

## **Policy Summary**

# **Direct Sales/Shipments From Producers to Consumers**

This policy summary is excerpted from:

**The September 2016 Report to Congress on the Prevention and Reduction of Underage Drinking**

## 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 or controlled retail outlets directly or both) 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. Thus, 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.<sup>1</sup>

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 study that found that internet alcohol vendors use weak, if any, age verification, thereby allowing minors to successfully purchase alcohol online (Williams & Ribisl, 2012). 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.<sup>2</sup>
- 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 that the recipient must be at least 21 years old.

<sup>1</sup> See, e.g., *Granholm v. Heald*, 544 U.S. 460, 125 S.Ct. 1885 (2005).

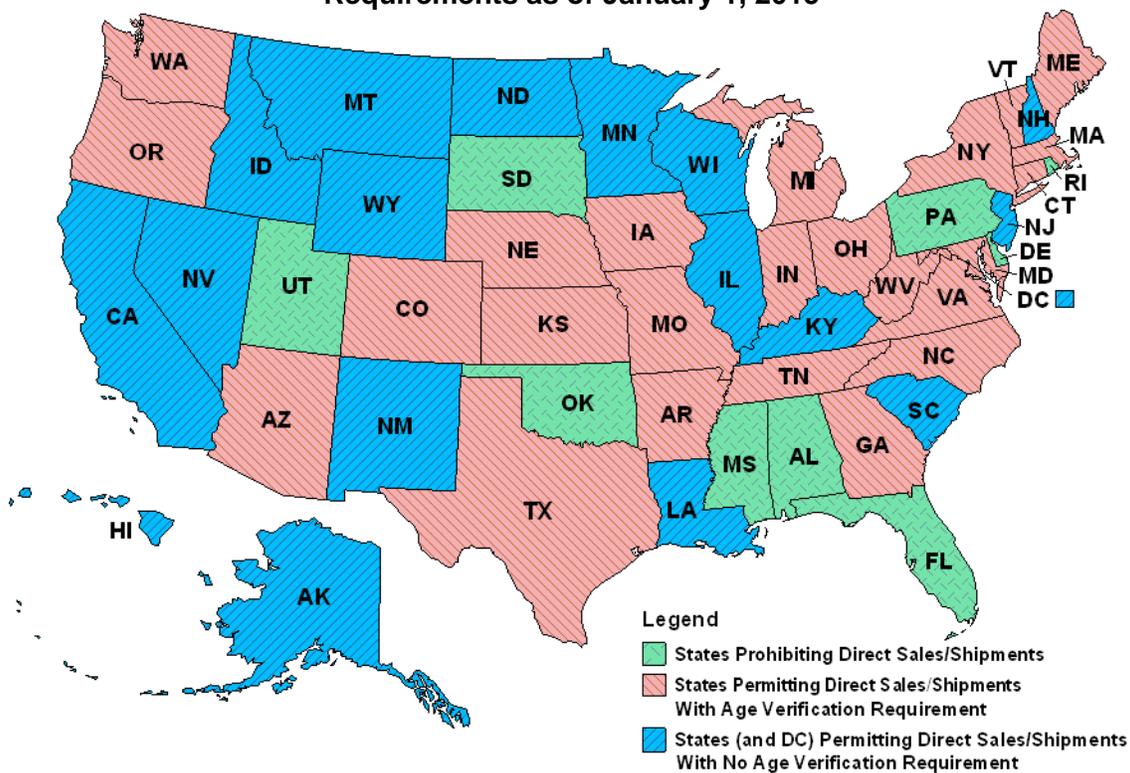
<sup>2</sup> Laws that require face-to-face transactions for all sales prior to delivery are treated as prohibitions on direct sales/shipments.

State laws also vary on the types of alcoholic beverages (beer, wine, distilled spirits) that producers may 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.<sup>3</sup>

**Status of Direct Sales/Shipment Policies**

As of January 1, 2015, 42 states permit direct sales/shipments from producers to consumers, and 9 prohibit such transactions (see Exhibit 4.3.35). Two states (Arkansas and Indiana) require face-to-face transactions at producers’ places of business (and verification of valid age identification) before shipments to the consumer can be made. Thirty-nine states require producers to obtain a shipper’s permit or state approval prior to shipping. Of the 42 states permitting direct sales or shipments, 8 require shippers to verify purchaser age, 21 require deliverers to verify recipient age, and 4 require age verification by both shippers and deliverers.

**Exhibit 4.3.35: Direct Sales/Shipment Policies and Age Verification Requirements as of January 1, 2015**



<sup>3</sup> These include caps on the 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).

Sixteen states and the District of Columbia do not require any age verification. Thirty-five states require a label stating that the package can be received only by a person over age 21, 34 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, 2015, seven states added more regulation to their policies. Seven other states (Arkansas, Kansas, Maine, Maryland, New Jersey, New Mexico, and Tennessee) adopted permit systems for allowing 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, Montana, and Nebraska adopted requirements that package labels state that the recipients of wine shipments must be over 21 and that the package contains alcohol. Iowa adopted requirements that labels state that recipients of wine shipments must be over 21. North Dakota adopted age verification requirements at the point of delivery and requirements that the carrier receive state approval and report purchasers' names. New Hampshire adopted a provision regarding collecting purchasers' names. In 2011, Ohio expanded direct shipping privileges to include beer, and in 2013 Vermont did the same. In 2014, Arizona granted direct shipping privileges to craft distilleries producing spirits.

### **References and Further Information**

Legal research and data collection for this topic are planned and managed by the Substance Abuse and Mental Health Services Administration (SAMHSA) and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, visit [stopalcoholabuse.gov](http://stopalcoholabuse.gov) and go to Report to Congress, Supplemental Information, "Definitions of Variables." 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 from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1340198](http://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 & Adolescent Medicine*, 166(9), 808–813. doi:10.1001/archpediatrics.2012.265