

Interstate Retailer Wine Shipping

A Primer for Lawmakers, Regulators and Stakeholders



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Executive Summary

Despite the dramatic migration by consumers to the convenience of online retail shopping, state laws concerning wine purchasing and shipments have largely stayed the same as they existed 80 years ago. Many states ban citizens from receiving wine shipments from out-of-state wine retailers, thereby significantly restricting consumer access to wine.

This White Paper argues that such bans harm consumers, the wine industry, and states, while provide a framework for how to regulate interstate retail wine shipments efficiently and effectively.

- Hundreds of thousands of wines—including imported wines, domestically made wines and older, rare and small production wine—are sold in various locations (including online) across the country.
- The only way for consumers to access this huge and growing diversity of wines is through interstate shipments
- Only 13 states allow consumers to receive shipments of wine from out-of-state wine retailers, wine clubs and wine auction houses.
- Some states violate the Dormant Commerce Clause of the Constitution when they allow consumers to receive wine shipments from in-state wine retailers but ban them from receiving shipments of wine from out-of-state wine retailers.
- A successful model for regulating shipments of wine originating out-of-state is available to state: the winery shipments laws that developed in the wake of the U.S. Supreme Court decision *Granholm v Heald*.
- Most states that regulate winery shipments (as well as the few states that allow and regulate wine shipments from out-of-state retailers create a permit system for out-of-state entities that allow the shipment of wine under the following conditions
 - A permit is obtained from the ship-to state and renewed annually
 - Sales taxes must be remitted to the state where the wine is shipped
 - Permittees must consent to both legal and regulatory jurisdiction
 - Reports from out-of-state wine shippers on what was shipped must be remitted
 - All shipments must be received only by an adult with an ID showing they are 21 or older
 - Limits on how much wine may be shipped to an individual are somethings instituted
- States that do allow wine shipments from out-of-state wineries and retailers have not seen an increase in minors obtaining wine nor the any degradation of the states' three-tier system as opponents of wine shipments have often claimed.

- Lawmakers have often upheld bans on wine retailer shipments because of miseducation about the threats wine shipments might bring. However, decades of experience have shown that a well-regulated system for wine shipments has resulted in states increasing their tax revenue and consumers having increased access to a far wider variety of products, without any detrimental results.

This paper demonstrates that states and lawmakers that continue to support bans on interstate retailer wine shipments encourage both continued tax avoidance by shippers and consumers, putting their state in jeopardy of federal lawsuits, and denying their citizens access to the full and growing compliment of domestic, imported and artisan wines.

Introduction

In contrast to the retailing of nearly every other consumer product in the United States, consumer wine sales take place in 50 separate and distinct marketplaces walled off by state borders. Wine products available locally at retail to New York residents might be accessible locally to Minnesota consumers, but also may not. In many cases, wines available at retail outlets in New York, New Jersey, New Mexico, or New Hampshire are not available to Minnesotans, Missourians, or Montanans. This cannot be said of any other consumer product in the United States due to the rise of Internet sales and the proliferation and convenience of interstate shipping via a common carrier that makes nearly every product sold in the United States available to every consumer—except for wine.

Since the passage of the 21st Amendment to the U.S. Constitution ending Prohibition, each state has had the authority to regulate the sale and distribution of wine within its borders. This state-based regulation has largely been accomplished through the so-called Three-Tier System. While state-by-state exceptions exist in abundance, in its most basic form the three-tier system gives licensed wholesalers operating in each state the sole authority to determine which wine

“Small-production wines may still be available at retail in some states while completely sold out and/or unavailable to consumers in other states.”

products will be brought into their state and then distributed to retailers for sale to consumers.

A relatively small set of the most popular domestic and foreign wines are generally brought into every state by its wholesalers, which are then made available to retailers to sell to consumers. These most popular wines tend to be produced in large quantities by a small group of large companies of both domestic and foreign origin and tend to be relatively inexpensive. Millions of cases of these popular wines are sold at retail annually.

However, a much larger and diverse set of wines sold in the United States are relatively small-production wines produced by much smaller domestic wineries and small foreign wineries brought into the United States via importers. The products making up this much larger collection of wines are rarely chosen by wholesalers in every state to be distributed and, as a result, are unavailable to all U.S. consumers. Moreover, unlike the large-production wines made available by U.S. wholesalers and retailers in every state, these smaller-production wines can often sell out quickly.

The result is these small-production wines may still be available at retail in some states while completely sold out and/or unavailable to consumers in other states. Because of the walled-off state marketplaces created by the implementation and maintenance of the three-tier system of alcohol regulation, an imbalance of supply and demand for these small-production wines exists in the United States.

The most obvious way to address this imbalance in supply and demand for this large set of small-production wines is to lower the walls separating wine sales in each state and allow consumers to order and procure through interstate shipment wines unavailable in their own state due either to them being sold out or not available at all. This solution to the imbalance of supply and demand of wine in the United States is referred to as Retailer Interstate direct-to-consumer shipment.

This method of wine distribution is currently only legal in 12 states and the District of Columbia. In the 38 other states, interstate shipment of wine from retailers is barred by state laws. These bans are generally supported and advocated by in-state stakeholders who would otherwise have to compete with out-of-state retailers if interstate shipment were legal.

These bans on retailer interstate shipment of wine first and foremost frustrate wine consumers, while also blocking the ambitions of a relatively small set of wine retailers across the country that specialize in small, hard-to-find, and collectible wines and who seek to serve consumers that can't find these wines locally.

This White Paper will explore the current state of interstate retailer wine shipping in the United States. In making the case for this form of wine sales and distribution, this paper will explore current market conditions for wine, retailer wine shipping laws in each state, logistics challenges and solutions, regulatory compliance questions and answers, the legal and constitutional issues at play, and the benefits of retailer wine shipping that accrue to consumers, the states, wine retailers, wineries and importers, and to wholesalers.

SUMMARY

- *The number of different wines in the U.S. market has increased significantly*
- *Upwards of a half million wines are available at retail in the United States*
- *Lack of access to interstate retailer shipments makes most wines unavailable*
- *Imported wines, only sold by retailers, are extremely limited where shipments are banned*
- *Retailer shipping bans interrupt the laws of supply and demand and promote protectionism*

The existence of 50 separate and distinct state markets and 50 sets of laws, as well as the proliferation of wine products over the past decade, give a veneer of complexity to the issue of

“No country comes close to selling a greater diversity or selection of wines than the United States. However...only a small minority of them receive wide distribution in most states.”

interstate retailer wine shipping. However, as this paper shows, in the end, this issue is a simple question of the laws of supply and demand interrupted by politics and protectionism. The degree to which policymakers and stakeholders can see through the latter and embrace the former will determine whether the needs and desires of the American wine consumer will be addressed through responsible public policy.

In the year 2000, the number of wines approved by the U.S. Alcohol and Tobacco Tax and Trade Bureau¹ (TTB) amounted to just under 46,000. These were both imported and domestic wines that were given

certificates of label approval (COLA), the necessary federal prerequisite allowing wine to be distributed in the United States.

