



The State of Retailer to Consumer Direct Wine Shipping in the United States

Tom Wark, Executive Director
NAWR Wine Retailer Summit 2018

Tom Wark, Executive Director

National Association of Wine Retailers

- Serving since 2007
- Owner Wark Communications PR and Marketing
- Publisher: FERMENTATION: The Daily Wine Blog
- Founder: Wine Bloggers Conference, Wine Blog Awards
- Lives in Napa with wife Kathy Berez and Son Henry George

We've Got Their Attention

10 Retailer Shipping Bills in the last two years

Pro Retailer Bills: KY, AL, RI, TX, MA, NY, CT

Anti-Retailer: MI, IL, MO, NH

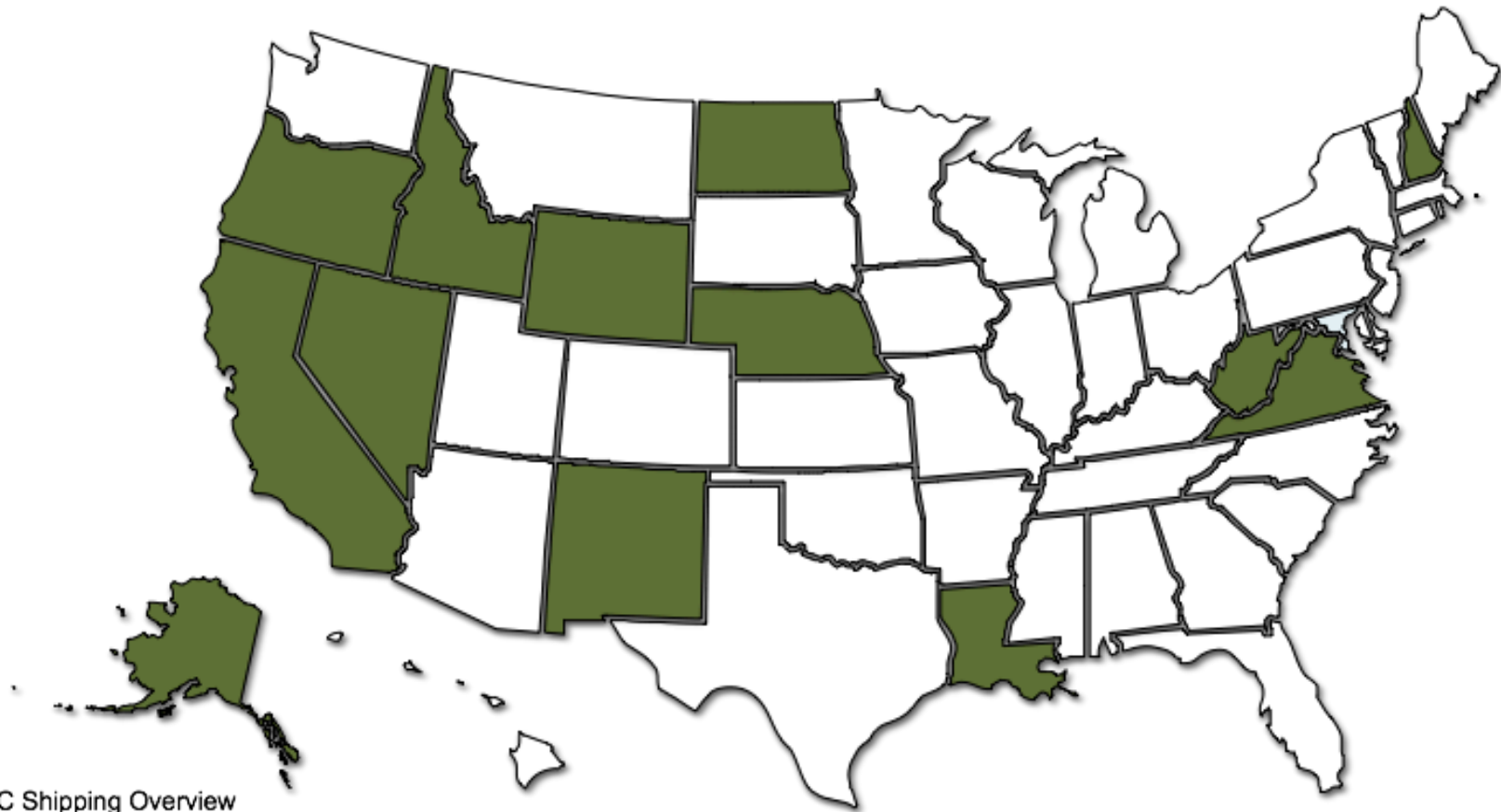
5 Lawsuits Specifically Addressing Wine Retailer Shipping in Last 2 Years

