of underage drinking parties who also supply the alcohol consumed or possessed by minors may be in violation of two distinct laws: furnishing alcohol to minors, and allowing underage drinking to occur on property they control.

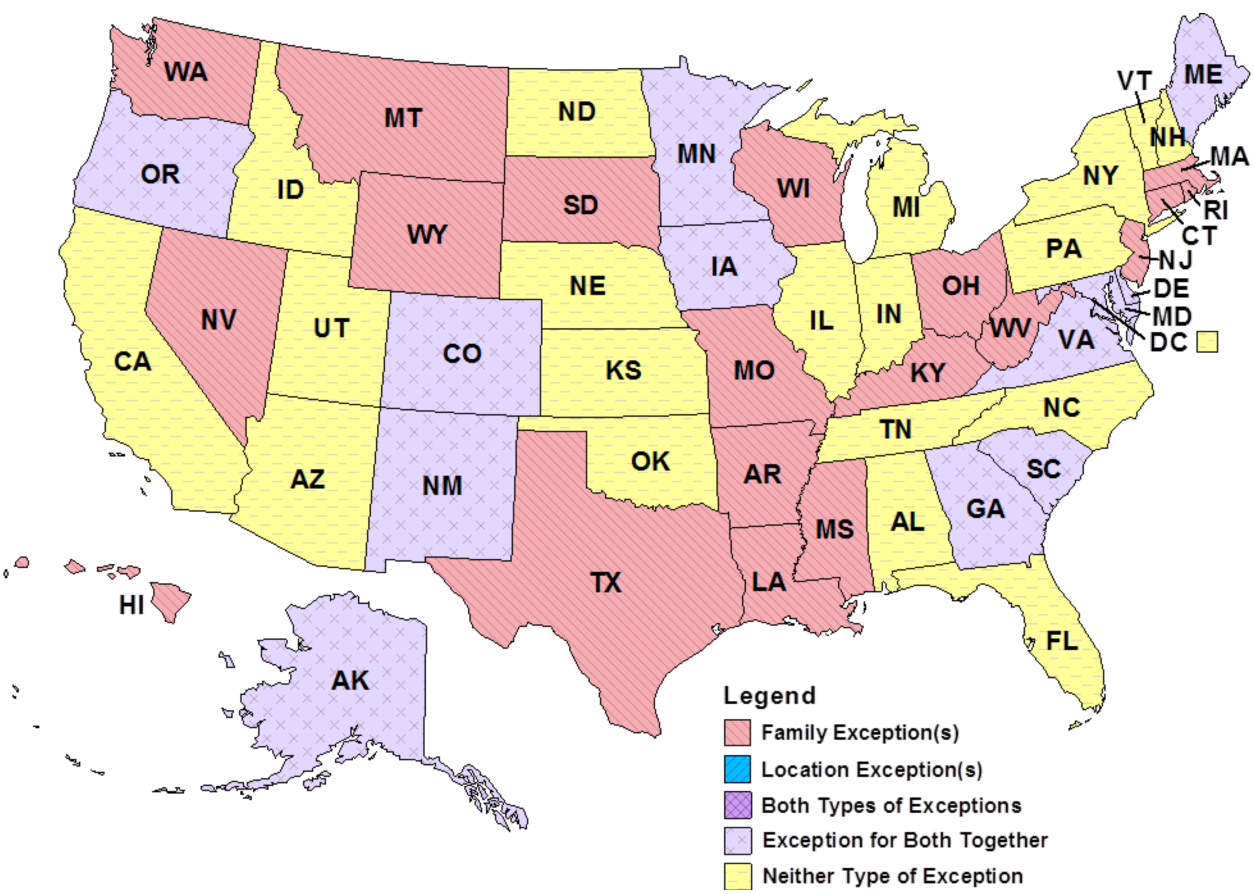
Also addressed in this report are social host liability laws, which impose civil liability on hosts for injuries caused by their underage guests. Although related to party hosting laws, social host liability laws are distinct. They do not establish criminal or civil offenses, but instead allow injured parties to recover damages by suing social hosts of events during which minors consumed alcohol and later were responsible for injuries. The commercial analog to social host liability laws is dram shop laws, which prohibit commercial establishments—bars, restaurants, and retail sales outlets—from furnishing alcoholic beverages to minors. See the "Social Host Liability" and "Dram Shop Liability" portions of this report for further discussion.

Status of Underage Furnishing Policies

Exceptions to Furnishing Prohibitions

As of January 1, 2012, all states prohibit the furnishing of alcoholic beverages to minors (see Exhibit 4.3.17). Nineteen states and the District of Columbia have no family or location exceptions to this prohibition. The remaining 31 states permit parents, guardians, and/or spouses to furnish alcohol to their underage children and/or spouses. Of these, 12 states limit the exception to certain locations (3 states, any private location; 7 states, any private residence; 2 states, parents' or guardians' homes only).

Exhibit 4.3.17: Exceptions to Prohibitions on Furnishing Alcohol to Persons Under Age 21 as of January 1, 2012



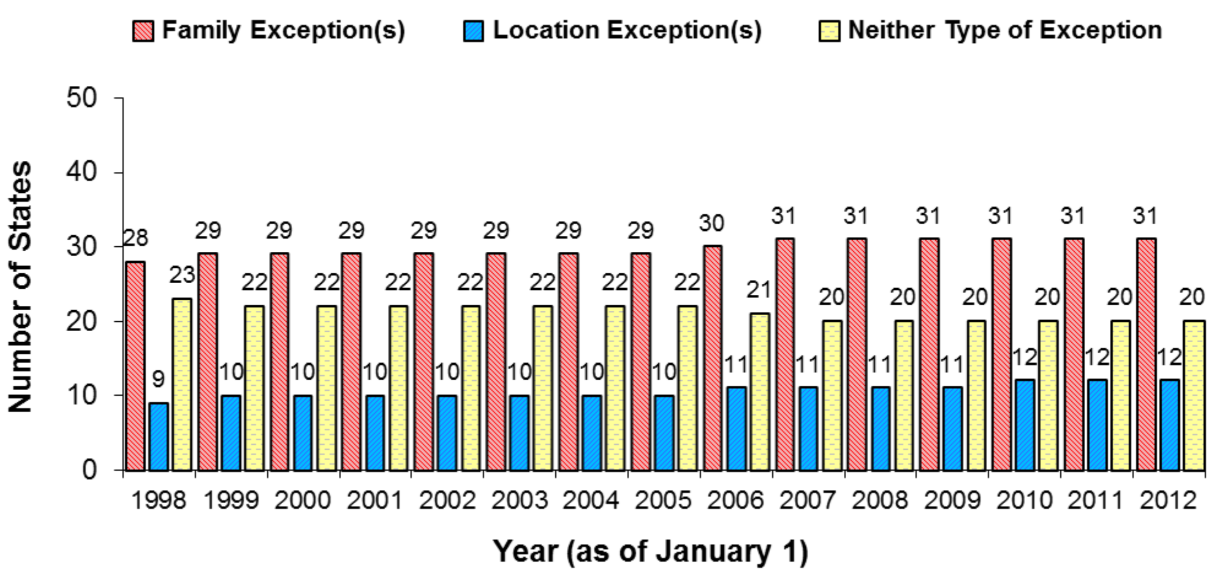
Affirmative Defense for Sellers and Licensees
As of January 1, 2012, the underage furnishing laws of two states (Michigan and South Carolina) include provisions requiring that the seller/licensee be exonerated of charges of furnishing alcohol to a minor unless the minor involved is charged.

Trends in Underage Furnishing Policies
State policies prohibiting the furnishing of alcohol to minors have remained stable over the last decade. As of January 1, 1998, all states prohibited underage furnishing (see Exhibit 4.3.18).

References and Further Information

All data for this policy were obtained from APIS at www.alcoholpolicy.niaaa.nih.gov. See the policy entitled "Furnishing Alcohol to Minors." APIS provides further descriptions of this policy and its variables, details regarding state policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

Exhibit 4.3.18: Number of States with Family and Location Exceptions to Prohibition on Furnishing Alcohol to Persons under Age 21, January 1, 1998, through January 1, 2012



8. Compliance Check Protocols (data current as of 1/1/12)

Policy Description

Compliance checks involve an underage operative (a "decoy") working with either law enforcement officials or agents from the state alcoholic beverage control (ABC) agency, who enters an alcohol retail establishment and attempts to purchase an alcoholic beverage from a server, bartender, or clerk. The protocols for these checks vary from state to state, but in general follow a similar outline. An underage person (allowable ages vary by state) serves as a decoy in the compliance check. Decoys are generally instructed to act and dress in an age-appropriate manner. The decoy enters an alcohol retail outlet to attempt to purchase a predetermined alcohol product (e.g., a six-pack of beer at an off-sale establishment or a mixed drink at an on-sales establishment). Typically the decoy is observed by an undercover enforcement officer from a local police department or the state ABC agency. Audio and video recording equipment may also be used or required. State rules vary regarding a decoy's use of legitimate identification cards (driver's licenses, etc.), although a few states allow decoys to verbally exaggerate their age. If a purchase is made successfully, the establishment and/or the clerk or server may be subject to an administrative or criminal penalty.

Most, but not all, states permit law enforcement agencies to conduct compliance checks on a random basis. A few states permit them only when there is a basis for suspecting that a particular licensee has sold alcohol to a minor in the past. To ensure that state and local law enforcement agencies are following uniform procedures, most states have issued formal compliance check protocols or guidelines. If the protocols are not adhered to, then the administrative action against the licensee may be dismissed. The protocols are therefore designed to ensure that law enforcement actions are fair and reasonable and to provide guidelines to licensees for avoiding prosecution.

Compliance checks of off- and on-premise licensed alcohol retailers are an important community tool for reducing illegal alcohol sales to minors and to promote community normative change. The Institute of Medicine (IOM) 2003 report, *Reducing Underage Drinking: A Collective Responsibility*, calls for (1) regular, random compliance checks; (2) administrative penalties, including fines and license suspensions that increase with each offense; (3) enhanced media coverage for the purposes and results of compliance checks; and (4) training for alcohol retailers regarding their legal responsibility to avoid selling alcohol to underage youths.

Compliance checks have both educational and behavior change goals:

- Change or reinforce social norms that underage drinking is not acceptable by publicizing noncompliant retailers.
- Educate the community, including parents, educators, and policymakers, about the ready availability of alcohol to youth, which may not be considered a major issue.
- Increase alcohol retailers' perception that violation of sales to minors laws will be detected and punished, creating a deterrent effect.

Status of Compliance Check Protocols

Data for this policy were coded from formal compliance check protocols or guidelines. A total of 31 states have formal, written protocols; the remaining states either do not have them or do not have them readily available to the public.

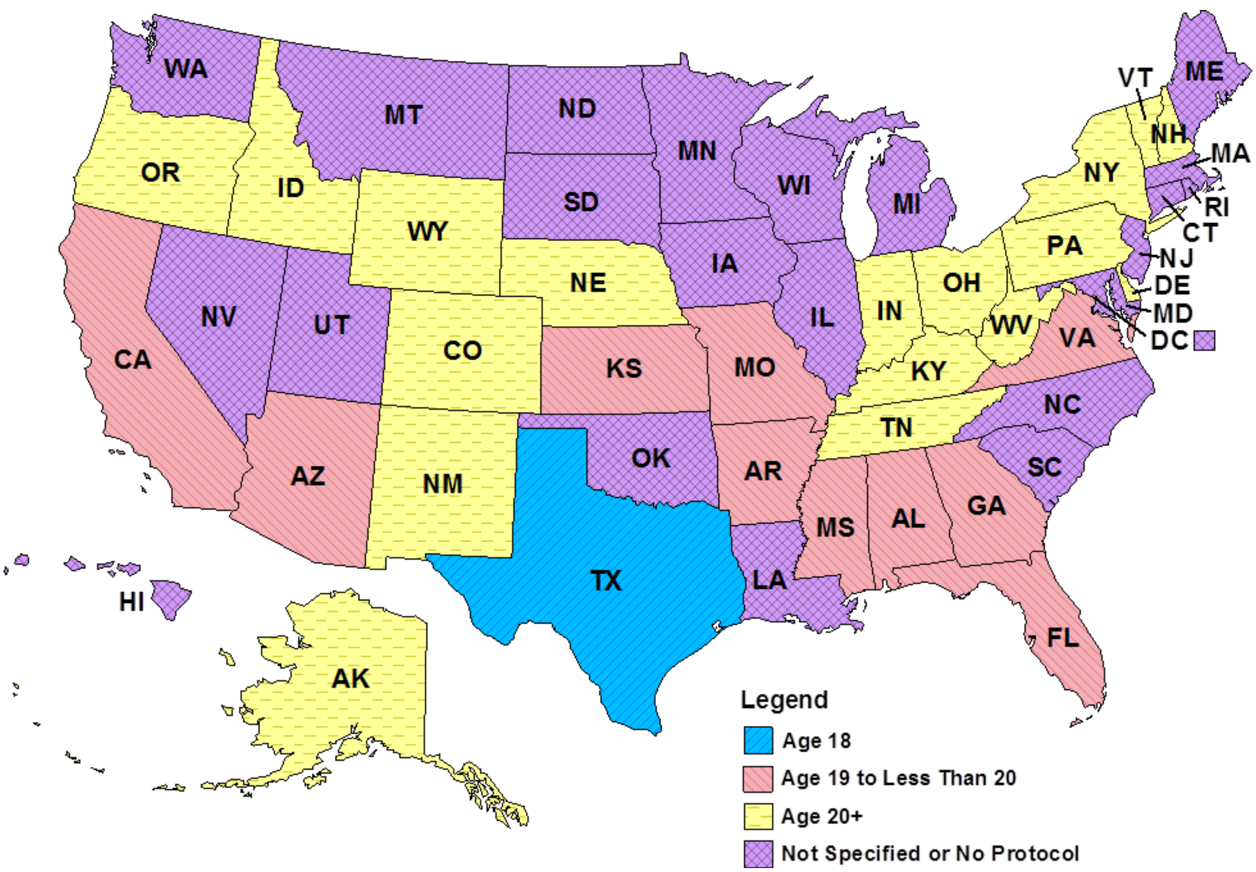
Compliance check protocols are generally issued by the state police or the state ABC agency. These guidelines vary somewhat in specificity and detail, possibly reflecting differences in the purposes of the checks and the evidentiary standards in each jurisdiction.

The maximum age of the decoy varies from 18 to just under 21, with the majority of states requiring that the maximum age of the decoy be 19 or 20 (see Exhibit 4.3.19). The minimum age of the decoy ranges from 15 to 18, with the majority of the states requiring the minimum age of the decoy to be 17 or 18. Thirty jurisdictions have guidelines for the decoys' appearance (e.g., no facial hair on males, no makeup on females). These requirements vary widely by state. One state uses an age panel to ensure that the decoys appear underage. Four states allow decoys to verbally exaggerate their age. Decoy training is mandatory in 13 states. About one half of the states (16) require decoys to have valid identification in their possession at the time of the check.

References and Further Information

Legal research and data collection for this topic is planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see variables for this policy, go to Appendix B. For further information and background, see: Pacific Institute for Research and Evaluation. (2007). *Reducing alcohol sales to underage purchasers: A practical guide to compliance investigations*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention

Exhibit 4.3.19: Maximum Age of Compliance Check Decoys in 2012



<u>9. Penalty Guidelines for Sales/Service to Minors</u> <u>*(data current as of 1/1/12)*</u>

Policy Description

In the majority of states, ABC agencies are responsible for adjudicating administrative charges against licensees, including violations for sales or service to those under age 21. Alcohol law enforcement seeks to increase compliance with laws by increasing the level of perceived risk of detection and sanctions. Such deterrence involves three key components: perceived likelihood that a violation will lead to apprehension and sanction, swiftness with which the sanction is imposed, and severity of the sanction (Ross, 1992). As stated in the 2003 IOM report, *Reducing Underage Drinking: A Collective Responsibility*, the effectiveness of alcohol control policies depends heavily on the "intensity of implementation and enforcement and on the degree to which the intended targets are aware of both the policy and its enforcement." The report recommends, "Enforcement agencies should issue citations for violations of underage sales laws, with substantial fines and temporary suspension of license for first offenses and increasingly stronger penalties thereafter, leading to permanent revocation of license after three offenses."

States typically include administrative penalties in their statutory scheme prohibiting sales to minors. The penalty provisions are usually very broad, allowing for severe penalties but delegating responsibility for determining actual penalties in particular cases to the ABC agencies. Penalties may include warning letters, fines, license suspensions, a combination of fines and suspensions, or license revocation. The agencies may consider both mitigating and aggravating circumstances as well the number of violations within a given time period, with repeat offenders usually receiving more severe sanctions.

Many ABC agencies issue penalty guidelines to alert licensees to the sanctions that will be imposed for first, second, and subsequent offenses, providing a time period for determining repeat offenses. The agency may treat the guidelines as establishing a set penalty or range of penalties or may treat them as providing guidance, allowing for deviation at the agency's discretion.

Penalty guidelines that establish firm, relatively severe penalties (particularly for repeat offenders) can increase the deterrent effect of the policy and its enforcement and can increase licensees' awareness of the risks associated with violations.

Status of Penalty Guidelines for Sales/Service to Minors

At least 24 jurisdictions have defined administrative penalty guidelines for licensees who sell alcohol to an underage youth (see Exhibit 4.3.20). The remaining 27 states either do not have penalty guidelines or do not make them readily available to the public. The guidelines may be based on statute, regulations, and/or internal policies developed by the agency.

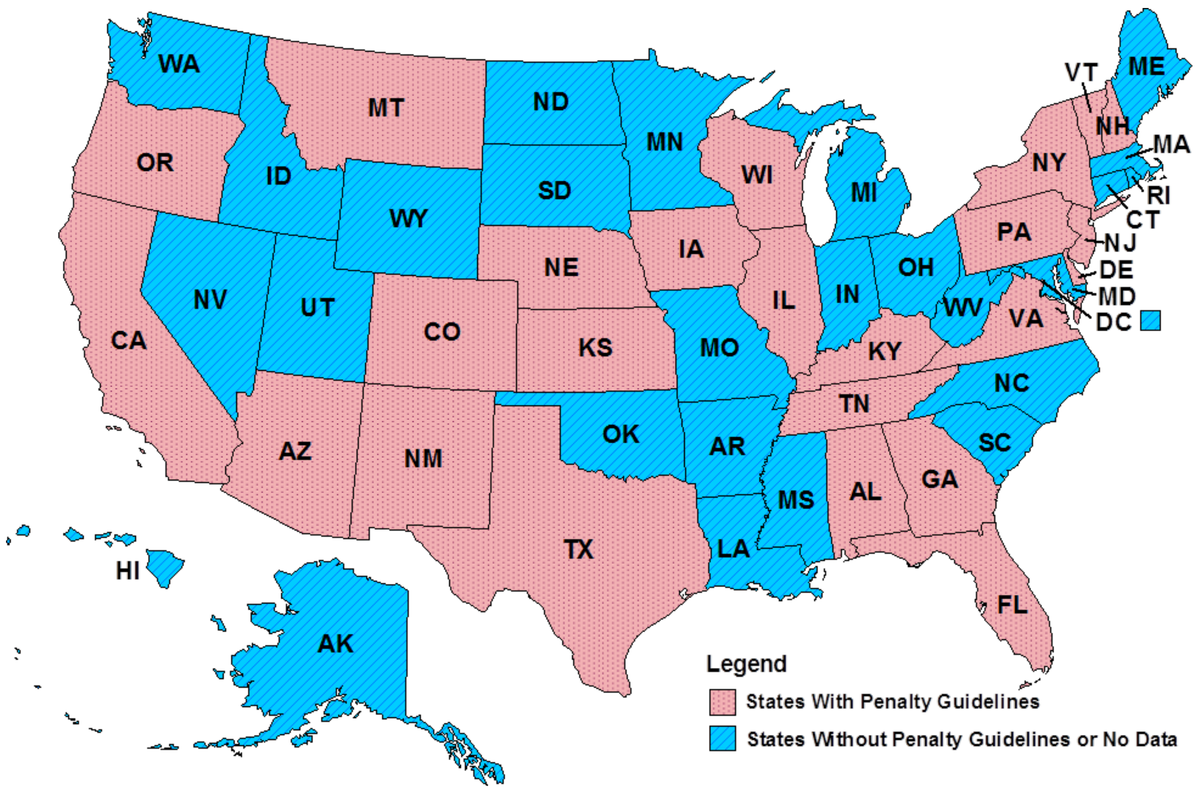
The guidelines vary widely across states. For example, two states issue warning letters for first offenses if there are no aggravating circumstances. Other states impose fines and/or suspensions. Minimum fines for a first offense range from $250 to $5,000, with most states in the $500 to $1,000 range. Fines are typically in lieu of suspensions for first offenses, with some states allowing licensees to choose between the two sanctions. Florida has the strictest first offense guidelines: it imposes a $1,000 fine and a 7-day suspension. New York imposes a $5,000 penalty if the minor served is under age 19.

Fines increase to as much as $20,000 for subsequent offenses (in California), with license suspension days increasing to as many as 72 days for subsequent violations (Kentucky). Three states have adopted the IOM recommendation that licenses should be revoked after three offenses (California, Florida, and New Mexico), and an additional six states revoke licenses for a fourth offense. The time periods for defining repeat offenses range from 1 to 5 years.

