

CHAPTER 4
Report on State Programs
and Policies Addressing
Underage Drinking

CHAPTER 4.1
Introduction

Introduction

The Sober Truth on Preventing Underage Drinking (STOP) Act recognizes the critical role that States play in the national effort to reduce underage drinking, particularly in their role as regulators of the alcohol market. Its preamble includes this statement of the sense of Congress:

Alcohol is a unique product and should be regulated differently than other products by the States and Federal Government. States have primary authority to regulate alcohol distribution and sale, and the Federal Government should support and supplement these State efforts. States also have a responsibility to fight youth access to alcohol and reduce underage drinking. Continued State regulation and licensing of the manufacture, importation, sale, distribution, transportation, and storage of alcoholic beverages are ... critical to ... preventing illegal access to alcohol by persons under 21 years of age.

To this end, the Act directs the Secretary of the Department of Health and Human Services (HHS), working with the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD), to provide an Annual Report on State activities pertaining to underage drinking prevention programs, policies, related enforcement efforts, and State expenditures.

This year's Report provides the following information for the 50 States and the District of Columbia (henceforth referred to as "States"):

3. Information on 23 underage drinking prevention policies focused on reducing youth access to alcohol and youth involvement in drinking and driving. Consistent with the STOP Act requirement to report on "evidence-based best practices to prevent and reduce underage drinking and provide treatment services to those youth who need them," most policies have been identified as best practices by a variety of relevant Federal Agencies (see below).
4. Data from a survey addressing underage-drinking-enforcement programs; programs targeted to youth, parents, and caregivers; collaborations, planning, and reports; and State expenditures on the prevention of underage drinking.

Underage Drinking Prevention Policies

This section presents summaries of the 23 policies that describe each policy's key components, the status of the policy across States, and trends over time. Summaries are followed by a State-by-State analysis of each policy. The policy variables for each State are linked electronically to both the relevant policy summaries and the variables definitions.

Seventeen of these policies were included in original STOP Act legislation or were recommended by Congress during the 2009–2010 appropriations process. The remaining six policies were added by ICCPUD. The Report obtained data for 13 of the policies, including the 6 added by ICCPUD, from the National Institute on Alcohol Abuse and Alcoholism (NIAAA) Alcohol Policy Information System (APIS).

The following policies are included (underlined policies are available on APIS):

Laws Addressing Minors in Possession of Alcohol

- Underage possession

- Underage consumption
- Internal possession by minors
- Underage purchase and attempted purchase
- False identification

Laws Targeting Underage Drinking and Driving

- Youth blood alcohol concentration limits
- Loss of driving privileges for alcohol violations by minors
- Graduated driver’s licenses

Laws Targeting Alcohol Suppliers

- Furnishing of alcohol to minors
- Compliance-check protocols
- Commercial furnishing penalty protocols
- Responsible beverage service
- Minimum ages for on-premises servers and bartenders
- Minimum ages for off-premises sellers
- Dram shop liability
- Social host liability
- Hosting underage drinking parties
- Direct sales/shipments
- Keg registration
- Home delivery

Laws Affecting Alcohol Pricing

- Alcohol taxes
- Drink specials
- Wholesaler pricing

State Survey

This section provides both the complete responses of the States to the Survey (included in the State-by-State analysis described above), and a Cross-State Report. The Cross-State Report summarizes the findings across States, and presents data on variables amenable to quantitative analysis.

The survey content was derived directly from the STOP Act, covering topics and using terminology from the Act. The survey questions were structured to allow States maximum flexibility in deciding which initiatives to describe and how to describe them. Open-ended questions were used whenever possible to allow States to “speak with their own voices.” The Survey addressed four main areas:

5. Enforcement programs
6. Programs targeted to youth, parents, and caregivers
7. Collaborations, planning, and reports
8. State expenditures on prevention of underage drinking

Best Practices

The majority of the underage drinking prevention policies analyzed in this chapter have been identified as best practices by one or more of the following four sources:

- *Guide to Community Preventive Services. Preventing excessive alcohol consumption.* www.thecommunityguide.org/alcohol/index.html. Community Preventive Services Task Force (Last updated: 05/16/2011);
- The Surgeon General (*The Surgeon General’s Call to Action to Prevent and Reduce Underage Drinking*, 2007);
- Institute of Medicine (IOM) (*Reducing Underage Drinking: A Collective Responsibility*, 2004)
- National Institute on Alcohol Abuse and Alcoholism (*A Call to Action: Changing the Culture of Drinking at U.S. Colleges*, 2002).

Exhibit 4.1 lists the 23 policies analyzed in Chapter 4. In the columns is information from the four Federal sources. An X indicates that a given policy is endorsed as a best practice.

Exhibit 4.1: Underage Drinking Prevention Policies – Best Practices

Underage Drinking Prevention Policies	Recommended by the Community Preventive Services Task Force	Addressed in the Surgeon General's Call to Action	IOM Report, Reducing Underage Drinking: A Collective Responsibility	A Call to Action: Changing the Culture of Drinking at U.S. Colleges (NIAAA)
Policies Included in Original STOP Act Legislation or Added in 2009-2010 Appropriations				
Purchase or attempt to purchase alcohol by minor		x	x	
Consumption by minor		x	x	
Possession by minor		x	x	
False identification/ Incentives for retailers to use ID scanners or other technology		x	x	
Penalty guidelines for violations of furnishing laws by retailers				x
Furnishing or sale to a minor		x	x	
Hosting underage drinking parties		x	x	
Dram-shop liability	x		x	
Social-host liability			x	
Compliance checks	x	x	x	
Mandatory-voluntary server-seller training (Responsible Beverage Service programs)		x	x	x
Direct sales (Internet/mail order)				
Home delivery			x	
Graduated drivers' licenses		x	x	x
Increasing alcohol tax rates	x		x	x
Restrictions on drink specials		x	x	x
Wholesaler pricing provisions				

Underage Drinking Prevention Policies	Recommended by the Community Preventive Services Task Force	Addressed in the Surgeon General's Call to Action	IOM Report, Reducing Underage Drinking: A Collective Responsibility	A Call to Action: Changing the Culture of Drinking at U.S. Colleges (NIAAA)
Policies Added at the Request of SAMHSA				
Keg registration		x	x	
Minimum age for on-sale server				
Minimum age for off-sale server				
Internal possession				
Youth BAC limits ("Zero Tolerance Law")		x	x	x
Loss of Privileges for Alcohol Violations by Minors (Use/Lose Law)				x

As can be seen in Exhibit 4.1, 19 of the policies are endorsed as best practices by at least one source document, and more than half are endorsed as best practices by two or more source documents. Four policies (Direct Sales, Minimum Age for On-Premises Servers, Minimum Age for Off-Premises Servers, and Internal Possession) were not endorsed as best practices by any of the sources examined, although all are included on NIAAA's APIS Web site. As relatively recent concerns, it is likely that these policies had not been thoroughly studied at the time the Federal source documents were prepared.

It is important to note that, although all 19 of the policies can be described as evidence based, the data that support each of them are different. Some policies find greater or lesser support in the research literature.

CHAPTER 4.2

Cross-State Survey Report

Overview

The STOP Act State Survey of the 50 States and the District of Columbia was designed to gather information about:

- Enforcement programs to promote compliance with underage drinking laws and regulations.
- Programs targeted to youth, parents, and caregivers to deter underage drinking, and the number of individuals served by these programs.
- The amount that each State invests, per youth capita, on the prevention of underage drinking.

The survey content was derived directly from the STOP Act, covering topics and using terminology from the Act itself. The survey instrument comprised approximately 90 questions divided into 4 sections:

1. Enforcement of underage drinking laws, including:
 - The extent to which States implement random checks of retail outlets, assessing compliance with laws prohibiting the sale of alcohol to minors, and the results of these checks
 - The extent to which the States implement other underage-drinking-enforcement strategies, including Minors in Possession, Cops in Shops, Shoulder Taps, Party Patrol/Party Dispersal, and Underage Alcohol-Related Fatality Investigations (see Definitions below)
 - Sanctions imposed for violations
2. Underage drinking prevention programs targeted to youth, parents, and caregivers, including data on State best-practice standards and collaborations with Tribal Governments, and the number of people served by these programs
3. State interagency collaborations used to implement the above programs
4. Estimates of the State funds, per youth capita, invested in the following categories, along with descriptions of any dedicated fees, taxes, or fines used to raise funds:
 - Compliance checks and provisions for technology to aid in detecting false IDs at retail outlets
 - Checkpoints and saturation patrols
 - Community-based, school-based, and higher-education-based programs
 - Programs that target youth within the juvenile justice and child welfare systems
 - Other State efforts as deemed appropriate

The survey questions were structured to allow States maximum flexibility in deciding which initiatives to describe and how to describe them. Open-ended questions were used, whenever possible, to allow States to “speak with their own voices.” Survey instructions emphasized that States were expected to rely on readily available data, rather than initiating data collection for the sole purpose of answering the survey questions. In all cases, the survey offered the opportunity to respond “Data not Available.”

Definitions for Enforcement Strategies

Compliance Checks/Decoy Operations: Trained underage operatives (“decoys”), working with law enforcement officials, enter retail alcohol outlets and attempt to purchase alcohol

Cops in Shops: A well-publicized enforcement effort in which undercover law enforcement officers are placed in retail alcohol outlets

Shoulder Tap: Trained young people (decoys) approach individuals outside of retail alcohol outlets and ask people to make an alcohol purchase

Party Patrol/Party Dispersal: Operations that identify underage drinking parties, and/or safely make arrests and issue citations at underage drinking parties

Underage, Alcohol-Related Fatality Investigations: Investigations to determine the source of alcohol ingested by fatally injured minors

Methods

The survey was uploaded to a Web-based platform, and a letter with a link to the survey was sent to each State Governor’s office and the Office of the Mayor of the District of Columbia. The Governors and Mayor were asked to designate a State representative to serve as the contact and be responsible for completing the survey. In all cases, designated contacts were typically staff members from State substance-abuse-program agencies and State alcohol beverage control (ABC) agencies.

The online survey was available for completion by the States beginning in December 2010. The Substance Abuse and Mental Health Services Administration (SAMHSA) provided both telephone and online technical support to State agency staff while the survey was in the field. SAMHSA also recruited key stakeholder groups to encourage complete and accurate responses to the survey and to identify respondent issues. Participating stakeholders included the National Association of State Alcohol and Drug Agency Directors, the National Liquor Law Enforcement Association, the National Prevention Network, the National Alcohol Beverage Control Association, and the National Association of Attorneys General.

Responses were received from all 50 States and the District of Columbia (100 percent response rate) (Note: The States and the District of Columbia are henceforth referred to simply as “States”). Each State’s response was reviewed by senior staff and inquiries were made concerning apparent omissions, ambiguities, or other content issues. The responses were also copy edited, and the edited responses were returned to each State by email. The States either approved the proposed copy edits or provided their own copy edits, and provided any requested clarifications to their submissions.

Results

Introduction

The individual State Reports provide a full presentation of the survey data submitted by each State. This Results section provides summary information on all variables amenable to quantitative analysis. Again, it is important to keep in mind that the States determined how much information to provide, and that the range of information provided by the respondents was highly

variable. The breadth and depth of the information should not be assumed to reflect all underage drinking prevention activity in any State.

The results are grouped into four broad headings:

1. Enforcement Programs
2. Programs Targeted to Youth, Parents, and Caregivers
3. Collaborations, Planning, and Reports
4. State Expenditures on the Prevention of Underage Drinking

In all cases where numerical estimates are reported, the reporting period is the most recent year for which complete data were available. Average values are reported as medians. The median is the numerical value separating the higher half of a sample from the lower half. The median is the best representation of the “average” value when, as is often the case with the State survey responses, the data include outliers (a data point that is widely separated from the main cluster of data points in a data set).

Enforcement Programs

The STOP Act State Survey requested enforcement data in four areas:

1. Whether or not the State encourages and conducts comprehensive enforcement efforts—such as random compliance checks and shoulder-tap programs—to prevent underage access to alcohol at retail outlets.
2. The number of compliance checks within alcohol retail outlets.
3. The results of such checks.
4. Enforcement of a variety of State laws aimed at deterring underage drinking (see Policy Summaries). In the current survey, arrest data for minor in possession (MIP) offenses have been used to index enforcement of these laws.

Such reporting requires that States keep records of enforcement activities. Exhibit 4.2.1 shows the percentage of States that collect data on compliance checks, MIP charges, and penalties levied against retail establishments for furnishing alcohol to minors.

Exhibit 4.2.1: Percentage of Jurisdictions that Reported Enforcement Data Collection at the State and Local Levels

	State collects data on compliance checks		State collects data on MIP arrests/citations	State collects data on MIP data, including arrests/citations by local law enforcement agencies	State collects data on penalties imposed on retail establishments		
	State-conducted	Locally conducted			Fines	License suspensions	License revocations
Percent	78%	31%	82%	35%	73%	73%	80%

The large majority of States collect data on State compliance checks, MIP charges, and penalties imposed on retail establishments. However, the number of States that collect data on local enforcement efforts is limited. Thus, it is likely that the enforcement statistics that follow underestimate the total amount of underage drinking enforcement occurring in the States.

Enforcement Strategies, Statistics, and Results

Compliance Checks

As can be seen in Exhibit 4.2.2, 78 percent of States conduct compliance checks and collect associated data. However, the number of licensees in the State upon which checks were conducted varies widely, as does the number of licensees that failed these checks. In addition, in 31 percent of the States, localities also conduct compliance checks and collect data. As shown in Exhibit 4.2.2, the number of licensees checked and licensee failures varies widely.

Exhibits 4.2.3 and 4.2.4 provide State-by-State licensee failure rates for available data on compliance checks conducted by State and local agencies. Most State-level checks report failure rates of 20 percent or less, with 10 States reporting higher rates. Exhibit 4.2.4 highlights the lack of data on local compliance checks for most States—only 13 States report any data, with 10 of those States reporting rates of 20 percent or less.

Exhibit 4.2.2: Compliance Checks

	Number of licensees upon which checks were conducted		Percentage of licensees upon which checks were conducted that failed the checks	
State agencies (<i>n</i> =40)	Median for those that collect data	1,277	Median for those that collect data	15%
	Minimum	44	Minimum	4%
	Maximum	10,788	Maximum	54%
Local agencies (<i>n</i> =16)	Median for those that collect data	1,305	Median for those that collect data	14%
	Minimum	0	Minimum	9%
	Maximum	8,551	Maximum	23%

Exhibit 4.2.3: State Compliance Checks Failure Rate

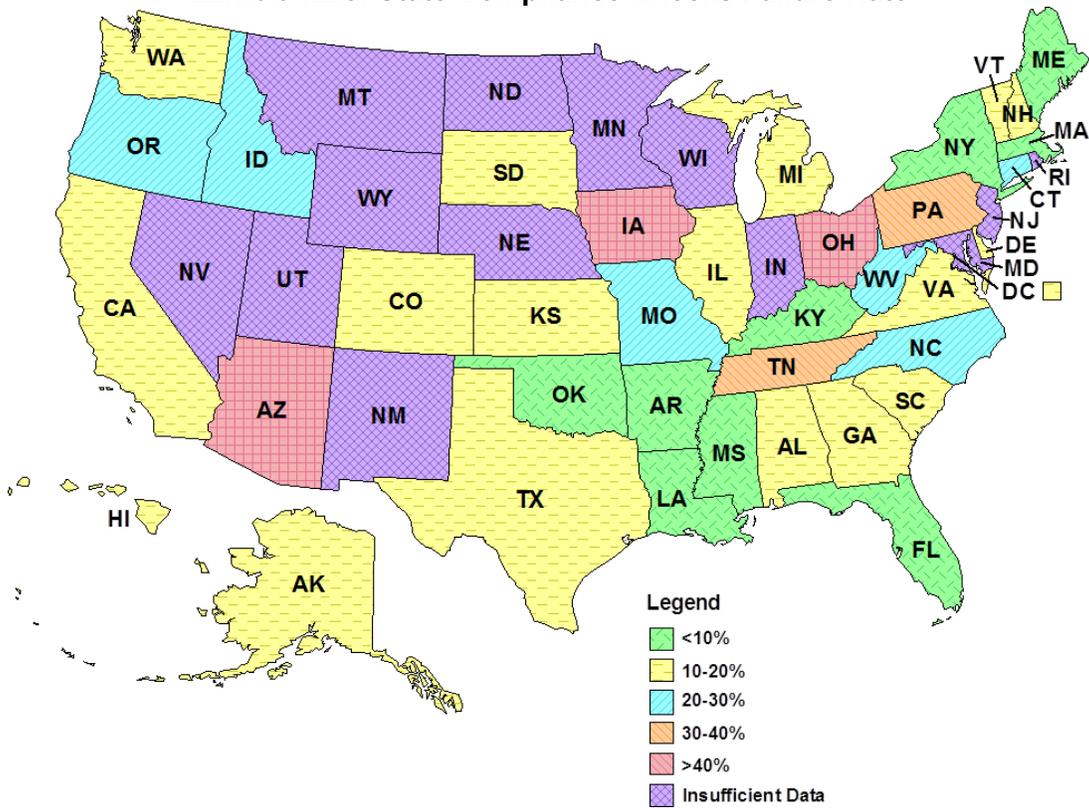
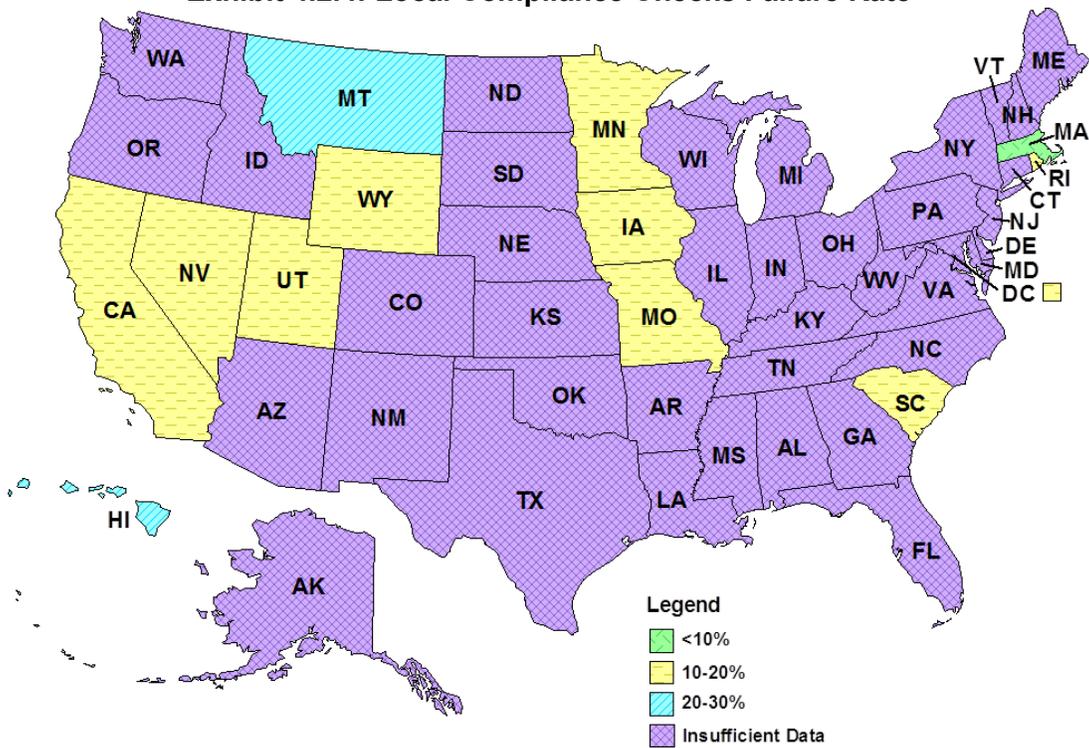


Exhibit 4.2.4: Local Compliance Checks Failure Rate



The data in Exhibits 4.2.3 and 4.2.4 must be viewed with considerable caution. First, more populous States will generally have more outlets. Second, the current data provide no information on cases in which multiple checks are made on the same outlet. Third—and relatedly—the survey did not request data that would allow a comparison of the total number of outlets in a jurisdiction with the total number of outlets checked during this period. This is an important omission that should be corrected in future years. Finally, compliance-check protocols vary by State; some States use different procedures and requirements for choosing underage decoys than do others (See Compliance Check Protocols in Policy Summaries). States may also conduct compliance checks randomly in response to complaints or due to a previous compliance check failure. Hence, differences in compliance check protocols may affect the number of outlets checked, the frequency of checks at a particular establishment, and the failure rates.