Significant Changes to Common Carrier Rules and Agreements

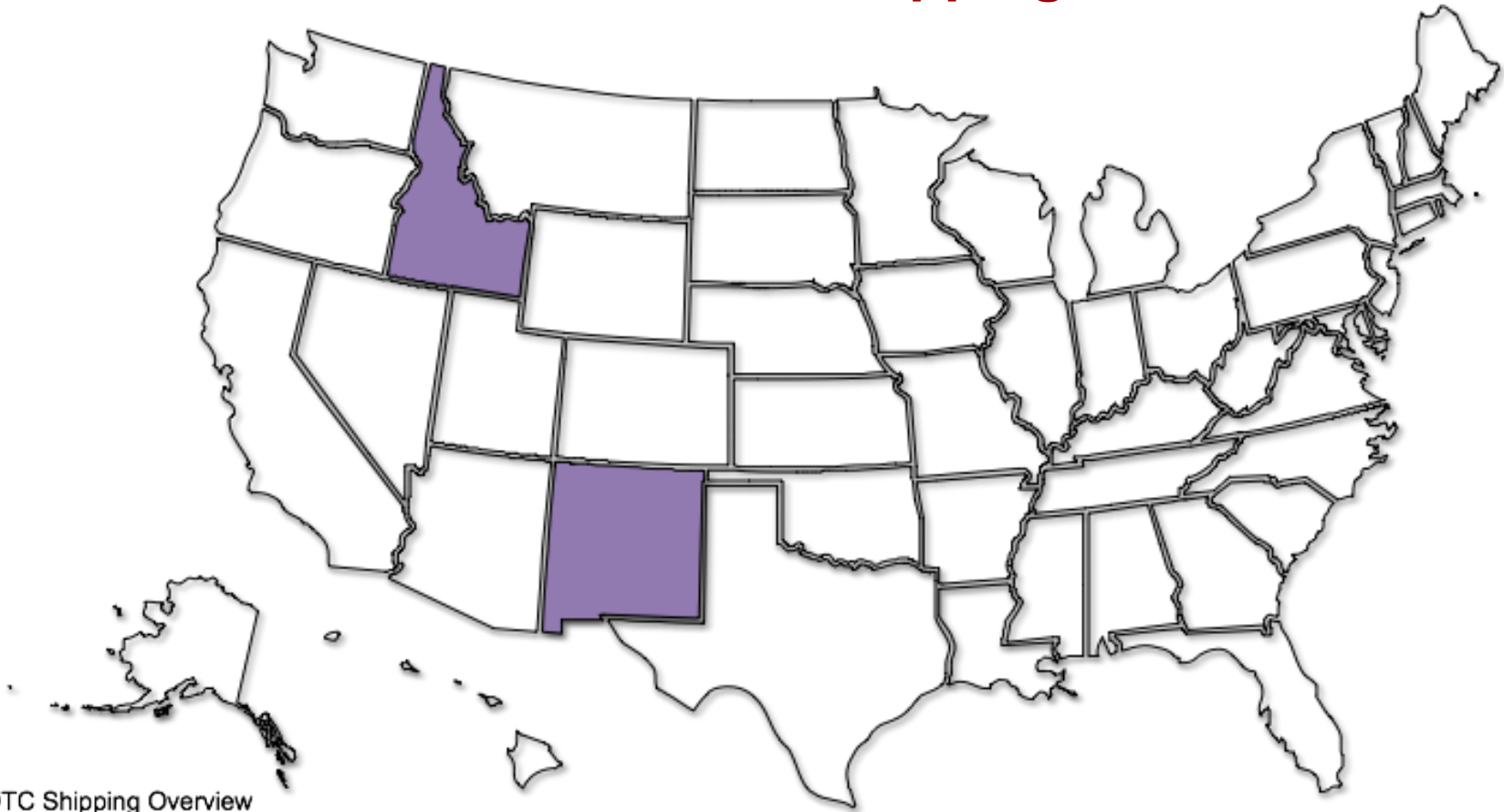
Increase in Cease and Desist Orders, Enforcement and Stings

Huge Increase in Media Coverage of Wine Retailer Shipping issues

Where Can Retailers Legally Ship According to Statute?