States also vary in the specificity of their guidelines. Many states list a set penalty or a relatively limited range of penalties. Pennsylvania's guideline, on the other hand, provides for penalties ranging from a $1,000 fine to license revocation for first offenses.

See Chapter 4.4, the Cross-State Survey Report, for a review of penalties actually imposed by states for selling to and serving minors.

Exhibit 4.3.20: States with Penalty Guidelines as of January 1, 2012



References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see:

National Research Council, Institute of Medicine. (2003). *Reducing underage drinking: A collective responsibility*. Washington, DC: National Academies Press.

Ross, H.L. (1992). *Confronting drunk driving: Social policy for saving lives*. Binghamton, New York: Vail-Ballou Press.

10. Responsible Beverage Service *(data current as of 1/1/12)*

Policy Description

Responsible beverage service (RBS) training policies set requirements or incentives for retail alcohol outlet participation in programs that: (1) develop and implement policies and procedures for preventing alcohol sale and service to minors and intoxicated persons, and (2) train licensees, managers, and servers/sellers to implement RBS policies and procedures effectively.

Server/seller training focuses on serving and selling procedures, recognizing signs of intoxication, methods for checking age identification, and techniques for intervening with intoxicated patrons. Manager training includes server/seller training, policy and procedures development, and staff supervision. RBS programs typically have distinct training curricula for on- and off-sale establishments because of the differing characteristics of these retail environments. All RBS programs focus on preventing sale and furnishing to minors.

Responsible beverage service training can be mandatory or voluntary. A program is considered mandatory if state provisions require at least one specified category of individual (e.g., servers/sellers, managers, or licensees) to attend training. States may have either mandatory programs, voluntary programs, or both. For example, a state may make training for new licenses mandatory while also offering voluntary programs for existing licensees. Alternatively, a state may have a basic mandatory program while also offering a more intensive voluntary program that provides additional benefits for licensees choosing to participate in both.

States with voluntary programs usually provide incentives for retailers to participate in RBS training but do not impose penalties for those who decline involvement. Incentives vary by state and include (1) a defense in dram shop liability lawsuits (cases filed by injured persons against retail establishments that provided alcohol to minors or intoxicated persons who later caused injuries to themselves or third parties); (2) discounts for dram shop liability insurance; (3) mitigation of fines or other administrative penalties for sales to minors or sales to intoxicated persons; and (4) protection against license revocation for sales to minors or intoxicated persons.

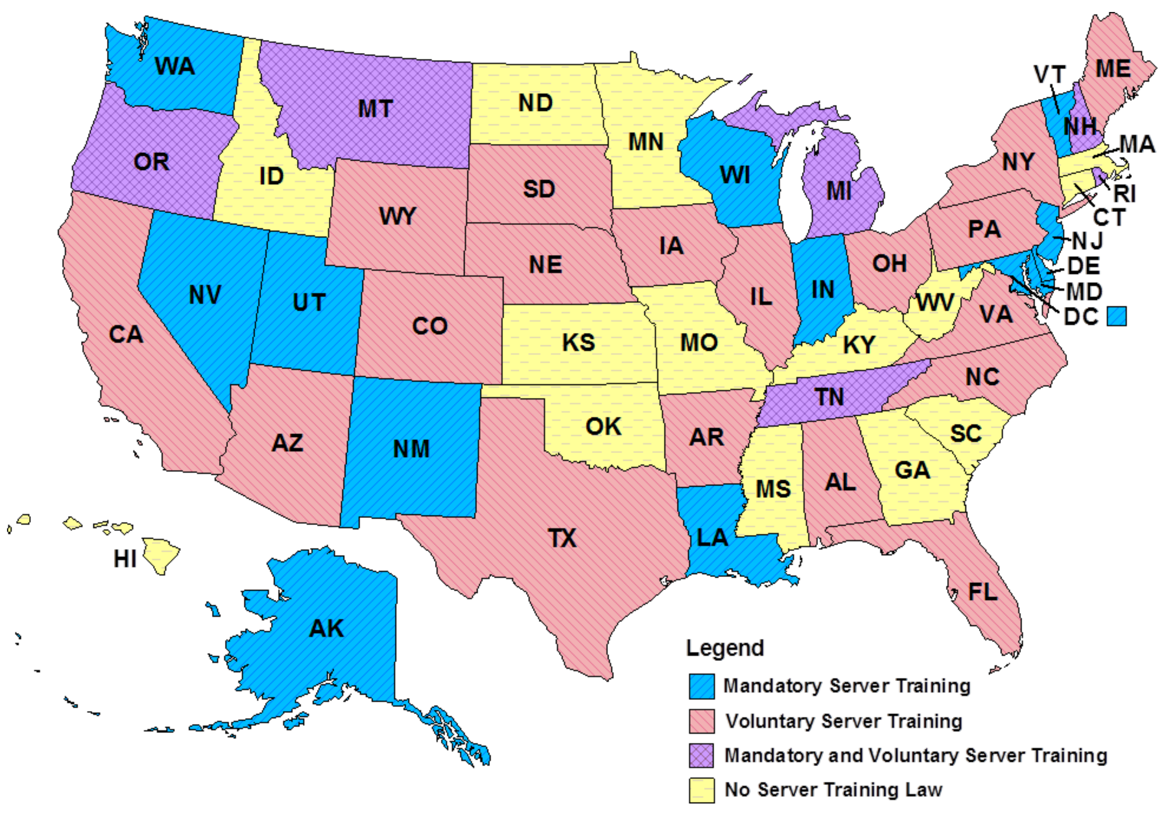
See the "Dram Shop Liability" section of this report for further discussion of this policy. The "Furnishing of Alcohol to Minors" section has additional information regarding prevention of alcohol sales to minors, and the "False Identification" section includes materials related to age identification policies.

Status of Responsible Beverage Service Training Policies

As of January 1, 2012, 36 states and the District of Columbia have some type of RBS training provision (see Exhibit 4.3.21). Out of these, 18 states and the District of Columbia have some form of mandatory provision and 24 states provide for voluntary training. Of the 18 mandatory states, 13 states and the District of Columbia apply their RBS training provisions to both on- and off-sale establishments; 4 states (Michigan, Rhode Island, Tennessee, and Washington) apply them to on-premises establishments only; and New Jersey limits its provisions to off-sale establishments. Thirteen of the mandatory states and the District of Columbia apply their provisions to both new and existing establishments, while four states (Michigan, New Hampshire, New Jersey, and Wisconsin) apply them to new establishments only. Six states (Michigan, Montana, New Hampshire, Oregon, Rhode Island, and Tennessee) have both mandatory and voluntary provisions:

- Michigan: The mandatory provisions apply to new on-premises establishments; the voluntary provisions apply to existing on-premises establishments.
- Montana: The mandatory provisions apply to new and existing as well as on and off-premises establishments; the voluntary incentives also apply to both new and existing and on-and off premises establishments.
- New Hampshire: The mandatory provisions apply to new on- and off-premises establishments; the voluntary provisions provide incentives available to both types of establishments.

Exhibit 4.3.21: Responsible Beverage Service as of January 1, 2012



- Oregon: Both the voluntary and mandatory provisions apply to both types of establishments, with the voluntary provisions offering incentives for participation in both.
- Rhode Island: The mandatory provisions apply to existing, on-premises establishments. The voluntary provisions offer dram shop liability defense incentives and do not specify which types of establishments may participate.

- Tennessee: The mandatory provisions apply to new and existing on-premises establishments. The voluntary provisions offer incentives available to off-premises establishments, but do not specify whether the incentives are available to new and/or existing establishments.

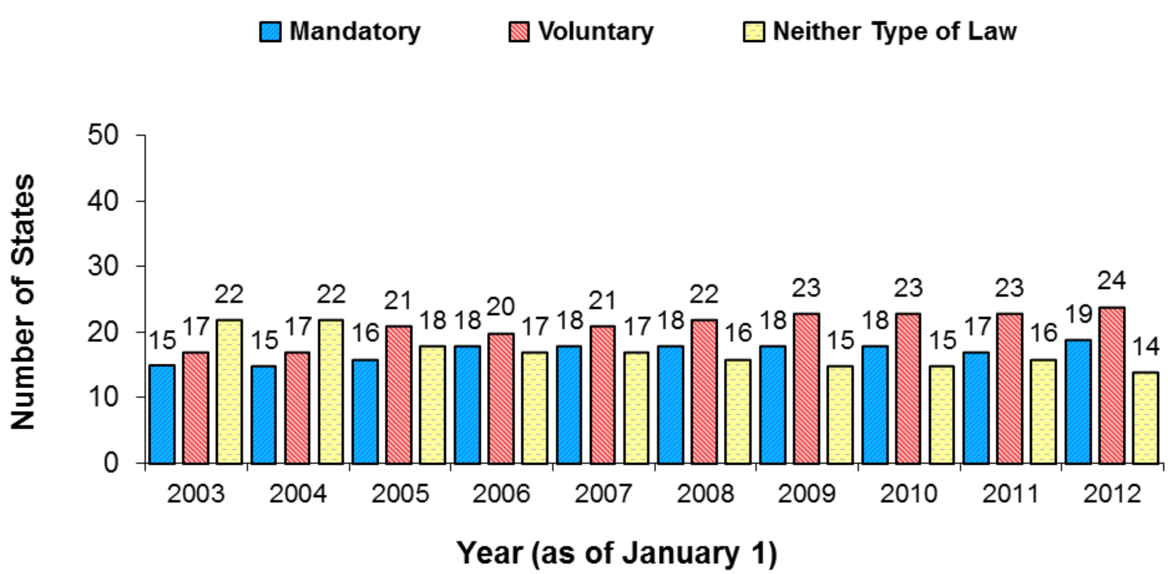
Trends in Responsible Beverage Service Policies

Between 2003 and 2012, the number of states with mandatory policies increased from 15 to 19, and the number of states with voluntary policies rose from 17 to 24 (see Exhibit 4.3.22). The number of states with no RBS training policy decreased from 22 to 14.

References and Further Information

All data for this policy were obtained from APIS at www.alcoholpolicy.niaaa.nih.gov. Follow links to the policy entitled "Beverage Service Training and Related Practices." APIS provides further descriptions of this policy and its variables, details regarding state policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

Exhibit 4.3.22: Number of States with Responsible Beverage Service, January 1, 2003, through January 1, 2012



11. Minimum Ages for On-Premises Servers and Bartenders *(data current as of 1/1/12)*

Policy Description

All states specify a minimum age for employees who serve or dispense alcoholic beverages. Generally, the term "servers" refers to waitpersons, and "bartenders" refers to individuals who dispense alcoholic beverages. These restrictions recognize that underage employees, particularly those who are unsupervised, may lack the maturity and experience to conduct adequate checks of age identification and resist pressure from underage peers to complete illegal sales.

States vary widely in terms of minimum age requirements for servers and bartenders. In some states, the minimum age for both types of employee is 21, but others set lower minimum ages, particularly for servers. No state permits underage bartenders while prohibiting underage servers. Some states permit servers or bartenders younger than 21 to work only in certain types of on-premises establishments, such as restaurants, or to serve only certain beverage types, such as beer or wine. Underage servers and bartenders may be allowed only if legal-age managers or supervisors are present when underage persons are serving alcoholic beverages or tending bar.

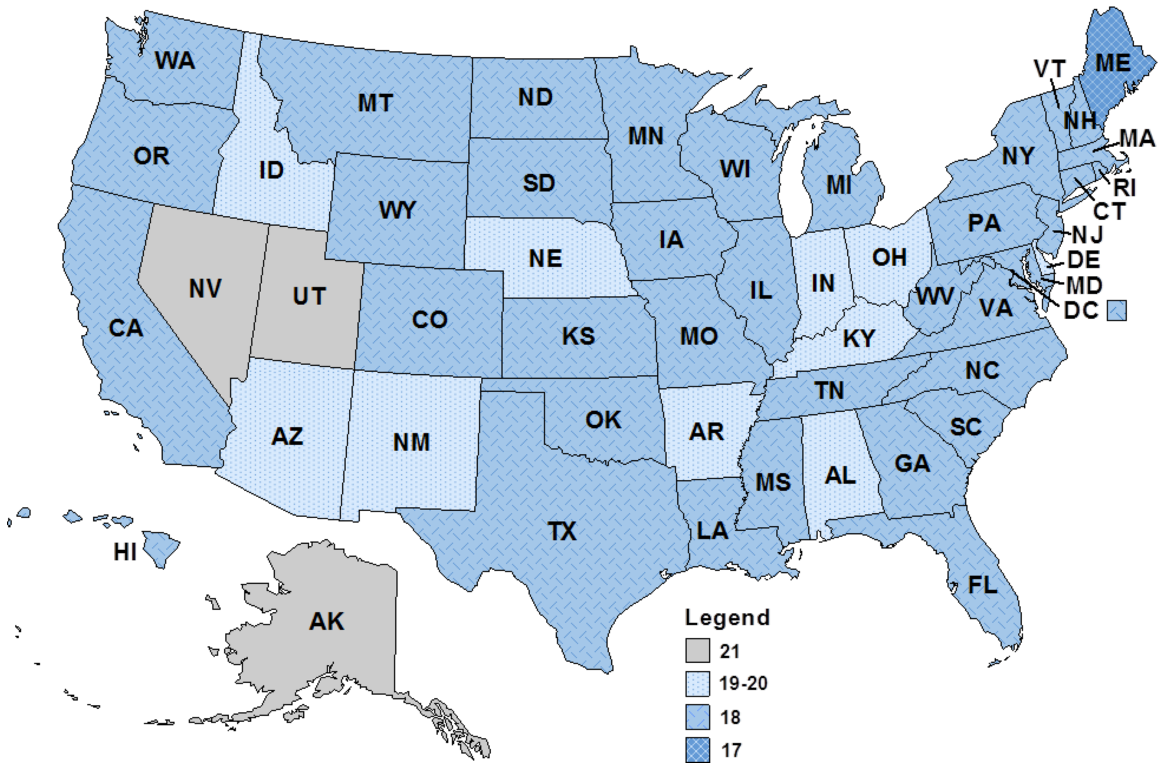
State laws setting a minimum age for employees who sell alcohol at off-premises establishments are described in the "Minimum Ages for Off-Premises Sellers" section of this report.

Status of Age of Server Policies

Age of Servers
As of January 1, 2012, three states (Alaska, Nevada, and Utah) specify that on-premises alcohol servers of beer, wine, or distilled spirits must be age 21 or older (see Exhibit 4.3.23). Only one state (Maine) allows 17-year-olds to be servers. Ten states specify that servers be at least 19 or at least 20 years old, and the remaining 36 states and the District of Columbia allow 18-year-old servers.

Age of Bartenders
Minimum ages for bartenders are generally higher than for servers across the states. Nineteen states and the District of Columbia limit bartending to those age 21 or older. Five states (Arizona, Idaho, Kentucky, Nebraska, and Ohio) specify that bartenders be at least age 19 or at least age 20. Twenty-five states allow 18-year-olds to bartend, while only one state (Maine) allows 17-year-olds to be bartenders. Minimum ages for serving beer, wine, and distilled spirits are identical in all but three states: Maryland, North Carolina, and Ohio. Maryland and North Carolina require bartenders to be 21 years old to serve spirits, but permit 18-year-olds to dispense beer and wine; Ohio requires bartenders to be 21 years old to serve wine and distilled spirits, but those age 19 and older are allowed to dispense beer.

Exhibit 4.3.23: Minimum Ages for On-Premises Servers (Beer) as of January 1, 2012



Trends in Age of Server Policies

Manager or Supervisor Presence

Ten states require that a supervisor or manager be present when an underage seller conducts an alcoholic beverage transaction.

State policies for ages of servers and bartenders in on-premises establishments have been generally stable over the last decade (see Exhibit 4.3.24). Between 2003 and 2012, Arkansas lowered its minimum age for servers from 21 to 19, and North Dakota lowered its age for servers from 19 to 18.

References and Further Information

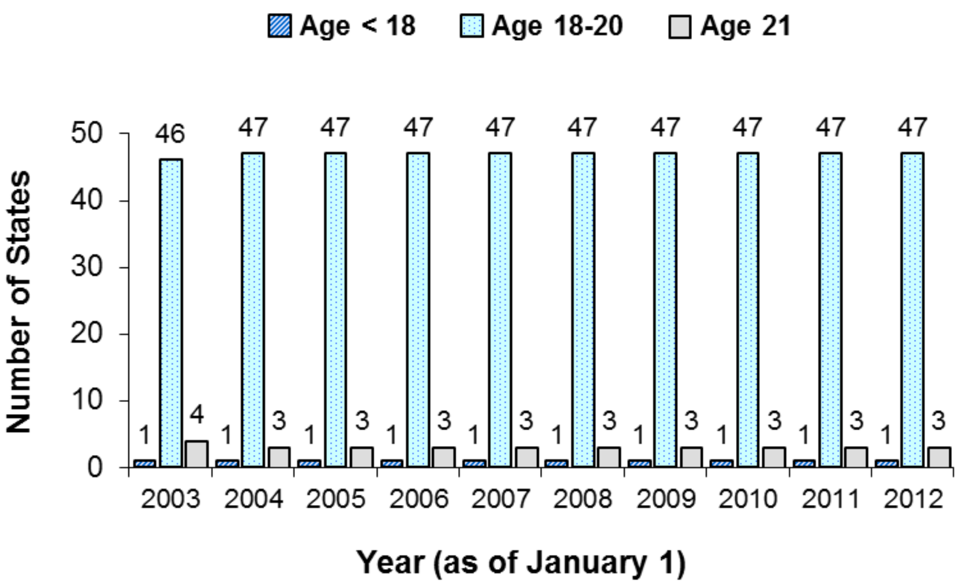
All data for this policy were obtained from APIS at www.alcoholpolicy.niaaa.nih.gov. Follow links to the policy entitled “Minimum Ages for On-Premises Servers and Bartenders.” APIS provides further descriptions of this policy and its variables, details regarding state policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

12. Minimum Ages for Off-Premises Sellers *(data current as of 1/1/12)*

Policy Description

Most states have laws that specify a minimum age for employees who sell alcoholic beverages in off-premises establishments such as liquor stores. A small number require sellers to be at least

Exhibit 4.3.24: Distribution of Minimum Ages for On-Premises Servers of Beer, January 1, 2003, through January 1, 2012



21 years old, but most states permit sellers to be younger. Some states allow any person to sell alcohol regardless of age. Other variations across states include minimum age requirements for conducting sales transactions with customers and allowing younger employees to stock coolers with alcohol or bag purchased alcohol. Age restrictions may also vary based on the type of off-premises establishment or type of alcohol being sold. For example, younger persons may be allowed to sell beer but not wine or distilled spirits. Younger persons may also be allowed to sell alcohol in grocery or convenience stores rather than liquor stores. Some states permit younger minimum selling ages only if a manager or supervisor is present.

State laws specifying minimum ages for employees who sell alcoholic beverages for on-premises consumption are described in the "Minimum Ages for On-Premises Servers and Bartenders" section of this report.

Status of Age of Seller Policies

Minimum Age of Sellers and Types of Beverages

Most jurisdictions specify the same minimum age for sellers of all types of alcoholic beverages (see Exhibit 4.3.25). As of January 1, 2012, 10 states specify that off-premises sellers must be 21 years or older. Three states (Idaho, Indiana, and Nebraska) require off-premise sellers to be 19 years or older; 15 states and the District of Columbia have set the minimum age at 18. Four states (Arizona, Maine, Nevada, and New Hampshire) set the minimum age between 16 and 17 years. Four states (California, Georgia, Louisiana, and Virginia) do not specify any minimum age for sellers.

Minimum age requirements in the remaining 14 states vary by type of alcohol, with age requirements generally higher for the sale of distilled spirits and lower for beer. Florida, New York, and North Carolina set a minimum age of 18 for the sale of spirits and have no age minimum for beer or wine. Alabama and South Carolina have a minimum age of 21 for the sale of spirits but no minimum for beer and wine. Vermont sets a minimum age for selling beer and wine (16), but does not specify a minimum age for selling spirits.

Manager or Supervisor Presence
Thirteen states require that a supervisor or manager be present when an underage seller conducts an alcoholic beverage transaction.

Trends in Age of Seller Policies

There have been no changes in age of seller policies across states between 2003 and 2012 (see Exhibit 4.3.26).