In 2023, the number of wines granted COLAs by the TTB rose to just over 115,000, a 151% increase over 2000. In this same 23-year period, the U.S. population increased by only 18%.

This does not suggest that the U.S. wine consumer in 2024 was served by just 115,000 wines. In fact, the number is far larger. Taking into account not just wines approved in previous years and still being distributed, as well as the hundreds of thousands of older and collectible wines that are sold via auctions and retailers specializing in old, rare, and collectible wines, the number of individual wines easily increases to something closer to a half-million different wines.

¹ <https://www.ttbonline.gov/colasonline/publicSearchColasBasic.do>

No country comes close to selling a greater diversity or selection of wines than the United States. However, not all of these wines—in fact only a small minority of them—receive wide distribution in most states. This means that apart from the largest production and most popular commercial wines, most wines available in the United States marketplace are not available in most states, but rather only in a selection of states, and sometimes only from a small selection of retailers scattered across the country.

The State of Kansas proves a fitting example. Examining the listing of active brands and wines available for distribution in Kansas as listed on August 25, 2024² on the Kansas Department of Revenue website, 27,000 different wines were shown to be approved for distribution in that state.

This collection of wines represents a very small minority of the total number of wines available for sale and distribution in the United States at this time. However, these are the only wines available to Kansas wine consumers who shop in the state's wine retailers or buy wine in restaurants.

Neighboring Nebraska is no different. Fewer than 22,000 products (including beer, wine and spirits) were approved for sale by the Nebraska Liquor Control Commission³.

The list of wines approved for sale in Kansas also tells us something about the kind of wine diversity to which consumers in that state are exposed. Of the 27,000 wines approved for sale in the state, no more than 57 of them are listed as representing vintages prior to the year 2000. Meanwhile, the California-based online auction house and wine retailer Winebid.com, regularly offers more than 2,000 wines⁴ from vintages older than the 2000 vintage. These wines range in price from \$10.00 to \$23,000 and represent vintages from 1800 to 1999.

Yet, Kansas consumers are barred from obtaining any of these wines due to the state's ban on direct-to-consumer wine shipments from out-of-state retailers.

In most states, no more than 20,000 to 50,000 individual wines are in distribution and sold by licensed wine retailers. The vast majority of wine sold in the United States is represented by a very small collection of wines that fall somewhere between \$12.00 and \$16.00 per bottle, depending on the state. These are wines produced in large quantities by very large domestic and international companies, distributed in every state by the largest wholesalers, and sold to consumers in a selection of retail outlets from grocery stores and convenience stores to gas stations and fine wine shops.

These are not the wines typically shipped directly to consumers where this practice is legal. The costs of shipping heavy bottles of wine either intrastate or interstate along with the easy availability of the most popular wines disincentivizes the distribution of these wines via direct

² <https://www.kdor.ks.gov/apps/liquorlicensee/ActiveBrands/ActiveBrandsDefault.aspx>

³ <https://lcc.nebraska.gov/brand-label-registration>

⁴ <https://www.winebid.com/BuyWine/Items/At-most/1265852/1/Vintage/Ascending>

shipment. It is the rare, collectible, hard-to-find, and small-production wines that consumers more commonly seek to obtain via interstate direct-to-consumer shipment.

Winery direct-to-consumer shipping is instructive on this issue. The 2024 SOVOS-Wines & Vines Direct-To-Consumer Shipping Report⁵ tracked the volume and value of wines shipped from wineries to consumers in 2023. The report found the average price per bottle shipped was \$46.12, three times the average price of a bottle of wine sold in the United States. However, 60% of wine shipped in 2023 originated with wineries producing less than 50,000 cases annually that averaged \$60.00 per bottle shipped.

While the ShipCompliant-Wines&Vines Report only tracks shipments from domestic wineries and not shipments from wine retailers, the economics and consumer motivations of the retail shipping channel are identical: Higher-priced wines produced in small quantities are sold and shipped to a sub-group of wine enthusiasts.

“When a state’s laws bar the shipment of wine from out-of-state retailers no imported wines are accessible to consumers via direct shipment.”

What separates wine retailer shipping from winery shipping is the type of wines being shipped and the source of the shipments. Nearly all of the 12,000+ wineries in the United States to one degree or another used the direct-to-consumer shipping channel to distribute their wines. Also, these wines are exclusively of domestic origin.

By contrast, the number of licensed wine retailers that claim to ship directly to consumers represents a very small percentage of the total retailer licensees in the United States. It has been estimated that there are more than 400,000 licensed wine retailers in the United States, including grocery stores, convenience stores, drug stores, big box stores, liquor stores, and fine wine retailers. However, only a very tiny percentage of these outlets (far less than the 12,000 U.S. wineries) claim to ship directly to consumers. And of those that will ship wine to consumers, a small subset of these will ship wine outside their state’s borders.

The other important distinction separating wineries and retailers is the products they sell and ship. Wineries in the United States only sell the wines they make here. By contrast, retailers are the only source for the purchase of imported wines in the United States. When a state’s laws bar the shipment of wine from out-of-state retailers no imported wines are accessible to consumers via direct shipment. This means the only imported wines available to consumers are those chosen to be distributed in the state by wholesalers. Consumers’ choices and access to wines are severely limited in this way. Rabobank estimates that in 2021, total online sales of wine by licensed specialty wine retailers reached \$1.14 billion in sales⁶. According to their

⁵ <https://sovos.com/shipcompliant/content-library/wine-dtc-report/>

⁶ Rabobank 2022 Alcohol Ecommerce Playbook, December, 2021
https://research.rabobank.com/far/en/documents/371426_Rabobank_2022-Alcohol-E-commerce-Playbook_Nesin_Dec2021.pdf

research, this figure does not include sales by marketplaces such as UberEats (formerly Drizly) in which the purchased wine is delivered locally. This estimated \$1.14 billion in wine was largely shipped using common carriers.

The licensed specialty wine retailer includes a variety of business models. Among these is the traditional fine wine retailer with a storefront and an online presence that specializes in a large variety of wines, most of which exceed the \$12 - \$16 average price for a bottle of wine sold in the U.S. Exclusively online specialty wine retailers such as Wine.com also fall into this category. Wine-of-the-month clubs are also licensed as retailers. Finally, wine auction houses with both traditional brick-and-mortar businesses such as Sotheby's and Christies as well as online-only wine auction houses such as WineBid.com also fall into the licensed specialty wine retailer category.

The Rabobank estimate of \$1.14 billion in online specialty wine retailer sales in 2021 is likely an underestimate. Rabobank identifies "months of research, dozens of interviews, and exclusive access to unique data sources" as the basis for its estimates. However, the 2024 SOVOS-ShipCompliant Direct-to-Consumer Winery Shipping Report ⁷estimated that wineries shipped \$4.1 billion worth of wine to consumers. This estimate does not include the shipment of any imported wines, nor does it include the multi-million-dollar wine auction marketplace where millions of dollars in rare and collectible wines are bought online and shipped. It does not include the millions of dollars in wine shipped from wine-of-the-month clubs.

The true value of the retailer-to-consumer shipping channel is very difficult to estimate with precision. However, it is undoubtedly larger than the \$1.14 billion that Rabobank estimates for 2021 and could easily be twice that amount.