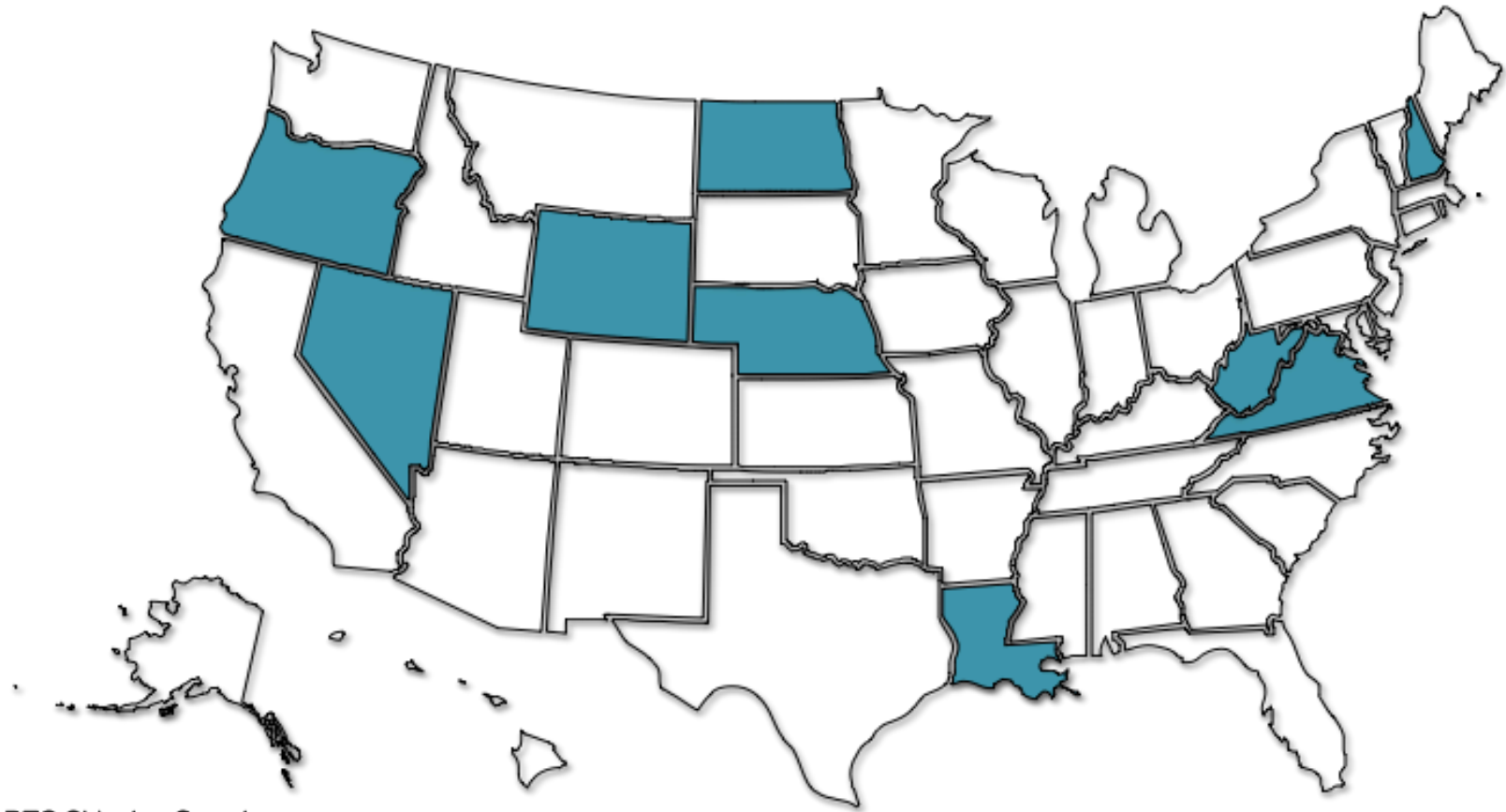
Retailer RECIPROCAL Shipping States



Retailer NO PERMIT NEEDED