
DIRECT-TO-CONSUMER SHIPMENT OF BEER: ISSUES FOR CONSIDERATION

Direct-to-consumer (DTC) shipping of wine has been a hotly debated issue in state legislatures across the country for decades. The result of these lengthy policy debates is that now more than 40 states allow some form of DTC shipping of wine by wineries to consumers in their state¹. While the economics of shipping heavy beer is different, some brewers are now seeking similar DTC privileges, which allow them to ship beer to consumers across the country. For the purposes of this note, DTC refers to shipping beer from a brewery through a common carrier for home delivery to the consumer and does not refer to local delivery where product is sourced from a local retailer and delivered to consumers in a matter of hours. If your state is considering DTC beer shipping, here are some issues to consider.

LONGSTANDING CONCERNS ABOUT DTC SHIPPING ALSO APPLY TO BEER

- Youth access remains a public health concern. While youth may not order an expensive merlot to be shipped to their home, beer is the most common form of alcohol for underage drinking.²
- Counterfeit alcohol remains a major issue in other nations around the world.³ Creating more loopholes to the closed alcohol distribution system in the United States creates more opportunities for counterfeit or illicit alcohol to be introduced into the U.S. market. Tax collection of beer is a challenge states will need to overcome. While sales taxes are now commonly collected online, excise taxes and other unique taxes specific to beer and alcohol create a compliance challenge for tax administrators.⁴

LOCAL DELIVERY OPTIONS ALREADY EXIST IN MANY MARKETS

If consumers desire access for beer to be delivered to their home, many states have approved business models where product sourced from local, licensed retailers can be safely delivered in a short time frame. These transactions are structured to assure the product is registered to be sold in the state, has had proper taxes paid, and the delivery is made by an individual who knows to check an ID and only leave the product with a sober person of legal drinking age.

Mobile apps or websites like Drizly/Uber, GoPuff or others provide the additional convenience consumers are looking for while not bypassing or upending the regulatory system that has worked so well for so many. DTC sales which circumvent the system are an unnecessary risk being sought by a select few special interests.

BEER IS NOT LIKE WINE, AND BREWERIES ARE NOT (PERMITTED) LIKE WINERIES

DTC shipping is a state-by-state issue where each legislature needs to decide what works best for the citizens of their state. However, one of the common challenges is how to handle enforcement and compliance for out-of-state companies shipping alcohol into the state. One aid available to states facing this jurisdictional challenge is

¹ <https://www.ncsl.org/research/financial-services-and-commerce/direct-shipment-of-alcohol-state-statutes.aspx>

² <https://www.healthychildren.org/English/ages-stages/teen/substance-abuse/Pages/Alcohol-The-Most-Popular-Choice.aspx>

³ https://www.centerforalcoholpolicy.org/wp-content/uploads/2020/03/CAP-2020-Report-on-Counterfeit-Alcohol_FINAL.pdf

⁴ <https://www.nbwa.org/resources/kpmg-tax-study-state-and-local-taxes-distribution-and-sale-beer-0>

that every winery in the country is required to hold a federal basic permit with the United States Treasury Tax & Trade Bureau (TTB). TTB has made clear that while direct shipping is a state issue, wineries breaking a states' shipping laws put their permit at risk. *"We want to remind industry members who engage in direct shipping that they are responsible for remaining in compliance with current State rules. Furthermore, industry members should remember that their Federal basic permits could be at risk if they fail to comply with State rules."*⁵

Breweries (and retailers) are not required to obtain a federal basic permit like wineries, distilleries, and wholesalers. Therefore, a state cannot seek assistance from TTB when attempting to enforce their laws with an out-of-state brewer. Should breweries wish to engage in interstate DTC shipping, they should at the very least be required to obtain the same federal basic permit that other segments of the industry have.

BEER QUALITY WILL SUFFER AS BEER IS A PERISHABLE PRODUCT THAT REQUIRES MORE CAREFUL HANDLING THAN WINE

The saying goes that wine gets better with age. The same cannot be said for beer. Beer is a perishable product with a limited shelf life that needs to be kept at a controlled temperature to prevent spoilage. Nearly all brewery distribution agreements require beer to be kept at a certain regulated temperature throughout the entire supply chain. In fact, some craft brands require the product to be kept cold every step from the brewery to the retail cooler in order to promote beers most important attribute – quality. Common carriers or the United States Postal Service (USPS) are simply not able to meet the same quality control criteria brewers require of their distributors.

The Brewers Association, the trade association representing America's craft breweries, has made quality control a primary focus of their association. Famously, BA's Director Paul Gatza told a room of 9,000 craft brewers in 2014 that, "Many people in this room have spent a lot of time and dedicated a good portion of their lives to building this community that we have today. So, seriously, don't [****] it up."⁶ Gatza explained further what happened the last time craft beer saw rapid growth in the 1990's, "What was suffering was the quality of the product in the bottles, and our observation was it brought down the whole segment," Gatza says. "People tried a few craft beers, didn't have great experiences with them, and just wrote off the segment for a number of years, and it really set the industry back for a while." Beer consumers will ultimately receive "funky" beer. Beer brands and the broader beer industry will suffer as a result of DTC. A beer sitting in a hot package sorting facility or in the back of a delivery vehicle for days, weeks or even months, can lead to a loss of quality control and should be avoided.

SUMMARY

Due to its weight, high shipping costs for a relatively inexpensive product and the perishability of beer, efforts to implement widescale DTC sales have seldom been a focus of the industry. However, now that some interests are looking to create another loophole to the system, legislators, regulators and other industry stakeholders need to consider whether this is public policy that benefits the public health and safety of their state as well as the entire beer industry.

⁵ <https://www.ttb.gov/publications/direct-shipping>

⁶ <https://associationsnow.com/2014/04/brewers-association-urges-members-make-quality-top-priority/>