References and Further Information

All data for this policy were obtained from APIS at www.alcoholpolicy.niaaa.nih.gov. Follow links to the policy entitled "Minimum Ages for Off-Premises Sellers." APIS provides further descriptions of this policy and its variables, details regarding state policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

Exhibit 4.3.25: Minimum Age To Sell Beer for Off-Premises Consumption as of January 1, 2012

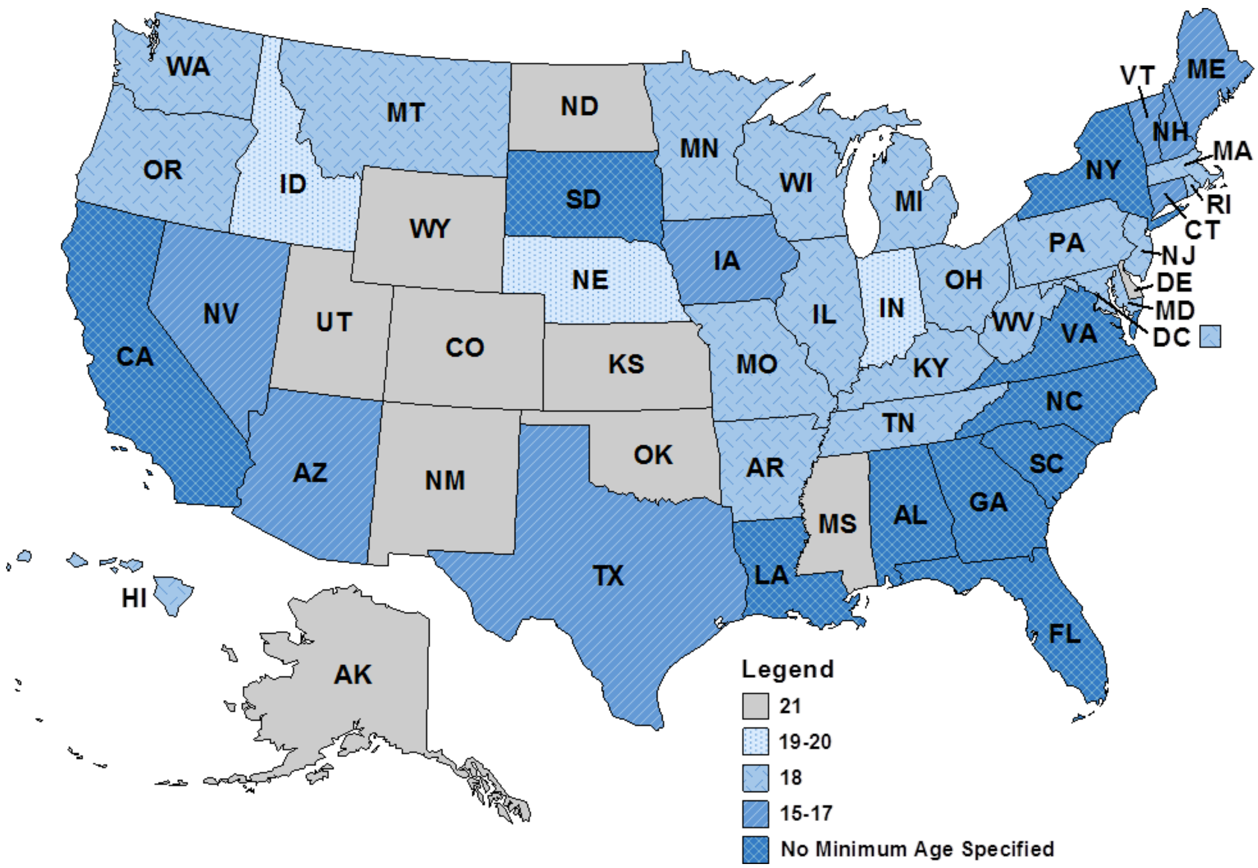
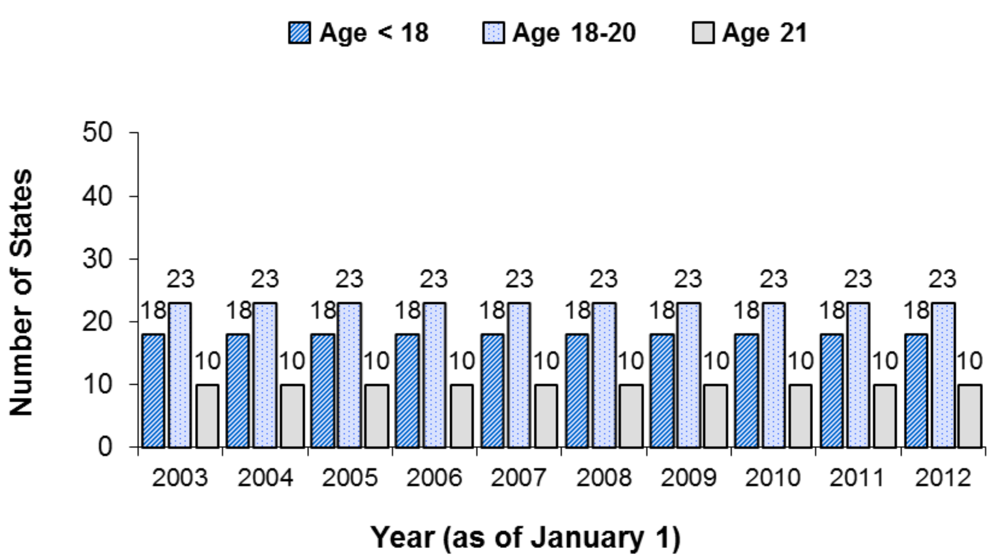


Exhibit 4.3.26: Distribution of Minimum Ages for Off-Premises Sellers of Beer, January 1, 2003, through January 1, 2012



13. Dram Shop Liability *(data current as of 1/1/12)*

Policy Description

Dram shop liability refers to the civil liability faced by commercial alcohol providers for injuries or damages caused by their intoxicated or underage drinking patrons. The analysis in this Report is limited to alcohol service to minors.[32] The typical factual scenario in legal cases arising from dram shop liability involves a licensed retail alcohol outlet that furnishes alcohol to a minor who, in turn, causes an alcohol-related motor vehicle crash that injures a third party. In states with dram shop liability, the injured third party ("plaintiff") may be able to sue the retailer (as well as the minor who caused the crash) for monetary damages. Liability comes into play only if an injured private citizen files a lawsuit. The state's role is to provide a forum for such a lawsuit; the state does not impose a dram-shop-related penalty directly. (This distinguishes dram shop liability from the underage furnishing policy, which results in criminal liability imposed by the state.)

Dram shop liability is closely related to the policy on furnishing alcohol to minors, but the two topics are distinct. Retailers who furnish alcohol to minors may face fines or other punishment imposed by the state as well as dram shop liability lawsuits filed by parties injured as a result of the same incident. Dram shop liability and social host liability (presented elsewhere in this report) are identical, except that the former involves lawsuits filed against commercial alcohol retailers and the latter involves lawsuits filed against noncommercial alcohol providers.

Dram shop liability serves two purposes: (1) it creates a disincentive for retailers to furnish to minors because of the risk of litigation leading to substantial monetary losses; and (2) it allows parties injured as a result of an illegal sale to a minor to gain compensation from those responsible for the injury. The minor causing the injury is the primary and most likely party to be sued. Typically, the retailer is sued through a dram shop claim when the minor does not have the resources to fully compensate the injured party.

Dram shop liability is established by statute or by a state court through "common law." Common law is the authority of state courts to establish rules by which an injured party can seek redress against the person or entity that negligently or intentionally caused injury. Courts have the authority to establish these rules only when the state legislature has not enacted its own statutes, in which case the courts must follow the legislative dictates (unless found to be unconstitutional). Thus, dram shop statutes normally take precedence over dram shop common law court decisions. This analysis includes both statutory and common law dram shop liability for each state.

A common law liability designation signifies that the state allows lawsuits by injured third parties against alcohol retailers for the negligent service or provision of alcohol to a minor. Common law liability assumes the following procedural and substantive rules:

---

[32] "Dram shop liability" is a legal term that originated in the 19th century. Dram shops were retail establishments that sold distilled spirits by the "dram" – a liquid measure that equals 1 ounce. This form of liability may also be referred to as "commercial host liability."

- A negligence standard applies (i.e., the defendant did not act as a reasonable person would be expected to act in like circumstances). Plaintiffs need not show that the defendant acted intentionally, willfully, or with actual knowledge of the minor's underage status.
- Damages are not arbitrarily limited. If negligence is established, the plaintiff receives actual damages and can seek punitive damages.
- Plaintiffs can pursue claims against defendants without regard for the age of the person who furnished the alcohol and the age of the underage person furnished with alcohol.
- Plaintiffs must only establish that minors were furnished alcohol and that the furnishing contributed to the injury without regard to the minor's intoxicated state at the time of sale.
- Plaintiffs must establish key elements of the lawsuit via "preponderance of the evidence" rather than a more rigorous standard (e.g., "beyond a reasonable doubt").

A statutory liability designation indicates that the state has a dram shop statute. Statutory provisions can alter the common law rules listed above, restricting an injured party's ability to make successful claims. This report includes three of the most important statutory limitations:

- Limitations on damages: Statutes may impose statutory caps on the total dollar amount that plaintiffs may recover through dram shop lawsuits.
- Limitations on who may be sued: Potential defendants may be limited to only certain types of retail establishments (e.g., on-premises but not off-premises licensees), or certain types of servers (e.g.,, servers above a certain age).
- Limitations on elements or standards of proof: Statutes may require plaintiffs to prove additional facts or meet a more rigorous standard of proof than would normally apply in common law. The statutory provisions may require plaintiff to:
  - Establish that the retailer knew the minor was underage or that the retailer intentionally or willfully served the minor.
  - Establish that the minor was intoxicated at the time of sale or service.
  - Provide clear and convincing evidence or evidence beyond a reasonable doubt that the allegations are true.

These limitations can restrict the circumstances that can give rise to liability or greatly diminish a plaintiff's chances of prevailing in a dram shop liability lawsuit, thus reducing the likelihood of a lawsuit being filed. Other restrictions in addition to the three listed above may also apply. For example, many states do not allow "first-party claims"—cases brought by the person who was furnished alcohol for his or her own injuries. This report does not track these additional limitations.

Some states have enacted responsible beverage service affirmative defenses. In these states, a defendant can avoid liability if it can establish that its retail establishment had implemented an RBS program and was adhering to RBS practices at the time of the service to a minor. Texas has enacted a more sweeping RBS defense. A defendant licensee can avoid liability if it establishes that (1) it did not encourage the illegal sale and (2) it required its staff, including the server in question, to attend RBS training. Proof that RBS practices were being adhered to at the time of service is not required. See the RBS Training policy topic in this report for additional information.

Status of Dram Shop Liability

As of January 1, 2012, 45 jurisdictions imposed dram shop liability as a result of statutory or common law or both (see Exhibit 4.3.29). The District of Columbia and 28 states have either common law liability or statutory liability or both with no identified limitation. The remaining 17 states impose one or more limits on statutory dram shop liability: 7 states limit the damages that may be recovered; 4 states limit who may be sued; and 12 states require stricter standards for proof of wrongdoing than for usual negligence. Seven states provide an RBS defense for alcohol outlets (see Exhibit 4.3.30). Six states provide an affirmative RBS defense and one state provides a complete RBS defense.

Trends in Dram Shop Liability for Furnishing Alcohol to a Minor

Between 2009 and 2012, the number of jurisdictions that permit dram shop liability remained constant and three states (Colorado, Illinois, and Maine) increased the dollar limits on damages.

Exhibit 4.3.29: Common Law/Statutory Dram Shop Liability and Limitations as of January 1, 2012

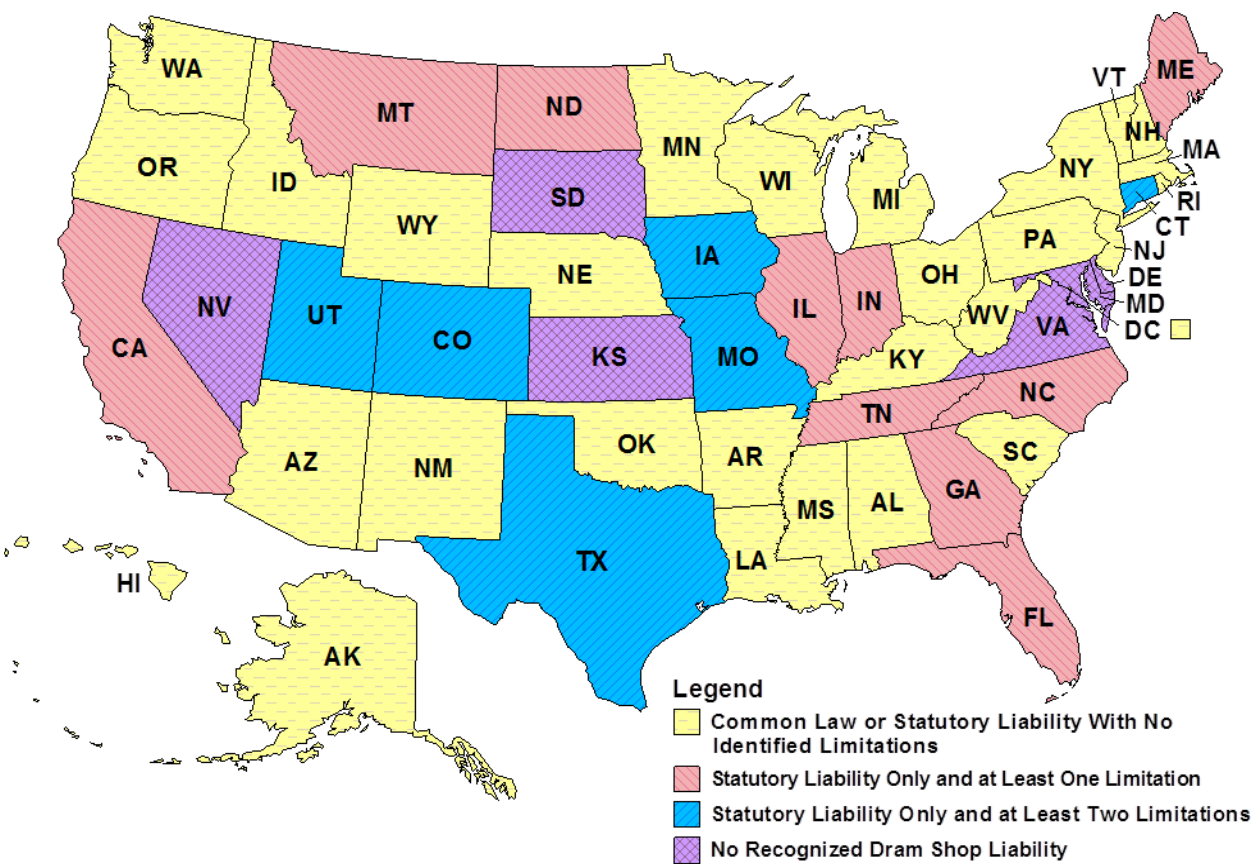
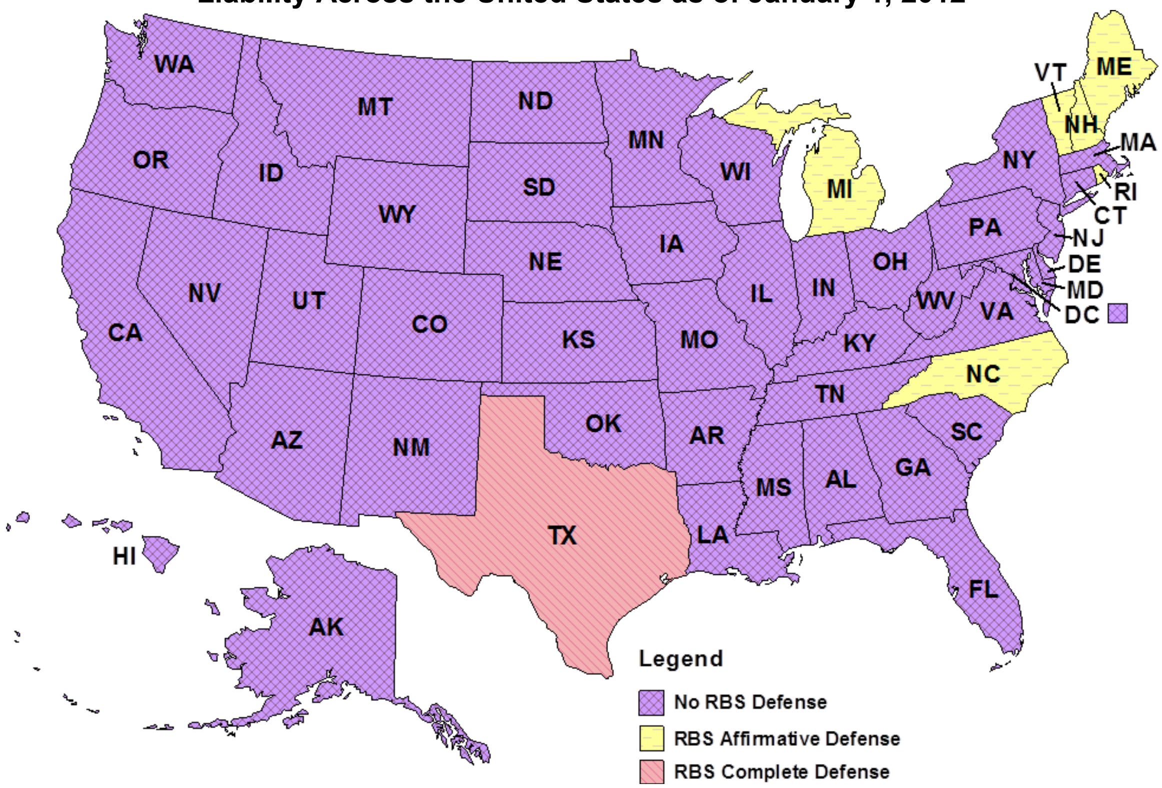


Exhibit 4.3.30: Responsible Beverage Service Program Defenses Against Dram Shop Liability Across the United States as of January 1, 2012



References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see:

Holder, H., Janes, K., Mosher, J., Saltz, R., Spurr, S., & Wagenaar, A. (1992). Final report: Evaluation of dram shop liability and the reduction of alcohol-related traffic problems. National Highway Traffic Safety Administration, DTNH22-87-R-07254.

Holder, H., et al. (1993). Alcoholic beverage server liability and the reduction of alcohol-involved problems. *J Stud Alcohol, 54,* 23–36.

Mosher, J., et al. (2011). *Liquor liability law.* Newark, NJ: LexisNexis.

14. Social Host Liability *(data current as of 1/1/12)*

Policy Description

Social host liability refers to the civil liability faced by noncommercial alcohol providers for injuries or damages caused by their intoxicated or underage drinking guests. The analysis in this report does not address social host liability for serving adult guests. The typical factual scenario in legal cases arising from social host liability involves an underage drinking party at which the party host furnishes alcohol to a minor who in turn injures a third party in an alcohol-related incident (often a motor vehicle crash). In states with social host liability, injured third parties ("plaintiffs") may be able to sue social hosts (as well as the minor who caused the crash) for monetary damages. Liability comes into play only if injured private citizens file lawsuits. The state's role is to provide a forum for such lawsuits; the state does not impose social host–related penalties directly. (As discussed below, this distinguishes social host liability from underage furnishing and host party policies, which can result in criminal liability imposed by the state.)

Social host liability is closely related to the furnishing alcohol to a minor and host party policy topics, but the three topics are distinct. Social hosts who furnish alcohol to minors or allow underage drinking parties on their property may face fines or other punishment imposed by the state as well as social host liability lawsuits filed by injured parties stemming from the same incident. Social host liability and dram shop liability (presented elsewhere in this report) are identical policies except that the former involves lawsuits brought against noncommercial alcohol retailers, and the latter involves lawsuits filed against commercial alcohol providers.

Social host liability serves two purposes: (1) it creates disincentives for social hosts to furnish to minors due to the risk of litigation and potentially substantial monetary losses and (2) it allows those injured as a result of illegal furnishing of alcohol to minors to gain compensation from the person(s) responsible for their injuries. Minors causing injuries are the primary and most likely parties to be sued. Typically, social hosts are sued through social host liability claims when minors do not have the resources to fully compensate the injured parties.

Social host liability is established by statute or by a state court through "common law." Common law refers to the authority of state courts to establish rules by which injured parties can seek redress against persons or entities that negligently or intentionally caused injuries. Courts have the authority to establish these rules only when state legislatures have not enacted their own statutes, in which case the courts must follow legislative dictates (unless found to be unconstitutional). Thus, social host statutes normally take precedence over social host common law court decisions.

Many states require evidence that social hosts furnished alcohol to the underage guest, although others permit liability if social hosts allowed underage guests to drink on the hosts' property even if the hosts did not furnish the alcohol. This analysis does not report the states that have adopted this more permissive standard. The analysis includes both statutory and common law social host liability for each state.

A common law liability designation signifies that the state allows lawsuits by injured third parties against social hosts for the negligent service or provision of alcohol to minors in noncommercial settings. Common law liability assumes the following procedural and substantive rules:

- A negligence standard applies (i.e., defendants did not act as reasonable persons would be expected to act in similar circumstances). Plaintiffs need not show that defendants acted intentionally, willfully, or with actual knowledge of minors' underage status.
- Damages are not arbitrarily limited. If successful in establishing negligence, plaintiffs receive actual damages and have the possibility of seeking punitive damages.

- Plaintiffs can pursue claims against defendants without regard for the age of the person who furnished the alcohol and the age of the underage person furnished with alcohol.
- Plaintiffs must establish only that minors were furnished with alcohol and that the furnishing contributed to injuries without regard to the minors' intoxicated state at the time of the party.
- Plaintiffs must establish the key elements of lawsuits by "preponderance of the evidence" rather than a more rigorous standard (such as "beyond a reasonable doubt").

A statutory liability designation indicates that a state has a social host liability statute. Statutory provisions can alter the common law rules listed above, restricting an injured party's ability to make successful claims. This report includes three of the most important statutory limitations:

- Limitations on damages: Statutes may impose statutory caps on the total dollar amount that plaintiffs may recover through social host lawsuits.
- Limitations on who may be sued: Potential defendants may be limited to persons above a certain age.
- Limitations on elements or standards of proof: Statutes may require plaintiffs to prove additional facts or meet a more rigorous standard of proof than would normally apply in common law. The statutory provisions may require the plaintiff to:
  - Establish that hosts had knowledge that minors were underage or proof that social hosts intentionally or willfully served minors.
  - Establish that the minors were intoxicated at the time of service.
  - Provide clear and convincing evidence or evidence beyond a reasonable doubt that the allegations are true.