What's absolutely clear is that the size and value of the retailer wine shipping channel is artificially suppressed by state laws that ban the shipment of wines from out-of-state licensed retailers.

⁷ <https://sovos.com/shipcompliant/content-library/wine-dtc-report/>

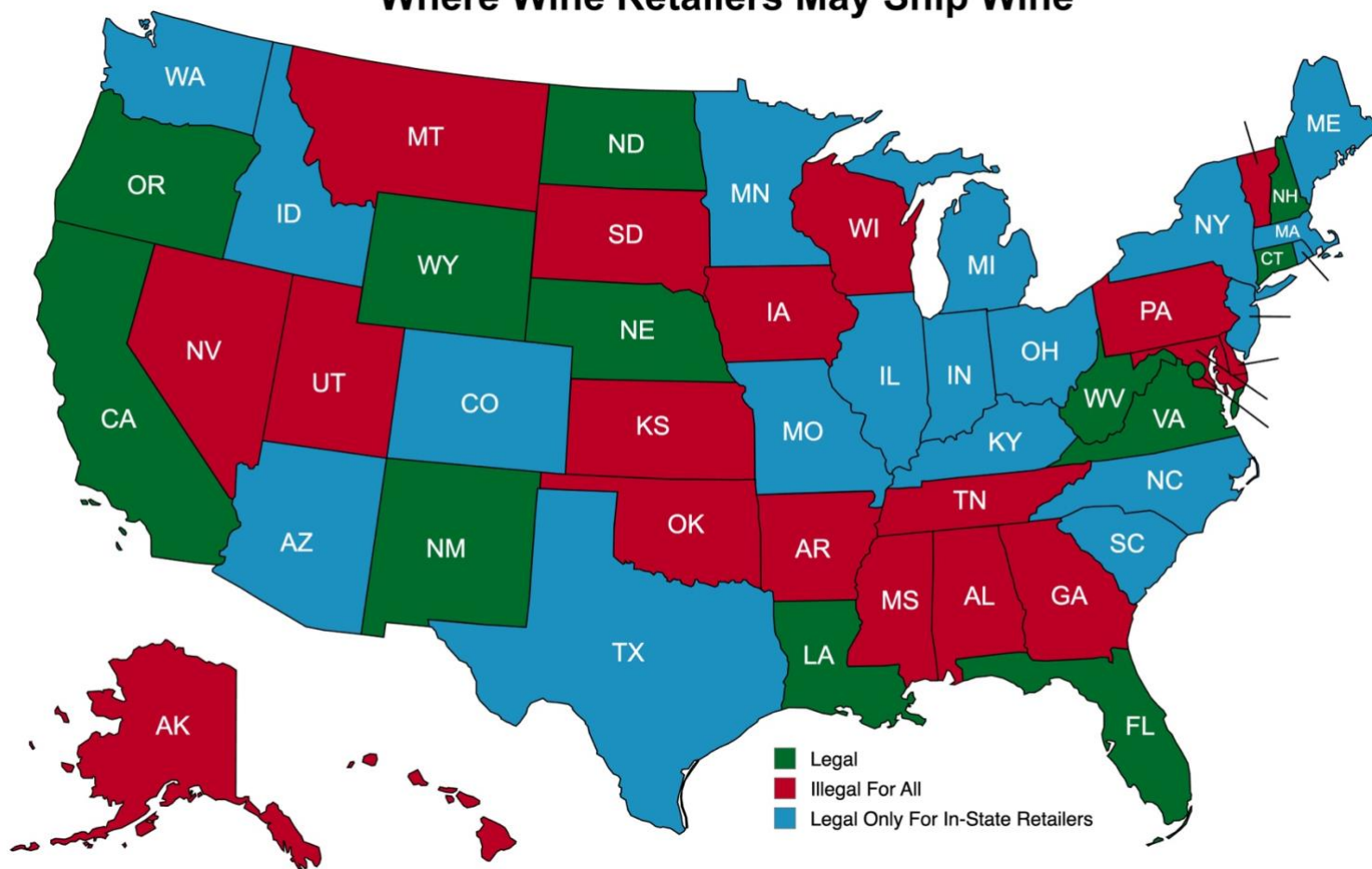
State-By-State Rules for Retailer Wine Shipping

SUMMARY

- Only 13 states currently allow wine shipments from out-of-state retailers
- 19 States only allow wine shipments from in-state retailers
- 19 States ban all retailer wine shipments

When the 21st Amendment to the U.S. Constitution was ratified in 1933, fifty-one separate and distinct alcohol marketplaces were created (including the District of Columbia). The amendment gave states the power to regulate the “delivery or use therein of intoxicating liquors”.⁸ In response, most states immediately implemented a regulatory system that banned

Where Wine Retailers May Ship Wine



⁸ <https://constitution.congress.gov/constitution/amendment-21/>

consumers from receiving deliveries of wine from sources outside the state, including retailers.

As of this writing, only 13 states allow legal retailer-to-consumer shipping to consumers from both in-state and out-of-state licensed retailers. Meanwhile, nineteen states' laws allow only retailer-to-consumer shipping from in-state licensed retailers, while barring such shipments from out-of-state licensed retailers. Finally, 19 states completely bar the retailer-to-consumer shipment of wine from either in-state or out-of-state licensed retailers. The map below outlines current laws on retailer wine shipping.

The above map of the status of state laws concerning retailer-to-consumer shipping is not static. However, it is slow to change and evolve. Since 2008, for example, five states have altered their laws to make retailer wine shipping more restrictive: Alaska, Idaho, Illinois, Missouri, and Nevada. However, in that same period, three states have seen their retailer wine shipping become less restrictive: Connecticut, Florida, and Oregon.

LEGAL FOR ALL

Among those 13 states that allow wine shipments from out-of-state retailers, three regulatory approaches are notable:

Permit Must Be Obtained: Connecticut, Louisiana, Nebraska, New Hampshire, North Dakota, Oregon, Virginia West Virginia, and Wyoming.

Shipment only on Reciprocal Basis⁹: California, New Mexico

No Permit Required: California, New Mexico, Florida

Due to them having access to wine shipments from out-of-state retailers, consumers in small states such as North Dakota, West Virginia, and Wyoming have far greater access to wine than do consumers in much larger states such as New York, Illinois, and Texas. In fact, Wyomingites have access to hundreds of thousands of more wines than New Yorkers due to the difference in wine shipping laws.

This category of states represents 28% of the U.S. Population

ILLEGAL FOR ALL

Consumers living in the 19 states that ban wine shipments from both in-state and out-of-state wine retailers generally have the least access to wine of any Americans. It is also true that wine retailers in these states are severely restricted in their ability to sell and market their inventory even to their fellow state residents.

⁹ States with reciprocity shipping laws only allow wine shipments from retailers in other states where its own retailers may legally ship.

There is little that unites the 19 states that altogether ban retailer-to-consumer shipments. These states can be found in New England (Vermont), the Mid-Atlantic (Pennsylvania and Maryland), the South (Tennessee, Arkansas, Mississippi, Alabama, and Georgia), the Midwest (Wisconsin, Iowa, South Dakota, Kansas and Oklahoma), and the West (Montana, Nevada, Utah, Alaska and Hawaii).