Shipping States



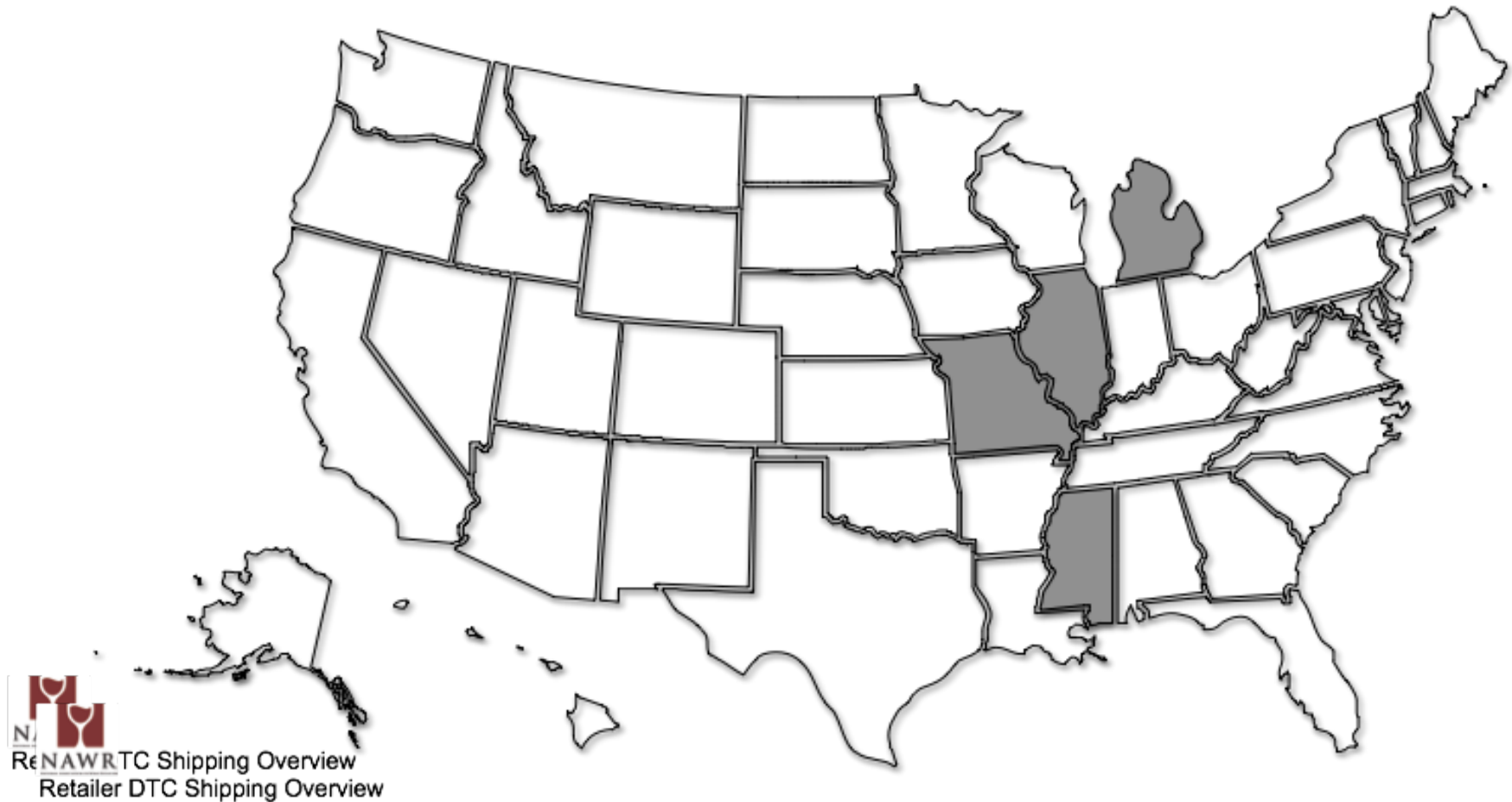
Retailer PERMIT REQUIRED Shipping States