These limitations can limit the circumstances that can give rise to liability or greatly diminish plaintiffs' chances of prevailing in a social host liability lawsuit, thus reducing the likelihood of a lawsuit being filed. Other restrictions in addition to the three listed above may also apply. For example, many states do not allow "first-party claims"—cases brought by the person who was furnished alcohol for his or her own injuries. This report does not track these additional limitations.

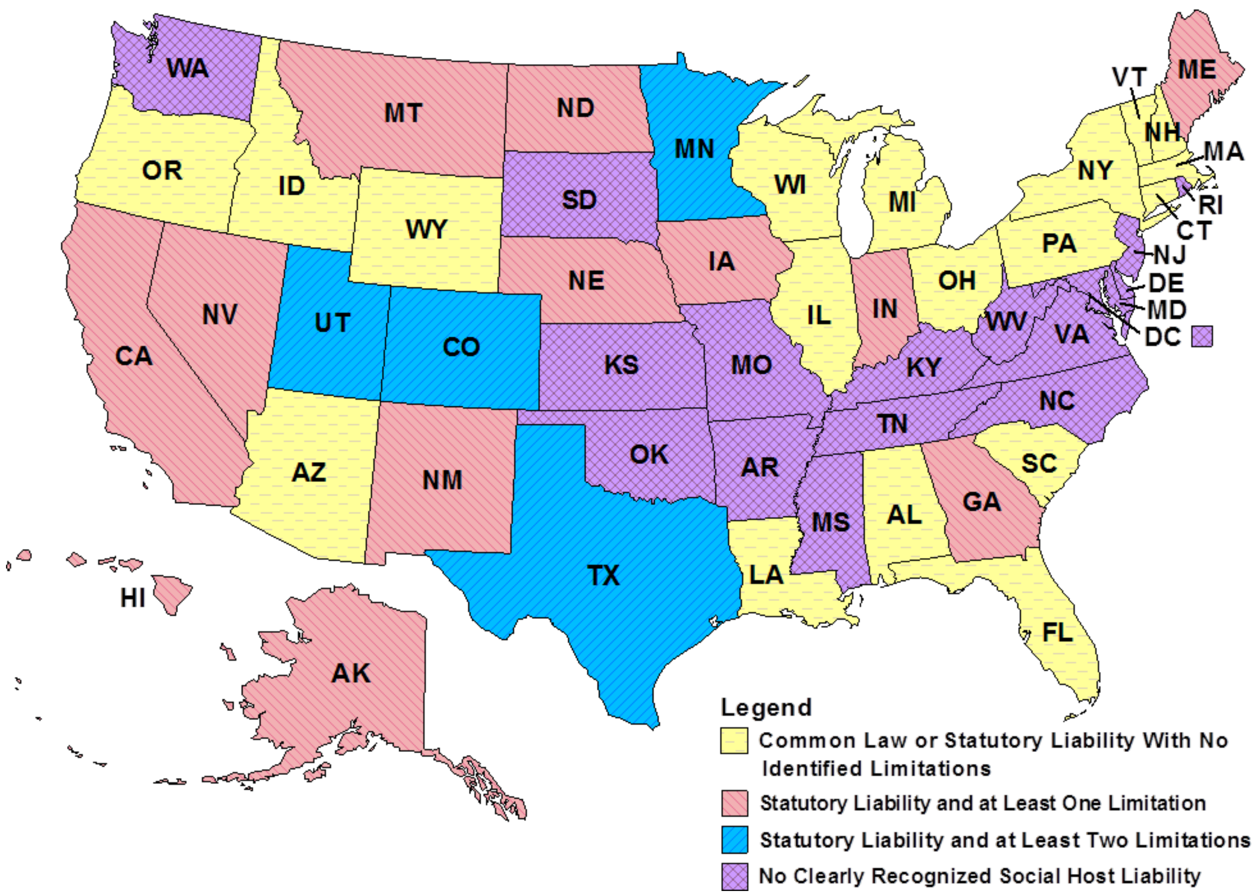
Status of Social Host Liability

As of January 1, 2012, 33 states impose social host liability through statute or common law; 15 states and the District of Columbia do not impose social host liability. In two states, there is no statutory liability and common law liability is unclear (see Exhibit 4.3.31). Seventeen states have either common law liability or statutory social host liability with no identified limitations. Twelve states impose one limit on statutory social host liability and four states impose two limitations. The count for limitations is as follows: 4 states limit the damages that may be recovered, 4 states limit who may be sued, and 12 states require standards of proof of wrongdoing that are stricter than usual negligence standards.

Trends in Social Host Liability for Furnishing Alcohol to a Minor

In the years between 2009 and 2012, the number of states that permit social host liability increased by one. California requires standards of proof of wrongdoing that are stricter than usual negligence standards. One state (Utah) increased the dollar limits on damages.

Exhibit 4.3.31: Common Law/Statutory Social Host Liability as of January 1, 2012



References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract with The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For additional information and background, see:

Mosher, J., et al. (2011). *Liquor liability law.* Newark, NJ: LexisNexis.

Stout, E., Sloan, A., Liang, L., & Davies, H. (2000). Reducing harmful alcohol-related behaviors: Effective regulatory methods. *J Stud Alcohol, 61,* 402–412.

15. Hosting Underage Drinking Parties *(data current as of 1/1/12)*

Policy Description

Host party laws establish state-imposed liability against individuals (social hosts) responsible for underage drinking events on property they own, lease, or otherwise control. The primary purpose of these laws is to deter underage drinking parties by raising the legal risk for individuals who allow underage drinking events on property they own, lease, or otherwise control. Underage drinking parties pose significant public health risks. They are high-risk settings for binge drinking and associated alcohol problems including impaired driving. Young drinkers are often introduced to heavy drinking behaviors at these events. Law enforcement officials report that, in many cases, underage drinking parties occur on private property, but the adult responsible for the property is not present or cannot be shown to have furnished the alcohol. Host party laws address this issue by providing a legal basis for holding persons responsible for parties on their property whether or not they provided alcohol to minors.

Host party laws often are closely linked to laws prohibiting the furnishing of alcohol to minors (analyzed elsewhere in this report), although laws that prohibit the hosting of underage drinking parties may apply without regard to who furnishes the alcohol. Hosts who allow underage drinking on their property and also supply the alcohol consumed or possessed by the minors may be in violation of two distinct laws: furnishing alcohol to a minor and allowing underage drinking to occur on property they control.

Two general types of liability may apply to those who host underage drinking parties. The first, analyzed here, concerns state-imposed liability. State-imposed liability involves a statutory prohibition that is enforced by the state, generally through criminal proceedings that can lead to sanctions such as fines or imprisonment. The second, social host liability (analyzed elsewhere in this report), involves an action by a private party seeking monetary damages for injuries that result from permitting underage drinking on the host's premises.

Although related, these two forms of liability are distinct. For example, an individual may allow a minor to drink alcohol, after which the minor causes a motor vehicle crash that injures an innocent third party. In this situation, the social host may be prosecuted by the state under a criminal statute and face a fine or imprisonment for the criminal violation. In a state that provides for social host civil liability, the injured third party could also sue the host for monetary damages associated with the motor vehicle crash.

State host party laws differ across multiple dimensions, including the following:

- They may limit their application specifically to underage drinking parties (e.g., by requiring a certain number of minors to be present for the law to take effect) or may prohibit hosts from allowing underage drinking on their property generally, without reference to hosting a party.
- Underage drinking on any of the host's properties may be included, or the laws may restrict their application to residences, out-buildings, and/or outdoor areas.
- The laws may apply only when hosts make overt acts to encourage the party, or they may require only that hosts knew about the party or were negligent in not realizing that parties were occurring (i.e., should have known based on the facts available).
- A defense may be available for hosts who take specific preventive steps to end parties (e.g., contacting police) once they become aware that parties are occurring.
- The laws may require differing types of behavior on the part of the minors at the party (possession, consumption, intent to possess or consume) before a violation occurs.
- Jurisdictions have varying exceptions in their statutes for family members or others, or for other uses or settings involving the handling of alcoholic beverages.

Status of Host Party Laws

As of January 1, 2012, 19 jurisdictions have general host party laws, 9 have specific host party laws, and 24 have no laws of either sort (see Exhibit 4.3.32). Of the jurisdictions with host party laws, 23 apply to both residential and outdoor property and 4 apply to residential property but not outdoor property. Twenty-six jurisdictions apply their law to other types of property (e.g., motels, hotels, campgrounds, out-buildings). Seven jurisdictions permit negation of violations when the host takes preventive action; 22 require knowledge standards to trigger liability; 3 rely on a negligence standard; 4 require an overt act on the part of the host to trigger liability; and 1 requires recklessness. Finally, 20 jurisdictions have family exceptions and 4 have resident exceptions.

Trends in Host Party Law Policies

Between 1998 and 2011, the number of jurisdictions that enacted specific host party laws rose from 5 to 9, and the number that enacted general host party laws rose from 11 to 19. In 1998, there were 16 host party laws of both types; in 2012 there are 28 (see Exhibit 4.3.33).

Exhibit 4.3.32: Prohibitions against Hosting Underage Drinking Parties as of January 1, 2012

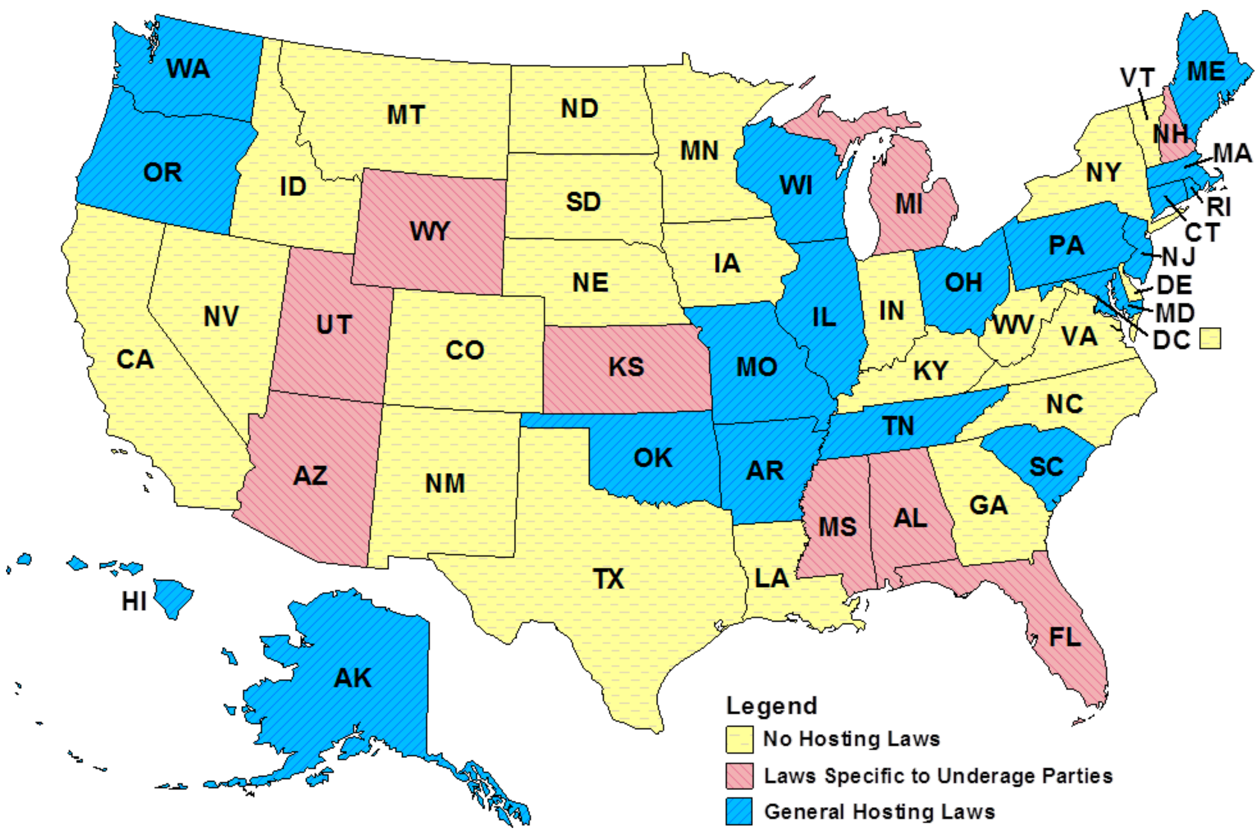
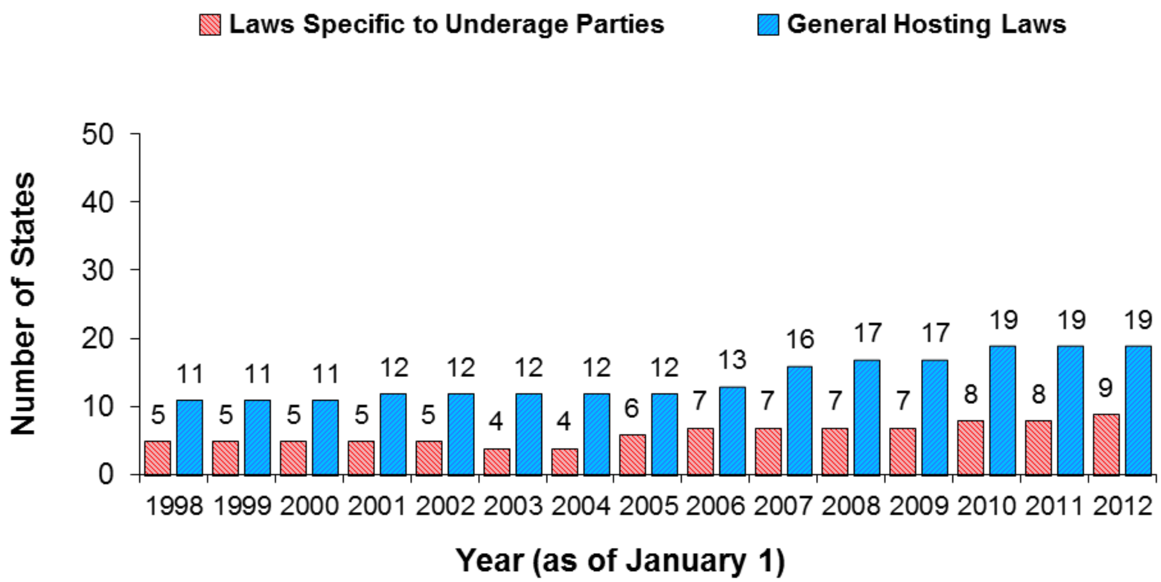


Exhibit 4.3.33: Number of States with Prohibitions Against Hosting Underage Drinking Parties, January 1, 1998, through January 1, 2012



References and Further Information

All data for this policy were obtained from APIS at www.alcoholpolicy.niaaa.nih.gov. Follow links to the policy entitled "Prohibitions against Hosting Underage Drinking Parties." APIS provides further descriptions of this policy and its variables, details regarding state policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

16. Direct Sales/Shipments From Producers to Consumers (Internet Sales) *(data current as of 1/1/12)*

Policy Description

State proscriptions against direct sales and shipments of alcohol from producers to consumers date back to the repeal of Prohibition. The initial reason for the proscription was to ensure that the pre-Prohibition-era "tied house system" (under which producers owned and/or controlled retail outlets directly) did not continue after repeal. Opponents of the tied house system argued that producers who controlled retail outlets permitted unsafe retail practices and failed to respond to community concerns. The alternative that emerged was a three-tier production and distribution system with separate production, wholesaling, and retail elements. Consequently, producers must distribute products through wholesalers rather than selling directly to retailers or consumers; wholesalers must purchase from producers; and consumers must purchase from retailers.

Modern marketing practices, particularly internet sales that link producers directly to consumers, have led many states to create laws with exceptions to general mandates that alcohol producers distribute their products only through wholesalers. Some states permit producers to ship alcohol to consumers using a delivery service (usually a common carrier). In some cases, these exceptions are responses to legal challenges by producers or retailers arguing that state law unfairly discriminates between in-state and out-of-state producers. The litigants have contended that such processes violate the U.S. Constitution's Interstate Commerce Clause by allowing in-state producers to ship directly to consumers but barring out-of-state producers from doing so.[33]

One central concern emerging from this controversy is the possibility that direct sales/shipments (either through internet sales or sales made by telephone or other remote communication) will increase alcohol availability to underage persons. Young people may attempt to purchase alcohol through direct sales instead of face-to-face sales at retail outlets because they perceive that detection of their underage status is less likely. These concerns were validated by a recent study that found that internet alcohol vendors use weak, if any, age verification, thereby allowing minors to successfully purchase alcohol online. In response to these concerns, several jurisdictions that permit direct sales/shipments have included provisions to deter youth access. These may include requirements that:

- Consumers have face-to-face transactions at producers' places of business (and show valid age identification) before any future shipments to consumers can be made.[34]
- Producers/shippers and deliverers verify recipient age, usually by checking recipients' identification.
- Producers/shippers and deliverers obtain permits or licenses or be approved by the state.
- Producers/shippers and deliverers maintain records that must either be reported to state officials or be open for inspection to verify recipients of shipments.
- Direct shipment package labels include statements that the package contains alcohol and/or that the recipient must be at least 21 years old.

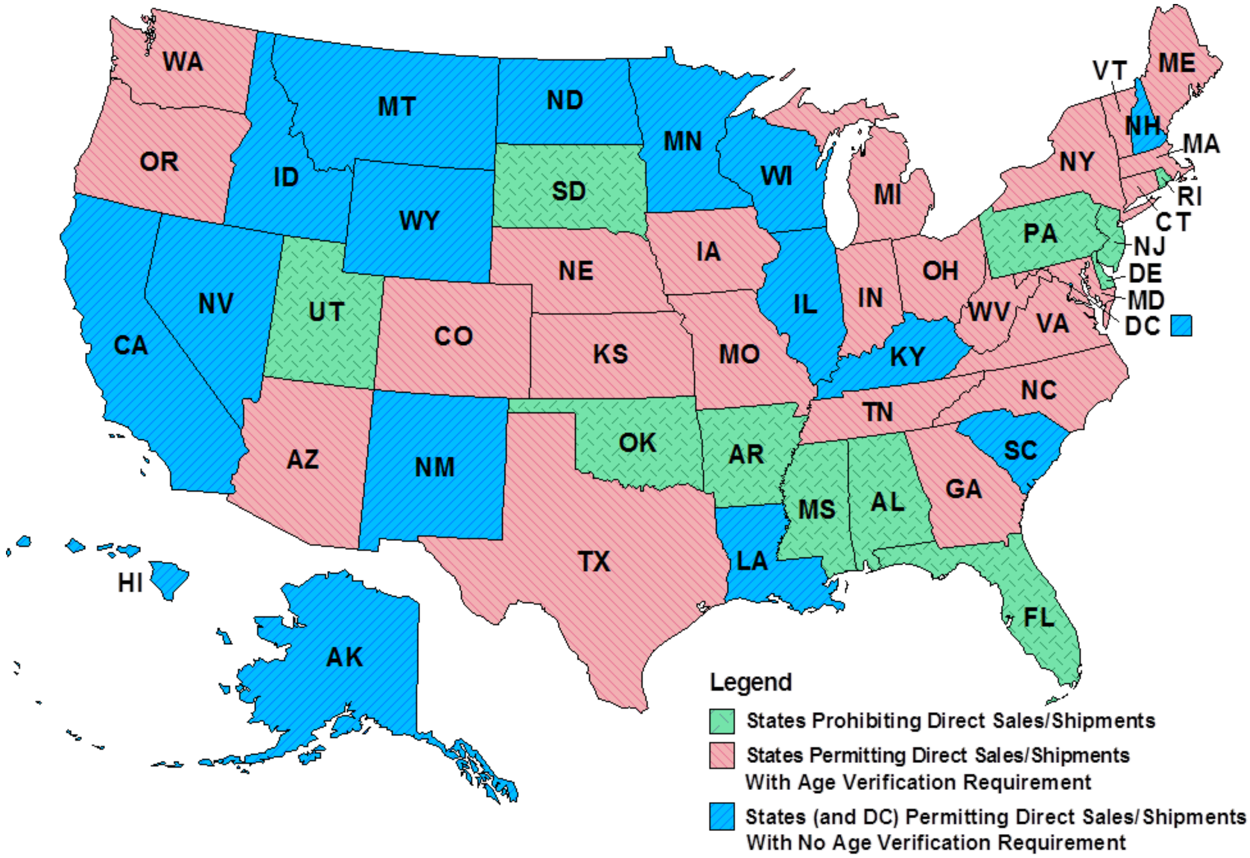
State laws also vary regarding the types of alcoholic beverages (beer, wine, distilled spirits) that producers are allowed to sell directly and ship to consumers. These and other restrictions may apply to all direct shipments. This report includes only those requirements related to preventing underage sales.[35]

Status of Direct Sales/Shipment Policies

As of January 1, 2012, 40 states permit direct sales/shipments from producers to consumers, and 11 prohibit such transactions (see Exhibit 4.3.34). One state (Indiana) requires face-to-face transactions at producers' places of business (and verification of valid age identification) before shipments to the consumer can be made. Thirty-seven states require producers to obtain a shipper's permit or state approval prior to shipping. Of the 40 states permitting direct sales or shipments, 8 require shippers to verify purchaser age, 20 require deliverers to verify recipient age, 5 require age verification by both shippers and deliverers, and 1 requires verification at some point before delivery. Sixteen states and the District of Columbia do not require any age

[33] See, e.g., *Granholm v. Heald*, 544 U.S. 460, 125 S.Ct. 1885 (2005).
[34] Laws that require face-to-face transactions for all sales prior to delivery are treated as prohibitions on direct sales/shipments.
[35] These include caps on amount that can be shipped; laws that permit only small producers to sell directly to consumers; reporting and taxation provisions unrelated to identifying potential underage recipients; and brand registration requirements. In some cases, exceptions are so limited that a state is coded as not permitting direct sales (e.g., shipments are allowed only by boutique historical distilled spirits producers).