Other Enforcement Activities

States were asked to report on four other State and local strategies to enforce underage drinking laws: Cops in Shops, Shoulder Tap Operations, Party Patrol Operations or Programs, and Underage Alcohol-Related Fatality Investigations.

As shown in Exhibit 4.2.5, the most common enforcement activities at both State and local levels are Underage Alcohol-Related Fatality Investigations and Party Patrol Operations or Programs.

Exhibit 4.2.5: Enforcement Activities

State enforcement: Number of States that implement					Local enforcement: Number of States in which localities implement			
	Cops in Shops	Shoulder Tap operations	Party patrol operations or programs	Underage alcohol-related fatality investigations	Cops in Shops	Shoulder Tap operations	Party patrol operations or programs	Underage alcohol-related fatality investigations
Percent	41%	27%	63%	80%	47%	61%	90%	76%

Exhibit 4.2.6 displays States that implement one, two, three, or all four of the strategies. Exhibit 4.2.7 displays States in which localities implement one, two, three, or all four of the strategies.

Exhibit 4.2.6: States that Implement Strategies

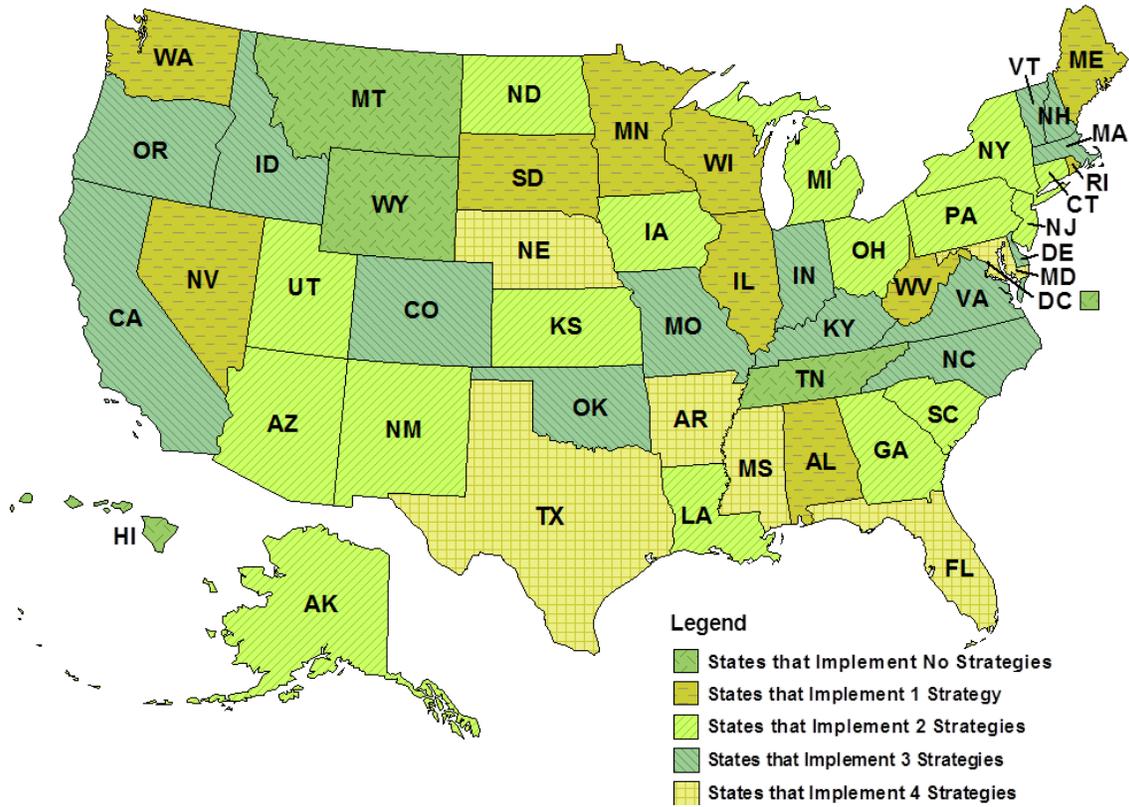
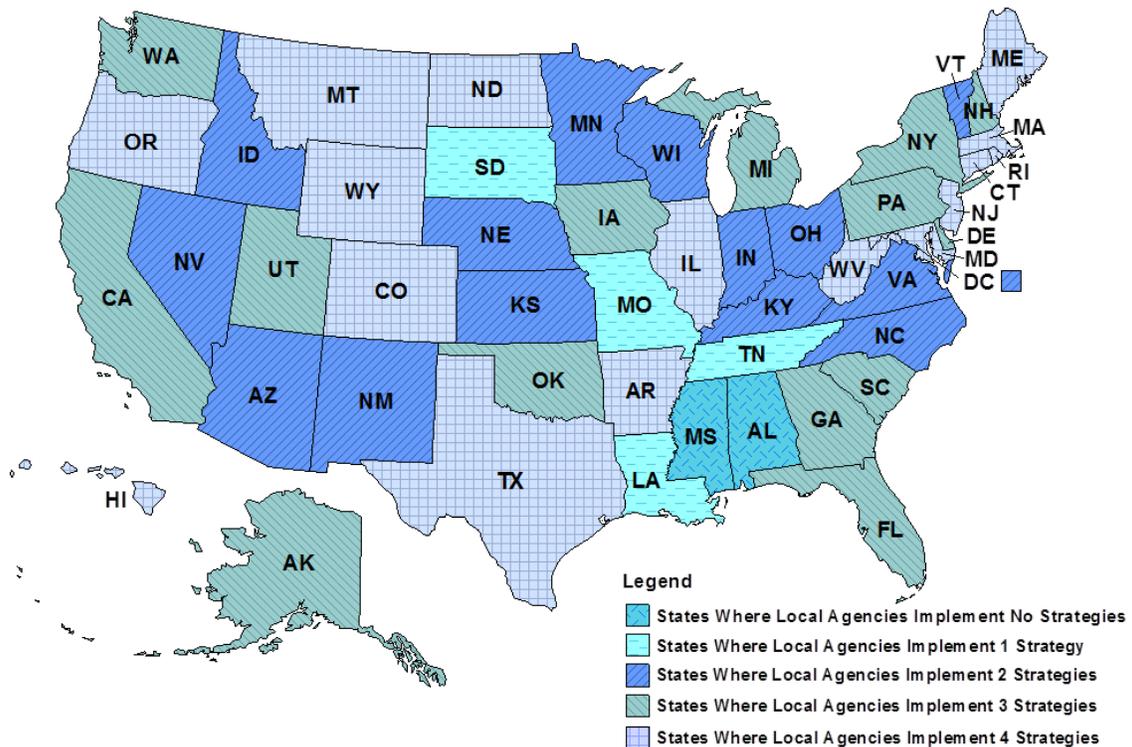


Exhibit 4.2.7: States Where Local Agencies Implement Strategies



In addition, all States regulate or prohibit direct shipment of alcohol to consumers, either through specific statutes and regulations or through general provisions of alcohol-beverage-control laws. States were asked whether they have a program to investigate and enforce direct sales/shipment laws and whether these laws are also enforced by local law enforcement agencies. Direct-shipment laws permit, regulate, or prohibit direct-to-consumer sales of wine, beer, or spirits via the Internet or delivery by common carrier. Direct-sales laws do not address home delivery to consumers by retailers without the use of common carriers. As shown in Exhibit 4.2.8, approximately two thirds of the States have direct-shipment-enforcement programs, but only about one fifth report local enforcement.

Exhibit 4.2.8: Enforcement of Direct Shipment Laws

State has a program to investigate and enforce direct sales/shipment laws		Laws are also enforced by local law enforcement agencies
Yes	63%	20%
No	29%	45%
Don't Know/ No Answer	8%	35%

Sanctions Imposed for Violations

Penalties on Retail Establishments

The State Survey requested information on penalties imposed on retail establishments for furnishing to minors (Exhibits 4.2.9–4.2.11). As would be expected, fines are the most common sanction, and are imposed about 12 times as often as suspensions. Revocations are rare. Of the States that collect data on revocations, more than half revoked one or no licenses. Almost two thirds of the States revoked fewer than six licenses.

Exhibit 4.2.9: Fines Imposed on Retail Establishments for Furnishing to Minors

Number of outlets fined for furnishing		Total amount of fines in dollars across all licensees
Median for those that collect data (n=38)	224	\$191,105
Minimum	5	\$2,400
Maximum	2,257	\$4,473,750

Exhibit 4.2.10: License Suspensions Imposed on Retail Establishments for Furnishing to Minors

Number of outlets suspended for furnishing		Total days of suspensions across all licensees
Median for those that collect data (n=38)	18	88
Minimum	0	0
Maximum	1,468	7,030

Exhibit 4.2.11: License Revocations Imposed on Retail Establishments for Furnishing to Minors

Number of outlets revoked for furnishing	
Median for those that collect data (n=41)	0*
Minimum	0
Maximum	106
*The median will be zero if more than half the responses are zero.	

Sanctions for furnishing to minors can be put in some perspective by considering rates per 1,000 drinking occasions among youths who are 16 to 20 years old. Exhibit 4.2.12 presents these rates for 28 States that collect complete sanctions data (fines, suspensions, and revocations).

Exhibit 4.2.12: Retailer Sanctions for Furnishing to Minors

n=28	Retailer sanctions per 1,000 drinking occasions
Median for those that collect data	9
Minimum	0.62
Maximum	34

Minor in Possession (MIP) Offenses

States were also asked to provide statistics on MIP offenses. As noted earlier, arrest data for MIP offenses provide an index of the enforcement of laws designed to deter underage persons from drinking.

Some States reported data that included arrests/citations issued by local law enforcement agencies; others did not.

The first three rows of Exhibit 4.2.13 present the number of arrests/citations reported by all States that collect such data. These data may not provide an accurate picture of MIP enforcement since much MIP enforcement is done by local police. The second three rows present data only from those States that collect both State and local data. When only those States that collect local data are included, the median number of arrests/citations increases by about three quarters, once again highlighting the importance of local enforcement efforts and data.

Exhibit 4.2.13: Number of Minors Found In Possession of (or Having Consumed or Purchased per State Statutes) Alcohol

Number of minors found in possession of (or having consumed or purchased per State statutes) alcohol	Number of arrests/citations
Median for all States that collect data (n=42)	1,345
Minimum	6
Maximum	18,248
Median for States that collect both State and local data (n=18)	2,373
Minimum	43
Maximum	13,097

To explore the meaning of these data, two indices were calculated for States with both State and local MIP enforcement. The first index compares the rates of MIP arrest/citations with an estimate of yearly drinking occasions among 16- to 20-year-olds.²⁹ The second index reflects arrests per 100,000 youth who are 16 to 20 years old. The results appear in Exhibit 4.2.14.

Exhibit 4.2.14: Arrests/Citations for Minors In Possession: 16- to 20-Year-Olds

N=17*	Number of arrests/citations	Arrests/citations per 1,000 drinking occasions	Arrests/citations per 100,000 population 16-20
Median for those that collect data	2,373	2.10	2,268
Minimum	43	.08	91
Maximum	13,097	8.09	8,735
*We could not obtain census data for 16- to 20-year-olds for one State.			

Because the data in Exhibit 4.2.14 are from States with both State and local MIP enforcement, the rates for the Nation as a whole will be lower.

Sanctions Against Youth vs. Sanctions Against Retailers

A window on enforcement priorities is provided by comparing rates of MIP arrests and rates of retailer sanctions (totals of fines, suspensions, and revocations). Twenty-two States provided the complete data set needed for this analysis (Exhibit 4.2.15).

In most States, MIP arrests outnumber retailer sanctions by a large degree. However, in about 20 percent of the States, the ratio of MIP arrests to retailer sanctions is less than one, indicating a priority on enforcement at the retail level.

Exhibit 4.2.15: Ratio of MIP Arrests to Retailer Sanctions

	MIP arrests per retailer sanctions
Median for those that collect data (<i>n</i> =22)	9
Minimum	0.01
Maximum	462

²⁹ This estimate is based on the calculations of Wagenaar and Wolfson (1994). Using *Monitoring the Future* data, they estimated a rate of 90 drinking occasions per 100 youth per month.

Programs Targeted to Youths, Parents, and Caregivers

States were asked to describe their underage drinking prevention programs. Information was requested about:

1. Programs **specific** to underage drinking (e.g., prevention of underage drinking is the primary objective).
2. Programs **related** to underage drinking (e.g., address other drug use [including tobacco] in addition to alcohol use), for example:
 - School-based drug and alcohol education
 - Programs that address individual risk and protective factors
 - Programs to strengthen families

Definitions for Youth, Parents, and Caregivers from Survey
<p>Youth: Persons younger than 21 years old</p> <p>Parents: Persons who have primary responsibility for the well-being of a minor (e.g., biological and adoptive parents, grandparents, foster parents, extended family)</p> <p>Caregivers: Persons who provide services to youth (e.g., teachers, coaches, healthcare and mental healthcare providers, human services and juvenile justice workers)</p>

The survey provided space to describe up to 20 specific programs and 2 related programs, and to list 8 additional related programs. For the specific programs, space was also provided to indicate:

- The numbers of youth, parents, and caregivers served by each program.
- Whether the program has been evaluated.
- Whether an evaluation report is available and where the report can be found.

In addition to program descriptions, States were asked whether they had programs to measure and/or reduce youth exposure to alcohol advertising and marketing, and about best practice standards they used to select or approve underage-drinking programs.

Program Content

States varied widely in the number of programs described, in part because some States provided detailed information on local variations of some program types (e.g., community coalitions), while others described the general program.

Many well-known programs were reported, including those focused on life skills, refusal skills, media advocacy, community organizing, and environmental change. Also well represented were indigenous initiatives that appear, at least for the moment, to be unique to their States of origin.

As a method for summarizing the types of programs States are implementing, all programs were coded into one of four categories:

- *Programs focused on individuals*—Programs designed to impart knowledge, change attitudes and beliefs, or teach skills. Although individual youths or adults (usually parents) are the focus of these programs, the programs are almost always conducted with groups (e.g., classrooms, Boys/Girls Clubs, PTAs, members of a congregation). Also in this category are programs for offenders (MIP, DWI). Certain kinds of education and skills development were considered part of the environment. These include training for alcohol sellers and servers, healthcare workers, public safety personnel, and others whose activities affect large numbers of people.

- *Programs focused on the environment*—Programs that seek to alter physical, economic, and social environments, which may be focused on entire populations (e.g., everyone in a State or community) or a subpopulation (e.g., underage people, youth who drive). The main mechanisms for environmental change include State laws and local ordinances and their enforcement, institutional policies (e.g., enforcement priorities or prosecutorial practice, how alcohol is to be served at public events, carding everyone who looks younger than 35 years old, alcohol screening of all ER injury admissions), and changing norms. These changes are generally designed to decrease physical availability to alcohol (e.g., home delivery bans, retailer compliance checks), raise economic costs (drink special restrictions, taxation), and/or limit social availability, such as policies that affect the extent to which alcohol and alcohol users are visible in the community, (e.g., banning alcohol in public places and at community events, banning outdoor alcohol advertising).
- *Mixed*—Cases where both individual and environmental approaches are a substantive part of the effort. So-called “comprehensive” prevention programs are a relevant example.
- *Media Campaigns*

In total, 284 programs (77 percent of all programs) were described in sufficient detail to allow coding.³⁰ The results are presented in Exhibit 4.2.16.

As shown in Exhibit 4.2.16, programs focused on individuals were more than twice as common as programs focused on the environment. There was a tendency for States to favor either an individual or an environmental approach in the programs they described, and some States focused exclusively on one or the other.

Exhibit 4.2.16: Types of Programs Implemented by the States

Focused on individuals	55%
Focused on the environment	21%
Mixed focus	18%
Media campaigns	6%

Numbers Served

For each specific program described, States were asked to estimate the numbers of youth, parents, and caregivers served. These data were spotty, with about 70 percent of the States ($n=36$) providing data for at least one program for youth served, 40 percent for parents served ($n=20$), and 18 percent ($n=9$) for caregivers served. These may be difficult data for certain types of programs to estimate. In particular, programs focused on the environment have entire populations or subpopulations as the target population. Estimating the actual numbers reached is therefore problematic, as one State noted in its response.

Exhibit 4.2.17 gives the reported number of youths, parents, and caregivers served across all States that reported data.

³⁰ In some cases, the States did not provide enough information about the nature of the program to allow coding. In other cases, space limitations in the survey instrument prevented States from fully describing all their programs.