Where the Law Changed for Retailer Shipping



Where the Law on Retailer Shipping is Being Challenged



THE CHALLENGES FACING RETAILERS

Wholesaler Opposition

Regulator Opposition

Winery Indifference

Retailer Opposition

Consumer Involvement

Law Enforcement Opposition

Funding

Apathetic Retailers

Legal Theory

THE CHALLENGES FACING RETAILERS (Wholesalers)

- **The Primary Opponent to Retailer wine Shipping**

"There is no way to control whether or not products are safe, and not counterfeit, that underage people are not getting their hands on alcohol, and that taxes are being paid. At least wineries are federally licensed and have something at stake. The retailers are state-licensed in their own states, not anywhere else. As for the states that have allowed out-of-state retailer shipping, they're losing local tax revenue, they're losing local jobs, and there's no way to account for the product."

CRAIG WOLF —WSWA CEO & President (The Wine Spectator)

- **Massive Campaign Contributions: \$107 Million**
- **Millions in Lobbying at the State Level**
- **Wholesalers Intervene in Lawsuits**
- **Active Wholesaler Associations in every state**



THE CHALLENGES FACING RETAILERS (Retailers)

- **The Vast Majority of Wine Retailers Do Not Ship Wine**
- **Over 1,000 retailers listed on Wine Searcher, but a large number take orders but don't ship interstate or ship at all.**
- **Likely no more than 300 retailers seriously pursuing interstate shipments.**
- **Every State Retailer Trade Association Opposes Wine Shipping into Their State**
- **The Only Other National Retailer Trade Association Opposes Wine Shipping and Even Attempted to Intervene in the Illinois Lawsuit on the Side of the State.**
- **The Number of Opposition Retailers and Their Home State Advantage in legislative Battles Make Them Sympathetic and Powerful Opponents. They Always Testify.**
- **They Always Align With Wholesalers**



THE CHALLENGES FACING RETAILERS

(Regulators & Law Enforcement)

- **Regulators are not supposed to make law, but to enforce and carry out the law.**
- **In New Hampshire, it was the Chairman of the Liquor Commission that worked to strip retailers of their right to ship**
- **At National Conferences Regulators Oppose Retailer Shipping**
- **Regulators Take the Position that the Supreme Court Decision Didn't Apply To Retailers**

THE CHALLENGES FACING RETAILERS (Wineries)

- **They Don't Go to Bat For Retailers When Legislation is in Play**
- **Free The Grapes is Funded By Wineries and Does Not Advocate For Retailer Shipping**
- **Wineries Throw Retailers Under the Bus in Legislative Battles Regularly**
- **Wineries Take the Position that the Supreme Court Decision Did Not Apply to Retailers**

THE CHALLENGES FACING RETAILERS

(Consumer Involvement and Lobbying)

- **Only a Tiny Fraction of Wine Buyers Purchase Via Direct Shipping, But They Tend to be Better Educated, Better Connected and More Affluent**
- **The Challenge is to Motivate These Consumers to Take Action.**
- **The Information Noise Level Is Great and Dissuades Consumers from Acting**
- **Retailer Outreach is Critical**
- **WineFreedom.Org is Critical**
- **Input from just 100 Consumers has been critical in New Hampshire**
- **Retailers Must be Willing to Personally Reach Out To Their Best Consumers**
- **Consumers Can Be the Key to Getting New Legislation Introduced**



THE CHALLENGES FACING RETAILERS

(Legal Perception)

- **Outside the Courts, the Effort to Apply Granholm v. Heald to Retailers has been Lost**
- **Wholesalers, Retailers, Regulators, Wineries, lawmakers, Most Attorneys and Consumers All Believe Granholm Only Applied to Wineries, Despite Nothing in the Decision Supporting the View.**
- **The Reason For this is Losses in the Courts in Texas and New York.**
- **NAWR Always Makes the Case that Granholm DID Apply to Retailers**
- **The Perception Makes Court Cases Critical for the future.**
- **Until We Have a Granholm Decision For Retailers or Another Positive Legal Development, the Legislative Initiatives are the Most Important Avenue for Retailers.**