Exhibit 4.3.34: Direct Sales/Shipment Policies and Age Verification Requirements as of January 1, 2012



verification. Labels stating that packages can only be received by persons over age 21 years are required by 33 states, 32 require labels stating that package contains alcohol, and 4 have no labeling requirements related to underage drinking.

Trends in Direct Sales/Shipments Policies

Between January 1, 2009, and January 1, 2012, four states added additional regulation to their policies. Five other states (Kansas, Maine, Maryland, New Mexico, and Tennessee) adopted permit systems for allowing the direct shipment of wine from producers to purchasers. Previously, New Mexico had allowed direct shipping by wineries only in those states that offered it reciprocal privileges. Alaska adopted label requirements stating that the recipients of wine shipments must be over 21 and that the package contains alcohol. Iowa adopted age verification requirements at the point of delivery. New Hampshire adopted a provision regarding collecting purchasers' names. In 2011, Ohio expanded direct shipping privileges to include beer.

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see variables for this policy, go to Appendix B. For further information and background, see:

Jurkiewicz, C., & Painter, M. (Eds.). (2008). Social and economic control of alcohol: The 21st Amendment in the 21st century. New York: CRC Press.

Moramarto, M. (2008). *The Twenty-First Amendment, Granholm, and the future of the three-tier system.* Working Paper, Social Science Research Network, December 13, 2008. Retrieved February 10, 2009, from papers.ssrn.com/sol3/papers.cfm?abstract_id=1340198

Norton, E. (2006). The Twenty-First Amendment in the twenty-first century: Reconsidering state liquor controls in light of Granholm v. Heald. *Ohio State Law J, 67,* 1465–1494.

Williams, R.S., & Ribisl, K.M. (2012). Internet alcohol sales to minors. *Arch Pediatr Adolesc Med,* E1–E6.

17. Keg Registration *(data current as of 1/1/12)*

Policy Description

Keg registration laws (also called keg tagging laws) require wholesalers or retailers to attach tags, stickers, or engravings with an identification number to kegs exceeding a specified capacity. These laws discourage purchasers from serving underage persons from the keg by allowing law enforcement officers to trace the keg to the purchaser even if he or she is not present at the location where the keg is consumed.

At purchase, retailers are required to record identifying information about the purchaser (e.g., name, address, telephone number, driver's license). In some states, keg laws specifically prohibit destroying or altering the ID tags and provide penalties for doing so. Other states make it a crime to possess unregistered or unlabeled kegs.

Refundable deposits may also be collected for the kegs themselves, the tapper mechanisms used to serve the beer, or both. Deposits are refunded when the kegs and/or tappers are returned with identification numbers intact. These deposits create an incentive for the purchaser to keep track of the whereabouts of the keg and a financial penalty if the keg is not returned.

Some jurisdictions collect information (e.g., location where the keg is to be consumed, tag number of the vehicle transporting the keg) to aid law enforcement efforts, further raising the chances that illegal furnishing to minors will be detected. Some jurisdictions also require retailers to provide warning information at the time of purchase about laws prohibiting service to minors and/or other laws related to the purchase or possession of the keg.

Disposable kegs complicate keg registration laws. Some of these containers meet the capacity definition for a keg but cannot be easily tagged or traced, as they are meant to be disposed of when empty. Most states do not differentiate disposable from nondisposable kegs, although some have modified keg registration provisions to accommodate this container type.

Status of Keg Registration Policies

Keg Registration Laws

The District of Columbia and 30 states require keg registration; 19 states do not require that kegs be registered. Minimum keg sizes subject to keg registration requirements range from 2 to 7.75 gallons with the exception of South Dakota, where the requirements are 8 or 16 gallons. Utah alone prohibits keg sales altogether, making a keg registration law irrelevant.

Prohibited Acts

Ten states prohibit both the possession of unregistered kegs and the destruction of keg labels. Six states prohibit only the possession of unregistered kegs, 8 prohibit only the destruction of keg labels, and 25 states and the District of Columbia prohibit neither act.

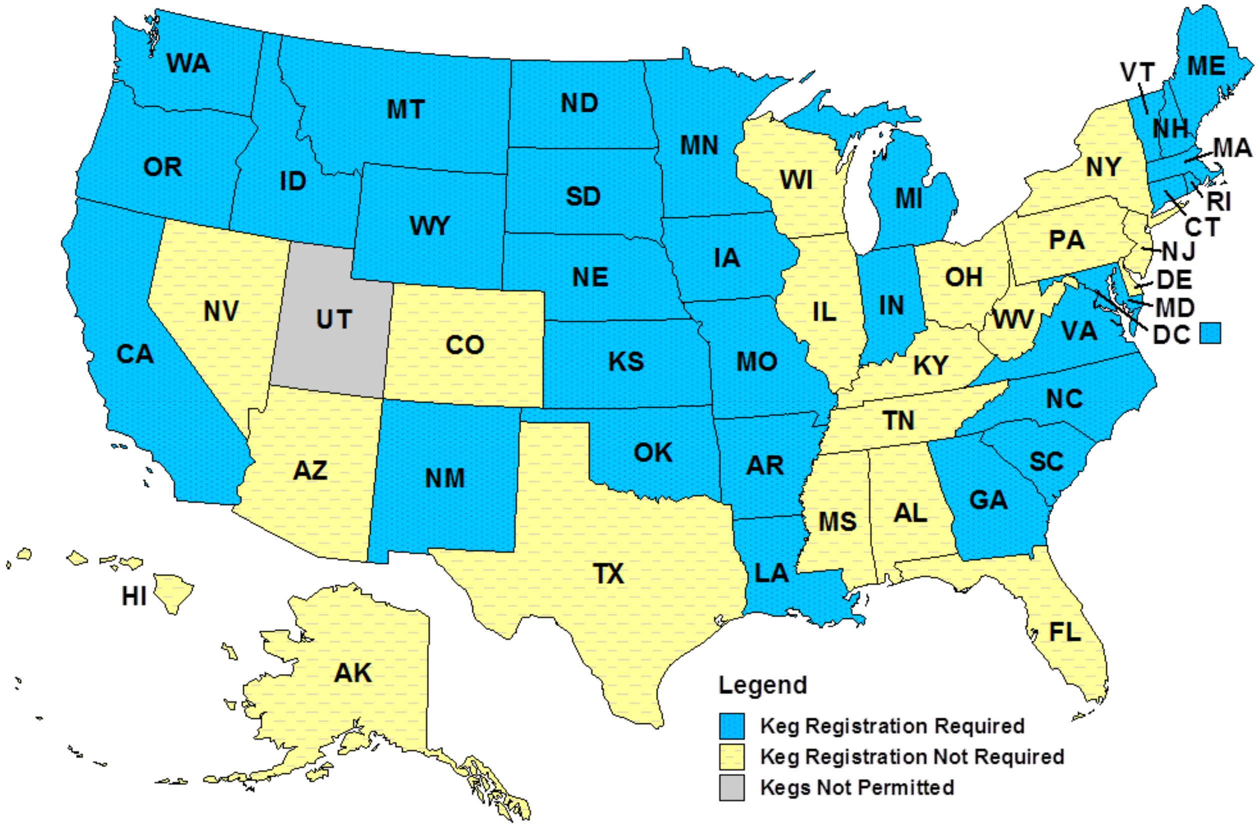
Purchaser Information Collected

All 31 jurisdictions with keg registration laws require retailers to collect some form of purchaser information. Of these, 27 require purchasers to provide a driver's licenses or other government-issued identification. Six jurisdictions (District of Columbia, Georgia, North Carolina, Oregon, Virginia, and Washington) require purchasers to provide the address at which the keg will be consumed.

Warning Information to Purchaser

Of the 31 jurisdictions with keg registration laws, 23 states and the District of Columbia require some kind of warning information be presented to purchasers concerning the violation of any laws related to keg registration (see Exhibit 4.3.35). Fourteen states and the District of Columbia specify "active" warnings (requiring an action on the part of the purchaser, such as signing a document), and 9 states specify "passive" warnings (requiring no action on the part of the purchaser). Seven states do not require that any warning information be given to purchasers.

Exhibit 4.3.35: Keg Registration Laws as of January 1, 2012



Trends in Keg Registration Policies

The number of states enacting keg registration laws has risen steadily between 2003 and 2008, with an increase from 20 to 31 jurisdictions (see Exhibit 4.3.36).

References and Further Information

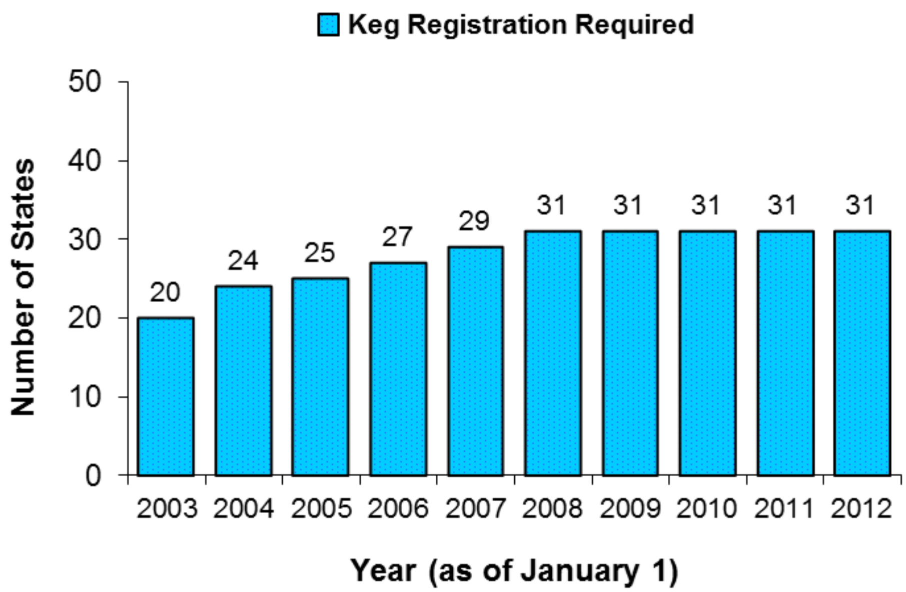
All data for this policy were obtained from APIS at www.alcoholpolicy.niaaa.nih.gov. Follow links to the policy entitled "Keg Registration." APIS provides further descriptions of this policy and its variables, details regarding state policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

18. Home Delivery *(data current as of 1/1/12)*

Policy Description

Home delivery restrictions prohibit or limit the ability of alcohol retailers to deliver alcoholic beverages to customers who are not present at their retail outlet. The University of Minnesota Alcohol Epidemiology Program notes that home delivery of alcohol may increase alcohol availability to youth by increasing opportunities for underage persons to subvert minimum age purchase requirements. Ordering by phone, fax, or e-mail may facilitate deception. Delivery persons may have less incentive to check purchasers' age identification when they are away from the licensed establishment and cannot be watched by a surveillance camera, the liquor store's management, or other customers.

Exhibit 4.3.36: Number of States with Keg Registration Laws, January 1, 2003, through January 1, 2012



Research on home delivery of alcohol is limited. One study examined the use of home delivery by adult males. The authors report that regular drinkers without a history of alcohol problems were significantly less likely to have had alcohol delivered than problem drinkers. Another study found similar results for underage drinkers. Ten percent of 12th graders and 7 percent of 18- to 20-year-olds in 15 midwestern communities reported they obtained alcohol through delivery services in the last year. Use of delivery services was more prevalent among young males and among more frequent, heavier drinkers.

A state home delivery law may:

- Specifically prohibit or permit the delivery of beer, wine, and/or spirits to residential addresses, hotel rooms, conference centers, etc.
- Permit home delivery, but with restrictions, including:
  - Limits on the quantity that may be delivered.
  - Limits on the time of day or days of the week when deliveries may occur.
  - A requirement that the retail merchant obtain a special license or permit.

In some states that allow home delivery, local ordinances may restrict or ban home delivery in specific sub-state jurisdictions.

Status of Home Delivery Policies

Exhibit 4.3.37 shows the number of states that permit, prohibit, or have no law regarding home delivery of beer, wine, and spirits. As the exhibit shows, 18 states permit home delivery of all three beverages, 9 prohibit delivery of all three, and 15 have no law for any beverage. Nine states have different laws for different beverages: Five states (New Hampshire, North Carolina, Oregon, Virginia, and Washington) permit delivery of beer and wine but have no law regarding spirits, Michigan permits beer and wine delivery but prohibits spirits, and Kentucky prohibits delivery of wine and spirits but has no law regarding beer. Louisiana and West Virginia permit home delivery of wine but have no law regarding beer and spirits.

Of the 24 states that permit home delivery of *beer and wine*, 11 place at least one restriction on retailers. Of the 18 states that permit home delivery of *spirits*, eight place at least one restriction on retailers. Of the two states that permit delivery of wine only, both impose retailer restrictions.

Exhibit 4.3.38 shows the distribution of those restrictions imposed by two or more states on home delivery laws: (1) a state permit is required (Colorado, Texas, Virginia, and West Virginia), (2) volumes that can be delivered are restricted (Indiana, Louisiana, New York, Virginia and West Virginia), and (3) the delivery vehicle must be clearly marked (New Jersey, New York, and Texas). Three additional states that permit delivery of beer, wine, and spirits place a single, unique restriction on retailers: (1) Orders must be in writing (Alaska), (2) written information on fetal alcohol syndrome must accompany the delivered product (Alaska), and (3) a local permit is required to deliver to the retailer's county or city (Maryland). One state (Washington) that permits delivery of beer and wine requires a special license only for internet orders. Massachusetts requires that each vehicle used for transportation and delivery have a state-issued permit. Oregon requires "for hire" carriers to be approved by the state.

Exhibits 4.3.39 through 4.3.41 summarize the status of home delivery for beer, wine, and spirits as of January 1, 2012.

Exhibit 4.3.37: Home Delivery of Beer, Wine, and Spirits

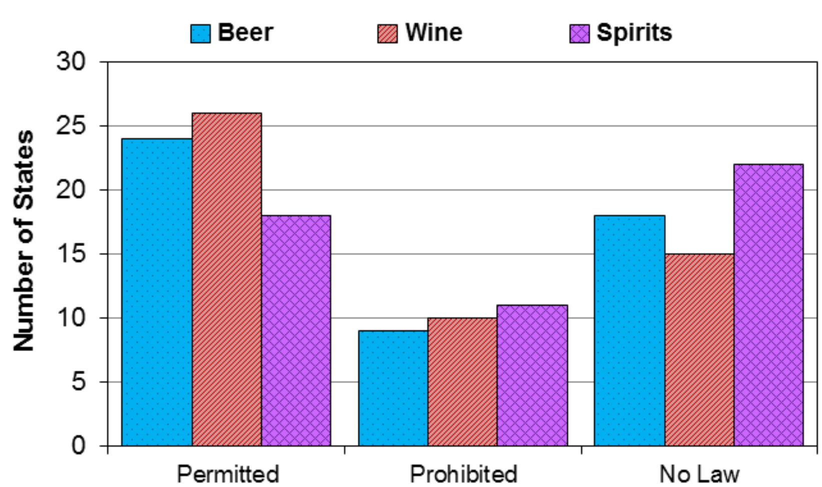


Exhibit 4.3.38: Restrictions Imposed by Two or More States on Delivery of Beer, Wine, and Spirits

