

Policy Summary

Direct Sales/Shipments From Producers to Consumers

This policy summary is excerpted from:

The 2013 Report to Congress on the Prevention and Reduction of Underage Drinking
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Direct Sales/Shipments from Producers to Consumers

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 sell 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 U.S. Supreme Court has held that state laws permitting in-state producers to ship directly to consumers while barring out-of-state producers from doing so violate the U.S. Constitution’s Interstate Commerce Clause, and that this discrimination is neither authorized nor permitted by the 21st Amendment.³⁷

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.³⁸
- 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.

³⁷ See, e.g., *Granholm v. Heald*, 544 U.S. 460, 125 S.Ct. 1885 (2005).

³⁸ Laws that require face-to-face transactions for all sales prior to delivery are treated as prohibitions on direct sales/shipments.

some point before delivery. Sixteen states and the District of Columbia do not require any age verification. Thirty-three states require a label stating that the package can only be received by a person over age 21, 32 states require a label stating that the package contains alcohol, and 4 states 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 more 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 Journal*, 67, 1465–1494.

Williams, R.S., & Ribisl, K.M. (2012). Internet alcohol sales to minors. *Archives of Pediatrics and Adolescent Medicine*, 166(9), 808–813.