Exhibit 4.2.17: Reported Numbers of Parents, Youth, and Caregivers Served

	Youths served	Parents served	Caregivers served
Median	28,300	13,500	2,105
Minimum	0	100	4
Maximum	1,336,780	802,488	711,835

Evaluation Data

For each program, States were asked whether the program has been evaluated and whether an evaluation report is available. Summary data for these questions appear in Exhibit 4.2.18.

Clearly, the States vary widely in the emphasis they place on evaluation.

Exhibit 4.2.18: Evaluation of Underage Drinking-Specific Programs

	Percentage of the State's programs that are evaluated	Percentage of evaluated programs with reports available
Median	50%	33%
Minimum	0%	0%
Maximum	95%	100%

Programs To Measure and/or Reduce Youth Exposure to Alcohol Advertising and Marketing

States were asked whether they have programs to measure or reduce youth exposure to alcohol advertising and marketing. Twenty-nine percent ($n=15$) of the States reported they had such programs, which tend to focus on four types of efforts:

1. Environmental scans to assess the degree of youth exposure to alcohol advertising
2. Counter-advertising initiatives
3. Eliminating environmental advertising aimed at youth
4. Social marketing

Best Practice Standards

States were asked whether they have adopted or developed best practice standards for underage-drinking-prevention programs. Seventy-five percent ($n=38$) reported they had such standards. States were asked to describe the standards; the data were of variable quality. Some State responses were ambiguous or too brief to code reliably; however, approximately 20 percent of the 38 States that reported having standards said they followed SAMHSA's guidance document on evidence-based practices (*Identifying and Selecting Evidence-Based Interventions for Substance Abuse Prevention*, Revised Guidance Document for the Strategic Prevention Framework State Incentive Grant Program, SAMHSA, January 2009). A few additional States referenced another federally produced document, and another 20 percent of the States described guidelines the States themselves developed. About 40 percent of the States described a process for selecting programs or listed the programs themselves that were considered best practices.

Collaborations, Planning, and Reports

The STOP Act survey included two questions about collaborations. The first asked whether States collaborated on underage drinking issues with federally recognized Tribal Governments (if any). Forty-three percent ($n=22$) said they did collaborate, 31 percent said they did not collaborate, and the remaining States reported no federally recognized Tribes in their States.

The second question asked whether the States had a State-level interagency body or committee to coordinate or address underage-drinking-prevention activities. Eighty percent of the States reported that such a committee exists, although the composition of the committee varied somewhat from State to State. Most States' interagency committees included a variety of State agencies directly involved in underage drinking-prevention policy implementation and enforcement, as well as educational- and treatment-program development and oversight. These include the State Departments of Health and Human Services, Alcohol Beverage Control, the Substance Abuse Agency, and the State Police/Highway Patrol. Of interest is the extent to which the committee included representatives of the governor, legislature, and attorney general, since they are so critical in setting priorities, providing funding, and generating political and public support.

As can be seen in Exhibit 4.2.19, about 1 in 5 States with a committee included the governor and/or attorney general, and only about 1 in 10 included a representative of the legislature.

We also assessed the extent to which the interagency committee included relevant entities and constituencies outside of State government (see Exhibit 4.2.20).

Exhibit 4.2.19: Composition of the Interagency Group - State Government Entities

Composition of the Interagency Group	Office of the Governor	Legislature	Attorney General
Percentage of States with a committee ($n=41$)	18%	11%	21%

Exhibit 4.2.20: Composition of the Interagency Group - Other Entities

	Local law enforcement	College/university administration, campus life department, campus police	Community coalitions/Concerned citizens	Youth
Percentage of States with a committee ($n=41$)	11%	29%	50%	18%

About half the States with interagency committees included community coalitions, and slightly less than one third included college/university administrations, campus life departments, or campus police. About 1 in 5 States included youth, but only about 1 in 10 included local law enforcement.

States were asked whether they had prepared a plan for preventing underage drinking and/or issued a report on underage drinking in the past 3 years. About two thirds of the States had prepared a plan, and about three quarters had issued a report. The majority of States provided a source for obtaining the plans or reports (see individual State reports).

State Expenditures on Prevention of Underage Drinking

States were asked to estimate State expenditures for two categories of enforcement activities and five types of programs targeted to youth, parents, and caregivers. Exhibit 4.2.21 provides the data in \$1,000 units reported for the enforcement activities, program activities, and an “other” category. An entry of “zero” in the “Minimum Reported” row means that at least one State that maintains data reports no expenditures in that category.

Exhibit 4.2.21: 12-Month Expenditures* (in thousands) for Enforcement Activities; Programs Targeted to Youths, Parents, and Caregivers; and Other Programs

	Enforcement activities		Programs targeted to youths, parents, and caregivers					Other programs
	Compliance checks	Checkpoints and saturation patrols	Community-based programs	K-12 programs	College/university programs	Juvenile justice system programs	Child welfare system programs	
Number of States providing data	24	21	31	24	18	19	12	16
Median expenditure**	\$130K	\$53K	\$591K	\$235K	\$24K	\$0*	\$0*	\$144
Minimum reported	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Maximum reported	\$4,426K	\$4,206K	\$17,779K	\$35,075K	\$619K	\$1,013K	\$1,000K	\$64,258K
Percentage of States providing data that invest in this category	71%	62%	87%	67%	78%	53%	33%	69%
* The data in this exhibit must be viewed cautiously. Response rates ranged from about 33 percent to about 87 percent. Thus, the extent to which some of these data reflect national trends is uncertain. ** The median will be zero if more than half the responses are zero.								

The largest expenditure category is for community-based programs, followed by K–12 programs. Noteworthy is the fact that the total median expenditure on programs targeted to youth, parents, and caregivers (approximately \$1 million) is five and one-half times the total median amount spent on enforcement (approximately \$180,000).

States were also asked whether funds dedicated to underage drinking are derived from taxes, fines, and fees. About 80 percent of the States provided data for these questions. As shown in Exhibit 4.2.22, use of these funding sources for underage-drinking-prevention activities is limited.

Exhibit 4.2.22: Sources of Funds Dedicated to Underage Drinking

	n	Percent Yes
Taxes	42	26%
Fines	41	17%
Fees	43	14%
Percentages reflect only those States that provided data for these questions		

Discussion

The extent and richness of State activities related to underage drinking can only be fully appreciated through examination of the State Survey Responses in this chapter. This report summarizes data on variables amenable to quantitative analysis. Four broad categories of initiatives were discussed:

9. Enforcement Programs
10. Programs Targeted to Youth, Parents, and Caregivers
11. Collaborations, Planning, and Reports
12. State Expenditures on the Prevention of Underage Drinking

A key conclusion to be drawn from the STOP Act State Survey is that the States have evidenced a commitment to the reduction of underage drinking and its consequences. This commitment is demonstrated by the fact that all States and the District of Columbia completed the survey, and that many jurisdictions provided substantial detail about their activities (see individual State summaries).

Enforcement Programs

The large majority of States collect data on State compliance checks, MIP charges, and penalties imposed on retail establishments. However, less than one-third of the States collect data on local enforcement efforts. Thus, our ability to draw conclusions about enforcement activities and effectiveness is currently limited, because a substantial portion of underage drinking law enforcement happens at the local level. Improvements in State enforcement data systems would increase the accuracy of these analyses in future years.

Overall, enforcement activities appear highly variable across the States. Compliance checks and other enforcement activities related to furnishing (Cops in Shops, Shoulder Tap Operations, Underage Alcohol-Related Fatality Investigations, and enforcement of Direct Shipment laws) are fairly widely implemented, although not necessarily at both the State and local levels. However, the total number of checks is modest. The effectiveness of these enforcement activities is difficult to assess from the current data. Sanctions for furnishing are predominantly fines, which are 12 times more common than suspensions. Revocations are extremely rare. More than half the States revoked one or no licenses. Data on MIP actions (an index of the enforcement of a variety of laws aimed at deterring underage drinking) revealed a median of about 2 arrests per 1,000 underage drinking occasions, and 2,268 arrests per 100,000 population of 16- to 20-year-olds. At least on their face, these rates appear low.

Programs Targeted to Youth, Parents, and Caregivers

States reported implementing a wide variety of underage-drinking-prevention programs for youth, parents, and caregivers. Many well-known programs were reported, including those focused on life skills, refusal skills, media advocacy, community organizing, and environmental change. The programs are predominantly focused on individuals. Only about one in five programs focused on environmental change. Data on numbers of program participants were spotty, owing perhaps to inherent difficulties in estimating program participation for programs focused on entire populations or subpopulations (e.g., environmental change programs).

Evaluation of underage drinking-prevention programs is limited. Only about half have been evaluated, and reports are available for only about a third of these. As with enforcement, our ability to assess program effectiveness suffers from a lack of relevant data.

Seventy-five percent of States reported that they had best practice standards for underage-drinking-prevention programs. However, data on the actual standards were somewhat difficult to interpret, perhaps owing to confusion about what the survey was asking. While approximately 60 percent of States that had standards reported that they followed a Federal standard or had developed their own standard, the remaining States described a process for selecting programs or listed the programs themselves that were considered best practices.

Collaborations, Planning, and Reports

Eighty percent of States reported the existence of a State-level interagency body or committee to coordinate or address underage-drinking-prevention activities. However, of the States with such a committee, only about one in five included the Governor and/or attorney general, and only about one in ten included a representative of the legislature. About half the States included community coalitions, and a little less than a third included college/university administrations, campus life departments, or campus police. About 1 in 5 States included youth, but only about 1 in 10 included local law enforcement. Thus, key decisionmakers and local stakeholders were underrepresented on the interagency committees.

States were asked whether they had prepared a plan for preventing underage drinking and/or issued a report on underage drinking in the past three years. About two-thirds of the States had prepared a plan, and about three-quarters had issued a report.

State Expenditures on the Prevention of Underage Drinking

States were asked to estimate State expenditures for two categories of enforcement activities and five types of programs targeted to youth, parents, and caregivers. The largest expenditure category is for community-based programs, followed by K – 12 programs. The total median expenditure on programs targeted to youth, parents, and caregivers (approximately \$1 million) is five and one-half times the total median amount spent on enforcement (approximately \$180,000). Data reporting was again spotty, with response rates ranging from 33 to 87 percent (median = 68 percent) across the five categories. Thus, these results must be viewed with some caution. On the other hand, these may be difficult data for States to assemble given multiple funding streams, asynchronous fiscal years, and so on.

Comment

The data reveal a wide range of activity in the areas studied, although they vary in scope and intensity from State to State. Clearly, all States have areas of strengths and all have areas where improvements can be realized. A recurrent theme is the inadequacy of some State data systems to respond to the data requested in the Survey. This is especially the case in the areas of local law enforcement and expenditures. Accurate and complete data are essential both for describing current activities to prevention underage drinking and to monitor progress in future State Surveys.

CHAPTER 4.3

Policy Summaries

Laws Addressing Minors in Possession of Alcohol

1. UNDERAGE POSSESSION, Internal Possession, and Consumption

Policy Description

As of January 1, 2011, all U.S. States and the District of Columbia prohibit possession of alcoholic beverages (with certain exceptions) by those under age 21. In addition, most but not all jurisdictions have statutes that specifically prohibit consumption of alcoholic beverages by those under age 21.

In recent years, a number of jurisdictions have passed laws prohibiting the “internal possession” of alcohol by persons less than 21 years old. These provisions typically require evidence of alcohol in the minor's body, but do not require any specific evidence of possession or consumption. Internal possession laws are especially useful to law enforcement in making arrests or issuing citations when breaking up underage drinking parties. Internal possession laws allow officers to bring charges against underage persons who are neither holding nor drinking alcoholic beverages in the presence of law enforcement officers. As with laws prohibiting underage possession and consumption, jurisdictions that prohibit internal possession may apply various statutory exceptions to these provisions.

Although all jurisdictions prohibit possession of alcohol by minors, some jurisdictions do not specifically prohibit underage alcohol consumption. In addition, some jurisdictions that do prohibit underage consumption allow different exceptions for consumption than those that apply to underage possession. Jurisdictions that may prohibit underage possession and/or consumption may or may not address the issue of internal possession.

Some jurisdictions allow exceptions to possession, consumption, or internal possession prohibitions when a family member consents and/or is present. Jurisdictions vary widely in terms of which relatives may consent or must be present for this exception to apply and in what circumstances the exception applies. Sometimes a reference is made simply to “family” or “family member” without further elaboration.

Some jurisdictions allow exceptions to possession, consumption, or internal possession prohibitions on private property. Jurisdictions vary in the extent of the private property exception, which may extend to all private locations, private residences only, or in the home of a parent or guardian only. In some, a location exception is conditional on the presence and/or consent of a parent, legal guardian, or spouse.

With respect specifically to consumption laws, some jurisdictions prohibit underage consumption only on licensed premises.

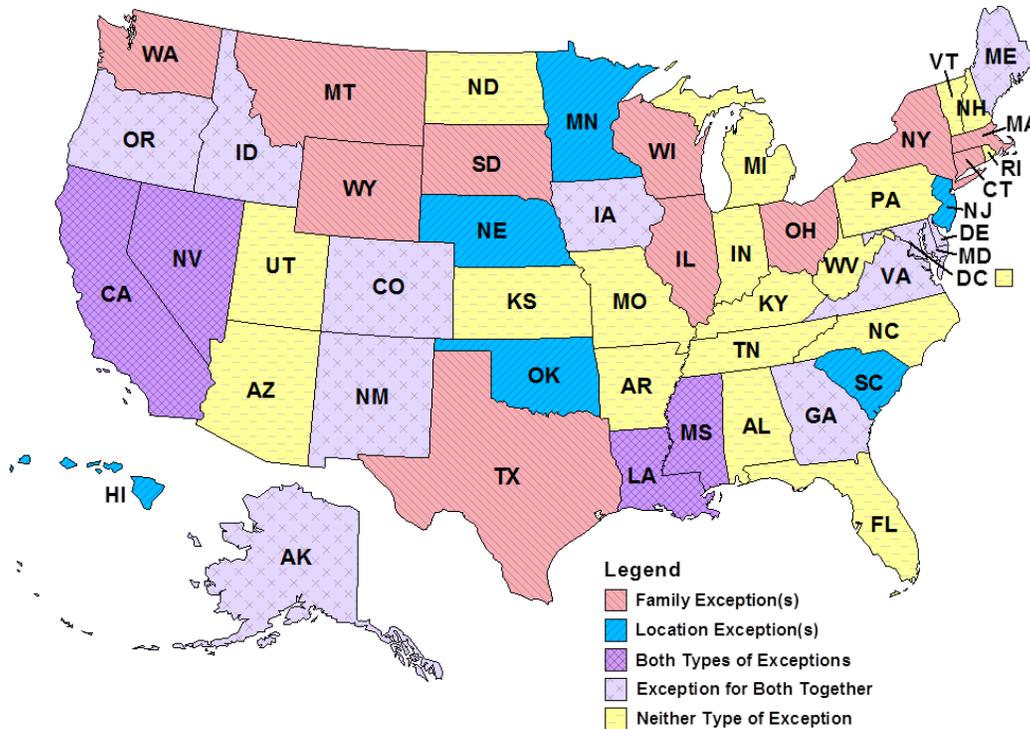
Status of Underage Possession Policies

As of January 1, 2011, all 50 States and the District of Columbia prohibit possession of alcoholic beverages by those under age 21.

Twenty-six jurisdictions have some type of family exception, 21 have some type of location exception, and 19 have neither (see Exhibit 4.3.1). Four of these limit the location to the

parent/guardian’s residence, eight pertain to any private residence, and nine concern any private location.

Exhibit 4.3.1: Exceptions to Minimum Age of 21 for Possession of Alcohol as of January 1, 2011



Trends in Underage Possession Policies

During the period between 1998 and 2011, the number of jurisdictions with family exceptions rose from 23 to 26, the number with location exceptions rose from 20 to 21, and the number of jurisdictions with neither exception decreased from 21 to 19 (see Exhibit 4.3.2).

