



# MODEL DIRECT-TO-CONSUMER SHIPPING LAW

August 23, 2023

1. Notwithstanding any law, rule, or regulation to the contrary, any person currently licensed in this or any other state as a brewer, brewpub, or other manufacturer of beer who obtains a Beer Direct Shipper License, as provided below, may ship beer directly to a resident of [State] who is at least 21 years of age for such resident's personal use and not for resale.
2. Before sending any shipment to a resident of [State] the Beer Direct Shipper Licensee must first:
  - a) File an application with the [Department of Alcoholic Beverage Control (Department)],
  - b) pay a \$100.00 registration fee,
  - c) provide to the Department a true copy of its current brewer, brewpub, or other manufacturer of beer license issued in this or any other state, and
  - d) obtain from the Department a Beer Direct Shipper License.
3. All Beer Direct Shipper Licensees shall:
  - a) Not ship to any address in an area identified by the Department as a "dry" or local option area.
  - b) Ensure that all containers of beer shipped directly to a resident in this state are conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."
  - c) If located outside of this state, report to the Department annually the total amount of beer shipped into the state the preceding calendar year.

- d) If located outside of this state, annually pay to the [State Revenue Agency] all sales taxes and excise taxes due on sales to residents of [State] in the preceding calendar year, the amount of such taxes to be calculated as if the sale were in [State] at the location where delivery is made.
  - e) If located within this state, provide the [State Revenue Agency] any additional information deemed necessary beyond that already required for retail sales from the brewery to ensure compliance with this section.
  - f) Permit the Department or the [State Revenue Agency] to perform an audit of the Beer Direct Shipper Licensees records upon request.
  - g) Be deemed to have consented to the jurisdiction of the Department or any other state agency and the [State] courts concerning enforcement of this section and any related laws, rules, or regulations.
4. The Beer Direct Shipper Licensee may annually renew its license with the Department by paying a \$50.00 renewal fee and providing the Department a true copy of its current brewer, brewpub, or other manufacturer of beer license issued in this or any other state.
  5. The Department and the [State Revenue Agency] may promulgate rules and regulations to effectuate the purposes of this law.
  6. The Department may enforce the requirements of this section by administrative proceedings to suspend or revoke a Beer Direct Shipper License, and the Department may accept payment of an offer in compromise in lieu of suspension, such payments to be determined by rule promulgated by the Department.
  7. Shipments of beer direct to consumers in [State] from persons who do not possess a current Beer Direct Shipper License from the Department are prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such a shipment is guilty of a misdemeanor punishable by [insert fine and/or jail]. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports or receives such a shipment commits an unfair trade practice.

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## Direct-to-Consumer Shipping Myths

February 21, 2023

Though few and far between, there are opponents making strong claims about the policy dangers of interstate direct-to-consumer (“DtC”) shipping of alcohol beverages. The Brewers Association is happy to address these claims in support of DtC shipping, and the positive impact it will have on the more than 9,200+ small and independent breweries across the country.

### Myth #1: Minors Will Buy DtC Shipped Products

- Opponents to DtC often point to anecdotal incidents of minors purchasing alcohol online (likely the result of state “sting” operations) as evidence that the DtC shipping threatens to increase underage drinking. But this claim does not survive factual scrutiny.
  - Anecdotal stories provide no basis for good policy choices. One can find many instances of traditional brick-and-mortar retailers selling to minors. This does not justify banning that sales channel.
- Underage drinking has been on a steady decline for over three decades.<sup>1</sup>
- During that same time, DtC shipping of alcohol, primary wine, expanded rapidly and substantially.<sup>2</sup>
  - While the COVID-19 pandemic substantially increased alcohol shipping and delivery, data shows steep declines in underage drinking during that same timeframe.<sup>3</sup>
  - In states where DtC shipping is legal, underage drinking has declined at a higher rate.
- Opponents also push back on DtC proponents’ reliance on a 2003 Federal Trade Commission (FTC) study finding no correlation between DtC and underage access to alcohol, arguing that age renders its conclusions questionable. They have not, however, requested a new FTC study to update the 2003 report’s conclusions. The Brewers Association welcomes a new FTC study and suspects the results would be the same.
- The reality is that many sensitive products – from prescription medicines to firearms – are successfully shipped to consumers’ homes.
- DtC Shipping opponents also embrace e-commerce solutions such as local, licensed delivery from in-state retailers.