These most restrictive states tend not to be either Control or Licensing states. Additionally, these states include large and small population states.

The states that ban wine shipments from both in-state and out-of-state retailers represent 20% of the U.S. Population.

LEGAL ONLY FOR IN-STATE RETAILERS

This collection of 19 states where direct-to-consumer shipment of wine via common carriers is allowed for their own retailers but not for out-of-state retailers only provides slightly more access to wine than those states that ban all shipping of wine. In Missouri, for example, all wine retailers are required to purchase their inventory only from Missouri-based wholesalers. This means a wine retailer in Branson, Missouri likely has the same selection as a wine store in St. Louis. If they don't the Missourian can simply go online and order wine from the St. Louis retailer and have it shipped. However, access to wine is controlled by the Missouri wholesaler and that's all residents have access to.

This dynamic plays out in most states where only in-state wine retailers are allowed to ship. Some states falling into this category are even more restrictive. In Texas, for example, a wine store may only ship wine to addresses within the county or city where it resides.¹⁰ As of this writing, six states (Arizona, Illinois, Indiana, New Jersey, Ohio and Rhode Island) are defending their discriminatory wine shipping laws.

A number of these only-in-state-retailer states have been sued in federal court where retailers and consumers have argued allowing in-state retailers to ship to residents in the state but banning out-of-state retailers from doing the same violates the dormant Commerce Clause of the U.S. Constitution. As of this writing, six states (Arizona, Illinois, Indiana, New Jersey, Ohio and Rhode Island) are defending their discriminatory retailer wine shipping laws.

The 19 states that only allow wine shipments from in-state retailers represent 52% of the population of the United States.

¹⁰ <https://www.tabc.texas.gov/services/tabc-licenses-permits/wine-shipping-to-texas/>

SUMMARY

- *An effective legal and technological infrastructure to govern retailer wine shipments exists*
- *Reciprocal wine shipping laws are likely unconstitutional*
- *Retailer shipping laws ought not excessively burden out-of-state retailers*
- *Lawmakers should be careful not to confuse shipments with sales in “dry” areas*
- *Retailer shipper reporting requirements should take account of consumer privacy*
- *Tax impositions on out-of-state retailers ought to match those for in-state retailers*

Over the past twenty years, state lawmakers, alcohol regulators, and wine shippers have worked to hone the best and most successful methods for regulating both winery and retailer direct-to-consumer wine shipments. While direct-to-consumer wine shipments were commonplace before 2005, the Supreme Court’s landmark *Granholm v. Heald*¹¹ decision sped the adoption of wine shipping regulations to manage the expansion of this distribution channel that came in the ruling’s wake.

Moreover, as the compliance, regulatory, and legal issues surrounding interstate wine shipments came into relief in the post-Granholm era, numerous products and services have been developed to address the unique issues that confront regulators who oversee wine shipments, and the challenges faced by wine shippers. The innovations surrounding DtC wine shipping and the now two decades of expanding shipments have resulted in a collection of best practices that should inform lawmakers and regulators as they oversee a needed expansion of retailer-to-consumer interstate wine shipment.

The expansion of retailer-to-consumer interstate shipment will occur on a state-by-state basis, rather than through federal legislation allowing the practice. The 21st Amendment’s grant of power to the states to regulate the sale and distribution of alcohol necessitates this cumbersome approach. Following is a set of best practices for regulating retailer direct-to-consumer shipments

Open vs. Reciprocal Shipping Laws

As noted above, the practice of passing “reciprocal” retailer wine shipping laws has gone out of fashion, with only two states (California and New Mexico) still maintaining such systems. Where such laws that restricted shipments into a state only from those states that allowed wine to be

¹¹ <https://www.law.cornell.edu/supct/html/03-1116.ZO.html>

shipped in from outside were commonplace prior to the 2005 *Granholm* Supreme Court decision, today they are rare.

Originally perceived as a way of protecting a state's wineries and retailers from competition by restricting shipments only from states that allowed wine to be shipped in, the Supreme Court made clear that such laws were likely unconstitutional¹² under its interpretation of the dormant Commerce Clause. In fashioning retailer wine shipping statutes, states should avoid reciprocity provisions and instead create an "open" or permit-based system for out-of-state retailers.

Permit-based retailer wine shipping laws, whereby out-of-state retailers are required to obtain a permit or license from the states into which they wish to ship wine, provide the states and their regulatory infrastructures the means to create a legal and economic nexus between the out-of-state retailer and the state as well as granting the state legal jurisdiction over the out-of-state retailer. Permit retailer shipping laws should also be clear that eligibility for shipping permits requires only that the retailer possesses a license in their home state to sell wine in an off-premise location.

By leaning into an open permit system rather than reciprocal laws, states will avoid the risk of lawsuits challenging the reciprocity provision.

Finally, while states should certainly provision a retailer wine shipping permit on the payment of a licensing or permit fee by the out-of-state retailer, that fee must be reasonable and not prohibitively expensive. The temptation to locate the size of the permit fee in proximity to the state's fee to hold an off-premise retailer location license is ill-founded. Out-of-state retailers do not make use of the infrastructure the in-state retailer has access to (police and fire protection, the local wine wholesalers, local public events, street parking, etc). History has shown that retailer wine shipping permits are best priced between \$100 and \$500 annually.

Jurisdictional Consent

Most state laws addressing both retailer and winery shipments have required out-of-state shippers to consent to the legal and regulatory jurisdiction as a condition of obtaining and keeping a wine shippers license. This is necessary and should be included in any retailer wine shipping legislation.

States issuing retailer shipping licenses must have explicit jurisdiction over out-of-state shipper licensees so that there is no dispute over whether the out-of-state shipper can be held to

¹² "The perceived necessity for reciprocal sale privileges risks generating the trade rivalries and animosities, the alliances and exclusivity, that the Constitution and, in particular, the Commerce Clause were designed to avoid ... The current patchwork of laws—with some States banning direct shipments altogether, others doing so only for out-of-state wines, and still others requiring reciprocity—is essentially the product of an ongoing, low-level trade war. Allowing States to discriminate against out-of-state wine "invite[s] a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause." - *Granholm v. Heald*, 544 U.S. 460 (2005)

account for violating the destination state's laws. It is also the case that states must have explicit jurisdiction to perform any number of oversight operations of out-of-state retail wine shippers as well as prosecute the out-of-state shipper in its state courts. This kind of jurisdictional oversight includes but is not limited to, audits of an out-of-state licensee's shipping records when violations of a state's shipping, taxation, or volume limits are alleged to have occurred.

States may not be able to rely on implied jurisdiction that comes with licensing by the destination state or interpretations of the 2017 *North Dakota v Wayfair* decision¹³ on taxation and nexus.

Product Restrictions

Certainly, states creating retailer wine shipping laws ought to include bans on the shipment of prohibited products from out-of-state retailers to the same degree that in-state retailers may be banned from selling certain products. Many states, for example, banned the sale of powdered alcohol.¹⁴ However, statutes governing shipments from licensed out-of-state retailers should not provide any other restrictions on the shipper, particularly of the sort that in-state retailers do not labor under.