Exhibit 4.3.2: Number of States with Family and Location Exceptions to Minimum Age of 21 for Possession of Alcohol, January 1, 1998, through January 1, 2011

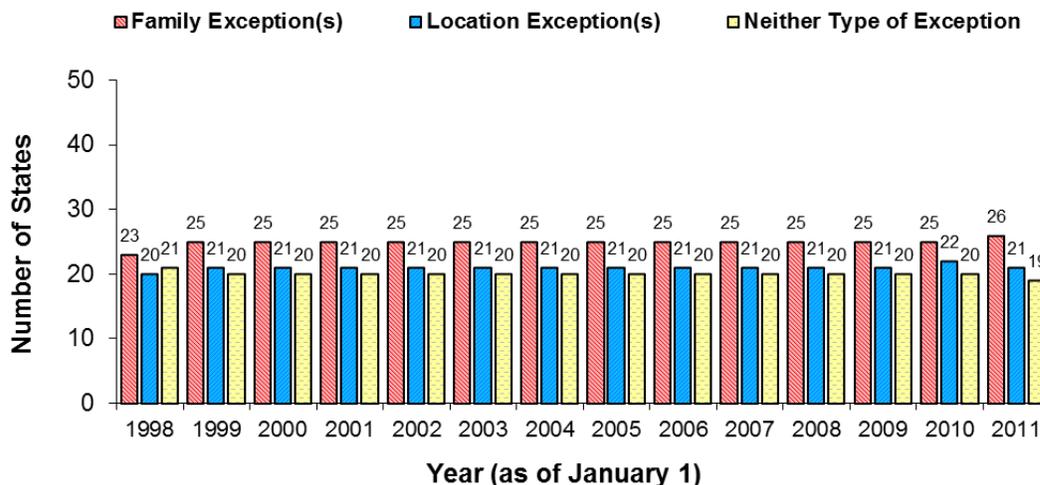
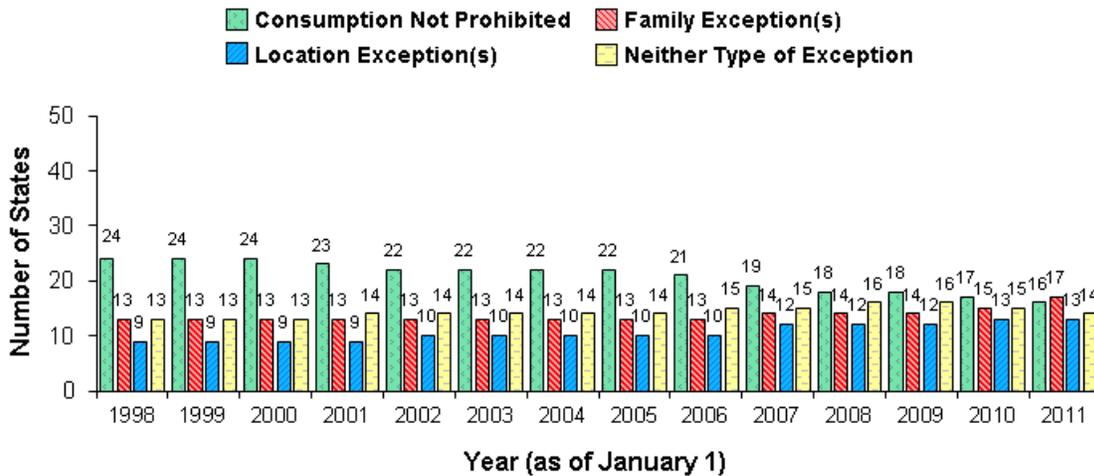


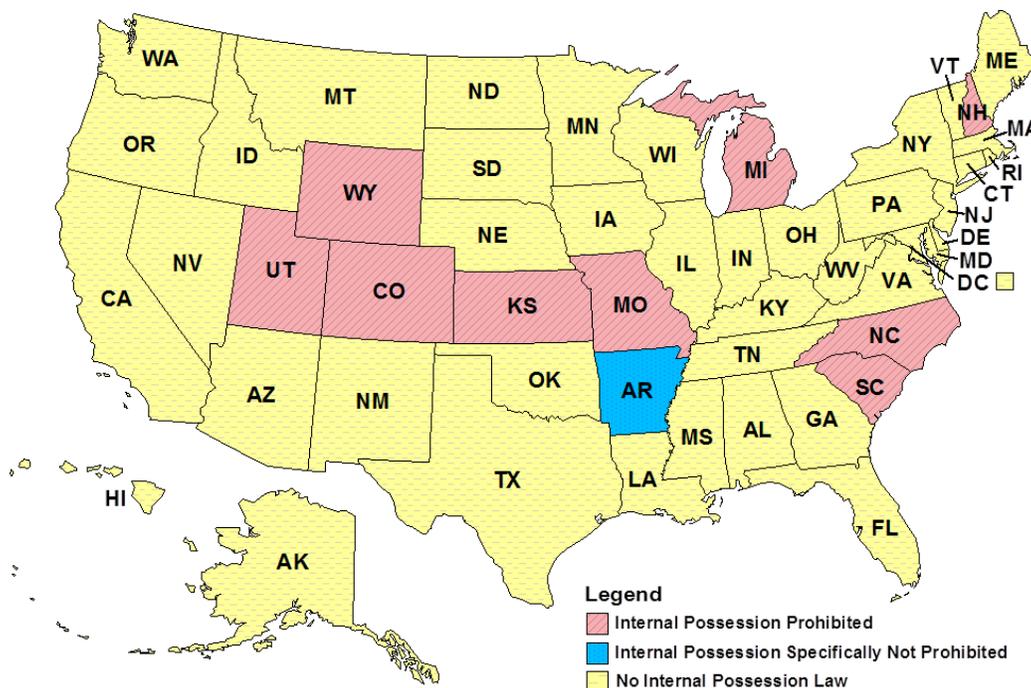
Exhibit 4.3.4: Number of States with Family and Location Exceptions to Minimum Age of 21 for Consumption of Alcohol, January 1, 1998, through January 1, 2011



Status of Underage Internal Possession Policies

As of January 1, 2011, nine States prohibit internal possession of alcoholic beverages for anyone under age 21 (see Exhibit 4.3.5). One State, Arkansas, specifically permits internal possession by minors. Of the eight States that prohibit internal possession, seven do not make any exceptions. In contrast, Colorado has exceptions for situations in which parents or guardians are present and give consent and the possession occurs in any private location. South Carolina’s law makes an exception for internal possession in the homes only of parents or guardians. Wyoming makes exceptions for situations in which parents, guardians and spouses are present.

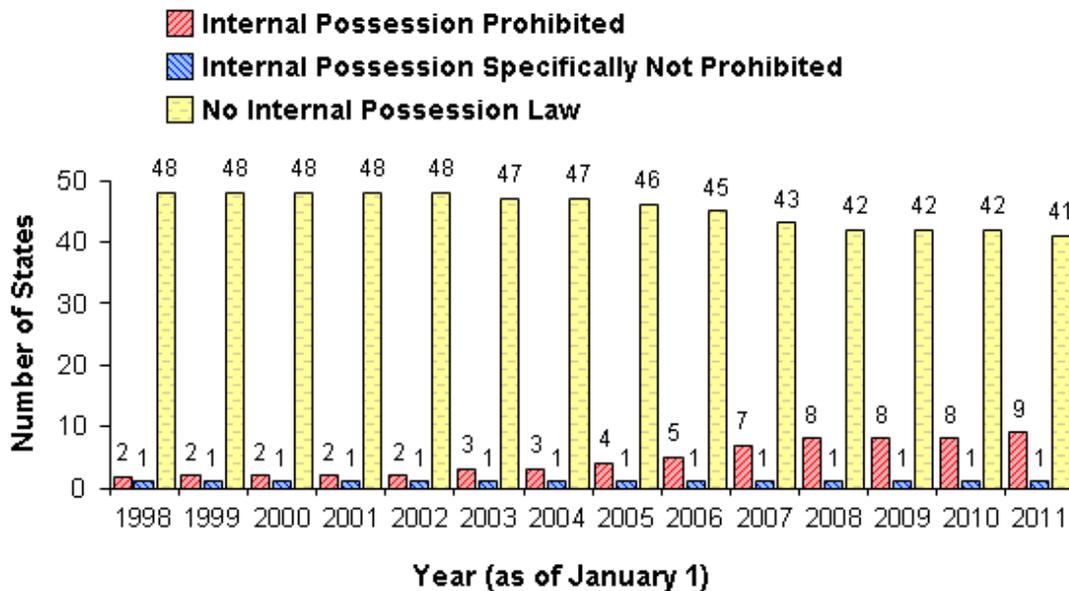
Exhibit 4.3.5: Prohibition of Internal Possession of Alcohol by Persons Under Age 21 as of January 1, 2011



Trends in Underage Internal Possession Policies

As Exhibit 4.3.6 illustrates, during the period between 1998 and 2011, the number of States that prohibit underage internal possession has grown steadily from two to nine. The most recent State to enact a prohibition on internal possession was Wyoming.

Exhibit 4.3.6: Distribution of States with Laws Prohibiting Internal Possession of Alcohol by Persons Under 21 Years of Age, January 1, 1998, through January 1, 2011



References and Further Information

All data for Underage Possession, Consumption, and Internal Possession policy topics were obtained from the Alcohol Policy Information System (APIS) at <http://www.alcoholpolicy.niaaa.nih.gov>. Follow links to the policy entitled “Underage Possession/Consumption/Internal Possession of Alcohol.” APIS provides further descriptions of this set of policies and its variables, details regarding State policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

2. UNDERAGE PURCHASE AND ATTEMPTED PURCHASE

Policy Description

Most States, but not all, prohibit minors from purchasing or attempting to purchase alcoholic beverages. A minor purchasing alcoholic beverages can be prosecuted for possession since, arguably, a sale cannot be completed until there is possession on the part of the purchaser. Purchase and possession are nevertheless separate offenses. A minor who purchases alcoholic beverages is potentially liable for two offenses in States that have both prohibitions. See the “Underage Possession/Internal Possession/Consumption” section of this Report for

further discussion.³¹ A significant minority of youths purchase or attempt to purchase alcohol for themselves, sometimes using falsified identification (see the “False Identification” section of this Report).

Such purchases increase the availability of alcohol to underage persons, which, in turn, increases underage consumption. Prohibitions and associated sanctions on alcohol purchases by underage persons can be expected to depress rates of purchase and attempted purchase by raising the monetary and social costs of this behavior. Such laws provide a primary deterrent (preventing attempted purchases) and a secondary deterrent (reducing the probability that persons sanctioned under these laws will attempt to purchase in the future).

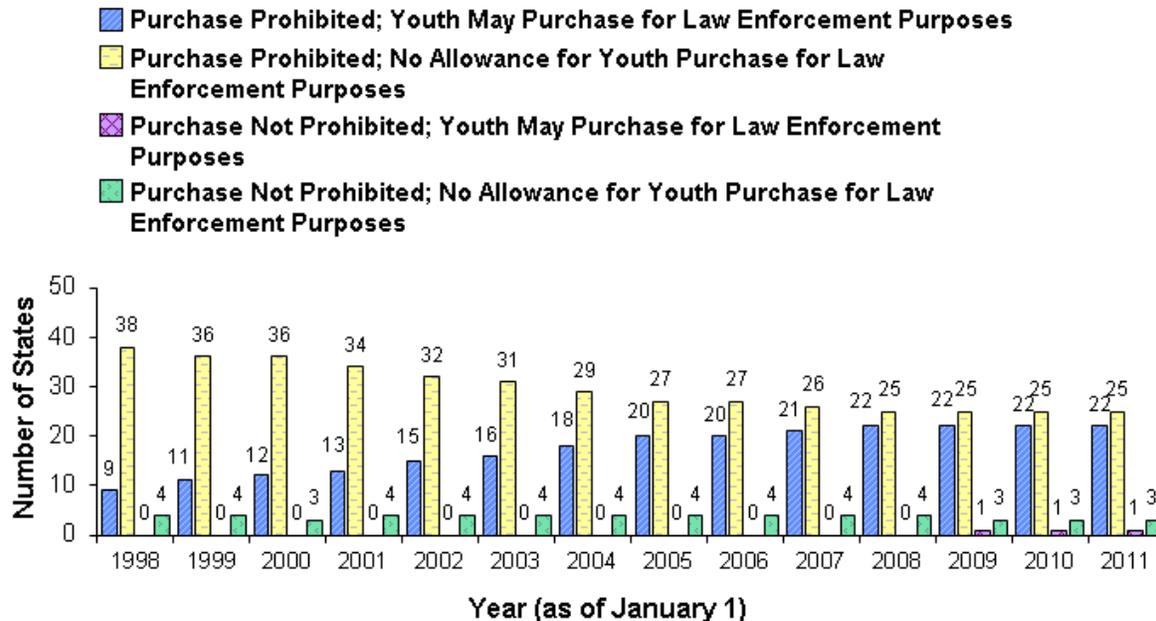
In some States, a person under age 21 is allowed to purchase alcoholic beverages as part of a law enforcement action. Most commonly, these actions are checks on merchant compliance or stings to identify merchants who illegally sell alcoholic beverages to minors. This allowance for purchase in the law enforcement context may exist even though a State does not have a law specifically prohibiting underage purchase.

Status of Underage Purchasing Policies

As of January 1, 2011, 46 States and the District of Columbia prohibit underage purchase or attempted purchase of alcohol; the remaining 4 States (Delaware, Indiana, New York, and Vermont) do not (see Exhibit 4.3.7). Underage persons are allowed to purchase alcohol for law enforcement purposes in 23 States including Indiana, even though Indiana does not have an underage purchase statute; the 3 other States without underage purchase statutes have no allowances for such purchases made for law enforcement purposes.

³¹ Some States have laws that specifically prohibit both underage purchase and attempted purchase of alcohol. An attempted purchase occurs when a minor takes concrete steps toward committing the offense of purchasing whether or not the purchase is consummated. It is likely that courts in States that only include the purchase prohibition in their statutes would treat attempted purchase as a lesser included offense. It can, therefore, be assumed that all States that prohibit purchase also prohibit attempted purchases. The two offenses are therefore not treated separately in this Report.

Exhibit 4.3.8: Underage Purchase of Alcohol for Law Enforcement Purposes, January 1, 1998, through January 1, 2011



References and Further Information

All data for this policy were obtained from APIS at <http://www.alcoholpolicy.niaaa.nih.gov>. Follow links to the policy entitled “Underage Purchase of Alcohol.” APIS provides further descriptions of this policy and its variables, details regarding State policies, and a review of the limitations associated with the reported data. For definitions for the variables in this policy, go to Appendix B.

3. FALSE IDENTIFICATION (“FALSE ID”)

Policy Description

Alcohol retailers are responsible for insuring that sales of alcoholic beverages are made only to persons who are legally permitted to purchase alcohol. Inspecting government-issued identification (driver's license, non-driver identification card, passport, and military identification) is one major mechanism for insuring that buyers meet minimum age requirements. In attempting to circumvent these safeguards, minors may obtain and use apparently valid identification that falsely states their age as 21 or over. Age may be falsified by altering the birthdate on a valid identification, obtaining an invalid identification card that appears to be valid, or using someone else's identification.

Compliance check studies suggest that underage drinkers may have little need to use false identification because retailers often make sales without any inspection of identification. However, concerns about false identification remain high among educators, law enforcement officials, retailers, and government officials. Current technology, including high-quality color copiers and printers, has made false identification easier to fabricate, and the Internet provides ready access to a large number of false identification vendors.

All States prohibit use of false identification by minors to obtain alcohol. In addition to the basic prohibitions, States have adopted a variety of legal provisions pertaining to false identification for obtaining alcohol. These provisions can be divided into three basic categories:

- Provisions that target minors who possess and use false identification to obtain alcohol
- Provisions that target those who supply minors with false identification, either through lending of a valid ID or the production of invalid (“fake”) IDs
- Provisions that assist retailers in avoiding sales to potential buyers who present false identification

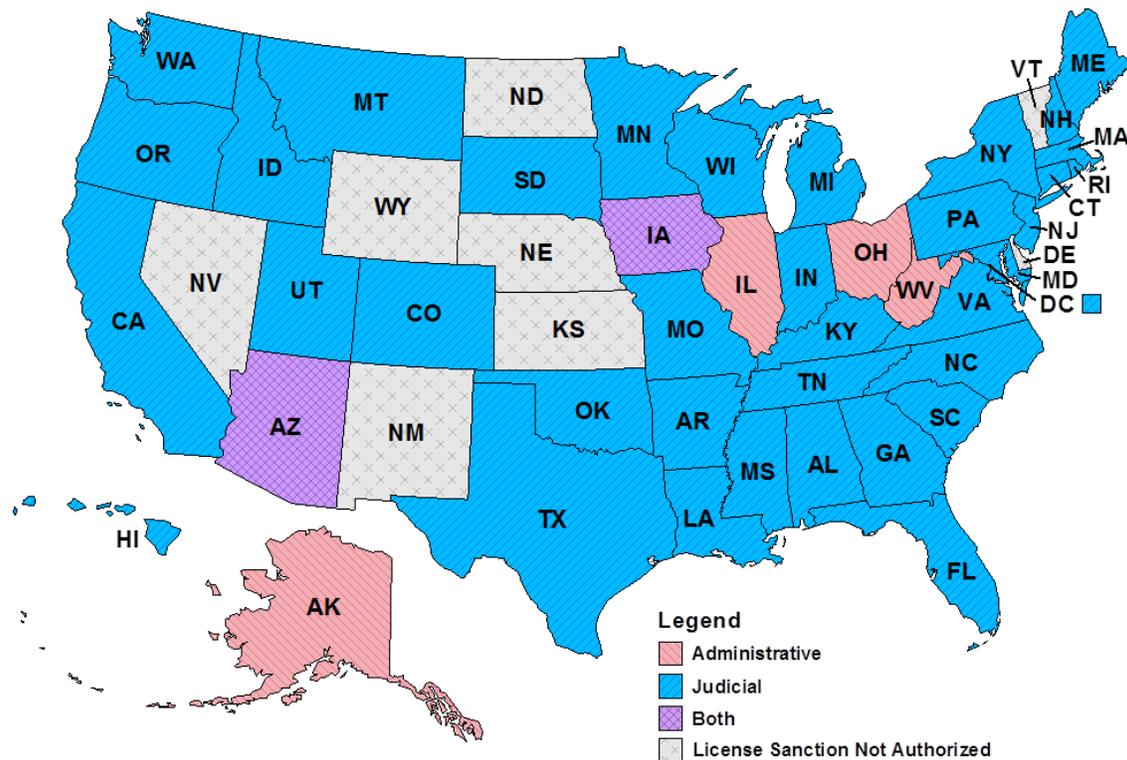
Government-issued IDs are used for a number of age-related purposes other than the purchase of alcohol: registering to vote, enlisting in the military, entering certain entertainment venues, and so on. APIS confines its analysis to statutes and regulations relating to the use of false identification for the purpose of obtaining alcohol.

For further discussion of policies pertaining to the purchase of alcohol by minors, see the “Underage Purchase and Attempted Purchase” section of this Report; of policies that mandate training of servers to detect false identification, the “Responsible Beverage Service” section of this Report; and of license suspension or revocation, the “Loss of Driving Privileges for Alcohol Violations by Minors” section of this Report.

Status of False ID Policies

Provisions That Target Minors

As of January 1, 2011, all States and the District of Columbia prohibit minors from using false IDs to obtain alcohol (see Exhibit 4.3.9). All but eight States (Delaware, Kansas, Nebraska, Nevada, New Mexico, North Dakota, Vermont, and Wyoming) authorize suspension of minors’ driver’s licenses for using a false ID in the purchase of alcohol. In all but four States (Alaska, Illinois, Ohio, and West Virginia) the suspension is through judicial proceedings. Two States (Arizona and Iowa) allow for both judicial and administrative proceedings for license sanctions.

Exhibit 4.3.9: Procedure for Imposing License Sanction for Use of False ID as of January 1, 2011

Provisions That Target Suppliers

As of January 1, 2011, 25 States have laws that target suppliers of false IDs; 24 prohibit lending, transferring, or selling false IDs to minors for the purpose of purchasing alcohol; and 13 prohibit manufacturing such licenses.

Retailer Support Provisions

Retailer support provisions vary widely across the States. In prosecution involving an illegal underage alcohol sale, 44 States and the District of Columbia provide for some type of affirmative defense (the retailer shows that he/she reached a good-faith or reasonable conclusion that the false identification was valid); 43 States have laws requiring distinctive licenses for persons under age 21; 10 States permit retailers to seize apparently false IDs; 11 States provide incentives for the use of scanners; 4 States (Arkansas, Colorado, South Dakota, and Utah) allow retailers to detain minors; and 4 States (Alaska, Oregon, and New Hampshire, and Utah) permit retailers to sue minors for damages.