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<sup>1</sup> Source: *Monitoring the Future*, [2021 results available here](#).

<sup>2</sup> In the 2000, just sixteen states permitted interstate shipping by wineries. Today that number stands at 47.

<sup>3</sup> *Id.*

- If common carriers (*e.g.*, FedEx and UPS) cannot be trusted to check identification upon delivery, how can opponents responsibly embrace shipping models that rely on other services such as Uber Eats and Door Dash to bring alcohol to consumers' homes, or on retail employees not trained in alcohol service (*e.g.*, the gig economy employees)?
- Both common carriers and delivery drivers can check I.D.s and safely deliver alcohol products. Wholesalers concern about underage access to DtC shipped alcohol magically disappears once wholesale companies profit from the alcohol in question.

## Myth #2: DtC Shippers Don't Pay Taxes

- Hard data, however, contradicts this assertion and shows that state excise tax revenues have increased during an era of rising DtC shipping.<sup>4</sup>
- Opponents point to states enforcing tax laws against *illegal* alcohol shippers as a reason to oppose laws allowing legal DtC sales and shipments.
  - That is akin to arguing that decades of cannabis arrests and prosecutions demonstrate why cannabis should remain illegal.
  - It also ignores a fundamental learning of the failed Prohibition experiment – prohibiting an activity that many consumers want to engage in only generates and facilitates a black market.
  - The truth is the best way to combat illegal shipments is by making shipping legal for the businesses who are regulated and responsible for the shipping of their beverage alcohol product. Taxes paid have increased in line with states passing more business friendly DtC shipping legislation, be it taproom sales and/or shipping.
- The fact that states can identify and enforce against illegal shipments is proof that the system is working.

## Myth #3: States Can't Regulate Out-of-State Shippers

- Opponents claim that states cannot enforce the law against out-of-state companies.
  - There are multiple instances of enforcement actions by many states (Michigan, North Carolina, Ohio, and Virginia) against out-of-state shippers.
  - If true, and out-of-state companies are effectively immune from state laws, then why advocate to preserve meaningless legal prohibitions? New legislation should be passed to effectively help combat against this.

## Myth #4: DtC Shipping is Full of Counterfeits

- Opponents claim that DtC shipping facilitates counterfeit alcohol sales, pointing to countries like Mexico and India as evidence.
  - The truth is that they produce no evidence that such counterfeits are facilitated by home delivery as opposed to, for example, state alcohol prohibitions (as in India) that turn people towards “bathtub gin” – just as Americans purchased such dangerous products during our failed Prohibition experiment.
  - They also engage in rank “cherry picking.” Very few, if any, markets around the world regulate alcohol like the U.S., and very few have meaningful counterfeit alcohol problems. The fact that

<sup>4</sup> Source: Tax Policy Center, <https://www.taxpolicycenter.org/statistics/state-and-local-alcohol-tax-revenue> (last visited September 15, 2022).

a few markets do have counterfeit issues hardly establishes any causation between three tiers and a lack of counterfeits in the market.

- This argument also creates a false impression of today's wholesalers and retailers engaged in practices designed to authenticate and test the alcohol beverages they sell.
  - That is simply not reality; wholesalers and retailers do not test or otherwise evaluate the safety of the products they purchase.
  - Like almost all commercial buyers, wholesalers and retailers rely on the express and implied warranties of the manufacturer that products are safe and wholesome.
- DtC shipping would not alter the substantial federal regulatory mechanisms which ensure that U.S. alcohol beverages are safe. These mechanisms include the ingredient safety requirements of the Food & Drug Administration, that agency's good manufacturing practice regulations, and the formula and label approval requirements of the Alcohol and Tobacco Tax and Trade Bureau.