THE CHALLENGES FACING RETAILERS

(Retailer Apathy)

- **Despite the Signs of Trouble Going Back Years, Retailers Who Could Ship Into Off Limit States Didn't Feel A Need to Get Involved**
- **There is a Tendency Among Retailers to Not Oppose Their Wholesalers**
- **Too Many Retailers Don't Appreciate What a \$500/Month Investment Can Do**
- **Some Retailers Are Content to "Free Load" — Cheer From the Sidelines**
- **NAWR Membership has increased 40% Over The Past Two Years**
- **The Threat Is Becoming More Obvious and Retailers are Looking For Solutions. Still, Many Retailers Sit on the Sidelines**
- **NAWR is the Only Organization Working on Behalf of Retailers**



THE CHALLENGES FACING RETAILERS (FUNDING)

- **A Good Lobbyists Costs Between \$4000 and \$8,000 per month: NAWR currently Employs Two Lobbyists.**
- **Legislative Battles Are Won With Money — Including Campaign Contributions**
- **Lawsuits Can Cost Between \$500,000 and \$1,500,000**
- **The Only Organization Fighting For Direct Shipping is Doing So With an Annual Budget Well Under \$500,000**
- **If NAWR Doubled it's Annual budget We Could Move Important States Into the Shipping Column.**
- **Donations and Memberships Are the Primary Means of Funding**



What's At Stake?

Billions

What's At Stake?

- In 2017, the Fine Wine Market Was Worth \$28 Billion
- Wineries Shipped \$2.6 Billion in Wine at an Average Price of \$38/Bottle
- 300 +/- Serious Retailer Wine Shippers
- Two-Thirds of What Wineries Ship is \$1.7 Billion
- Reason To Believe Retailers Are More Important Than Wineries
- In New Hampshire, Retailers Possess 6% of all Shipping Permits, but They Sell 27% of All Wine Direct Shipped Into The State
- The Retail Shipping Market Nationwide May Be Worth \$3.5 Billion



The Media

Along With Consumers, The Media Is The Primary Ally of Retailers and Direct Shipping.

The Media

Wine Spectator

More Direct Shipping News:

February 1, 2018

**Wine Lovers Face
Increasing Hurdles Ordering
Online**

December 29, 2017

Top Wine Stories of 2017

January 31, 2017

**New Report Shows Winery
Direct Shipping Sales
Surging**

January 12, 2017

**New Michigan Law Takes
on Retailer Direct Shipping**

December 31, 2016

**Clash Over Wine Merchant
Shipping Laws Grows**

More from Direct Shipping

In Courthouses and State Capitols, Wine Retailers Are Fighting for Direct Shipping

Bills have been introduced to end the restrictions on retailer shipping, and lawsuits have been filed challenging the bans



Photo by: istockphotos



Retailer DTC Shipping Overview

The Media

The New York Times

WINE, BEER & COCKTAILS

Wines Are No Longer Free to Travel Across State Lines



Eric Asimov

THE POUR OCT. 23, 2017



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The Media

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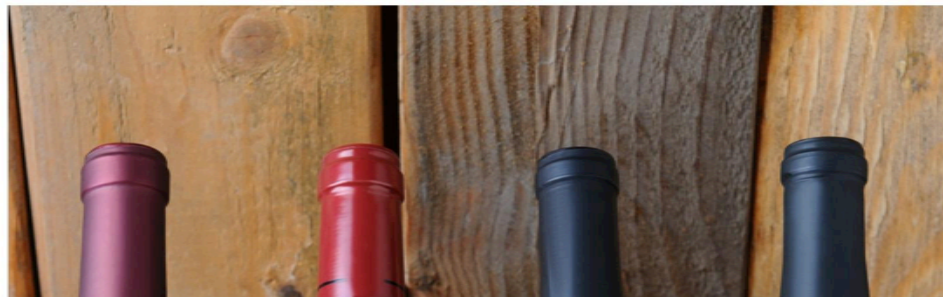
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Shipping Companies Crack Down on Wine Shipments