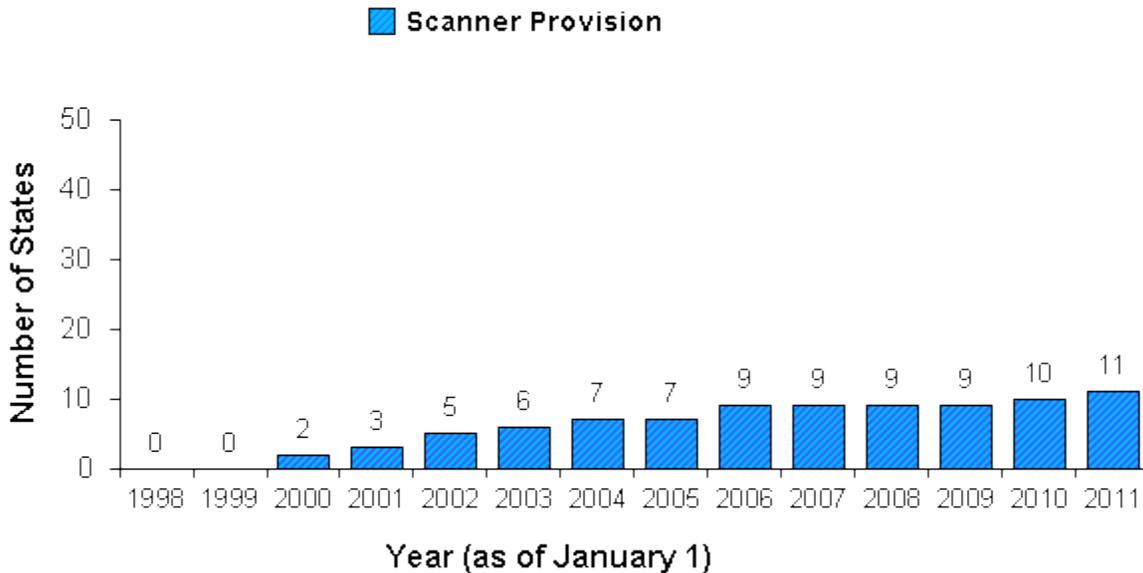
Trends in False ID State Policies

State false ID policies that target minors and suppliers have been relatively stable for the last 10 years. During this period, Hawaii, Maine, Mississippi, and South Dakota implemented judicial license revocation, and Missouri enacted a law making it illegal to lend, transfer, or sell false IDs to minors.

By contrast, States have been actively enacting four of the retailer support provisions. All 11 scanner provisions were enacted over the last 11 years (see Exhibit 4.3.10). Two of the specific

affirmative defense laws (Arizona and Vermont), two of the right to detain minors laws (Arkansas and South Dakota), and three of the right to sue minors laws (Alaska and New Hampshire, and Utah) have been enacted during this time period. Idaho is an exception to the general trend; in 2007, it rescinded its law permitting retailers to seize apparently false IDs.

Exhibit 4.3.10: Number of States with Scanner Provisions in False ID Laws, January 1, 1998, through January 1, 2011



References and Further Information

All data for this policy were obtained from APIS at <http://www.alcoholpolicy.niaaa.nih.gov>. Follow links to the policy entitled “False Identification for Obtaining Alcohol.” APIS provides further descriptions of this policy and its variables, details regarding State policies, and a review of the limitations associated with the reported data. Variables are defined in Appendix B.

Laws Targeting Underage Drinking and Driving

4. YOUTH BLOOD ALCOHOL CONCENTRATION LIMITS (UNDERAGE OPERATORS OF NONCOMMERCIAL MOTOR VEHICLES)

Policy Description

Blood alcohol concentration (BAC) limits policies establish the maximum amount of alcohol a minor can have in his/her bloodstream when operating a motor vehicle. BAC is commonly expressed as a percentage. For instance, a BAC of 0.08 percent means that a person has 8 parts alcohol per 10,000 parts blood in the body. State laws generally specify BAC levels in terms of grams of alcohol per 100 milliliters of blood (often abbreviated as grams per deciliter, or g/dL). BAC levels can be detected by breath, blood, or urine tests. The laws of each jurisdiction specify the preferred or required types of tests used for measurement.

There is strong scientific evidence that as BAC increases, the cognitive and motor skills needed to operate a motor vehicle are increasingly impaired. BAC statutes establish criteria for determining when the operator of a vehicle is sufficiently impaired to constitute a threat to public safety, and is therefore violating the law. Currently, all States and the District of Columbia mandate a BAC limit of 0.08 g/dL for adult drivers.

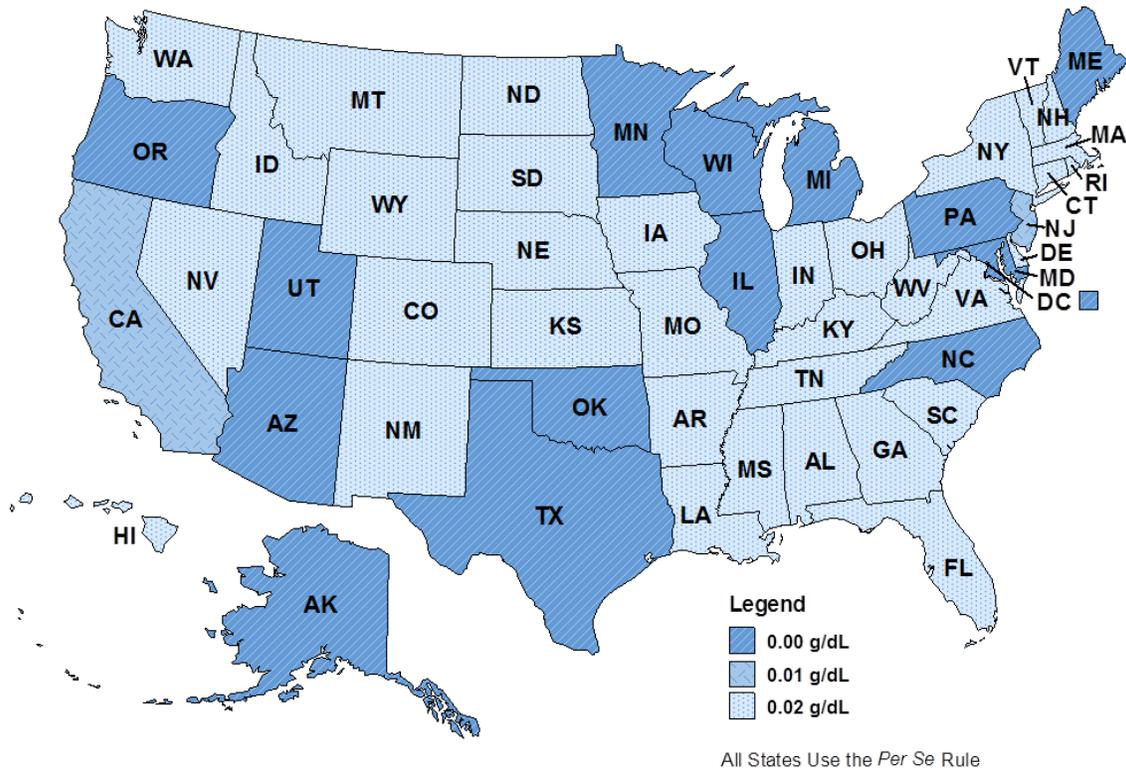
Owing to differences between young people and adults (e.g., body mass, physiological development, driving experience), young people's ability to safely operate a motor vehicle is impaired at a lower BAC than in adults. Partly as a result of financial incentives established by the Federal Government, all jurisdictions in the United States have enacted low BAC limits for underage drivers. Laws establishing very low legal BAC limits of 0.02 g/dL or less for drivers under the legal drinking age of 21 have been widely referred to as zero-tolerance laws.

A per se BAC statute stipulates that if the operator has a BAC level at or above the per se limit, a violation has occurred without regard to other evidence of intoxication or sobriety (e.g., how well or poorly the individual is driving). In other words, exceeding the BAC limit established in a per se statute is itself a violation.

Status of Youth BAC Limit Policies

As of January 1, 2011, all States have per se youth BAC statutes (see Exhibit 4.3.11). Thirty-four States set the driving BAC limit for underage persons at 0.02 g/dL. The District of Columbia and 14 States consider any underage alcohol consumption while driving to be a violation of the law and have set the limit to 0.00 g/dL. Two states (California and New Jersey) have set the underage BAC limit to 0.01 g/dL.

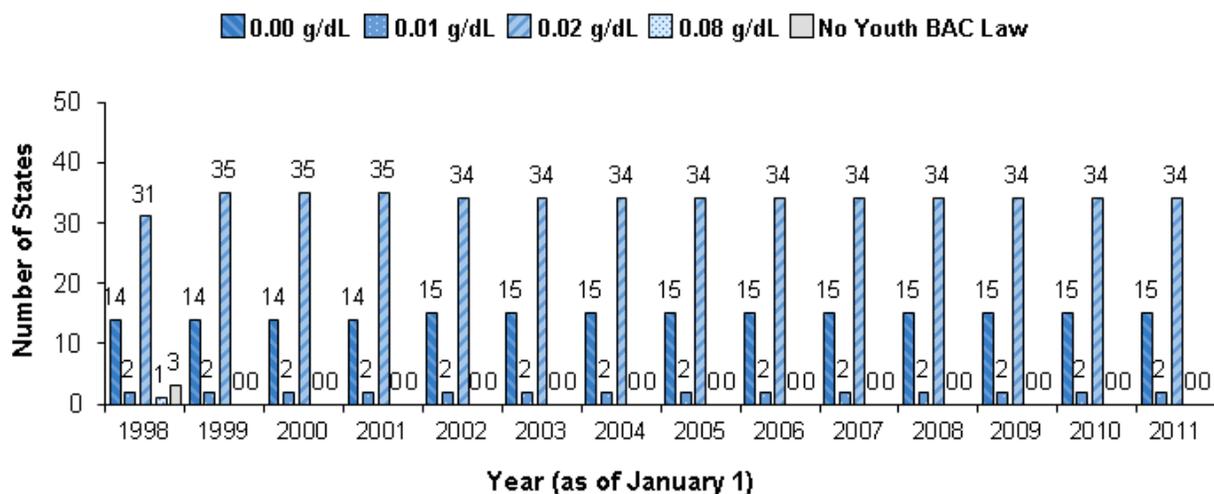
Exhibit 4.3.11: Youth Operators Blood Alcohol Concentration Limit Laws as of January 1, 2011



Trends in Youth BAC Limit Policies

Since 1998, all States have had zero tolerance (0.02 g/dL or lower) youth BAC limit laws (see Exhibit 4.3.12). In the period between 1999 and 2011, the number of States mandating specific BAC limits for underage drivers remained constant with the exception of one State (Maryland), which lowered its underage BAC limit from 0.02 to 0.00 g/dL. Prior to 1998, three states (South Carolina, South Dakota, and Wyoming) had no youth BAC limits and one (Mississippi) set the limit to 0.08 g/dL.

Exhibit 4.3.12: Distribution of Youth (Underage Operators of Noncommercial Motor Vehicles) BAC Limit Laws, January 1, 1998, through January 1, 2011



References and Further Information

All data for this policy were obtained from APIS at <http://www.alcoholpolicy.niaaa.nih.gov>. Follow links to the policy entitled “Blood Alcohol Concentration Limits: Youth (Underage Operators of Noncommercial Motor Vehicles).” APIS provides further descriptions of this policy and its variables, details regarding State policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

5. LOSS OF DRIVING PRIVILEGES FOR ALCOHOL VIOLATIONS BY MINORS (“USE/LOSE” LAWS)

Policy Description

Use/lose laws authorize suspension or revocation of driving privileges as a penalty for underage purchase, possession, or consumption of alcoholic beverages. States began enacting these statutes in the mid-1980s to deter underage drinking by imposing a punishment that young people would consider significant: the loss of a driver’s license. In most States, use/lose laws make it mandatory to impose driver’s license sanctions in response to underage alcohol violations. State laws vary as to the type of violation (purchase, possession, or consumption of alcohol) that leads to these sanctions and how long suspensions or revocations stay in effect.

State laws specific to minors (purchase, possession, and consumption of alcoholic beverages) are described in the “Underage Purchase and Attempted Purchase,” “Underage Possession,” “Underage Consumption,” and “Internal Possession by Minors” sections of this Report.

Status of Loss of Driving Privileges Policies

Upper Age Limit

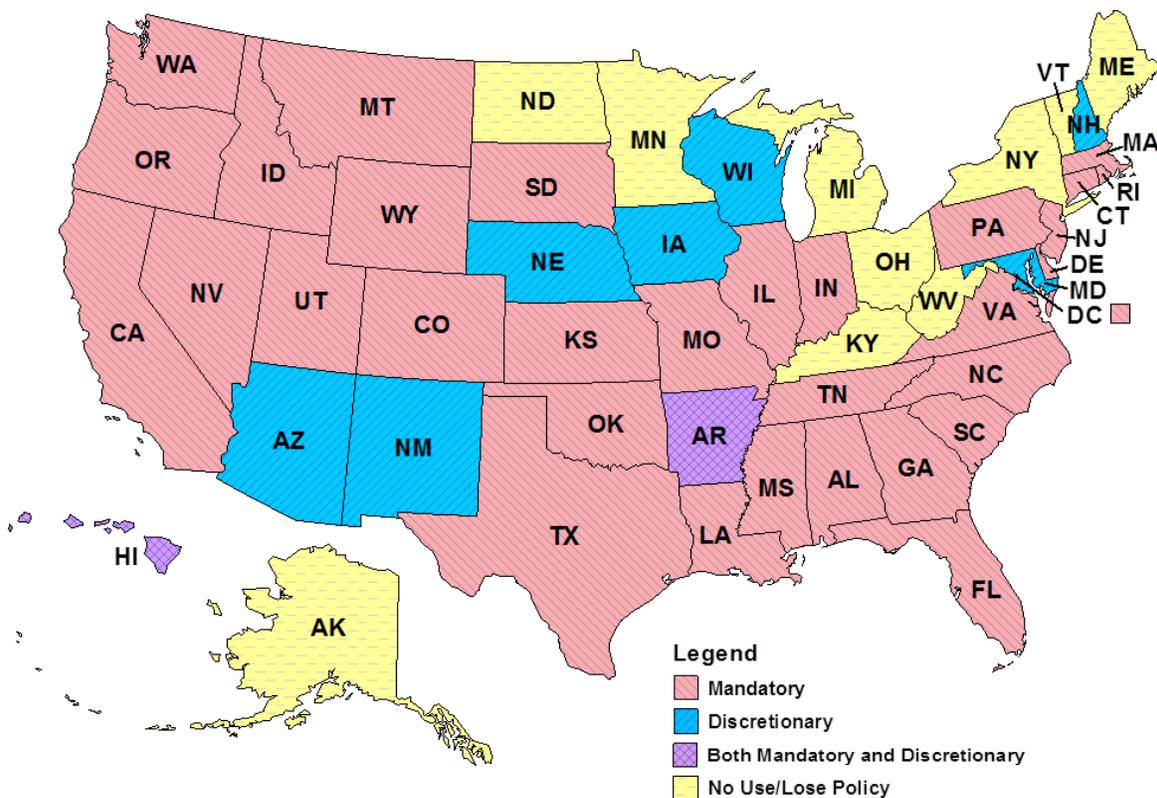
Thirty States and the District of Columbia set age 21 as the upper limit for which use/lose laws apply. Fourteen States set the upper limit at age 18, and one State (Wyoming) sets the limit at

age 19. In four States (Arkansas, Hawaii, Tennessee, and Virginia), some sanction conditions vary depending on whether the violator is under age 18 or under age 21.

Authority To Impose License Sanction

The vast majority of jurisdictions (37 States and the District of Columbia) have made license suspension or revocation mandatory in cases of underage alcohol violations (see Exhibit 4.3.13). Nine States have made this a discretionary penalty for such violations, and 10 States have no use/lose law. One State (Hawaii) makes this a discretionary penalty for minors below age 18, but mandatory for violators ages 18 through 20. (The total of States is greater than 51 because some have both mandatory and discretionary laws.)

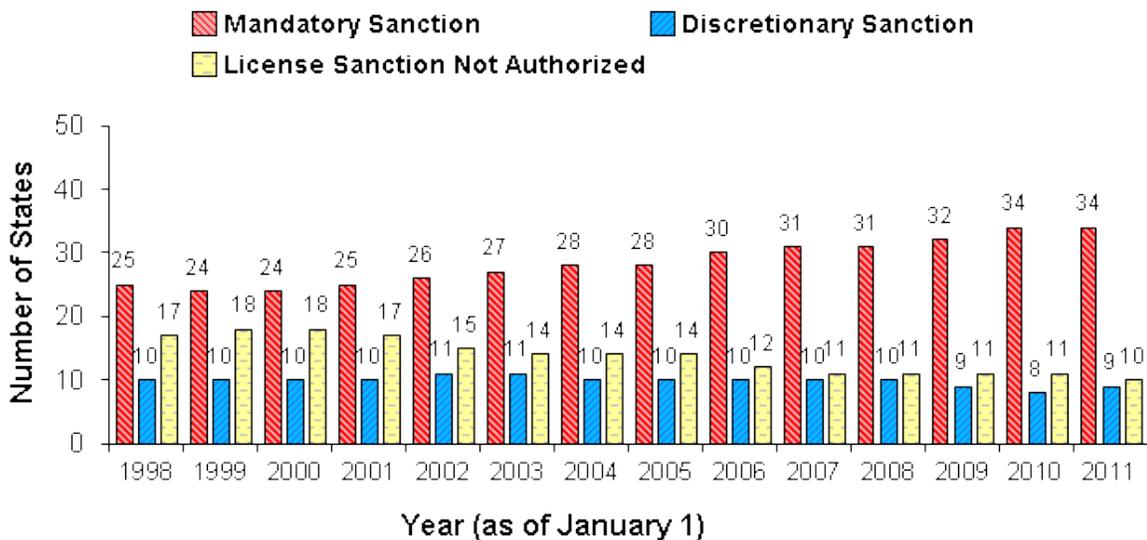
Exhibit 4.3.13: License Suspension/Revocation for Alcohol Violations by Minors as of January 1, 2011



Trends in Loss of Driving Privileges Policies

Between 1998 and 2011, the number of jurisdictions that made license suspension or revocation mandatory in cases of underage alcohol violations increased from 25 to 34 (see Exhibit 4.3.14). During this same time period, the number of jurisdictions with no use/lose laws decreased from 17 to 10, and the number with discretionary authority to impose use/lose sanctions dropped from 10 to 9.

Exhibit 4.3.14: Distribution of License Suspension/Revocation Procedures for Alcohol Violations by Minors, January 1, 1998, through January 1, 2011



References and Further Information

Data for this policy were obtained from APIS at <http://www.alcoholpolicy.niaaa.nih.gov>. Follow links to the policy entitled “Loss of Driving Privileges for Alcohol Violations by Minors (“Use/Lose” Laws).” APIS provides further descriptions of this policy and its variables, details regarding State policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

6. GRADUATED DRIVER’S LICENSES

Policy Description

Graduated driver licensing (GDL) is a system designed to delay full licensure for teenage automobile drivers, thus allowing beginning drivers to gain experience under less risky conditions. Teenagers are targeted because they are at the highest risk for motor vehicle crashes, including alcohol-related crashes. By imposing restrictions on driving privileges, GDL reduces the chances of teenagers driving while intoxicated.