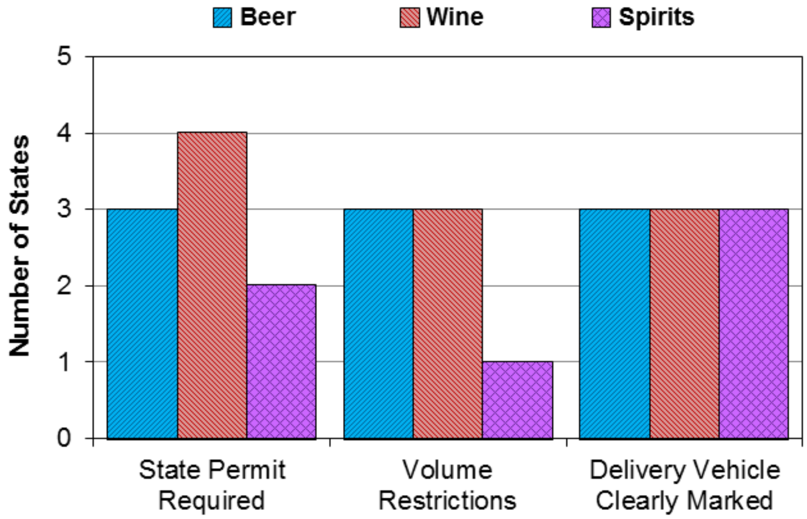


Exhibit 4.3.39: Beer

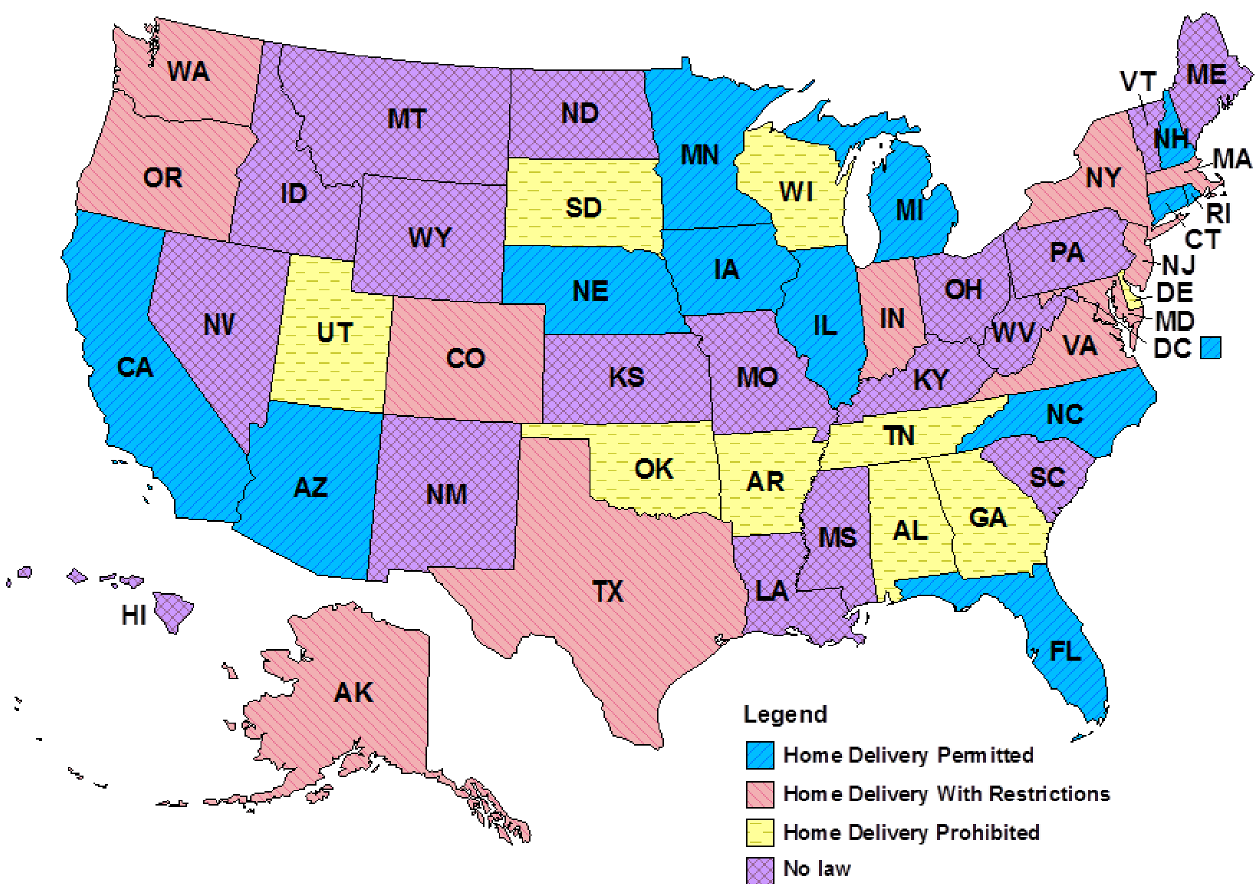


Exhibit 4.3.40: Wine

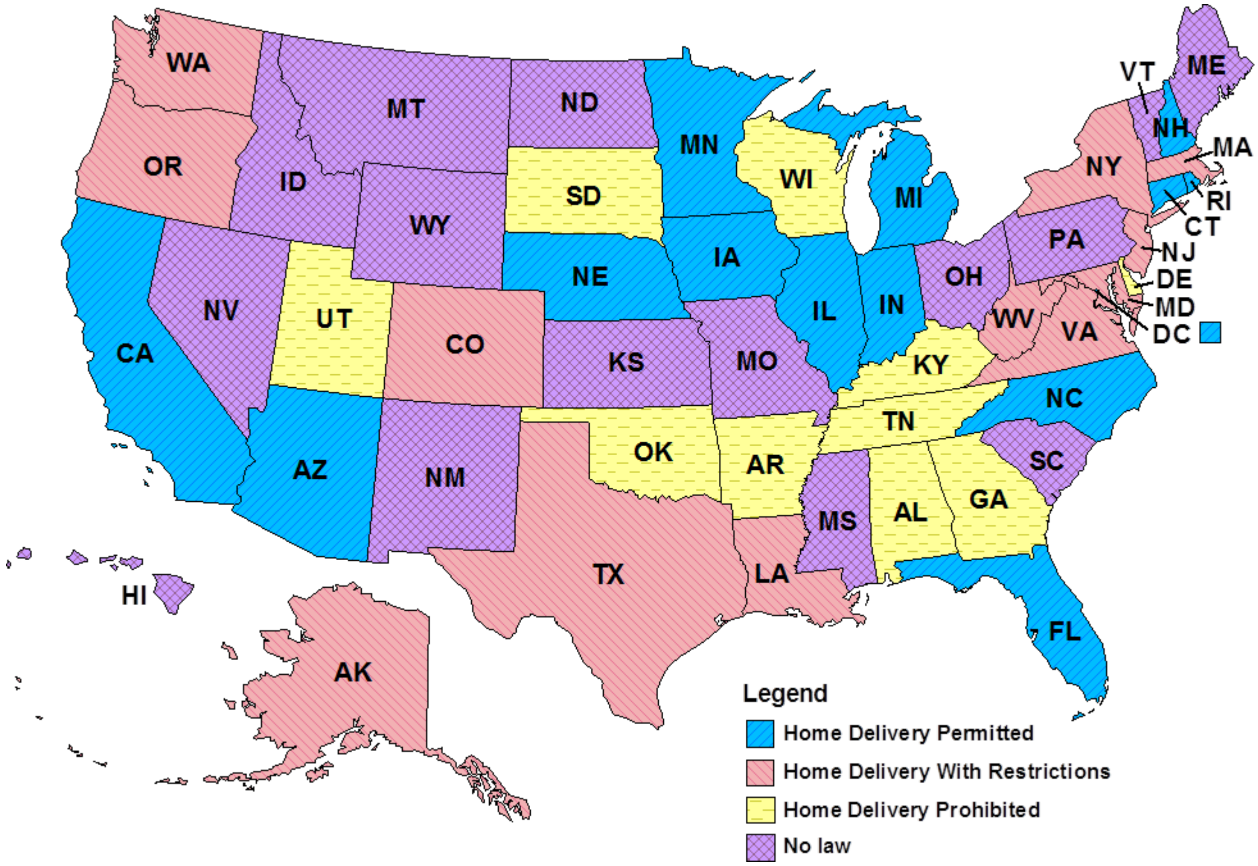
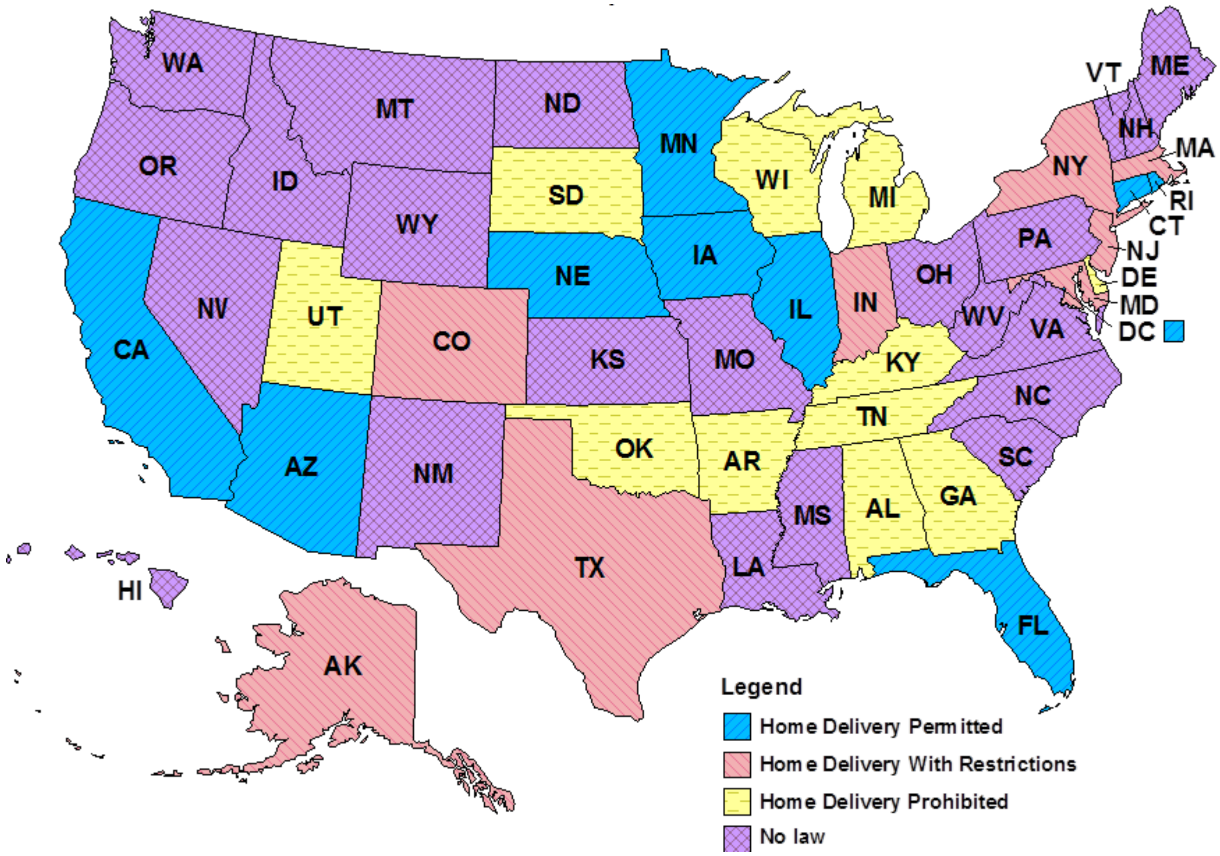


Exhibit 4.3.41: Spirits



Trends in Home Delivery Policies

Between 2010 and 2012, only Louisiana changed its home delivery policies by permitting wine retailers to deliver to consumers in 2011.

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see: www.epi.umn.edu/alcohol/policy/homdeliv.shtm

Fletcher, L.A., Nugent, S.M., Ahern, S.M., & Willenbring, M.L. (1996). Brief report. The use of alcohol home delivery services by male problem drinkers: a preliminary report. *J Substance Abuse, 8(2),* 251–261.

Fletcher, L.A., Toomey, T.L., Wagenaar, A.C., Short, B., & Willenbring, M.L. (2000). Alcohol home delivery services: A source of alcohol for underage drinkers. *J Stud Alcohol, 61,* 81–84.

Alcohol Pricing Policies

19. Alcohol Taxes *(data current as of 1/1/12)*

Policy Description

There is ample evidence that the "economic availability" of alcoholic beverages (i.e., retail price) has an impact on underage drinking and a wide variety of related consequences. The *Surgeon General's Call to Action*[36] includes economic availability as a strategy in the context of increasing the cost of underage drinking, which includes the price, time, effort, and resources required for young people to obtain alcohol as well as penalties associated with its use.

Chaloupka and colleagues (2002)[37] report effects of price on underage drinking, college drinking, and binge drinking (including drinking among youth who show signs of alcohol use disorders). They also report significant effects on youth traffic crashes, violence on college campuses, and crime among people under 21. Although alcohol taxes are an imperfect index of retail prices, tax rates are relatively easy to measure and provide a useful proxy for economic availability.

Based on this and other research, the National Research Council/IOM Report, *Reducing Underage Drinking: A Collective Responsibility*, made the following recommendation: "[S]tate legislatures should raise excise taxes to reduce underage consumption and to raise additional revenues for this purpose."[38]

This policy addresses beer, wine, and distilled spirits taxes. Although some states have separate tax rates for other alcoholic products (e.g., sparkling wine and flavored alcohol beverages), these account for a small market share and are not addressed.

State alcohol taxes fall into four main categories. The names applied to these categories may vary by jurisdiction, but the following terms are commonly used:

- *Specific excise taxes:* Taxes applied per gallon at the wholesale or retail level.
- *Ad valorem excise taxes:* Value-based taxes, usually levied as a percentage of the alcoholic product's retail price (which may also be referred to as gross receipts, gross proceeds, retail receipts or retail proceeds). Different ad valorem excise tax rates may apply to on- and off-premises sales.
- *Sales tax:* A value-based tax that is not typically specific to alcoholic beverages.
- *Sales tax adjusted retail ad valorem excise tax:* In some states, ad valorem excise taxes are levied in lieu of sales tax (see Exhibit 4.3.42). In these cases, an accurate index of the actual tax reflected in the retail price requires that the retail ad valorem excise tax be adjusted to reflect the fact that sales taxes are not levied. The sales tax adjusted retail ad valorem excise tax = the retail ad valorem excise tax minus the (unlevied) sales tax. As shown in Exhibit 4.3.42, the trade-off between retail ad valorem excise tax and sales tax is not uncommon.

---

[36] www.surgeongeneral.gov/topics/underagedrinking/calltoaction.pdf

[37] Chaloupka, F., Grossman, M., & Saffer, H. (2002). The effects of price on alcohol consumption and alcohol-related problems. *Alcohol Research & Health, 26*.

[38] National Research Council and Institute of Medicine. (2003). *Reducing underage drinking: A collective responsibility*. Washington, DC: National Academies Press.

Exhibit 4.3.42: Number and Percentage of States that Levy an Ad Valorem Excise Tax but Do Not Apply General Sales Tax

Beverage type	Type of ad valorem excise tax	Number of states that levy this ad valorem excise tax	Number of states that do not apply general sales tax when the ad valorem excise tax is levied	Percentage of states that do not apply general sales tax when the ad valorem excise tax is levied
Beer	Ad valorem excise tax: onsite	9	6	66
	Ad valorem excise tax: offsite	8	4	50
Wine	Ad valorem excise tax: onsite	9	5	55
	Ad valorem excise tax: offsite	8	4	50
Spirits	Ad valorem excise tax: onsite	12	5	42
	Ad valorem excise tax: offsite	8	4	50

Status of Alcohol Taxation

As of January 1, 2012, all license states have an excise tax for beer, wine, and spirits. The federal government also levies an excise tax of $0.58/gallon for beer, $1.07/gallon for wine, and $13.50/gallon for spirits.

Like the federal excise tax, state excise taxes are generally highest for spirits and lowest for beer, roughly tracking the alcohol content of these beverages. Beer excise taxes range from $0.02 to $1.07/gallon, wine excise taxes range from $0.11 to $2.50/gallon, and spirits excise taxes range from $1.50 to $12.80/gallon. The states with the highest excise tax for one beverage may not be the states with the highest excise taxes for other beverages. States may be control for one, two, or three categories (beer, wine, spirits).

Exhibits 4.3.43 through 4.3.45 show the levels of excise taxes for beer, wine, and spirits across the 50 states and the District of Columbia.

Exhibit 4.3.46 shows the ad valorem excise tax or sales tax adjusted ad valorem excise tax rates for license states that have ad valorem excise taxes. These may be levied at on- or off-sale outlets and may be for beer, wine, and/or spirits. Beer ad valorem excise tax rates range from 1 to 17 percent for on- and/or off-premises sales. Wine rates range from 1.7 to 15 percent for on- and/or off-premises sales. Distilled spirit rates range from 1.7 to 15 percent for on- and/or off-premises sales.