R Street Institute · August 2, 2017



Retailer DTC Shipping Overview

The Media

Wine Spectator

More Direct Shipping News:

February 2, 2018

In Courthouses and State Capitols, Wine Retailers Are Fighting for Direct Shipping

February 2, 2018

French Billionaire Jean-Pierre Savare Buys Bordeaux Château Franc-Mayne

February 1, 2018

Turning Tables: Switch-Up at Daniel Boulud Restaurant in Miami

January 26, 2018

Northern California Wine-Country Wildfire Impact Study Shows Signs of Hope

January 25, 2018

Wine Lovers Face Increasing Hurdles Ordering Online

Can't find a bottle at your local wine shop? States and shipping companies are clamping down on shipping by wine retailers, leaving consumers with fewer choices

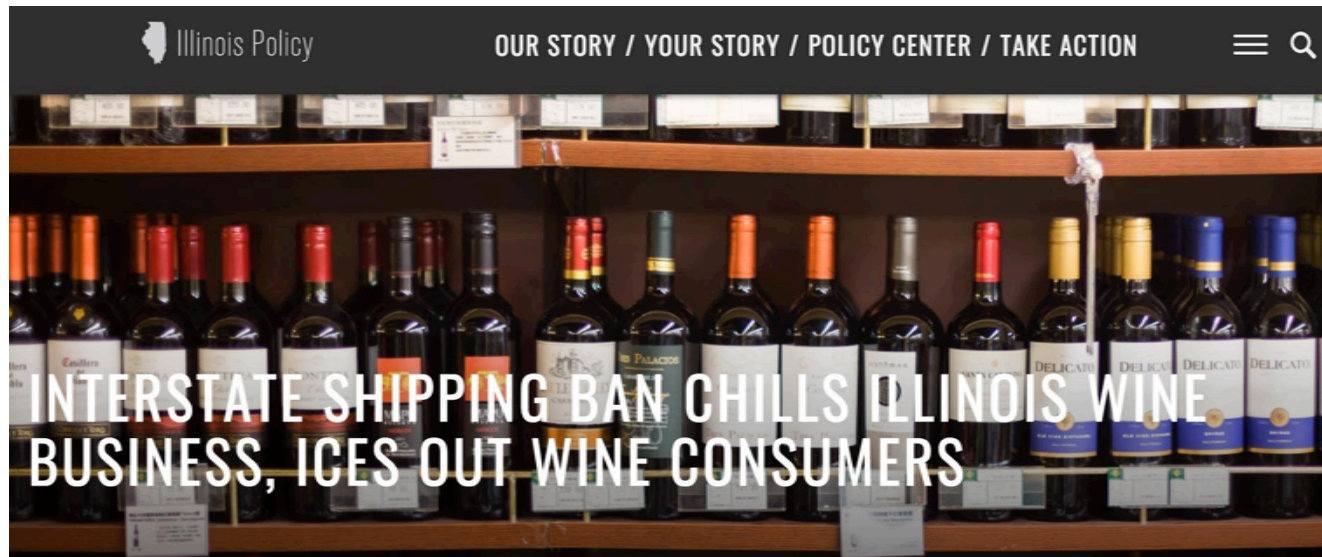


Photo by: Jeff Amy/AP Photo



Retailer DTC Shipping Overview

The Media



Vincent Caruso

Writer



Prohibition died in 1933, but alcohol-related cronyism is alive and well.

“Chicago’s retail wine scene is hopping,” the Wall Street Journal trumpeted this month.



[/ JOBS + GROWTH](#)

Retailer DTC Shipping Overview

The Media



Interstate Shipping Issue Looms Large Again As States Take Strict Enforcement Measures

December 12, 2017

For years, retailers have shipped quietly into non-reciprocal states that were lax in enforcement, but lately there have been some tough crackdowns on interstate shipping. In January, Illinois lawmakers made it a felony to deliver wine into their state. Other states began threatening to confiscate wine in transit and levy major fines on shippers. Earlier this year, FedEx and UPS announced they were ending wine deliveries to all states except the 14 where shipping is legal. And then Amazon announced it would drop its Internet wine sales.