A fully developed GDL system has three stages: a minimum supervised learner’s period, an intermediate license (once the driving test is passed) that limits unsupervised driving in high-risk situations, and a full-privilege driver’s license available after completion of the first two stages. Beginners must remain in each of the first two stages for set minimum time periods.

The learner’s stage has three components:

- Minimum age at which drivers can operate vehicles in the presence of parents, guardians, or other adults
- Minimum holding periods during which learner’s permits must be held before drivers advance to the intermediate stage of the licensing process

- Minimum age at which drivers become eligible to drive without adult supervision

The intermediate stage of GDL law has five components:

- Minimum age at which drivers become eligible to drive without adult supervision
- Unsupervised night-driving prohibitions
- Primary enforcement of night-driving provisions
- Passenger restrictions, which set the total number of passengers allowed in vehicles driven by intermediate-stage drivers
- Primary enforcement of passenger restrictions

“Primary enforcement” refers to the authority given to law enforcement officers to stop drivers for the sole purpose of investigating potential violations of night-driving or passenger restrictions. Law enforcement officers in States without primary enforcement can investigate potential violations of these provisions only as part of an investigation of some other offense. Primary enforcement greatly increases the chance that violators will be detected.

The single component for the license stage of GDL is the minimum age at which full licensure occurs and both passenger and night-driving restrictions are lifted.

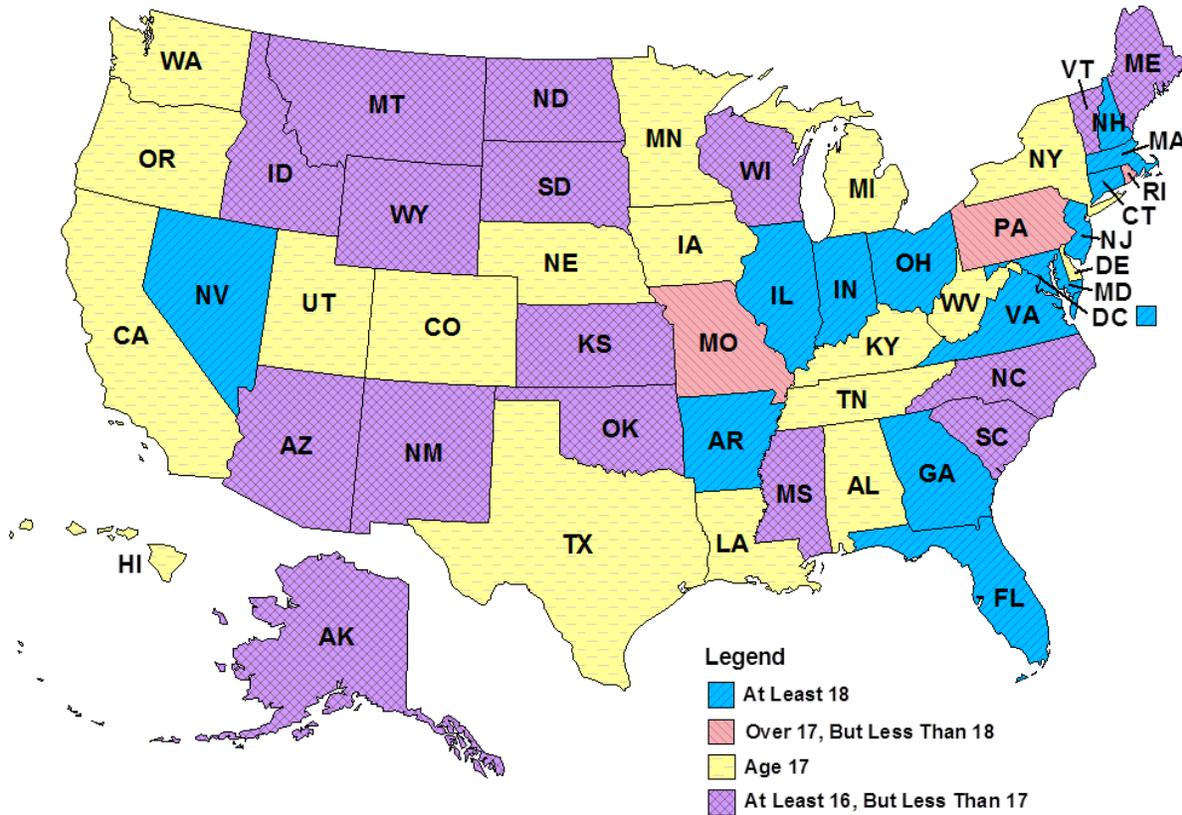
Status of Graduated Driver Licensing Policies

Currently, all 51 jurisdictions have some form of GDL policy and all but one State have full three-stage criteria (see Exhibit 4.3.15). North Dakota omits the intermediate stage; young drivers are eligible for full licensure upon completion of the learner stage.

The minimum ages established for each stage and the extent to which the other restrictions are imposed vary across jurisdictions. Among the most important GDL provisions related to traffic safety is the minimum age for full licensure. Fourteen jurisdictions allow full licensure on the 18th birthday; three jurisdictions permit it at ages above 17 but under 18; and 18 permit it on the 17th birthday. The remaining 16 jurisdictions permit full licensure to those who are under 17 but at least 16 years old.

All but two jurisdictions have night-driving restrictions; the hours during which these restrictions apply vary widely among jurisdictions, but fall largely between the hours of 6 p.m. and 1 a.m. Thirty-seven jurisdictions have primary enforcement of night-driving restrictions. Forty-five jurisdictions place passenger restrictions on drivers with less than full licensure, and 30 of those have primary enforcement of these restrictions.

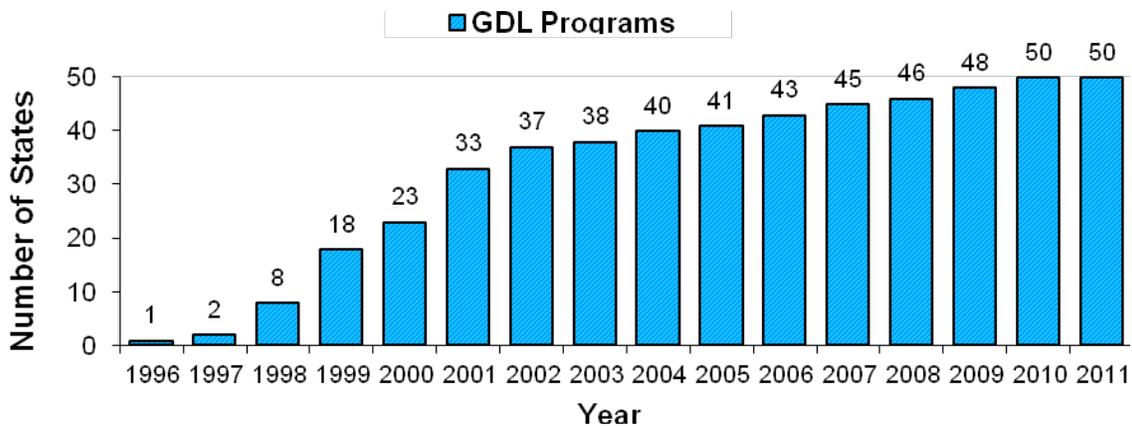
Exhibit 4.3.15: Minimum Age of Full Driving Privileges Laws as of January 1, 2011



Trends in Graduated Driver Licensing Policies

Since the mid-1990s, States enacting three-stage GDL laws have steadily increased (see Exhibit 4.3.16). On January 1, 1996, only one State (Maryland) had such a law, but by 2000, 23 jurisdictions had enacted three-stage GDL laws and by 2011, that number had risen to 50.

Exhibit 4.3.16: Number of States (and District of Columbia) with Three-Stage Graduated Driver Licensing Policies, July 1, 1996, through January 1, 2011



References and Further Information

Legal research for this topic is planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. Historical data for the years 1996 through 2004 were obtained from “Graduated Driver Licensing Programs and Fatal Crashes of 16 year old Drivers: A National Evaluation” (Baker, S. P., Chen, L.-H., & Li, G. (2006).; National Highway Transportation Safety Administration DOT HS 810 614). Data from January 1, 2005, until December 31, 2008, were obtained from the Insurance Institute for Highway Safety (http://www.iihs.org/laws/pdf/us_licensing_systems.pdf). Data through January 1, 2011, were collected by SAMHSA. To see definitions of the variables for this policy, go to Appendix B.

Laws Targeting Alcohol Suppliers

7. FURNISHING ALCOHOL TO MINORS

Policy Description

All States prohibit furnishing alcoholic beverages to minors by both commercial (bars, restaurants, retail sales outlets) and noncommercial servers. However, examination of case law would be required to determine with certainty that the prohibition applies to both commercial and noncommercial servers in all States. Additionally, most States include some type of exception to their Furnishing laws of the types listed below.

Most underage persons obtain alcohol from adults including parents, older siblings and peers, or strangers solicited to purchase alcohol for the minor. Smaller numbers of youth purchase alcohol for themselves from merchants who fail to comply with laws prohibiting sale to minors or by using false identification (see the “False Identification” section of this Report). These sources increase the availability of alcohol to underage persons, which, in turn, increases underage consumption. Prohibitions and associated sanctions on furnishing to underage persons can be expected to depress rates of furnishing by raising the monetary and social costs of this behavior. Such laws provide a primary deterrent (preventing furnishing) and a secondary deterrent (reducing the chances of persons sanctioned under these laws furnishing in the future).

Two types of exceptions to underage furnishing laws are discussed in this analysis:

- Family exceptions permit parents, guardians, or spouses to furnish alcohol to minors; some States specify that the spouse must be of legal age while others do not.
- Location exceptions permit furnishing alcohol in specified locations and may limit the extent to which family members can furnish minors. No State has an exception for furnishing on private property by anyone other than a family member.

Some States provide sellers and licensees with one or more defenses against a charge of furnishing alcoholic beverages to a minor. Under these provisions, a retailer who provides alcohol to a minor will not be found in violation of the furnishing law if he or she can establish one of these defenses. This policy topic tracks one such defense: some States require that the minor who initiated a transaction be charged for possessing or purchasing the alcohol before the retailer can be found in violation of the furnishing law. (Defenses associated with minors using false identification can be found in the “False Identification” section of this Report.) Many States also have provisions that mitigate or reduce the penalties imposed on retailers if they have

participated in responsible beverage service (RBS) programs; see the RBS section of this Report for further discussion.

In some States, furnishing laws are closely associated with laws that prohibit hosting underage drinking parties. These laws target hosts who allow underage drinking on property they own, lease, or otherwise control. (See the “[Hosting Underage Drinking Parties](#)” section of this Report for further discussion.) Hosts of underage drinking parties who also supply the alcohol consumed or possessed by minors may be in violation of two distinct laws: furnishing alcohol to minors, and allowing underage drinking to occur on property they control.

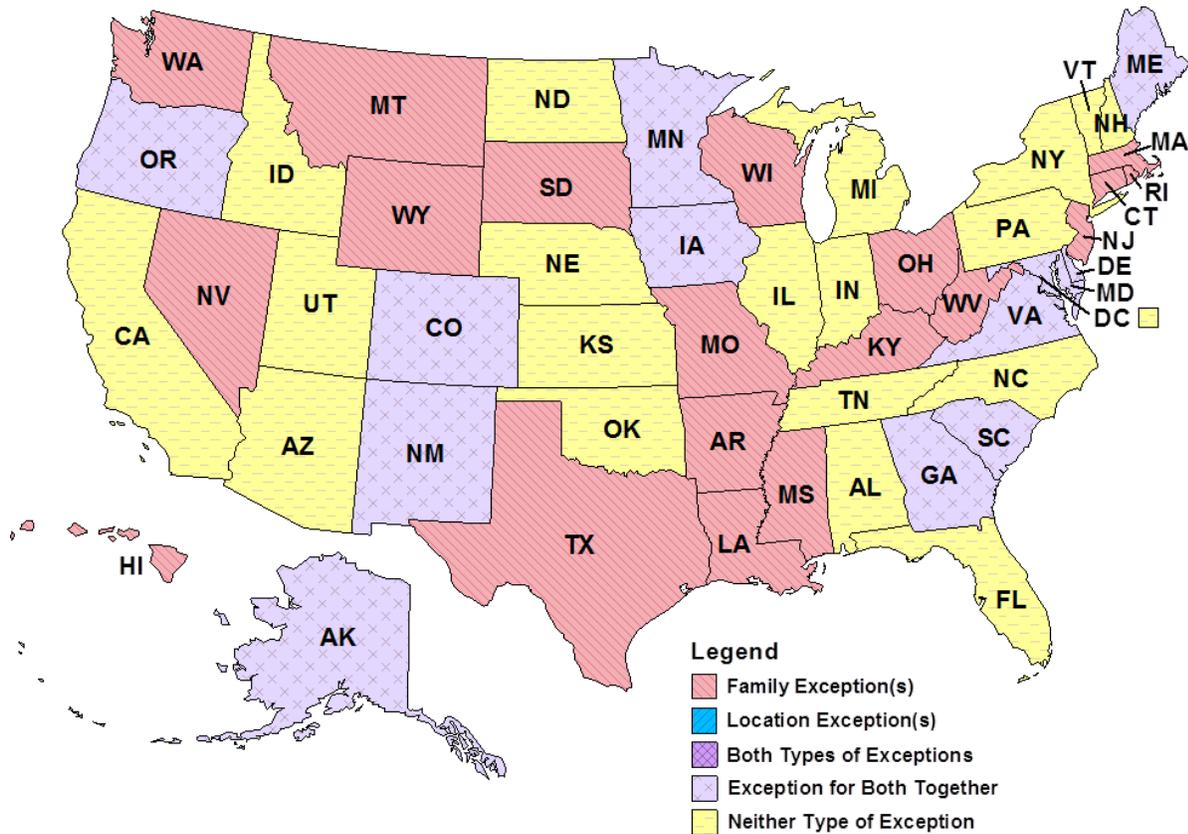
Also addressed in this Report are social host liability laws, which impose civil liability on hosts for injuries caused by their underage guests. Although related to party hosting laws, social host liability laws are distinct. They do not establish criminal or civil offenses, but instead allow injured parties to recover damages by suing social hosts of events during which minors consumed alcohol and later were responsible for injuries. The commercial analog to social host liability laws are dram shop laws that prohibit the furnishing of alcoholic beverages to minors by commercial establishments—bars, restaurants, and retail sales outlets. See the “[Social Host Liability](#)” and “[Dram Shop Liability](#)” portions of this Report for further discussion.

Status of Underage Furnishing Policies

Exceptions to Furnishing Prohibitions

As of January 1, 2011, all States prohibit the furnishing of alcoholic beverages to minors (see Exhibit 4.3.17). Nineteen States and the District of Columbia have no family or location exceptions to this prohibition. The remaining 31 States permit parents, guardians, and/or spouses to furnish alcohol to their underage children and/or spouses. Of these, 12 States limit the exception to certain locations (3 States, any private location; 7 States, any private residence; 2 States, parents’ or guardians’ homes only).

Exhibit 4.3.17: Exceptions to Prohibitions on Furnishing Alcohol to Persons under Age 21 as of January 1, 2011



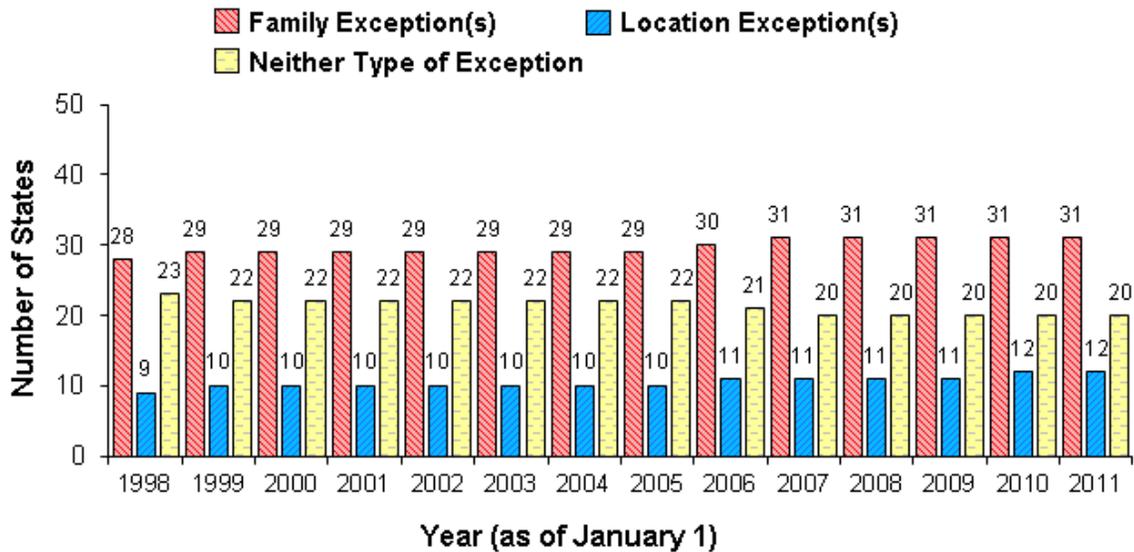
Affirmative Defense for Sellers and Licensees

As of January 1, 2011, the underage furnishing laws of two States (Michigan and South Carolina) include provisions requiring that the seller/licensee be exonerated of charges of furnishing alcohol to a minor unless the minor involved is charged.

Trends in Underage Furnishing Policies

State policies prohibiting the furnishing of alcohol to minors have remained stable over the last decade. As of January 1, 1998, all States prohibited underage furnishing (see Exhibit 4.3.18).