### **Myth #5: DtC Shipping is a Jobs Killer**

- WSWA points to wholly speculative "studies" claiming that DtC shipping would put thousands of jobs at risk. But an examination of facts (not self-serving projections) tells a very different story.
- Evidence from states that currently allow beer consumers to receive beer direct from U.S. breweries show there are 15% MORE beer distributor jobs per capita than in states without direct-to-consumer beer.
  - While this data cannot prove causation, it undermines bogus "studies" and shows zero (and in fact slightly positive) correlation between DtC beer shipping and beer wholesaler jobs.
- Wine and spirit wholesaler jobs and liquor store jobs have INCREASED as a percentage of the population during the period when the U.S. we went from 27 states to 47 states allowing consumers to order wine direct from wineries.

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## Direct-to-Consumer Shipping Principles

February 21, 2023

The Brewers Association (BA) believes that brewery direct-to-consumer (DtC) shipping legislation is good for small brewery businesses, good for consumers, and good for state governments. We urge lawmakers to pass DtC shipping legislation and start expanding access and innovation for small and independent craft brewers.<sup>1</sup>

The BA also believes that in order to do this, it must be done right: including safeguards to ward off abuse is imperative, as is regulation and implementation to ensure small and independent craft brewers throughout the country have the same access to the system.

Consumers want more variety, from more producers, whether those producers are in state or out of state. The Sovos ShipCompliant/Harris Poll consumer survey finds that 92% of regular craft beer drinkers would purchase DtC shipped beer monthly if permitted in their state, yet beer DtC interstate shipping is only available to 14.8% of the 21+ U.S. population. The potential of this mostly untapped market is huge. (Regular craft beer drinkers are defined as those who drink craft beer at least once per month.)

Of course, beer is a socially sensitive product, and DtC shipping legislation needs to incorporate appropriate, proven safeguards.

### **BA supports legislation with the following features:**

1. Require regulatory oversight consistent with other sellers of alcohol:
  - a. All sellers must obtain a license, which must be periodically renewed;
  - b. Sellers must subject themselves to the jurisdiction of the state; and
  - c. Sellers must submit periodic reports to the relevant state regulatory body.
2. Guardrails to avoid abuse (this infrastructure already exists for wine):
  - a. Conspicuous labeling that the package contains alcohol;
  - b. Require a signature by a 21+ individual before delivering the product;
  - c. Compulsory ID check for delivery to be completed.

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<sup>1</sup> A craft brewer is small (produces less than 6M barrels per year – roughly 3% of the U.S. beer market), independent (of a large brewer or other large alcohol beverage industry member), and brews beer in the U.S.

3. Mechanisms to protect state revenues:
  - a. All sellers must report to state tax authorities and pay the applicable state excise tax on beer; and
  - b. All transactions subject to sales tax if that tax is imposed in other retailer sales of beer.
4. Breweries from both in and out of state must have equal access to consumers to avoid Commerce Clause violations and ensure innovation from craft brewing and selection for consumers in the state.

Overall, DtC shipping gives consumers in a state the ability to seek out and find more variety. It will not replace a regular “beer run” to the store down the street but will be for special occasions – a birthday or anniversary or Super Bowl party – to get something special to share with friends or family. Consequently, brewery DtC shipping of beer will not undermine businesses operating within the three-tier system, as most consumers will continue to purchase widely available products through local retail channels, just as they continue to do for wine.

As breweries make a name for themselves through DtC shipping, the potential exists for wholesalers to find and distribute new products and brands that would have otherwise remained unavailable in their territories.

In sum, legal drinking age consumers should be able to purchase the beers they want from the brewers that can supply them in a regulated and responsible manner.

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# The Truth About Alcohol Delivery and Underage Drinking

October 18, 2022

Source: [rstreet.org](https://rstreet.org) / C. Jarrett Dieterle

The COVID-19 global pandemic has led to a broad re-thinking of American alcoholic beverage laws. That's because, in a time of lockdowns, more and more consumers transitioned to a delivery-based model of purchasing daily household products. In doing so, they were naturally interested in having a six-pack of beer or a bottle of their favorite whiskey delivered to their homes.