Exhibit 4.3.43: Beer-Specific Excise Tax

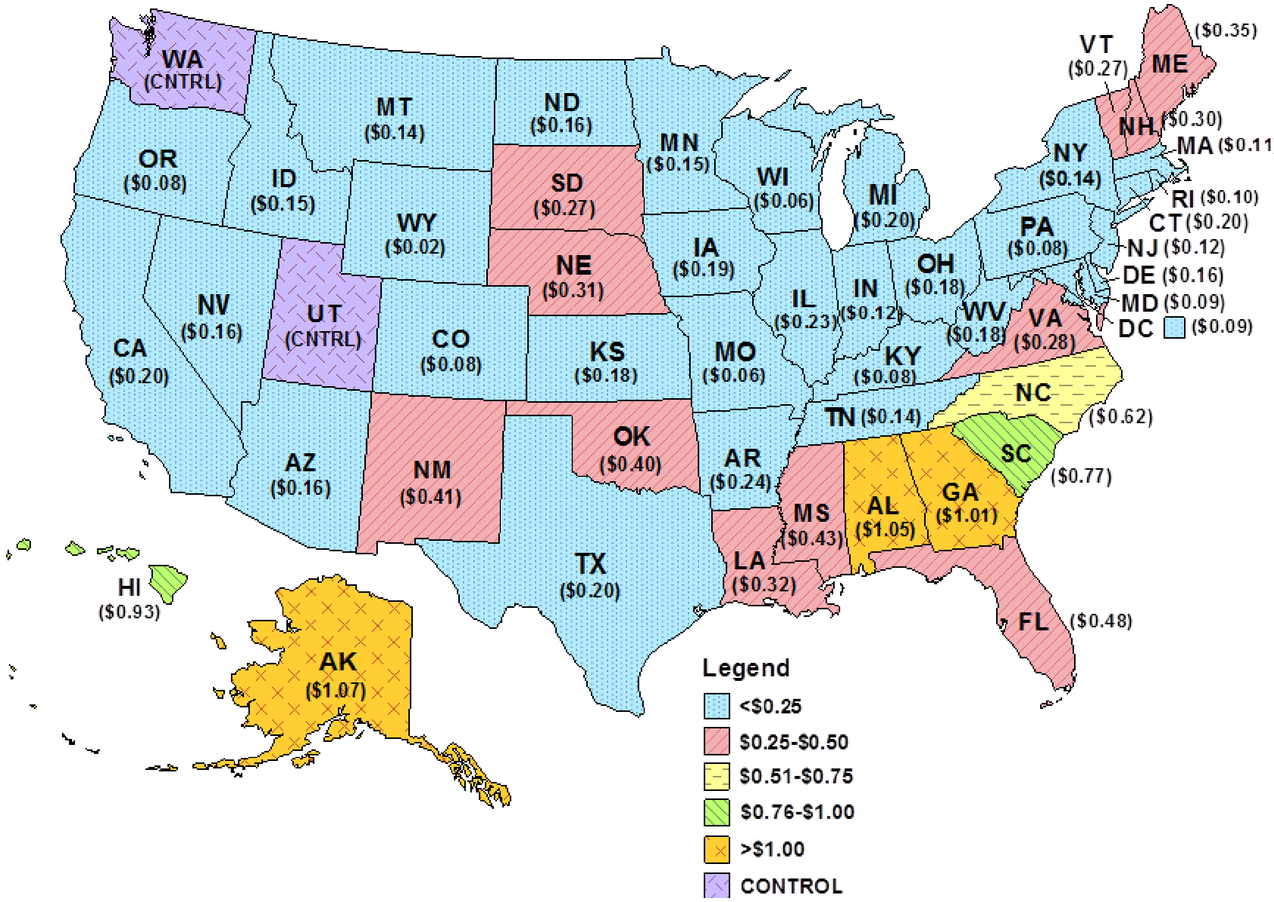


Exhibit 4.3.44: Wine-Specific Excise Tax

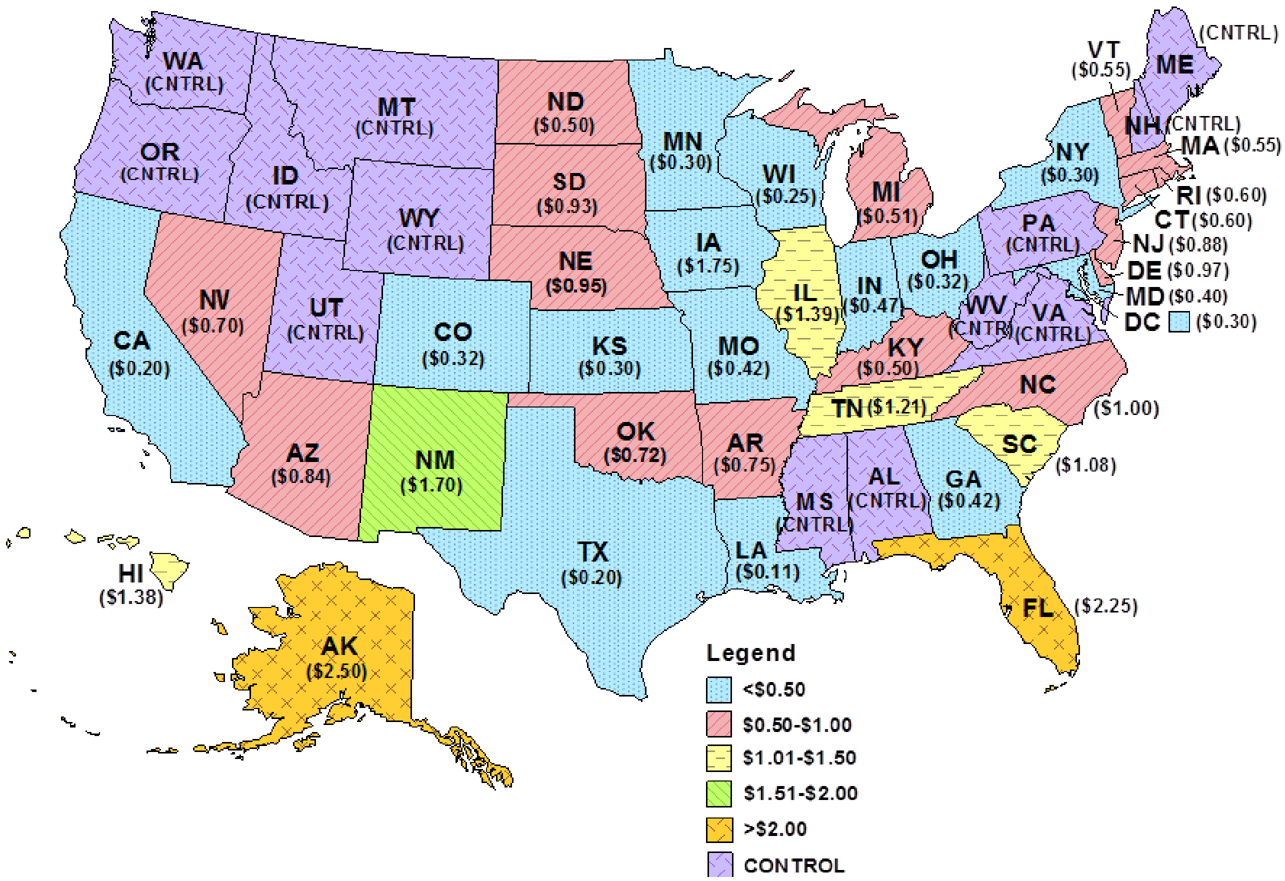


Exhibit 4.3.45: Spirits-Specific Excise Tax

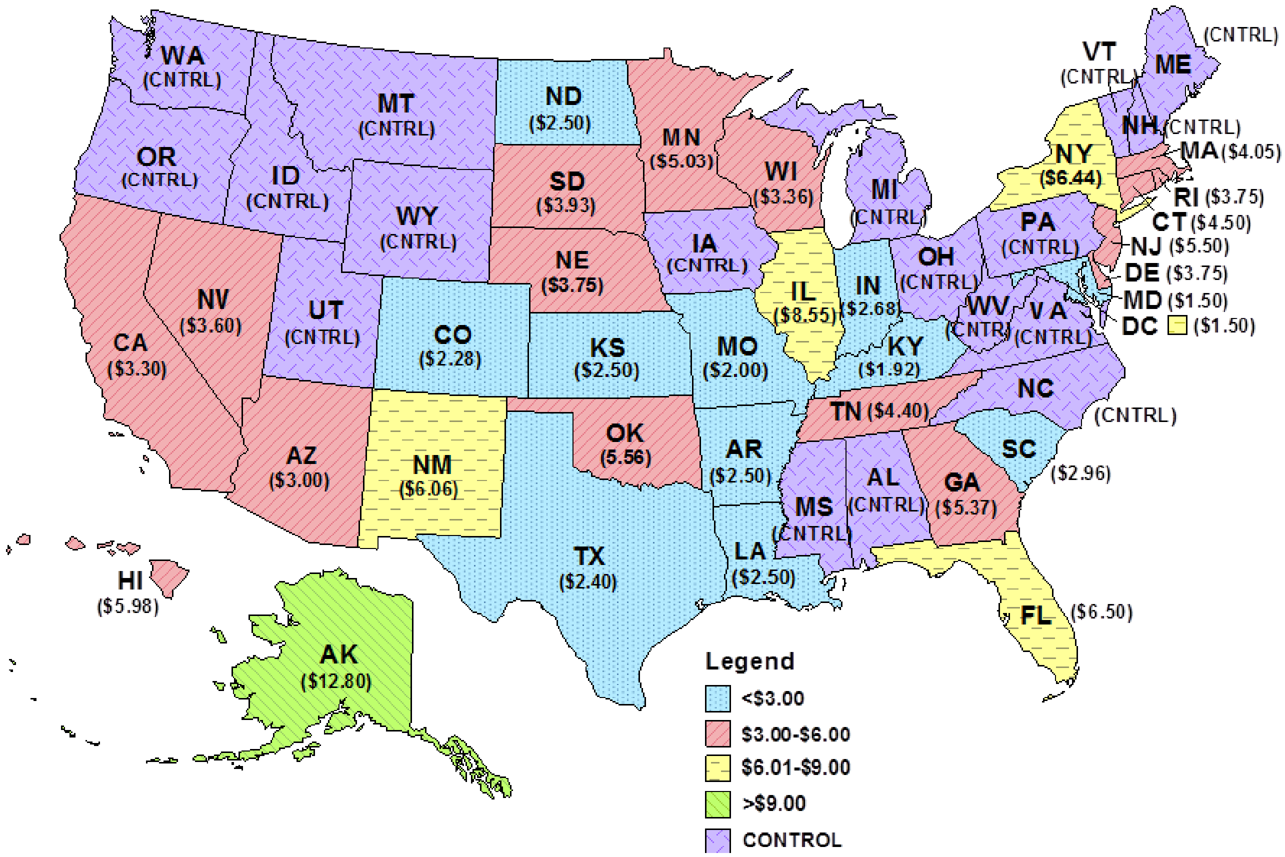
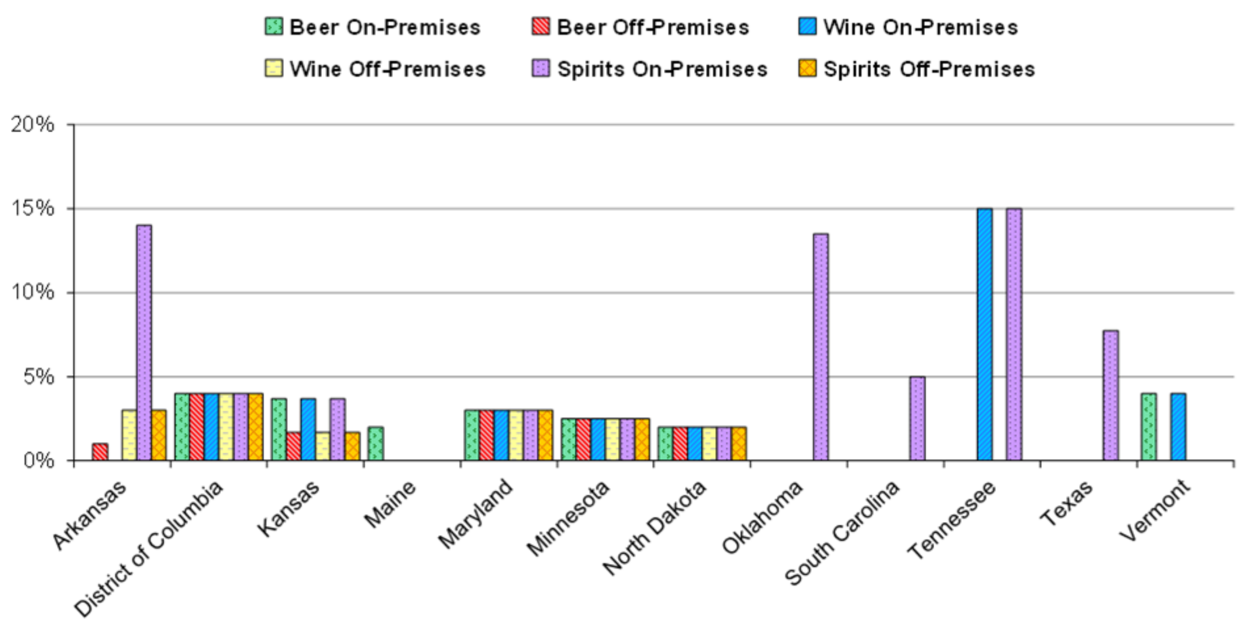


Exhibit 4.3.46: Ad Valorem Excise Tax or Sales Tax Adjusted Ad Valorem Excise Tax Rates as of January 2012



Trends in Alcohol Taxes

Alcohol taxes have remained relatively constant for several decades. As can been seen in Exhibit 4.3.47, there have been limited tax increases or decreases in beer, wine, or spirits excise taxes since 2003. During this period there have been 28 tax rate increases across all jurisdictions. Eight of these increases occurred from 2011 to 2012, indicating that the rate of increases may be accelerating. Tax rate decreases across all jurisdictions remained stable from 2011 to 2012 (no additional decreases in 2012 were noted).

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see:

Chaloupka, F., Grossman, M., & Saffer, H. (2002). The effects of price on alcohol consumption and alcohol-related problems. *Alcohol Research & Health, 26*.

Community Preventive Services Task Force. (2010). Increasing alcohol beverage taxes is recommended to reduce excessive alcohol consumption and related harms. *Am J Prev Med, 38,* 230–232.

Elder, R.W., Lawrence, B., Ferguson, A., Naimi, T.S., Brewer, R.D., Chattopadhyay, S.K., Toomey, T.L., & Fielding, J.E. (2010). The effectiveness of tax policy interventions for reducing excessive alcohol consumption and related harms. *Am J Prev Med, 38,* 217–229.

National Research Council and Institute of Medicine. (2003). *Reducing underage drinking: A collective responsibility.* Washington, DC: National Academies Press.

Exhibit 4.3.47: Alcohol Tax Changes 2003–2011

		Beer		Wine		Spirits		
		Specific excise tax	Ad valorem excise tax	Specific excise tax	Ad valorem excise tax	Specific excise tax	Ad valorem excise tax	Total
Number of jurisdictions that:	Increased rates	6	2	7	3	6	4	28
	Decreased rates	1	3	1	3	1	3	13

20. Low-Price, High-Volume Drink Specials *(data current as of 1/1/12)*

Policy Description

Low-price, high-volume drink specials restrictions prohibit or limit the ability of on-premises retailers from using various price-related marketing tactics such as happy hours, two-for-one specials, free drinks, and so on, that encourage heavier consumption. These promotions are particularly prevalent in college communities, where large numbers of underage students are present.

Research has examined the impact of on-premises retail drink specials on binge drinking among college students. For example, one study measured self-reported binge drinking rates among college students from 119 colleges, conducted an assessment of marketing practices of on-premises outlets in neighboring communities, and determined whether these communities restricted low-price, high-volume drink specials. The results demonstrated that price-related promotions were significantly correlated with higher binge-drinking and self-reported drinking and driving rates among students (Wechsler et al., 2003).

Based on this and other research, the *Surgeon General's Call to Action* concluded that "increasing the cost of drinking can positively affect adolescent decisions about alcohol use," and recommended "[e]limination of low price, high-volume drink specials, especially in proximity to college campuses, military bases, and other locations with a high concentration of youth."

A state low-price, high-volume drink specials law may prohibit or restrict the following practices:

- Providing customers with free beverages either as a promotion or on a case-by-case basis (e.g., on a birthday or anniversary, as compensation for poor services)
- Offering additional drinks for the same price as a single drink (e.g., two-for-ones)
- Offering reduced-price drinks during designated times of day ("happy hours")
- Instituting a fixed price for an unlimited amount of drinks during a fixed period of time (e.g., "beat the clock" and similar drinking games)
- Offering drinks with increased amounts of alcohol at the same price as regular-sized drinks (e.g., double shots for the price of single shots)
- Service of more than one drink to a customer at a time

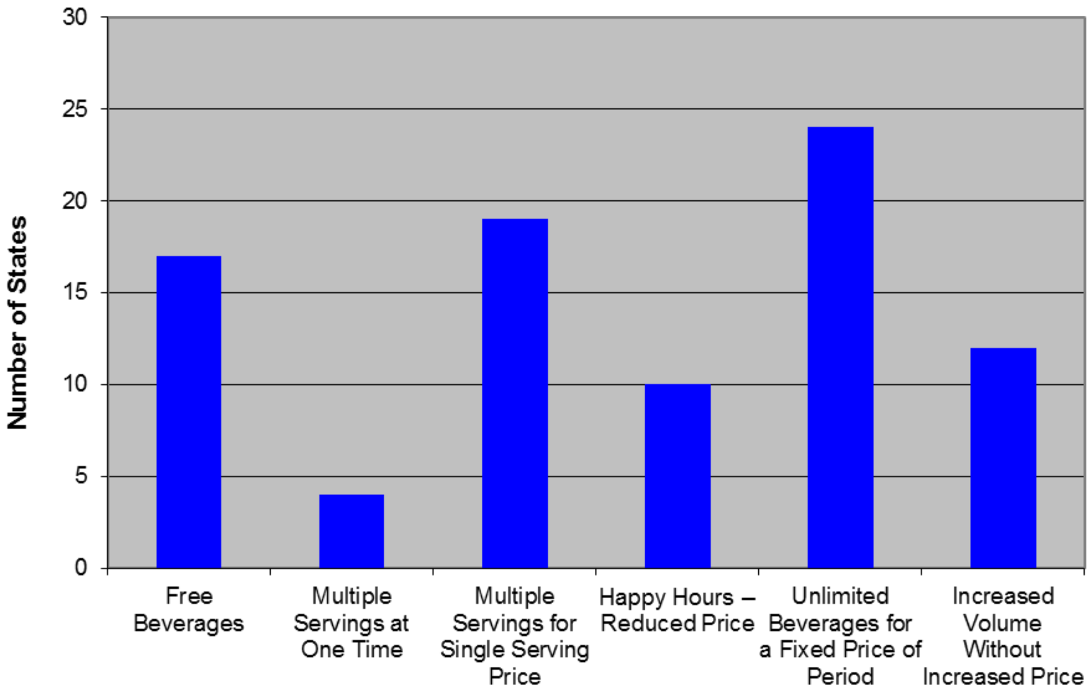
Status of Low-Price, High-Volume Drink Specials Law

Exhibit 4.3.48 shows the number of states that prohibited the six low-price, high-volume specials discussed above.

Seventeen states prohibited *free beverages*. Five additional states (New Jersey, New Mexico, South Carolina, Texas, and Washington) allowed a licensee to offer a free drink on a case-by-case basis only (e.g., on a birthday or anniversary, as compensation for poor services).

Four states prohibited *multiple servings at one time.* In one of these states (Tennessee), this prohibition applied only after 10 p.m. Nineteen states prohibited *multiple servings for single serving price*. Twenty-four states prohibited *unlimited beverages for a fixed price or period.* In one of these (Louisiana), this prohibition applied only after 10 p.m. Twelve states prohibited *increased volume without increase in price*, with Tennessee making it unlawful after 10 p.m.

Exhibit 4.3.48: Number of States Prohibiting Various Low-Price, High-Volume Drink Specials



As can be seen in Exhibit 4.3.49, 10 states prohibited *happy hours (reduced prices)*. Eight additional states allowed happy hours but restricted the hours in which they may be offered.

Trends in Low-Price, High-Volume Drink Specials Law

Between 2010 and 2011, only one small change occurred in low-price, high-volume drink specials law. One state expanded its definition of "drink" to include two different drinks customarily served at the same time. Such a change created a decrease by one state in "multiple servings at one time." Between 2011 and 2012, one state (Pennsylvania) increased the number of hours during which discounts may be offered. No other changes occurred.

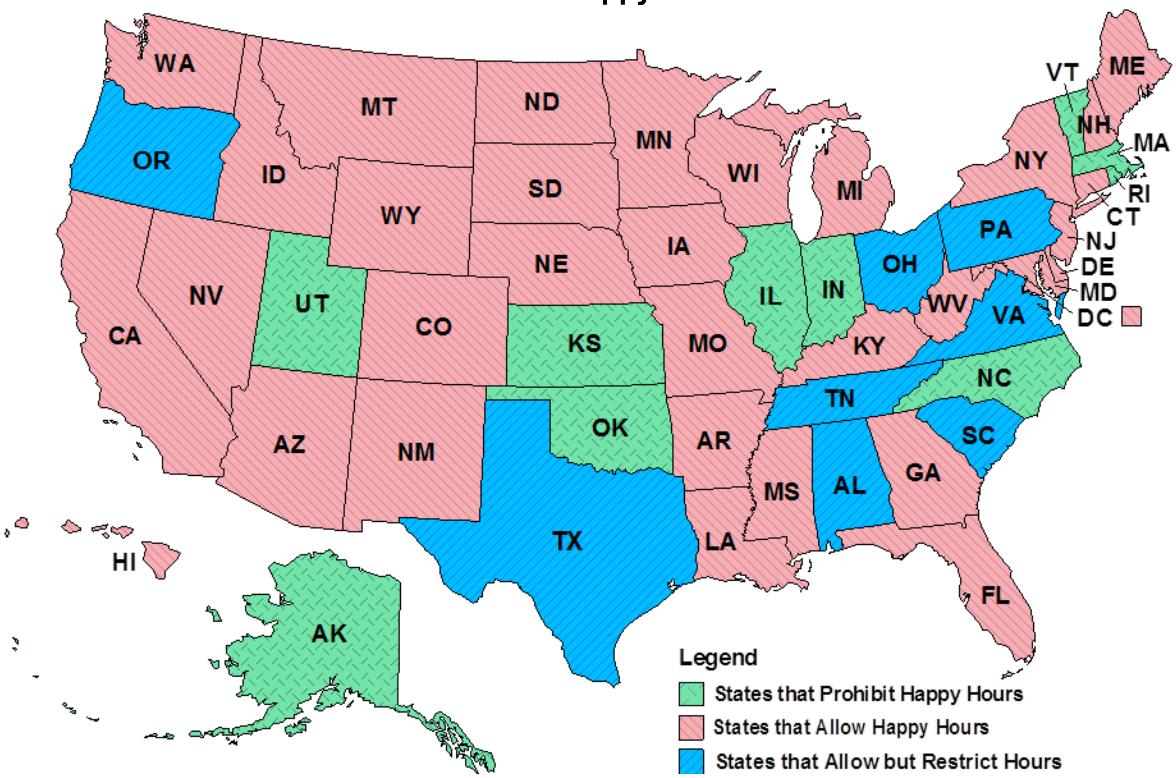
References and Further Information

Legal research for this topic is planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see:

Babor, T., et al. (1978). Experimental analysis of the 'happy hour': effects of purchase price on alcohol consumption. *Psychopharmacol, 58,* 35–41.

Beverage Information Group, Fact Book. (2010). Norwalk, CT: Beverage Information Group (annual publication).

Exhibit 4.3.49: Happy Hours 2012



Chaloupka, F., et al. (2002). The effects of price on alcohol consumption and alcohol-related problems. *Alcohol Res & Health, 26(1),* 22–34.

Department of Health and Human Services. (2007). *The Surgeon General's call to action to prevent and reduce underage drinking*. Rockville, MD: HHS, Office of the Surgeon General. Available at: www.surgeongeneral.gov and at www.hhs.gov/od

Kuo, M., Wechsler, H., Greenberg, P., & Lee, H. (2003). The marketing of alcohol to college students: The role of low prices and special promotions. *Am J Prev Med, 25(3),* 1–8.

National Highway Traffic Safety Administration. (2005). Research report: Preventing over-consumption of alcohol – sales to the intoxicated and "happy hour" (drink special) laws. Springfield, VA: National Technical Information Service, DOT HS 809 878, February 2005.

Wechsler, H., Lee, J., Nelson, T., & Lee, H. (2003) Drinking and driving among college students: The influence of alcohol control policies. *Am J Prev Med, 25(3),* 212–218.

21. Wholesaler Pricing Restrictions *(data current as of 1/1/12)*

Policy Description

The 21st Amendment to the Constitution repealed Prohibition and gave states broad authority to regulate alcohol sales within their borders. Most states established a three-tier structure: producers, wholesalers, and retailers. Many states included restrictions on wholesaler pricing practices, intended to strengthen the three-tier system, reduce price competition among wholesalers and retailers, and combat corruption and crime in the alcohol market.

Research suggests that the specific wholesaler pricing restrictions described below increase the price of alcohol to consumers. Research also shows that underage consumption and problems are strongly influenced by alcohol prices. One study has suggested that restrictions on certain wholesale pricing practices may have a stronger effect on alcohol pricing than alcohol taxes.

Some states operate alcohol wholesale operations directly through a state agency, usually limited to distilled spirits, beer with high alcohol content, and wine with high alcohol content.[39] In these cases, the state sets wholesaler prices as part of its administrative function, and statutory provisions are relevant only to that portion of the wholesaler market in the control of private entities. For this policy, an index beverage has been selected: beer (5 percent), wine (12 percent), and spirits (40 percent). If the index beverage is controlled, in whole or in part, by the state at the wholesale level, the state is coded as CONTROL and no additional coding is displayed.

Types of Wholesaler Pricing Policies

In general, wholesaler pricing policies fall within four types: (1) Restrictions on volume discounts; (2) restrictions on discounting practices; (3) price posting requirements, and (4) restrictions on the ability of wholesalers to provide credit extensions to retailers. These policy categories are closely interrelated but may operate independently of each other. Each is described briefly below.

Volume discounting restrictions: Large retailers often have an advantage over smaller retailers due to the large volumes they are able to purchase at once. This purchasing power allows them to negotiate lower prices on most commodities and therefore offer items at lower prices to consumers. Many states have imposed restrictions on the ability of wholesalers to provide volume discounts—the same price must be charged for products regardless of the amount purchased by individual retailers. The primary purpose of these laws is to protect small retailers from predatory marketing practices of large-volume competitors and to prevent corruption. They have a secondary effect of increasing retail prices generally by making retail price discounting more difficult.

Minimum pricing requirements: States may require wholesalers to establish a minimum markup or maximum discount for each product sold to retailers based on the price of the producer's price for the product or may enact a ban against selling any product below cost. These provisions are designed to maintain stable prices on alcohol products by limiting price competition at both retail

[39] For a state-by-state review of control state wholesaler systems, see www.apis.niaaa.nih.gov.

and wholesale levels. In most cases, this increases the retail price to consumers, and thus affects public health outcomes.

Post-and-hold provisions: This policy requires wholesalers to publicly “post” prices of their alcohol products (i.e., provide a list of prices to a state agency for review by the public, including retailers and competitors) and hold these prices for a set amount of time, allowing all retailers the opportunity to make purchases at the same cost. Post-and-hold requirements are typically tied to minimum pricing and price discounting provisions and enhance the states’ ability to enforce those provisions. The wholesalers’ submissions can be reviewed easily to determine whether wholesalers are paying the proper taxes on their products and whether they are providing any illegal price inducements to retailers. Post-and-hold provisions reduce price competition among both retailers and wholesalers because the posted prices are locked in for a set amount of time. They also promote effective enforcement of other wholesaler pricing policies. Some states require wholesalers to post prices but have no “hold” requirement—that is, posted prices may be changed at any time. This is a weaker restriction.

Credit extension restrictions: Wholesalers often provide retailers with various forms of credit (e.g., direct loans or deferred payment of invoices). Many states restrict alcoholic beverage wholesalers’ ability to provide credit to retailers, typically by banning loans and limiting the period of time required for retailers to pay invoices. The primary purpose of the restrictions is to limit the influence of wholesalers on retailer practices. When a retailer is relying on a wholesaler’s credit, the retailer is more likely to promote the wholesaler’s products and to agree to the wholesaler’s demands regarding product placement and pricing. The restrictions have a secondary effect of limiting the retailer’s ability to operate on credit, indirectly increasing retail prices.

Federal Court Challenges to State Wholesaler Pricing Restrictions

As noted earlier, in general, states have broad authority under the 21st Amendment to the Constitution to regulate alcohol availability within their boundaries. That authority has been constrained by U.S. Supreme Court and Federal Court of Appeals cases, which have interpreted the Interstate Commerce Clause (ICC) and Sherman Antitrust Act[40] to prohibit certain state restrictions on the alcohol market.[41,42] These cases have led to considerable uncertainty regarding the validity of state restrictions on alcohol wholesaler prices, and additional challenges to those restrictions are anticipated. In the meantime, this uncertainty has prompted states to reexamine their alcohol wholesaler practices provisions.

Status of Wholesaler Pricing Restrictions

[40] July 2, 1890, ch. 647, 26 Stat. 209, 15 U.S.C. § 1-7.

[41] See, e.g., California Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc., 445 U.S. 97, 100 S.Ct. 937 (1980).

[42] Several federal and state courts have addressed the constitutionality of selected wholesaler pricing practices, with conflicting results. For example, in *Costco Wholesale Corp. v. Maleng*, 522 F.3d 874 (9th Cir. 2008), the plaintiff challenged nine distinct Washington state restrictions governing wholesaler practices, including policies in all four categories described above. The court upheld the state’s volume discount and minimum markup provisions but invalidated the post-and-hold requirements. In *Manuel v. State of Louisiana*, 982 So.2d 316 (3rd Cir. 2008), a Louisiana appellate court rejected six separate challenges to the Sherman Act, including the ban on volume discounts. It upheld the state’s ability to regulate alcoholic beverages within the state and concluded that the Sherman Act had to yield to the state’s authority granted under the 21st Amendment. Maryland’s post-and-hold law and volume discount ban were challenged in *TFWS, Inc. v. Franchot*, 572 F.3d 186 (4th Cir. 2009), a complicated case involving multiple appeals and rehearings. On Maryland’s fourth appeal, the court upheld its previous decisions to strike down the two policies.