For example, the state of Virginia requires out-of-state retailers to register with the state each product it plans to offer for sale in the state. Moreover, it requires the out-of-state retailer to obtain permission from the brand owner before it may offer to ship wine to a buyer in the state. This kind of provision is so burdensome as to make the Virginia retailer wine shipping permit useless. Retailers across the country often offer upwards of 2,500 to 5,000 different brands of wine, and sometimes even more. Obtaining permission from the "brand owner" (often the wholesaler of the brand in Virginia) is not only a dissuasive time and cost burden, but there is also no guarantee the brand owner will consent out of a desire to protect itself from competition. This provision in Virginia law is itself both protectionist in nature and a remnant of sloppy bill drafting.

Better that lawmakers merely require that out-of-state retailers guarantee importers and domestic producers of any wine they ship to consumers in the state have been granted a Certificate of Label Approval (COLA) from the TTB for that wine. This kind of declaration by the out-of-state retail shipper assures the wine meets the standard federal label requirements—the requirement most states impose upon wholesalers before they may sell it to retailers. Certainly, violation of this requirement by the out-of-state retailer would be subject to some form of punishment.

Moreover, assuming the wine an out-of-state retailer is shipping to consumers in a state is approved for sale by the federal government, there is nothing else a state needs to know about the wine in order to regulate the shipment properly. A state may require out-of-state retailers to

¹³ https://www.supremecourt.gov/opinions/17pdf/17-494_i4el.pdf

¹⁴ <https://www.nabca.org/powdered-alcohol-encapsulation>

report the amount of wine or the price of the wine shipped into the state for tax and regulatory purposes, but the specific identity of the wine is not something the state needs or requires to regulate shipments from out-of-state retailers.

Volume Limits on Shipments

It has become standard practice for state wine shipping laws to place limits on the amount of wine that a winery or retailer may ship to an individual in a given period (usually over a calendar year). What's notable about this practice is that there are no limits placed on a state's off-premise retailers on how much can be purchased by a single consumer in the span of a year. Volume limits on out-of-state retailers may therefore not be supportable.

A review of state winery and retailer shipping laws shows volume limits on shipments usually ranging from 12 to 36 cases to an individual annually. From a consumer perspective, a 24-case limit would mark an appropriate maximum limit a state should impose on the retailer/consumer commercial relationship with no limit being the most consumer-friendly volume limit.

Efforts to place volume limits in the 12-case range smack of protectionist legislation, particularly when no limit is placed on how much the same consumer can purchase at a brick-and-mortar off-premise retailer. Additionally, there is no compliance burden placed on regulators when no volume limit or very high-volume limits make their way into the law.

Shipping Restrictions to Dry Areas or Precincts

When states enact retailer wine shipping legislation, it ought to be the principle that unless a city, precinct, or county prohibits the consumption of alcohol altogether, there ought not be restrictions on shipments to any area in the state, including those jurisdictions that ban the sale of alcohol for off-premise consumption.

Shipments of wine even to jurisdictions where purchase for off-premise consumption is banned, do not constitute sales. The sale takes place in an on-line venue, not a geographic territory. This is true despite wine shipping laws that deem a sale from an out-of-state retailer to take place in the state to which the wine will be shipped. Jurisdictions that ban the off-premise purchase of wine almost always do so out of concern for the environment that will be created by the public sale of intoxicating beverages. In the case of online wine sales that precipitate shipment, there is no public evidence for or witness of the sale of alcohol. State legislatures should avoid implementing unnecessary restrictions on shipments to "dry" areas within the state.

Retailer Reporting to the State

To monitor the state's alcohol marketplace and oversee retail wine shippers, laws instituting interstate wine shipping must include a provision requiring the licensed out-of-state wine retailer to remit reports to the state on what they shipped to consumers under their shipping license. However, it is critical that these reports not reveal significant personal and private information about the customers.

To monitor the size and economic trajectory of a state's marketplace, wine shipping laws ought to require out-of-state retail shippers to disclose how much wine they shipped into a state during a given time period. States have analogous laws in place for the in-state distribution of wine. Additionally, oversight of the direct shipping marketplace requires states to be able to compare retail wine shippers' activity with reports of wine shipments made by common carriers. This necessitates periodic reports from licensed wine retail shippers

Information required by licensed wine shippers to be reported should include the address to which the wine was shipped, the date of the shipment, the common carrier used to make the shipment, and the total volume of wine within the shipment. What is not necessary, and a violation of the consumer's privacy, is the inclusion in the report of what specific types of wine were shipped.

The frequency of licensed retailer wine shipper reporting should be as infrequent as possible while still allowing state alcohol regulators to perform oversight of the marketplace.

Taxation of Wine Shipments

Any responsible law concerning retailer wine shipments will include a provision that the shipper remit to the state the same level of sales tax that in-state retailers remit. This promotes both fairness and the common good.

The question of remittance of excise taxes by out-of-state retailers is different. In no state do retailers collect and remit excise taxes. These types of taxes are remitted either at the wholesale or producer level. Moreover, while the level of excise tax may be different from state to state, the retailer wine shipper will be selling and shipping wines that have already had an excise tax laid upon them in their home state. Additionally, the largest differential in state excise tax between two states (\$0.20 per gallon in CA v. \$2.50 per gallon in AK)¹⁵ is a relatively inconsequential \$0.04 per bottle in California versus \$0.50 per bottle in Alaska.

This fact, as well as the constitutional issues that arise when state law imposes a tax upon an out-of-state licensee but not on an in-state licensee, argues for retailer wine shipping laws that do not require remittance of a destination state's excise tax. Lawmakers writing and sponsoring retailer wine shipping laws ought to avoid imposing requirements that include the remittance of excise tax by out-of-state wine retailers.

Packaging and Delivery Requirements

Despite little to no evidence that minors are using the direct shipping channel to obtain alcohol illicitly, states have made considerable efforts to deter minors from accessing alcohol via the direct shipping channel. Most states include requirements that all wine delivered by common carriers be packaged in boxes that have signage announcing alcohol is inside and that a signature of a person of legal drinking age be obtained at the time of delivery.

¹⁵ <https://wineinstitute.com/pliancerules.org/state-wine-excise-tax/>

Both these measures are commonsense safeguards that can be undertaken by retailer shippers and common carriers without imposing significant burdens on either.

Lawmakers crafting retailer direct-to-consumer shipping legislation should include provisions that require all boxes containing wine to have the following or similar wording prominently displayed on the outside of the box: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."

Too often lawmakers succumb to the temptation to include discriminatory and protectionist provisions in bills authorizing interstate wine shipping. Often this is done to appease opponents of interstate shipping. This kind of temptation is satisfied with bill language that includes reciprocal shipping provisions, excise tax remittance, and severe restrictions on the volume of wine that can be shipped to consumers during a month or year. To avoid legal challenges and to promote fair dealing for their own retailers when other states write direct shipping legislation, this temptation should be avoided.