During COVID-19, states like Kentucky passed comprehensive reforms to allow distillers and brewers to deliver their products directly to consumers—a practice which is known as Direct-to-Consumer (DtC) shipping. DtC has long been practiced in the American wine industry—the vast majority of states allow wineries to deliver bottles to their customers' homes—but it is much rarer in the brewing and distilling industry. All told, only a small handful of states permit breweries and distilleries to engage in DtC shipments.

And certain influential interest groups want to keep it that way. A new survey by alcohol wholesalers blares a warning that American mothers are "concerned" that reforms like DtC delivery could be a gateway to more kids getting their hands on alcohol. Scary warnings aside, the empirical evidence on this topic is clear: There is no consistent correlation between DtC delivery and underage drinking.

## A Long-Boiling Debate

To understand the dynamics at play, it's important to break down how the alcohol industry works. The system predominantly operates under what is known as the three-tier system, which requires legal separation between producers, wholesalers and retailers of alcohol.

The three-tier system impacts the alcohol supply chain in myriad ways, but it makes it more difficult for businesses like breweries and distilleries to sell and deliver their products straight to consumers. Instead, they have to route those products through a wholesaler and then a retailer—only then can they be sold to the customer. If this sounds anachronistic in modern day America, that's because it is: It would be analogous to Apple only being allowed to sell its products at a store like Best Buy, rather than also being able to sell directly from the online Apple Store.

The three-tier system traces its roots to the immediate aftermath of Prohibition, and—unsurprisingly for a system that has been around for so long—it has created significant reliance interests. Namely, alcohol wholesalers and retailers are often leery of reforms like DtC shipments since those delivery models circumvent the three-tier model by allowing producers to sell straight to consumers.

While this type of resistance is an unremarkable, albeit unfortunate, example of economic protectionism, it rarely manifests itself in these terms. Instead, opponents of reforms like DtC argue that the real dangers of producers being able to ship their products straight to consumers are potential health and societal harms.



## A Renewed Warning

One of the most-repeated arguments by opponents is that reforms like DtC could lead to more underage individuals gaining access to alcohol. These worries, while understandable, are devoid of significant data to support them. Perhaps in an attempt to adduce such evidence, a recent survey conducted on behalf of the Wine and Spirits Wholesalers of America (WSWA) features an eye-catching headline: "New WSWA Study Finds U.S. Mothers Concerned that Direct-to-Consumer Spirits Shipping Endangers Children."

When one digs down into the details, however, there is less to these purported findings than meets the eye. For one, the survey framing likely influenced the results. The survey methodology included polling 2,000 mothers nationwide via online interviews. An additional 600 mothers were surveyed in New York and Texas, because both states are scheduled to consider pending DtC reform bills in upcoming legislative sessions. Why only mothers, and not fathers, were sampled in the survey is a curiosity that goes unexplained.

These mothers were asked to agree or disagree with broad questions, like if it was "important for lawmakers to consider [preventing underage alcohol access] when deciding alcohol laws and regulations like DtC spirits shipping privileges?" Over 90 percent of mothers answered in the affirmative. Another question asked the mothers if they were "concerned" that DtC shipping of spirits "will lead to underage access?" Over 70 percent answered in the affirmative.

In order to qualify as a mother who thought it was "important" for lawmakers to consider underage alcohol access when deciding issues like DtC shipping, the respondent had to think it was either "somewhat important" or "extremely important." Similarly, a mother "concerned" that DtC would lead to more underage access was one who was either "somewhat concerned" or "extremely concerned."

Needless to say, it does not take a PhD in polling data to see the inherent limits of this type of questioning: Ask any parent if they are at least "somewhat concerned" about pretty much any topic that could affect their children's lives, and you'll likely get a chorus of head-nods and affirmations. "Are you at least somewhat concerned your child might get lost at the zoo on the field trip?" "Are you at least somewhat concerned your kid might be exposed to drugs at an after-school party?" Pretty much every parent has fears about their children, which makes affirmative responses about those fears fairly unremarkable.

To be clear, being concerned about your child's well-being is an extremely rational impulse for any parent. But when it comes to determining public policy questions, good empirical data, rather than survey results about "concern" levels, is still the best guide.