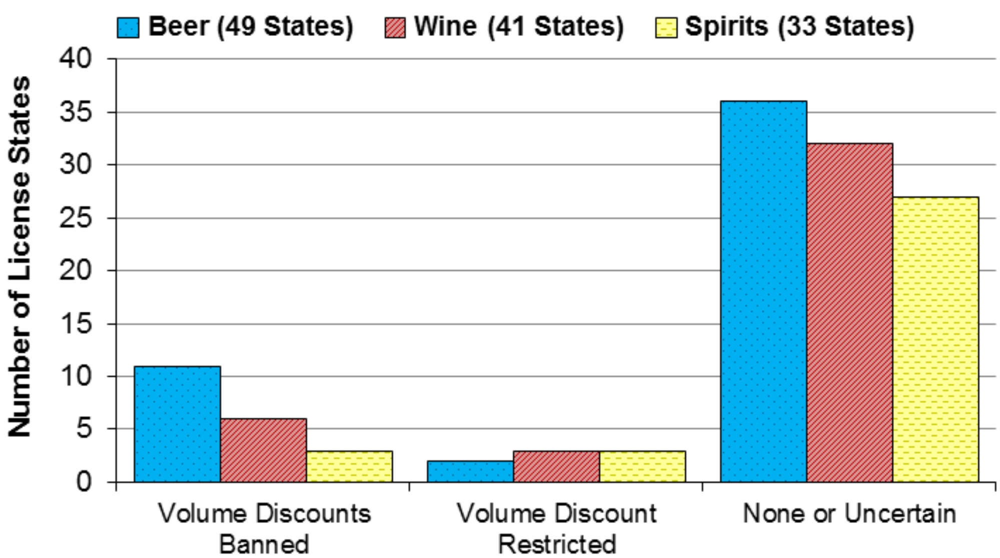
Federal Law
Federal law addresses restrictions on wholesaler credit practices:

> The Federal Alcohol Administration Act provides for regulation of those engaged in the alcohol beverage industry and for protection of consumers. 27 U.S.C. § 201 et seq. Under the Act, wholesalers may not induce retailers to purchase beverage alcohol by extending credit in excess of 30 days from the date of delivery. 27 U.S.C. § 205(b)(6), 27 C.F.R. § 6.65.

Some states allow wholesalers to extend credit to retailers for a longer period than is permitted under federal law.

State Law
Exhibits 4.3.50 through 4.3.53 show summary distributions of volume discounts, minimum markup/maximum discount, post and hold, and retailer credit for the license states (beer = 49 license states; Wine = 41 license states; Spirits = 33 license states).[43]

Exhibit 4.3.50: Volume Discounts



[43] Comparisons among beverage types must be made with some caution, since the number of license states differs for each beverage.

Exhibit 4.3.51: Minimum Markup/Maximum Discount

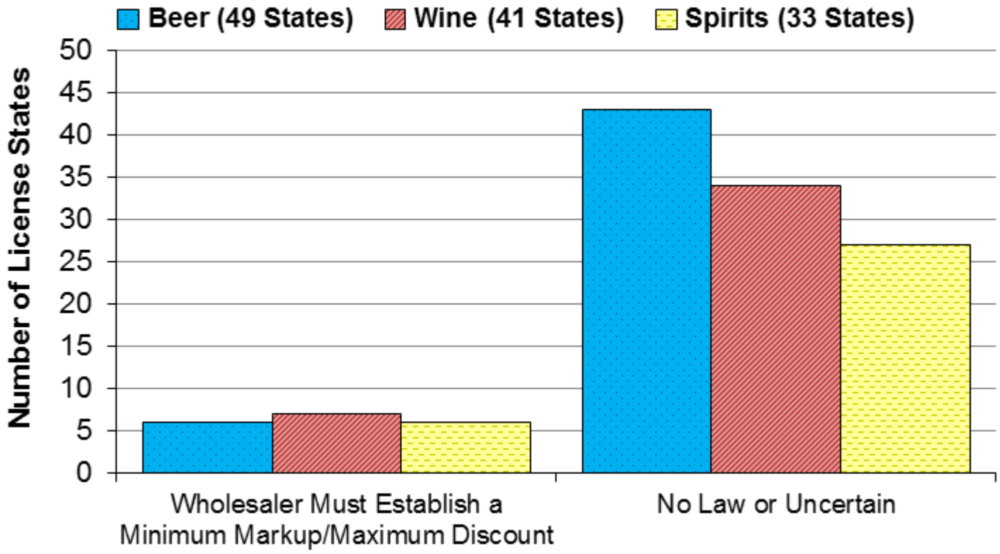


Exhibit 4.3.52: Post and Hold

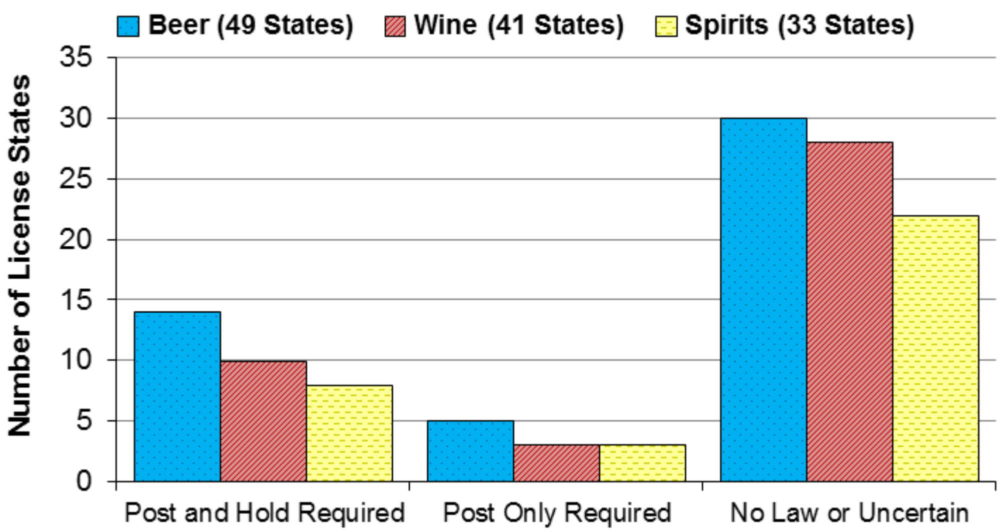
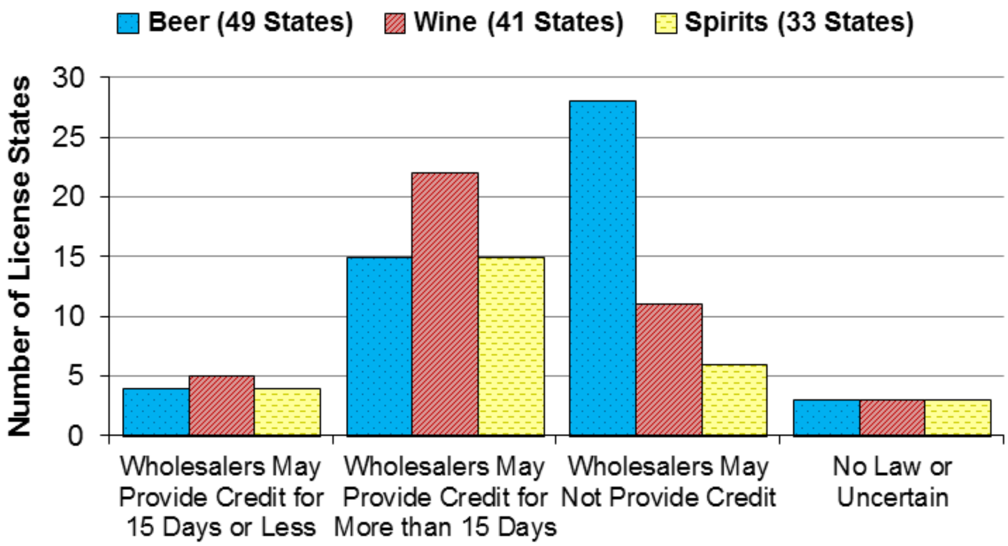


Exhibit 4.3.53: Retailer Credit



Only two license states (Alaska and Rhode Island) have no wholesaler pricing restrictions. Among the remaining states, bans on extending credit and post and hold (excluding post only) are the most common wholesaler pricing restrictions (ranging from about a fifth to about half the states depending on beverage type). Other restrictions range from under 10 percent of the license states to about a quarter of the states depending on beverage type.

Exhibits 4.3.54 through 4.3.57 present detailed state-by-state information for wholesaler pricing policies for beer.

Exhibit 4.3.54: Volume Discounts for Beer as of January 1, 2012

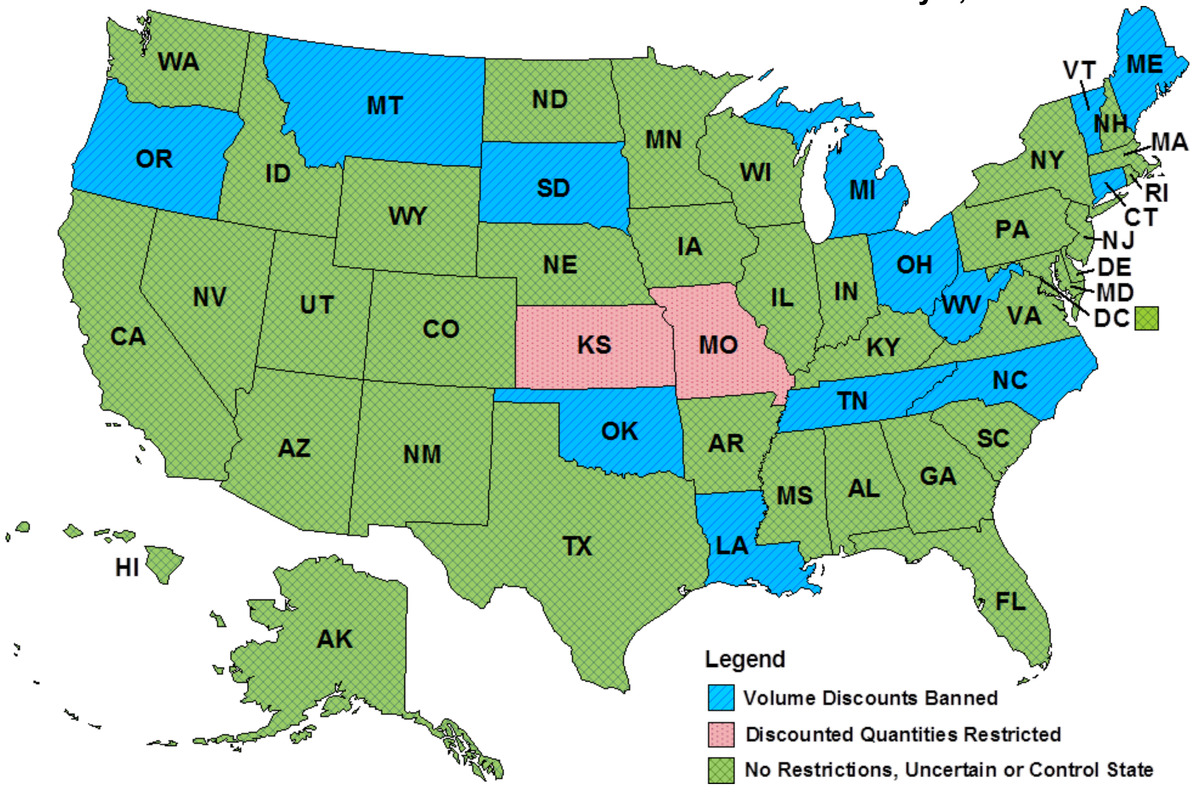


Exhibit 4.3.55: Minimum Markup, Maximum Discount for Beer as of January 1, 2012

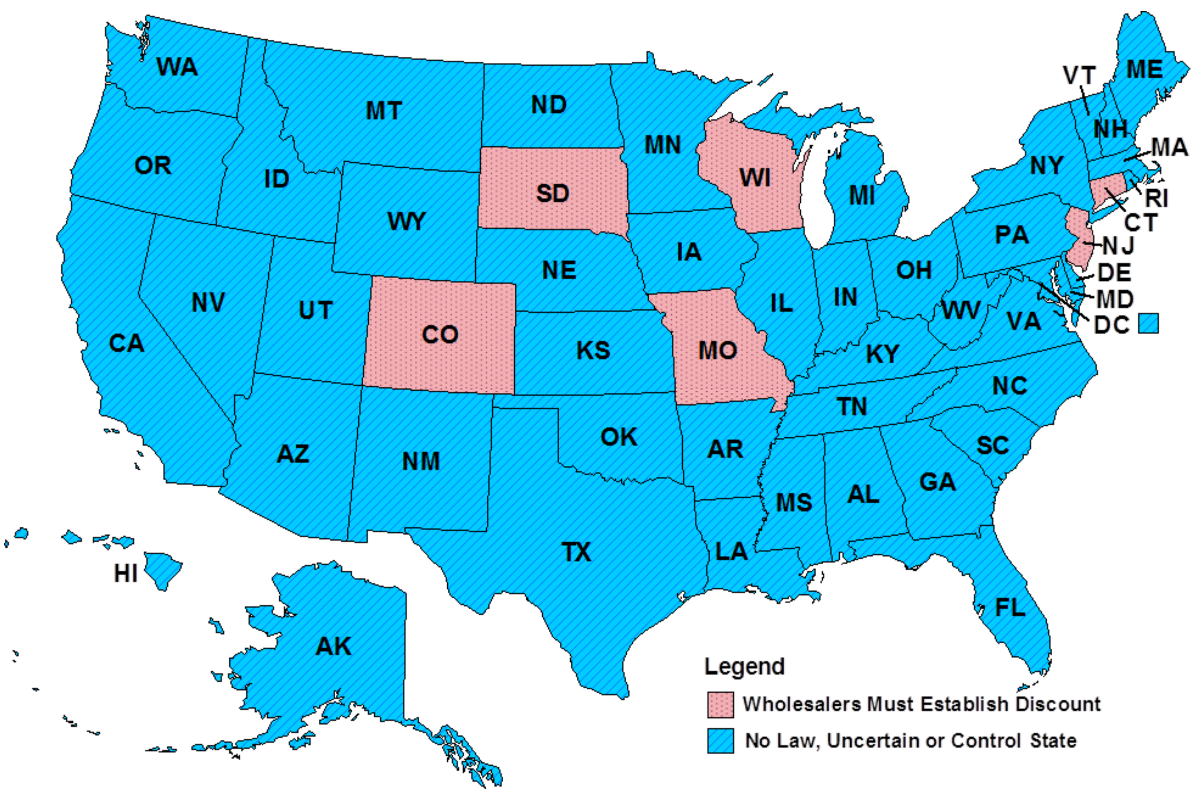


Exhibit 4.3.56: Post and Hold Requirements for Beer as of January 1, 2012

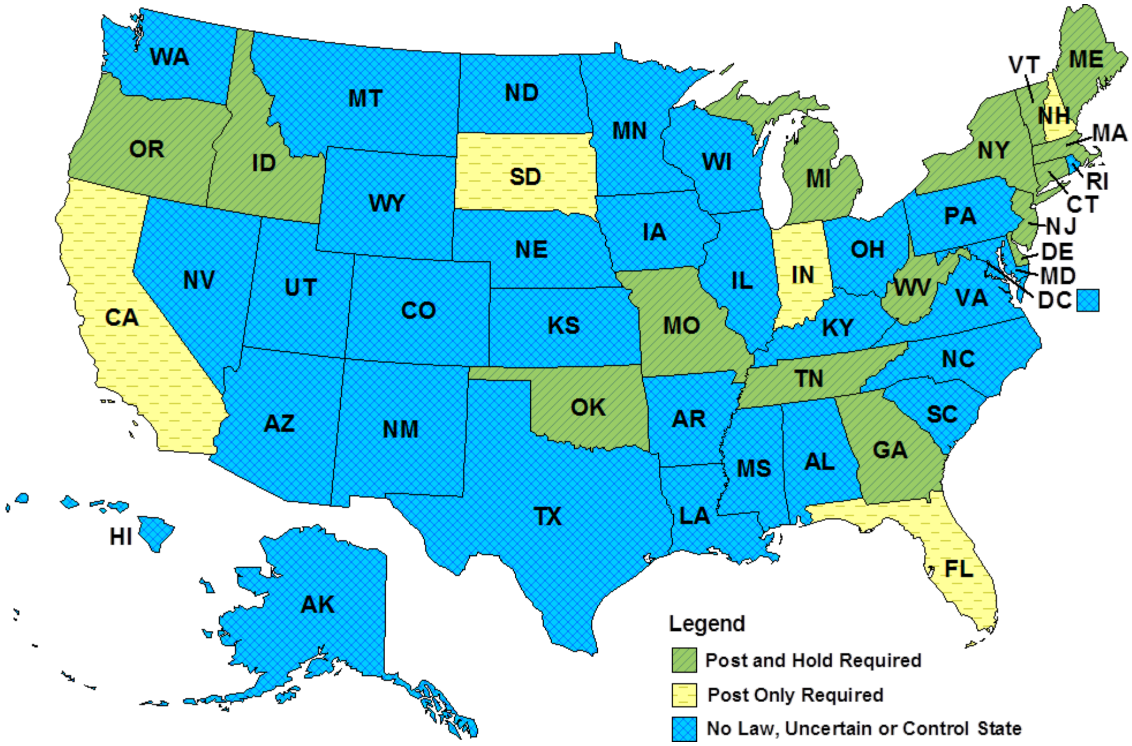
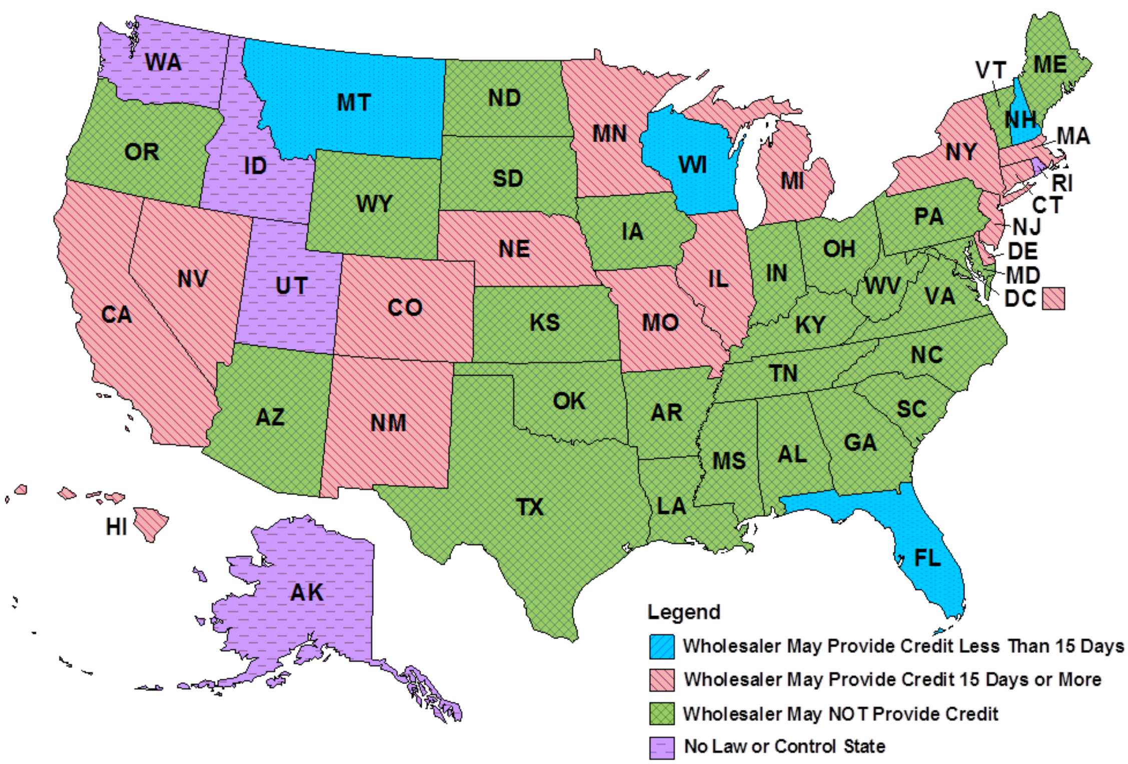


Exhibit 4.3.57: Retail Credit for Beer as of January 1, 2012



*MI allows 30 days credit to on-sale retailers but no credit to off-sale retailers

Trends in Wholesaler Pricing Restrictions

Between 2010 and 2011, only one state changed its wholesaler pricing restriction policies. South Dakota adopted a price-posting requirement. No additional changes occurred between 2011 and 2012.

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see:

Chaloupka, F. (2008). Legal challenges to state alcohol control policy: An economist's perspective. Presentation at the Alcohol Policy 14 Conference, San Diego, CA, January 28, 2008.

Gruenwald, P., et al. (2006). Alcohol prices, beverage quality, and the demand for alcohol: Quality substitutions and price elasticities. *Alcoholism: Clin Exp Res, 30*, 96–105.

National Research Council and Institute of Medicine. (2003). *Reducing underage drinking: A collective responsibility*. Washington, DC: National Academies Press.