The shift has reduced the revenues of key retailers around the country. Daniel Posner, the owner of Grapes the Wine Company in White Plains, New York, derived 50% of his revenues from interstate shipping. "I have a staff of 12, and I'm facing



Retailer DTC Shipping Overview

The Media

[All Episodes](#) / [Ep 206: Tom Wark on the Messy Politics of US Wine Shipping](#)

Ep 206: Tom Wark on the Messy Politics of US Wine Shipping



Nov 10, 2017

Tom Wark, executive director of the National Association of Wine Retailers (Winefreedom.org), wine PR guru, and author of [Fermentation Wine Blog](#) gives a fascinating look at the history of US wine law, current inane laws (unconstitutional) on interstate wine shipping, and the ripple effects for wine producers, importers, and drinkers.

**Note: This issue is not a democrat v republican issue, so if you fear this will be a partisan conversation, both sides are restricting consumer rights and there is no discussion of party politics in the show.*

Even if you are not an American listener, the history and politics of the world's biggest market (by volume) and the restrictive environment in which wine is sold will shock and amaze you.

Here are some of the issues we tackle in the conversation:



Retailer DTC Shipping Overview

The Media

Wine Spectator

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More About Direct Shipping:

February 2, 2018

[In Courthouses and State Capitols, Wine Retailers Are Fighting for Direct Shipping](#)

February 1, 2018

[Wine Lovers Face Increasing Hurdles Ordering Online](#)

December 29, 2017

[Top Wine Stories of 2017](#)

January 31, 2017

[New Report Shows Winery Direct Shipping Sales Surging](#)

January 12, 2017

[New Michigan Law Takes on Retailer Direct Shipping](#)

[More from Direct Shipping](#)

Clash Over Wine Merchant Shipping Laws Expands to Missouri and Michigan

In a Missouri courthouse and the Michigan statehouse, retailers are battling for the right to ship wine to customers across state lines



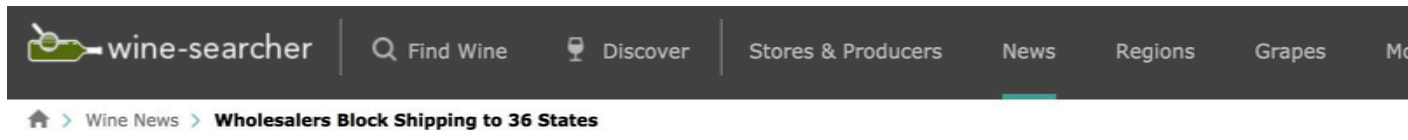
Photo by: iStock/RiverNorthPhotography

The Michigan state senate will consider a new law banning out-of-state



Retailer DTC Shipping Overview

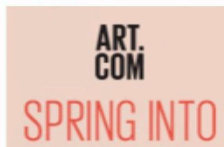
The Media



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- Buzzwine >
- The Spotlight >

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Wholesalers Block Shipping to 36 States



© iStock | *The major delivery companies will only ship wine to 14 states.*

It's not shippers blocking interstate wine delivery, it's the wholesalers, argues **Liza B. Zimmerman.**

Posted Friday, 27-Oct-2017



Retailer DTC Shipping Overview

The Media

- **NAWR and Wine Shipping Issue Has Received Significant Coverage in Last Year**
- **Media Intuitively Rejects Justifications for Restrictions**
- **Challenge: Focus Media on Impact to Consumers**
- **NAWR Subscribes to Largest Media List Creation Service**
- **Daniel Posner and Tom Wark Have Been Most Common Spokespeople**
- **Over the Next Year, NAWR Wants To Put Forward Wider Array of Spokespeople**
- **Media Coverage Will Be Critical to Legislative Efforts**



Keys To Success

- Increased Support/Membership From Independent Wine Retailers
- Motivating Consumers to Take Action
- Communicating to Media Impact of Restrictions on Consumers
- Generating In-State Retailer Support for Interstate Shipments
- Making the Case For Expanded Retailer Shipping to the Trade
- Supporting Lawsuits
- Carefully Choosing Which Legislative Efforts to Fully Support