Exhibit 4.3.18: Number of States with Family and Location Exceptions to Prohibition on Furnishing Alcohol to Persons under Age 21, January 1, 1998, through January 1, 2011



References and Further Information

All data for this policy were obtained from APIS at <http://www.alcoholpolicy.niaaa.nih.gov>. See the policy entitled “Furnishing Alcohol to Minors.” APIS provides further descriptions of this policy and its variables, details regarding State policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

8. COMPLIANCE CHECK PROTOCOLS

Policy Description

Compliance checks involve an underage operative (a “decoy”) working with either law enforcement officials or agents from the Alcoholic Beverage Control (ABC) agency, who enters an alcohol retail establishment and attempts to purchase an alcoholic beverage from a server, bartender, or clerk. The protocols for these checks vary to some degree from State to State, but in general follow a similar outline. An underage person (allowable ages vary by State) serves as a decoy in the compliance check. Decoys are generally instructed to act and dress in an age-appropriate manner. The decoy enters an alcohol retail outlet to attempt to purchase a predetermined alcohol product (e.g., a six-pack of beer at an off-sale establishment or a mixed drink at an on-sales establishment). Typically the decoy is observed by an undercover enforcement officer from a local police department or the State ABC agency. Audio and video recording equipment may also be used or required. State rules vary regarding a decoy’s use of legitimate identification cards (driver’s licenses, etc.), although a few States allow decoys to verbally exaggerate their age. If a purchase is made successfully, the establishment and/or the clerk or server may be subject to an administrative or criminal penalty.

Most, but not all, States permit law enforcement agencies to conduct compliance checks on a random basis. A few States permit them only when there is a basis for suspecting that a particular licensee has sold alcohol to a minor in the past. To ensure that State and local law enforcement agencies are following uniform procedures, most States have issued formal compliance check protocols or guidelines. If the protocols are not adhered to, then the administrative action against the licensee may be dismissed. The protocols are therefore designed to ensure that law enforcement actions are fair and reasonable and to provide guidelines to licensees for avoiding prosecution.

Compliance checks of off- and on-premise licensed alcohol retailers are an important community tool for reducing illegal alcohol sales to minors and to promote community normative change. The Institute of Medicine (IOM) 2003 report, *Reducing Underage Drinking: A Collective Responsibility*, calls for (1) regular, random compliance checks; (2) administrative penalties, including fines and license suspensions that increase with each offense; (3) enhanced media coverage for the purposes and results of compliance checks; and (4) training for alcohol retailers regarding their legal responsibility to avoid selling alcohol to underage youths.

Compliance checks have both educational and behavior change goals:

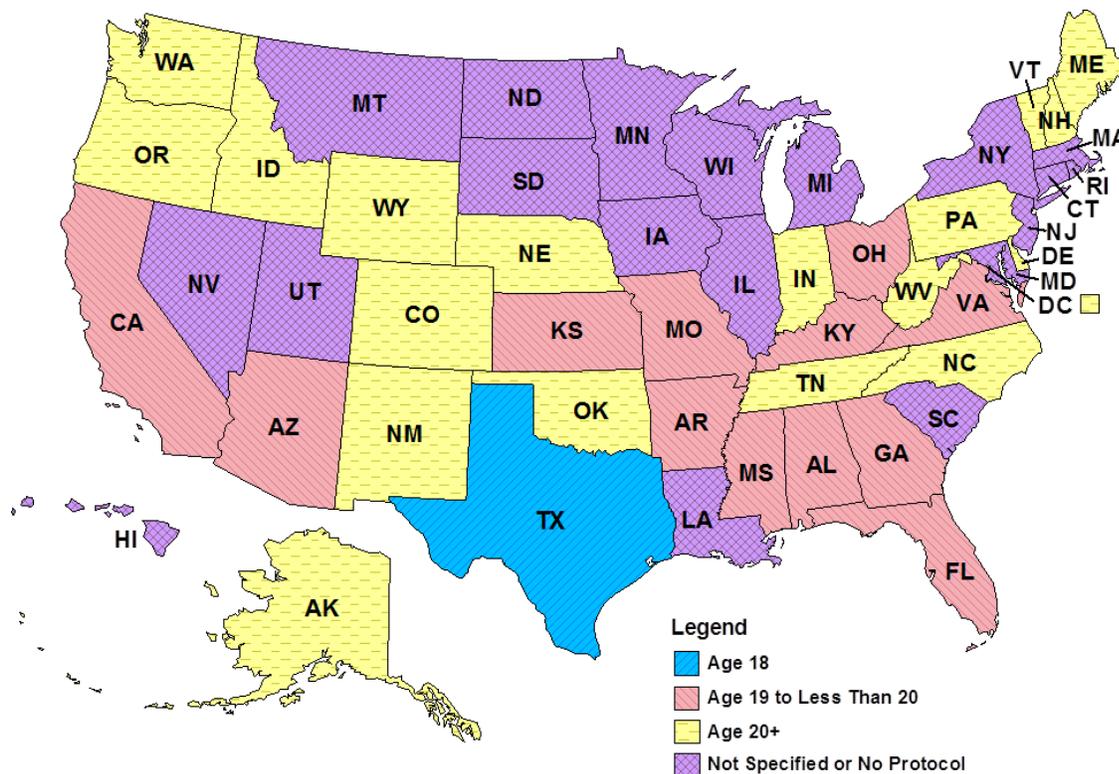
- Change or reinforce social norms that underage drinking is not acceptable by publicizing noncompliant retailers.
- Educate the community, including parents, educators, and policymakers, about the ready availability of alcohol to youth, which may not be considered a major issue.
- Increase alcohol retailers' perception that violation of sales to minors laws will be detected and punished, creating a deterrent effect.

Status of Compliance Check Protocols

Data for this policy were coded from formal compliance check protocols or guidelines. A total of 34 States and the District of Columbia have formal, written protocols; the remaining States either do not have them or do not have them readily available to the public.

Compliance check protocols are generally issued by the State police or the State ABC agency. These guidelines vary somewhat in specificity and detail, possibly reflecting difference in the purposes of the checks and the evidentiary standards in each jurisdiction.

The maximum age of the decoy varies from 18 to just under 21, with the majority of States requiring that the maximum age of the decoy be 19 or 20 (see Exhibit 4.3.19). Thirty-three jurisdictions have guidelines for the decoys' appearance (e.g., no facial hair on males, no makeup on females). These requirements vary widely by State. Three States use an age panel to ensure that the decoys appear underage. Three States allow decoys to verbally exaggerate their age, although no States allow the decoy to use a false ID. Decoy training is mandatory in 11 States. All States and the District of Columbia require a photograph of the underage decoy on the day of the operation, presumably to document that the decoy appeared underage.

Exhibit 4.3.19: Maximum Age of Compliance Check Decoys in 2011

References and Further Information

Legal research and data collection for this topic is planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see variables for this policy, go to Appendix B. For further information and background, see:

Pacific Institute for Research and Evaluation. (2007). *Reducing alcohol sales to underage purchasers: A practical guide to compliance investigations*. Washington, DC: U. S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

9. PENALTY GUIDELINES FOR SALES/SERVICE TO MINORS

Policy Description

In the majority of States, ABC agencies are responsible for adjudicating administrative charges against licensees, including violations for sales or service to those under age 21. Alcohol law enforcement seeks to increase compliance with laws by increasing the level of perceived risk of detection and sanctions. Such deterrence involves three key components: perceived likelihood that a violation will lead to apprehension and sanction, swiftness with which the sanction is imposed, and severity of the sanction (Ross, 1992). As stated in the 2003 IOM report, *Reducing Underage Drinking: A Collective Responsibility*, the effectiveness of alcohol control policies depends heavily on the “intensity of implementation and enforcement and on the degree to which the intended targets are aware of both the policy and its enforcement.” The report recommends, “Enforcement agencies should issue citations for violations of underage sales laws, with

substantial fines and temporary suspension of license for first offenses and increasingly stronger penalties thereafter, leading to permanent revocation of license after three offenses.”

States typically include administrative penalties in their statutory scheme prohibiting sales to minors. The penalty provisions are usually very broad, allowing for severe penalties but delegating responsibility for determining actual penalties in particular cases to the ABC agencies. Penalties may include warning letters, fines, license suspensions, a combination of fines and suspensions, or license revocation. The agencies may consider both mitigating and aggravating circumstances as well the number of violations within a given time period, with repeat offenders usually receiving more severe sanctions.

Many ABC agencies issue penalty guidelines to alert licensees to the sanctions that will be imposed for first, second, and subsequent offenses, providing a time period for determining repeat offenses. The agency may treat the guidelines as establishing a set penalty or range of penalties or may treat them as providing guidance, allowing for deviation at the agency’s discretion.

Penalty guidelines that establish firm, relatively severe penalties (particularly for repeat offenders) can increase the deterrent effect of the policy and its enforcement and can increase licensees’ awareness of the risks associated with violations.

Status of Penalty Guidelines for Sales/Service to Minors

At least 22 jurisdictions have defined administrative penalty guidelines for licensees who sell alcohol to an underage youth (see Exhibit 4.3.20). The remaining 29 States either do not have penalty guidelines or do not make them readily available to the public. The guidelines may be based on statute, regulations, and/or internal policies developed by the agency.

The guidelines vary widely across States. For example, two States issue warning letters for first offenses if there are no aggravating circumstances. Other States impose fines and/or suspensions. Minimum fines for a first offense range from \$250 to \$1,750, with most States in the \$500 to \$1,000 range. Fines are typically in lieu of suspensions for first offenses, with some States allowing licenses to choose between the two sanctions. Florida and Kentucky have the strictest first offense guidelines: Florida imposes a \$1,000 fine and a 7-day suspension; Kentucky imposes a \$1,750 fine and a 35-day suspension. Fines increase to as much as \$10,000 for subsequent offenses, with license suspension days increasing to as many as 60 days for third and subsequent violations. Three States have adopted the IOM recommendation that licenses should be revoked after three offenses (California, Florida, and New Mexico), and an additional six States revoke licenses for a fourth offense. The time periods for defining repeat offenses range from 1 to 4 years.

States also vary in the specificity of their guidelines. Many States list a set penalty or a relatively limited range of penalties. Pennsylvania’s guideline, on the other hand, lists penalties ranging from a \$1,000 fine to license revocation for first offenses.

See the Cross-State Survey Report in this chapter for a review of penalties actually imposed by States for selling and serving minors.

development, and staff supervision. RBS programs typically have distinct training curricula for on- and off-sale establishments because of the differing characteristics of these retail environments. All RBS programs focus on preventing sale and furnishing to minors.

Responsible beverage service training can be mandatory or voluntary. A program is considered mandatory if State provisions require at least one specified category of individual (e.g., servers/sellers, managers, or licensees) to attend training. States may have either mandatory programs, voluntary programs, or both. For example, a State may make training for new licenses mandatory while also offering voluntary programs for existing licensees. Alternatively, a State may have a basic mandatory program while also offering a more intensive voluntary program that provides additional benefits for licensees choosing to participate in both.

States with voluntary programs usually provide incentives for retailers to participate in RBS training but do not impose penalties for those who decline involvement. Incentives vary by State and include (1) a defense in dram shop liability lawsuits (cases filed by injured persons against retail establishments that provided alcohol to minors or intoxicated persons who later caused injuries to themselves or third parties); (2) discounts for dram shop liability insurance; (3) mitigation of fines or other administrative penalties for sales to minors or sales to intoxicated persons; and (4) protection against license revocation for sales to minors or intoxicated persons.

See the “Dram Shop Liability” section of this Report for further discussion of this policy. The “Furnishing of Alcohol to Minors” section has additional information regarding prevention of alcohol sales to minors, and the “False Identification” section includes materials related to age identification policies.

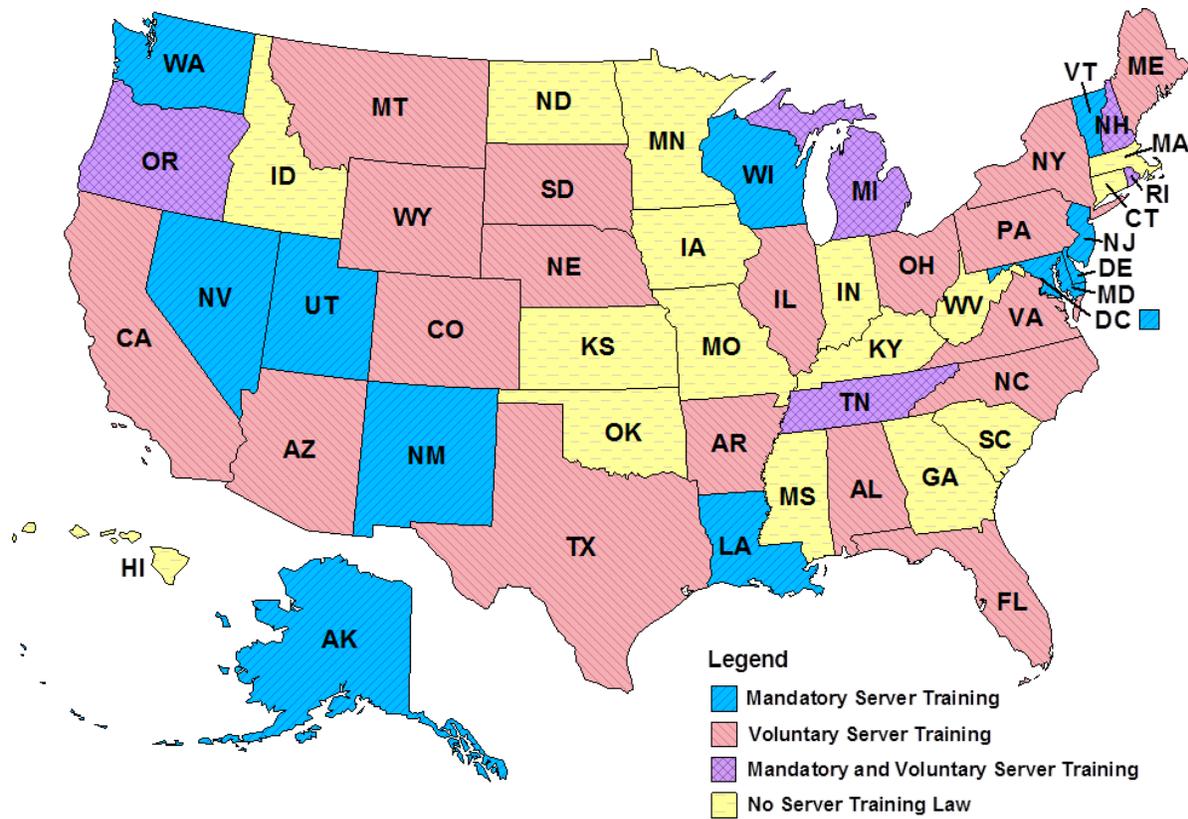
Status of Responsible Beverage Service Training Policies

As of January 1, 2011, 35 States and the District of Columbia have some type of RBS training provision (see Exhibit 4.3.21). Out of these, 17 States and the District of Columbia have some form of mandatory provision and 23 States provide for voluntary training. Of the 17 mandatory States, 12 States and the District of Columbia apply their RBS training provisions to both on- and off-sale establishments; 4 States (Michigan, Rhode Island, Tennessee, and Washington) apply them to on-premises establishments only; and New Jersey limits its provisions to off-sale establishments. Twelve of the mandatory States and the District of Columbia apply their provisions to both new and existing establishments, while four States (Michigan, New Hampshire, New Jersey, and Wisconsin) apply them to new establishments only. Five States (Michigan, New Hampshire, Oregon, Rhode Island, and Tennessee) have both mandatory and voluntary provisions:

- Michigan: The mandatory provisions apply to new on-premises establishments; the voluntary provisions apply to existing on-premises establishments.
- New Hampshire: The mandatory provisions apply to new on- and off-premises establishments; the voluntary provisions provide incentives available to all types of establishments.
- Oregon: Both the voluntary and mandatory provisions apply to all types of establishments, with the voluntary provisions offering incentives for participation in both.

- Rhode Island: The mandatory provisions apply to existing, on-premises establishments. The voluntary provisions offer dram shop liability defense incentives and do not specify which types of establishments may participate.
- Tennessee: The mandatory provisions apply to new and existing on-premises establishments. The voluntary provisions offer incentives available to off-premises establishments but do not specify whether the incentives are available to new and/or existing establishments.

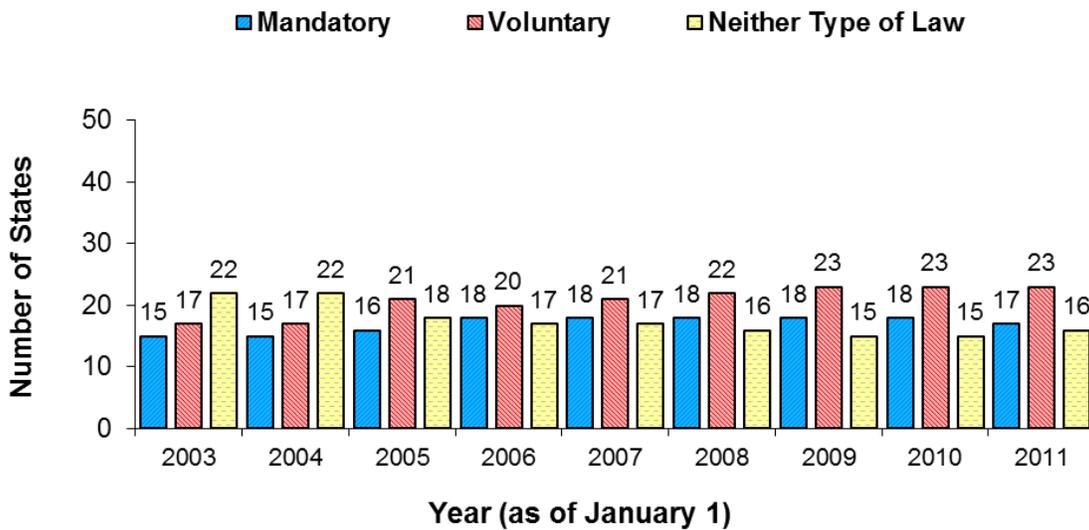
Exhibit 4.3.21: Beverage Service Training and Related Practices as of January 1, 2011



Trends in Responsible Beverage Service Policies

Between 2003 and 2011, the number of States with mandatory policies increased from 15 to 17, and the number of States with voluntary policies rose from 17 to 23 (see Exhibit 4.3.22). The number of States with no RBS training policy decreased from 22 to 16.

Exhibit 4.3.22: Number of States with Beverage Server Training Laws, January 1, 2003, through January 1, 2011



Note: Some Jurisdictions have both types of laws

References and Further Information

All data for this policy were obtained from APIS at <http://www.alcoholpolicy.niaaa.nih.gov>. Follow links to the policy entitled “Beverage Service Training and Related Practices.” APIS provides further descriptions of this policy and its variables, details regarding State policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

11. MINIMUM AGES FOR ON-PREMISES SERVERS AND BARTENDERS

Policy Description

All States specify a minimum age for employees who serve or dispense alcoholic beverages. Generally, the term “servers” refers to waitpersons, and “bartenders” refers to individuals who dispense alcoholic beverages. These restrictions recognize that underage employees, particularly those who are unsupervised, may lack the maturity and experience to conduct adequate checks of age identification and resist pressure from underage peers to complete illegal sales.