The survey also portrays completely non-controversial sentiments by mothers as somehow indicative of opposition to DtC delivery in all forms. For instance, few rationale observers—even those most in favor of DtC delivery—would dispute that it is "important" for lawmakers to consider underage drinking when analyzing DtC reforms. Of course, taking something into account while developing smart reforms is far different from rejecting a reform outright—a distinction that gets lost in the way the survey was administered.

In a follow-up post, the WSWA did attempt to cite to an actual empirical study on underage access and alcohol delivery. According to that study, 45 percent of alcohol orders by underage buyers were successfully received during the course of the study. Once again, though, there are clear limitations to this data.

First, this study suffered from a severely limited sample size, both numerically and geographically: It involved a mere eight buyers, all located in North Carolina, who placed a grand total of 100 alcohol orders over a two-week period. Additionally, the study is now over a decade old and apparently was never expanded beyond these original constraints.

Attempting to base widescale public policy decisions on the experience of eight people, all located in one locale, is risky and unnecessary given that better data on the history of alcohol shipments exists, as discussed below.

## **The Facts About Underage Drinking and DtC Reforms**

Fortunately, such data exists. Earlier this year, the R Street Institute published an empirical study: "Alcohol Delivery and Underage Drinking: Data-Driven Lessons from Direct-to-Consumer Wine Shipping." This research was based on a simple concept—since DtC wine shipping has existed for decades in America, it is a relatively straightforward endeavor to evaluate empirically whether such shipments led to a rise in underage drinking over that time.

As noted, DtC shipping for beer and spirits remain less widespread across America, but over 45 states currently allow some form of DtC wine shipments. The trend toward DtC wine has developed over the past few decades, providing ample opportunity to measure its effects.

We used data from the Center for Disease Control's long-standing Youth Risk Behavior Surveillance System (YRBSS) survey. For decades, the YRBSS has asked high school students whether they currently drink alcohol, defined as consuming at least one alcoholic drink in the past 30 days.

It should be noted that asking a respondent a simple "yes" or "no" factual question—as in, did you or did you not have a drink within the past 30 days?—produces a more specific, objectively quantifiable answer than inquiring into a respondent's subjective "concern level" about a certain topic. To conceptualize this, consider the difference between asking a respondent "Are you concerned about high gas prices?" versus "Did you vote for candidate X on November 8?" The prior question involves a subjective value judgment—i.e., how important are higher gas prices to me and how much do I care about this issue?—versus the objective "yes" or "no" factual answer for the latter.

Overlaying the YRBSS' underage drinking data with state laws governing DtC wine shipping over time allows one to compare the change in underage drinking rates in states that have allowed DtC wine shipping versus those that have not.

It's important to note that underage drinking has declined precipitously across America over the past few decades. From 1991 to 2019, the number of high school students who drank fell from 50 percent to 29 percent. While every state saw a decline in its underage drinking rates in recent decades, our research was able to determine if the extent of those declines were impacted by a state's laws on DtC wine shipping.

## **Our research produced the following conclusions:**

States that allowed DtC wine shipments in 2003 and in 2019 showed an average drop of 44.3 percent in the underage drinking rate. States that did not allow DtC wine shipments in 2003 and still did not in 2019 showed an average drop of 43 percent. In other words, underage drinking rates declined a few percentage points

more in states that have continuously allowed DtC wine shipments over the past few decades versus ones that have continuously prohibited it. This is not to suggest that DtC wine shipments necessarily reduce underage drinking, but, at the very least, it does suggest that DtC wine shipments have not led to an increase in underage drinking rates.

Put another way, there is no empirical evidence to suggest that states that legalized DtC wine shipments over the past few decades saw greater levels of underage drinking.

## **Moving Forward**

Given that there is an overall lack of evidence that allowing alcohol to be shipped directly to consumers' homes has led to more underage drinking, the focus for policymakers should be on continuing to emphasize proper IDing protocol and training of delivery personnel-tools which can ensure that alcohol is delivered in a safe and responsible manner.

Rather than relying on surveys attempting to gauge a respondent's subject "concern" about whether an issue is "important" to them, policymakers should look to hard data. The history of DtC shipping in America provides an ample empirical paper trail to show that DtC does not increase underage drinking.