This can be done while at the same time providing state alcohol regulators, tax collectors, and the state's courts with significant tools to ensure the state's laws are adhered to and the citizens of the state are protected from harm. Lawmakers should strive for this balance in crafting wine retailing interstate shipping bills.

SUMMARY

- *Lawmakers should be guided by the non-discrimination principles from the Supreme Court*
- *Wine shipments from out-of-state retailers do not impact a state's "Three-tier system"*
- *Lawmakers should review the evidence that minors do not procure wine via shipments*

As retailer-to-consumer interstate wine shipments have been debated over the years, three important issues have risen to prominent questions debated by lawmakers, the trade, alcohol regulations, consumers, and the courts. Following is a review of those issues.

The Constitutional Question

As mentioned above, states have treated retailer wine shipments in three ways: 1) ban it completely, 2) allow in-state retailers to ship to residents but ban out-of-state retailers from doing so, and 3) allowing both in-state and out-of-state retailers to ship to residents in the state. Because of the consistency of treatment between in-state and out-of-state retailers in the first and third alternatives, there is no constitutional issue at play. However, the second alternative

“Lawmakers considering legislation on retailer wine shipments should sidestep the discriminatory and often protectionist option of only allowing in-state retailers to ship wine to consumers.”

burdens interstate commerce, discriminates against out-of-state businesses, and, as a result, is unconstitutional.

Lawmakers considering legislation on retailer wine shipments should sidestep the discriminatory and often protectionist option of only allowing in-state retailers to ship wine to consumers. By avoiding this option lawmakers deter lawsuits from being filed by out-of-state shippers and their own consumers.

In the landmark 2005 *Granholm v. Heald* Supreme Court decision, Justice Anthony Kennedy, writing for the majority, stated,

“States may not enact laws that burden out-of-state producers or shippers simply to give a competitive advantage to in-state businesses. ...States have broad power to regulate liquor under §2 of the Twenty-first Amendment. This power, however, does not allow States to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers. If a State chooses to allow direct shipment of wine, it must do so on evenhanded terms.”¹⁶

¹⁶ *Granholm v. Heald*, 544 U.S. 460 (2005)

Fourteen years later in *Tennessee Wine v Thomas*, Justice Alito addressed the contention made by many since the *Granholm* decision that the non-discrimination principle outlined in that 2005 decision only applied to wineries and did not extend to wine retailers:

*“This argument...reads far too much into Granholm’s discussion of the three-tiered model. Although Granholm spoke approvingly of that basic [three-tier] model, it did not suggest that §2 [of the 21st Amendment] sanctions every discriminatory feature that a State may incorporate into its three-tiered scheme.”*¹⁷

The Supreme Court has been clear that states may not discriminate against out-of-state wine retailers by barring this group from shipping into a state while that state allows its own retailers to ship to residents. This principle should guide lawmakers when they consider retailer direct-shipping legislation.

Retailer Shipping and the Three-Tier System

“Direct shipments from out-of-state retailers do not impact the functioning of a state’s three-tier system with its mandate that all wine sold in the state first move from an in-state wholesaler to a licensed retailer in the state.”

Very few states adhere to a strict implementation of the three-tier system today. Most include various exceptions such as self-distribution privileges or direct shipment for producers. Still, the idea of an out-of-state retailer shipping directly to a consumer in the state without the wine first going through the destination state’s wholesale tier concerns some regulators, lawmakers, and the middle tier. This should not be a concern.

Direct shipments from out-of-state retailers do not impact the functioning of a state’s three-tier system with its mandate that all wine sold in the state first move from an in-state wholesaler to a licensed retailer in the state. The three-tier system

does not dictate how a consumer purchases wine, which is the event that takes place when a consumer purchases and then receives a shipment of wine from an out-of-state retailer. Rather, the three-tier system governs the path a wine must take and the hands through which it must move in order to arrive in a retail setting. The sale and delivery of a wine to a consumer happens after the three-tier system has done its work.

The three-tier system dictates that a retailer in a state must purchase alcohol from a licensed in-state wholesaler. Wine Shipments from out-of-state retailers do not impose upon this system nor disrupt it.

¹⁷ *Tennessee Wine and Spirits Retailers Association v Thomas* 129 U.S. 2449, 2019

Retailer-to-Consumer Shipping and Minors' Access to Wine

In every instance when the Substance Abuse & Mental Health Services Administration has surveyed minors¹⁸ on the source of the alcohol they obtain, 72% say they did not pay for it and that they received it from another person or “from the home”. Among those minors who did say they paid for the alcohol, none identified the internet as the source.

A 2023 Study conducted by ZeroLink Markets¹⁹, an online sales and marketing platform used by hundreds of wineries and retailers to sell wine online, looked at more than 600,000 online transactions over a three-year period. It found that 0.15% of those translations were initiated by minors. Furthermore, all those attempts at purchasing alcohol on the platform went unfulfilled.

While it is the responsibility of lawmakers and regulators to concern themselves with the serious issue of minors and alcohol use, the data shows that minors are not using the internet and direct shipment to obtain alcohol illicitly.

Equally important for lawmakers to consider is that while minor access to alcohol via direct shipping has been an important issue debated for more than two decades, forty-six states have concluded that winery direct-to-consumer shipping ought to be allowed and made wine shipping legal in their state. The way retailers ship wine to consumers is identical to the methods used by wineries from how orders are taken to the use of common carriers to deliver the wine and obtain proof of age at the time of delivery. Lawmakers and regulators should consider the similarity between winery and retailer direct shipping as well as the evidence that minors are not using the internet and direct shipment to obtain alcohol when they consider retailer-to-consumer wine shipping legislation.

¹⁸ 2023 National Survey on Drug Use and Health, Substance Abuse & Mental Health Services Administration. <https://www.samhsa.gov/data/report/2023-nsduh-detailed-tables>

¹⁹ <https://assets.vinoshipper.com/2023-Zerolink-Age-Verification-Study.pdf>

SUMMARY

- *Coordinated Advocacy to maintain protectionist policies and laws*
- *Bans on wine shipments reduce competition*
- *Claims of health and safety concerns designed to pressure lawmakers*
- *Protection for middlemen wholesalers prioritized over consumer choice*
- *Wholesalers use vast resources and strategies to restrict competition*

State bans on the interstate shipment of wine from out-of-state retailers to consumers are a clear example of protectionist policies driven by the coordinated advocacy of alcohol wholesalers and allied retailers. These bans, which ostensibly aim to protect public health and safety, primarily serve to protect the financial interests of these powerful groups. By restricting competition, these laws ensure that wholesalers and local retailers maintain their market dominance and profit margins, all while stifling innovation and harming consumers.²⁰ This desire on the part of opponents to protect profits by placing protectionist walls around states is the motivating factor for their opposition to proposals to give consumers access to out-of-state wine retailers and the products they sell. Over the years, opposition to and opponents of allowing retailer-to-consumer wine shipments have established a now-familiar approach to the politics surrounding consumer access to wine.

