Direct-to-Consumer Shipping Myths

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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.[1]
- During that same time, DtC shipping of alcohol, primary wine, expanded rapidly and substantially.[2]
  - While the COVID-19 pandemic substantially increased alcohol shipping and delivery, data shows steep declines in underage drinking during that same timeframe.[3]
  - 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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[1] Source: *Monitoring the Future*, 2021 results available here.

[2] In the 2000, just sixteen states permitted interstate shipping by wineries. Today that number stands at 47.

[3] *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.[4]
- 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

[4] 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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