Beneficiaries of Bans: Wholesalers and Retailers

The primary beneficiaries of these bans are alcohol wholesalers and local retailers. Wholesalers, who act as state-mandated middlemen between producers and retailers, have a vested interest in maintaining their control over the state alcohol distribution network. By preventing out-of-state retailers from shipping directly to consumers, wholesalers ensure that all wine sales within a state must pass through their hands, allowing them to collect fees and markups at every step. Local retailers, in turn, benefit from reduced competition, as they are shielded from the potentially lower prices and greater selection offered by out-of-state competitors.

Public Health and Safety: A Convenient Smokescreen

One of the key arguments used to justify these bans is the protection of minors from accessing alcohol. Lawmakers are understandably reluctant to be seen as supporting policies that could potentially increase underage drinking. However, this argument is often exaggerated and lacks concrete evidence.²¹ In reality, out-of-state retailers are subject to the same stringent age

²⁰ Luczy, Matthew, "Why U.S. Wine Lovers Can't Buy the Wines They Want" <https://www.decanter.com/wine-news/opinion/matthew-luczy/luczy-why-us-winelovers-cant-buy-the-bottles-they-want-454319/> Accessed October 18, 2024

verification requirements as in-state retailers. Modern technology, such as online age verification systems and delivery services that require adult signatures, can effectively prevent minors from purchasing alcohol online. The claim that banning interstate shipments is necessary to protect minors is a convenient smokescreen that obscures the true motivation behind these laws: economic protectionism.

Innovation and Diversity Stifled

The impact of these protectionist laws extends beyond the financial interests of wholesalers and retailers. By restricting consumer choice, these bans inhibit innovation within the wine industry. Out-of-state retailers often offer a wider selection of wines, including rare and unique bottles that may not be available locally. By preventing consumers from accessing these options, states stifle the diversity and creativity that drive the wine market forward. Additionally, these bans limit the ability of small and boutique wineries to reach a broader audience, as they are forced to rely on the traditional distribution network dominated by large wholesalers.

Consumers: The Real Victims

Consumers are the ultimate victims of these protectionist policies. By restricting access to out-of-state retailers, states effectively limit the choices available to wine enthusiasts. This not only reduces the variety of wines that consumers can enjoy but also keeps prices artificially high. Out-of-state retailers often offer competitive pricing, and their entry into the market could drive down prices across the board. By maintaining these bans, states ensure that consumers continue to pay higher prices for a more limited selection of wines.

Political and Legal Strategies of Wholesalers

In addition to their direct influence, alcohol wholesalers employ a variety of political and legal strategies to maintain bans on interstate wine shipments. First, they invest heavily in lobbying efforts, forming powerful coalitions to ensure their interests are prioritized. By financially supporting sympathetic state lawmakers to the tune of \$100 million over a decade²² and leveraging long-standing relationships, wholesalers can effectively sway legislative agendas. Moreover, they frame their arguments in terms of protecting public health and safety, knowing that few lawmakers wish to appear negligent on these issues. On the legal front, wholesalers have strategically involved themselves in litigation over discriminatory bans on retailer wine shipments, often applying for intervenor status in the cases and submitting amicus briefs in relevant court cases at the Appeals Court and Supreme Court level²³ to shape judicial opinions in their favor. By presenting themselves as protectors of local businesses and communities,

²¹ “*American Moms Know DtC Spirits Shipping is Dangerous*”, Wine & Spirit Wholesalers of America, <https://www.wswa.org/news/american-moms-know-dtc-spirits-shipping-dangerous> Accessed October 18, 2024

²² “*Report Shows Alcohol Wholesalers Political Contributions Top More than \$107 Million*”, Wine Business, <https://www.winebusiness.com/news/article/194830>

²³ Docket # 18-96, Tennessee Wine v Thomas, U.S. Supreme Court, <https://www.supremecourt.gov/docket/docketfiles/html/public/18-96.html>

wholesalers have managed to defeat bills aimed at loosening restrictions on wine shipments. This blend of political influence, strategic litigation, and public relations tactics has allowed them to maintain a protective barrier around their market, ensuring their continued dominance and profitability at the expense of consumer choice and industry innovation.

State bans on the interstate shipment of wine from out-of-state retailers are a clear example of protectionist policies driven by the coordinated advocacy of alcohol wholesalers and allied retailers. These bans benefit these groups' bottom lines by reducing competition and maintaining their market dominance. The arguments used to justify these bans, such as protecting minors, are often exaggerated and lack concrete evidence. Ultimately, these protectionist laws inhibit innovation, uphold protectionist aims, and harm consumers by limiting their choices and keeping prices high. It is time for states to reconsider these outdated and economically harmful policies in favor of a more open and competitive wine market.

SUMMARY

- *Retailer wine shipping means greater choice and lower prices for consumers*
- *Collectors and enthusiasts are entirely frustrated by bans on retailer shipments*
- *Millions of dollars in tax revenue is realized by states from retailer wine shipments*
- *Domestic producers and importers have access to more markets with retailer shipping*
- *Retailer shipping helps build small brands into brands wholesalers can work with*

The value of legalizing interstate retailer shipping can't be understated. The benefits accrue to every stakeholder from a state's treasury and producers to its citizens, retailers, and wholesalers. Perhaps the greatest benefit comes with the market competition that is created. As wholesalers consolidate and lead to fewer choices on the shelves, while at the same time, the number of potential products within the United States continues to expand, interstate retailer shipping plays the role of virtual wholesaler in a state where consumers are instantly given access to hundreds of thousands of wine products not available on local shelves. This broadening of selection forces local wholesalers to compete by broadening their own selections.

“By far, consumers more than any other stakeholder benefit from interstate retailer shipping being allowed in a state.”

Another win for consumers. Below we look at the benefits of a state legalizing interstate retailer shipments as they apply to all stakeholders.

Consumers — Greater Choice and Lower Prices

By far, consumers more than any other stakeholder benefit from interstate retailer shipping being allowed in a state. Through friends, travel (both domestic and international), media, and social

media, consumers have never been confronted so readily by the myriads of wine choices that are available in the United States through domestic production as well as the increasing number of imported wines. Interstate retailer shipping gives those consumers easy access to nearly every wine available somewhere in the U.S., even if the wines distributed in retail settings in their state represent a tiny minority of what's available nationally.

Access to wine is increased substantially when imported products are considered. Imported wines, unlike, domestically-produced wines, are only sold by retailers. While a consumer who can't find a particular California, Oregon, or Washington-produced wine at a local retailer, they may have access to the wine via winery direct shipment. Foreign wineries, however, do not direct ship into the United States, taking the producer direct shipping option off the table for foreign-made wines. When a state legalizes interstate retailer shipping, the entire collection of imported wines available anywhere in the United States is accessible to a state's consumers.

Additionally, without access to wines sold by retailers and auction houses across the country, a state's consumers shop for wine locally within a semi-closed market. This in turn allows for higher prices to the consumer. A Federal Trade Commission study upon which the Supreme Court relied heavily in its 2005 *Granholm* decision²⁴ found not only that bans on interstate shipping decrease selection but also increase the price of wines:

"The study also found that, depending on the wine's price, the quantity purchased, and the method of delivery, the Internet can offer consumers lower prices. In many cases, the online and offline price differences are statistically significant. Excluding transportation costs, the bottles in the sample are, on average, \$5.84 (16%) less expensive if purchased online.... Even including transportation costs, however, consumers can save substantial amounts of money on more expensive wines by buying online. For bottles priced at \$20.00 or more, a McLean consumer can save an average of between \$4.40 and \$7.19 per bottle by buying online, or 5-13%, depending on the shipping method and quantity purchased. For bottles priced at \$40.00 or more, a McLean consumer can save an average of between \$15.00 and \$18.45 per bottle by buying online, or 13-21%, again depending on the shipping method and quantity purchased."

Collectors and Enthusiasts — Access to The Wines Not Available Locally

Perhaps more than any other slice of the wine-consuming public, it is collectors and enthusiasts that benefit most from a state legalizing interstate retailer shipments. These types of consumers buy wine at a much higher frequency and at a much higher average price per bottle. They tend to seek out rare, collectible, and small-production wines—the type that are not typically stocked in large numbers by most retailers but are usually available at a small number of specialty wine retailers and auction houses across the country. Interstate retailer wine shipments are essential to this group of consumers, and they will use it extensively in their wine purchase patterns.

The State — A Revenue Enhancer

Legalizing interstate retailer shipping increases tax revenue in a state. Consumers rarely purchase commonly-distributed wines from out-of-state shipments because they are often readily available in every state, and because the cost of shipping lower-priced wines such as these is very expensive on a per-bottle basis.

As a result of this dynamic, consumers seeking a particular wine they can't find locally, are unlikely to purchase another wine as a substitute. However, if interstate retailer shipping were an option, the consumer uses it and the tax revenue accrues to the state where otherwise the state would not receive any tax revenue if the consumer is blocked from purchasing from an out-of-state retailer. Interstate retailer shipping is a revenue enhancer for the state.

Producers and Importers

Domestic producers benefit from interstate retailer shipments by having a larger market for their products. Many domestic producers, particularly those with smaller production and higher prices

²⁴https://www.ftc.gov/sites/default/files/documents/reports/possible-anticompetitive-barriers-e-commerce-wine/winereport2_0.pdf

do not see their wines distributed in every state like the mass-produced and distributed wines. When retailers in the limited number of states where their wines are sold can legally ship to consumers across the country, the market for domestic producers expands considerably.

Importers sell foreign wines to wholesalers, who then distribute them to retailers. Like domestic producers, importers often only see their portfolio of wines distributed in a limited number of states by a limited number of wholesalers. When states legalize retailer wine shipments, those limited-production imported wines are accessible to a much larger consumer marketplace, expanding their sales.

Wholesalers

While many wholesalers will distribute some small production wine most commonly shipped direct-to-consumer by retailers, oftentimes these wines simply do not sell fast locally, and certainly not as fast as the mass-production wines that make up the majority of wholesalers' revenue. Yet, if these small production wines moved off the shelves at a higher velocity, the wholesalers who supply them to retailers would have the opportunity to replace them with more wines. Higher velocity sales are much more likely when their retailer clients have access to consumers not only locally, but across the country—as interstate retailer shipping allows.

Finally, wholesalers should view retailer interstate shipping as an incubator for small brands with limited distribution. The interstate shipment of small production wines often results in these products attaining greater exposure and demand by consumers. The growth of these brands via interstate shipment will often blossom into products wholesalers can then have greater success distributing.

Conclusions

It is an irony that in a country where the three-tier system of alcohol regulation is said to reign supreme first-tier producers are largely allowed to retail wine across state lines, while third-tier retailers are largely forbidden from retailing wine across state lines. This irony and injustice is a logical product of history and happenstance. However, it is not a product of community consent.

Over the past few years, several states including Michigan, Ohio, and Tennessee have expressed concern that consumers in their states have illegally received shipments of wine from out-of-state retailers. This is undoubtedly true. But what you don't hear are states complaining that producers of wine are acting as retailers and selling thousands of wines from across the

“The numerous state laws that ban consumers from accessing wines from retailers outside their state are largely held in contempt by consumers and retailers alike.”

globe to consumers. You don't hear complaints that wholesalers are growing grapes, producing wine, and selling it to other wholesalers.

The reason we don't encounter these situations is that no one believes the laws prohibiting these practices are unjust or don't represent the will of the community. By contrast, the numerous state laws that ban consumers from accessing wines from retailers outside their state are largely held in contempt by consumers and retailers alike.

In 1934, the authors of the most influential book on how states could re-regulate alcohol in a post-Prohibition environment²⁵ took pains to stress the importance of fashioning laws that met with public approval:

“We need to be on our guard against any system of control that has outlived its usefulness of that no longer represents the prevalent ideas and attitudes of the community. Our legal prescriptions and formulas must be living conceptions, capable of growing as we grow. For law is itself a social phenomenon and has no meaning apart from the uses and necessities from which it springs.”

State lawmakers, presented with the benefits of interstate retailer shipping listed above as well as with the obvious disregard by consumers and retailers for the bans on interstate retailer shipping, have nonetheless ignored calls to allow this practice and largely failed to make changes to the laws. Dysfunctional, unconstitutional, and anti-consumer laws invite disrespect for those laws and those who created, support and are charged with enforcing them. Ignoring the real benefits of a practice that has little or no negative impact yet also addresses the desires of constituents is a recipe for lawbreaking.

The National Association of Wine Retailers (NAWR) will continue to advocate for changes in the retailer wine shipping laws based on the principles laid out in this white paper because it is both the best policy and because it matches the will of the community. NAWR will continue to support

²⁵ Fosdick, Raymond (1933) *Toward Liquor Control*, Harper

lawsuits that challenge state laws that discriminate against out-of-state retailers by banning shipments from retailers outside their state while allowing it by retailers inside their states because justice is required, and the results will lead to proper 21st century alcohol control policy.

The legislative effort necessary to make the changes recommended in this white paper and to bring a state's alcohol code up to community standards is relatively simple. Nearly every state has a model in hand already with their winery direct-to-consumer shipping laws. NAWR has produced model legislation²⁶ that can also help guide lawmakers in the crafting of new retailer shipping laws. A number of states that do allow interstate retailer shipping can also act as models for legislators seeking to remedy the injustice and infirmity of laws that ban consumers from accessing all the wines they want in a well-regulated way.

Finally, we remind lawmakers to recall that no one ever lost their seat for effectively representing the will of the majority of the people. We urge them to ignore calls to defend and support protectionist laws that only benefit the profits of a very small group. But most importantly, we ask lawmakers to honestly weigh the risks and benefits of policies that discriminate against free trade, reduce tax revenue, invite litigation, and harm the interests of their constituents.

²⁶ <https://nawr.org/wp-content/uploads/2019/03/MODEL-WINE-RETAILER-SHIPPING-BILL.pdf>

Founded in 2007, the National Association of Wine Retailers represents progressive and reform-minded wine and spirit merchants located across the country. In addition to providing benefits to its members, the Association works to encourage and create a modern alcohol regulatory system that emphasizes a level playing field for all industry participants and well-regulated access to legal alcohol products for consumers. For more information on the Association see www.nawr.org.