States vary widely in terms of minimum age requirements for servers and bartenders. In some States, the minimum age for both types of employee is 21, but others set lower minimum ages, particularly for servers. No State permits underage bartenders while prohibiting underage servers. Some States permit servers or bartenders younger than 21 to work only in certain types of on-premises establishments, such as restaurants, or to serve only certain beverage types, such as beer or wine. Underage servers and bartenders may be allowed only if legal-age managers or supervisors are present when underage persons are serving alcoholic beverages or tending bar.

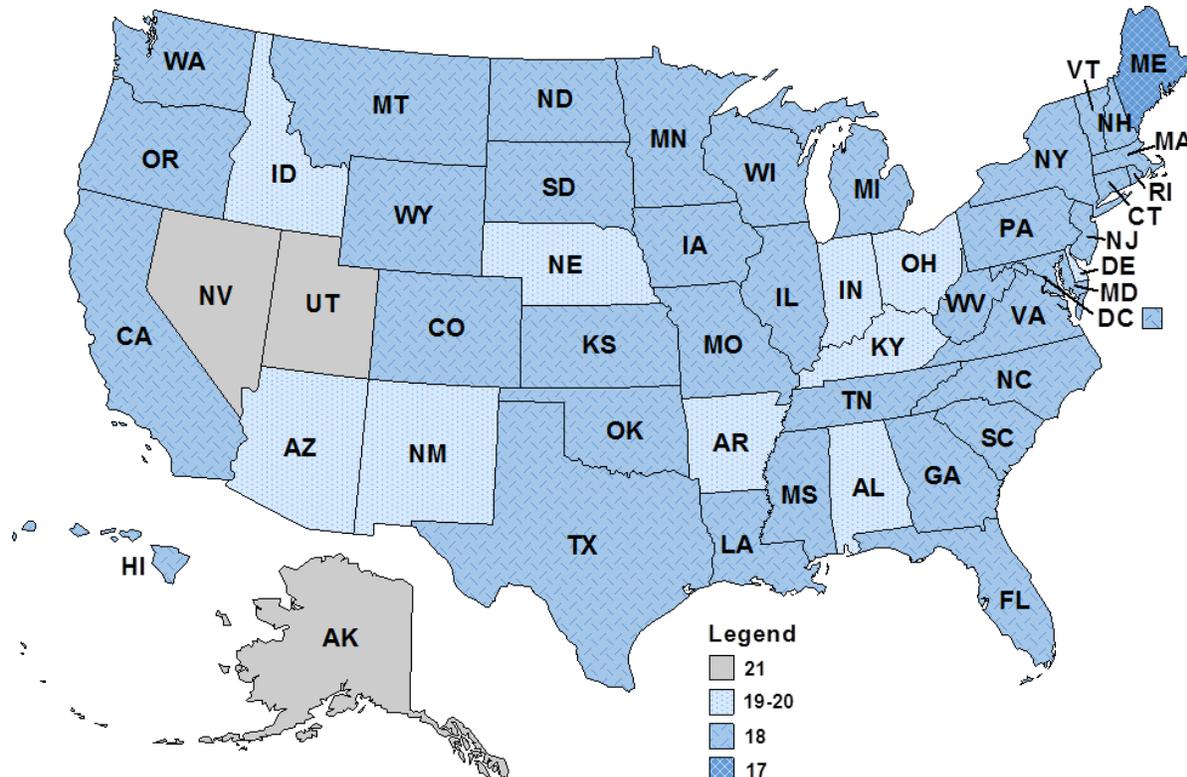
State laws setting a minimum age for employees who sell alcohol at off-premises establishments are described in the “Minimum Ages for Off-Premises Sellers” section of this Report.

Status of Age of Server Policies

Age of Servers

As of January 1, 2011, three States (Alaska, Nevada, and Utah) specify that on-premises alcohol servers of beer, wine, or distilled spirits must be 21 years of age or older (see Exhibit 4.3.23). Only one State (Maine) allows 17-year-olds to be servers. Ten States specify that servers be at least 19 or at least 20 years old, and the remaining 36 States and the District of Columbia allow 18-year-old servers.

Exhibit 4.3.23: Minimum Ages for On-Premises Servers as of January 1, 2011



Age of Bartenders

Minimum ages for bartenders are generally higher than for servers across the States. Nineteen States and the District of Columbia limit bartending to those age 21 or older. Five States (Arizona, Idaho, Kentucky, Nebraska, and Ohio) specify that bartenders be at least age 19 or at least age 20. Twenty-five States allow 18-year-olds to bartend, while only one State (Maine) allows 17-year-olds to be bartenders. Minimum ages for serving beer, wine, and distilled spirits are identical in all but three States: Maryland, North Carolina, and Ohio. Maryland and North Carolina require bartenders to be 21 years old to serve spirits, but permit 18-year-olds to dispense beer and wine; Ohio requires bartenders to be 21 years old to serve wine and distilled spirits, but those age 19 and older are allowed to dispense beer.

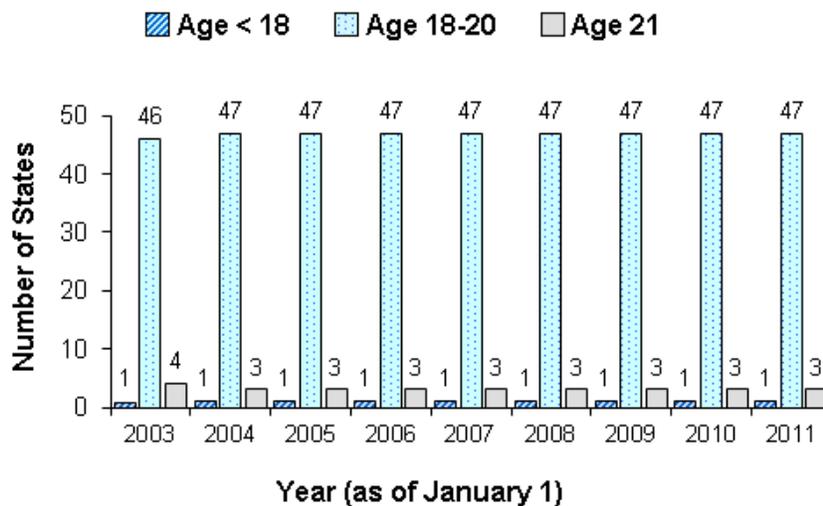
Manager or Supervisor Presence

Ten States require that a supervisor or manager be present when an underage seller conducts an alcoholic beverage transaction.

Trends in Age of Server Policies

State policies for ages of servers and bartenders in on-premises establishments have been generally stable over the last decade (see Exhibit 4.3.24). Between 2003 and 2011, Arkansas lowered its minimum age for servers from 21 to 19, and North Dakota lowered its age for servers from 19 to 18.

Exhibit 4.3.24: Distribution of Minimum Ages for On-Premises Servers of Beer, January 1, 2003, through January 1, 2011



References and Further Information

All data for this policy were obtained from APIS at <http://www.alcoholpolicy.niaaa.nih.gov>. Follow links to the policy entitled “Minimum Ages for On-Premises Servers and Bartenders.” APIS provides further descriptions of this policy and its variables, details regarding State policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

12. MINIMUM AGES FOR OFF-PREMISES SELLERS

Policy Description

Most States have laws that specify a minimum age for employees who sell alcoholic beverages in off-premises establishments such as liquor stores. A small number require sellers to be at least 21 years old, but most States permit sellers to be younger. Some States allow any person to sell alcohol regardless of age. Other variations across States include minimum age requirements for conducting sales transactions with customers and allowing younger employees to stock coolers with alcohol or bag purchased alcohol. Age restrictions may also vary based on the type of off-premises establishment or type of alcohol being sold. For example, younger persons may be

allowed to sell beer but not wine or distilled spirits. Younger persons may also be allowed to sell alcohol in grocery or convenience stores rather than liquor stores. Some States permit younger minimum selling ages only if a manager or supervisor is present.

State laws specifying minimum ages for employees who sell alcoholic beverages for on-premises consumption are described in the “Minimum Ages for On-Premises Servers and Bartenders” section of this Report.

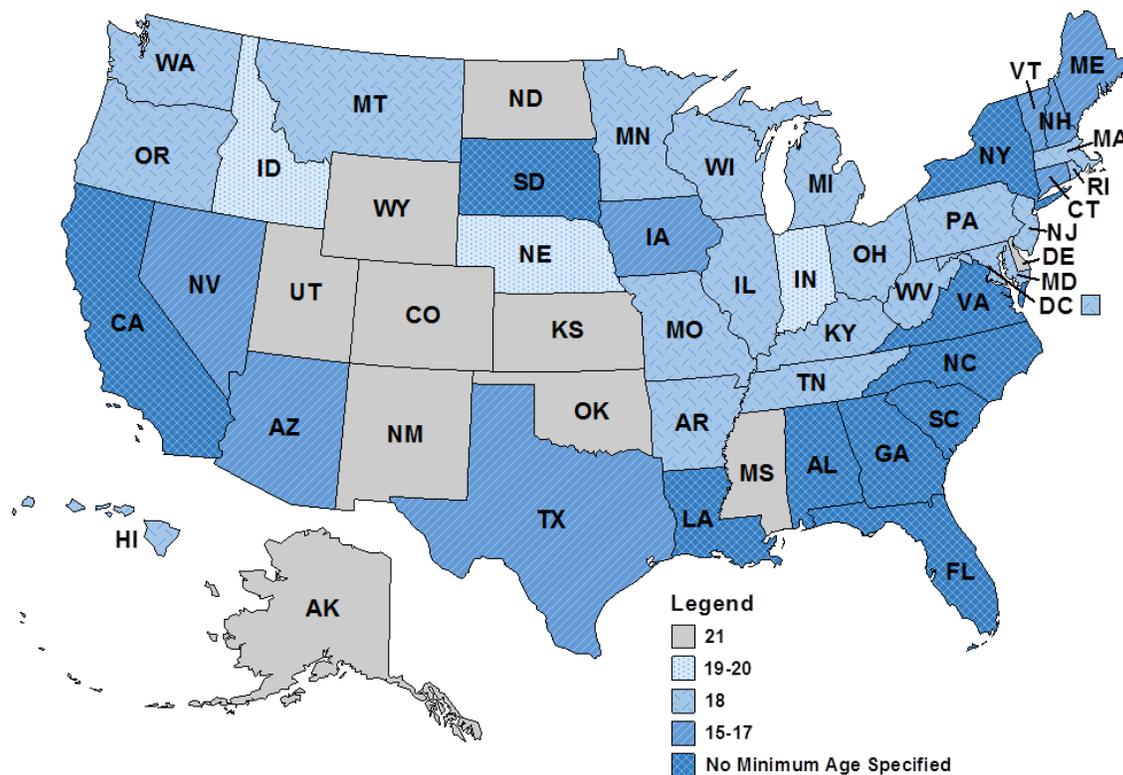
Status of Age of Seller Policies

Minimum Age of Sellers and Types of Beverages

Most jurisdictions specify the same minimum age for sellers of all types of alcoholic beverages (see Exhibit 4.3.25). As of January 1, 2011, 10 States specify that off-premises sellers must be 21 years or older. Three States (Idaho, Indiana, and Nebraska) require off-premise sellers to be 19 years or older; 15 States and the District of Columbia have set the minimum age at 18. Four States (Arizona, Maine, Nevada, and New Hampshire) set the minimum age between 16 and 17 years. Four states (California, Georgia, Louisiana, and Virginia) do not specify any minimum age for sellers.

Minimum age requirements in the remaining 14 States vary by type of alcohol, with age requirements generally higher for the sale of distilled spirits and lower for beer. Florida, New York, and North Carolina set a minimum age of 18 for the sale of spirits and have no age minimum for beer or wine. Alabama and South Carolina have a minimum age of 21 for the sale of spirits but no minimum for beer and wine. Vermont sets a minimum age for selling beer and wine (16), but does not specify a minimum age for selling spirits.

Exhibit 4.3.25: Minimum Age To Sell Beer for Off-Premises Consumption as of January 1, 2011



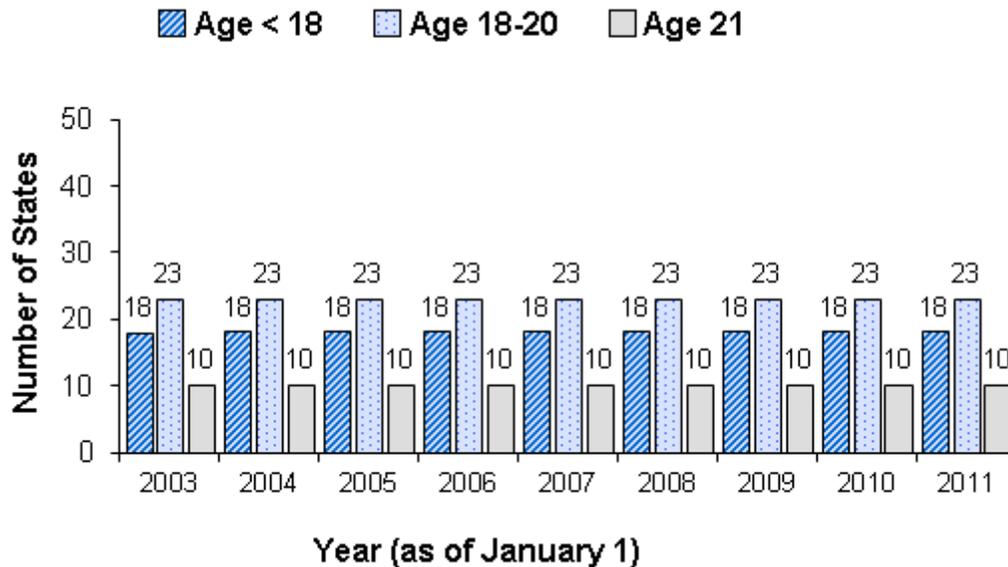
Manager or Supervisor Presence

Thirteen States require that a supervisor or manager be present when an underage seller conducts an alcoholic beverage transaction.

Trends in Age of Seller Policies

There have been no changes in age of seller policies across States between 2003 and 2011 (see Exhibit 4.3.26).

Exhibit 4.3.26: Distribution of Minimum Ages for Off-Premises Sellers of Beer, January 1, 2003, through January 1, 2011



References and Further Information

All data for this policy were obtained from APIS at <http://www.alcoholpolicy.niaaa.nih.gov>. Follow links to the policy entitled “Minimum Ages for Off-Premises Sellers.” APIS provides further descriptions of this policy and its variables, details regarding State policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

13. DRAM SHOP LIABILITY

Policy Description

Dram shop liability refers to the civil liability faced by commercial alcohol providers for injuries or damages caused by their intoxicated or underage drinking patrons. The analysis in this Report is limited to alcohol service to minors.³² The typical factual scenario in legal cases arising from dram shop liability involves a licensed retail alcohol outlet that furnishes alcohol to a minor who, in turn, causes an alcohol-related motor vehicle crash that injures a third party. In States with dram shop liability, the injured third party (“plaintiff”) may be able to sue the retailer (as well as the minor who caused the crash) for monetary damages. Liability comes into play only if an injured private citizen files a lawsuit. The State’s role is to provide a forum for such a lawsuit; the State does not impose a dram-shop-related penalty directly. (This distinguishes dram shop liability from the underage furnishing policy, which results in criminal liability imposed by the State.)

³² “Dram shop liability” is a legal term that originated in the 19th century. Dram shops were retail establishments that sold distilled spirits by the “dram” – a liquid measure that equals 1 ounce. This form of liability may also be referred to as “commercial host liability.”

Dram shop liability is closely related to the Furnishing of Alcohol to Minors policy, but the two topics are distinct. Retailers who furnish alcohol to minors may face fines or other punishment imposed by the State as well as dram shop liability lawsuits filed by parties injured as a result of the same incident. Dram shop liability and social host liability (presented elsewhere in this Report) are identical, except that the former involves lawsuits filed against commercial alcohol retailers and the latter involves lawsuits filed against noncommercial alcohol providers.

Dram shop liability serves two purposes: (1) it creates a disincentive for retailers to furnish to minors because of the risk of litigation leading to substantial monetary losses; and (2) it allows parties injured as a result of an illegal sale to a minor to gain compensation from those responsible for the injury. The minor causing the injury is the primary and most likely party to be sued. Typically, the retailer is sued through a dram shop claim when the minor does not have the resources to fully compensate the injured party.

Dram shop liability is established by statute or by a State court through “common law.” Common law is the authority of State courts to establish rules by which an injured party can seek redress against the person or entity that negligently or intentionally caused injury. Courts have the authority to establish these rules only when the State legislature has not enacted its own statutes, in which case the Courts must follow the legislative dictates (unless found to be unconstitutional). Thus, dram shop statutes normally take precedence over dram shop common law court decisions. This analysis includes both statutory and common law dram shop liability for each State.

A common law liability designation signifies that the State allows lawsuits by injured third parties against alcohol retailers for the negligent service or provision of alcohol to a minor. Common law liability assumes the following procedural and substantive rules:

- A negligence standard applies (i.e., the defendant did not act as a reasonable person would be expected to act in like circumstances). Plaintiffs need not show that the defendant acted intentionally, willfully, or with actual knowledge of the minor’s underage status.
- Damages are not arbitrarily limited. If negligence is established, the plaintiff receives actual damages and can seek punitive damages.
- Plaintiffs can pursue claims against defendants without regard for the age of the person who furnished the alcohol and the age of the underage person furnished with alcohol.
- Plaintiffs must only establish that minors were furnished alcohol and that the furnishing contributed to the injury without regard to the minor’s intoxicated state at the time of sale.
- Plaintiffs must establish key elements of the lawsuit via “preponderance of the evidence” rather than a more rigorous standard (e.g., “beyond a reasonable doubt”).

A statutory liability designation indicates that the State has a dram shop statute. Statutory provisions can alter the common law rules listed above, restricting an injured party’s ability to make successful claims. This report includes three of the most important statutory limitations:

- Limitations on damages: Statutes may impose statutory caps on the total dollar amount that plaintiffs may recover through dram shop lawsuits.
- Limitations on who may be sued: Potential defendants may be limited to only certain types of retail establishments (e.g., on-premises but not off-premises licensees), or certain types of servers (e.g. servers above a certain age).

- Limitations on elements or standards of proof: Statutes may require plaintiffs to prove additional facts or meet a more rigorous standard of proof than would normally apply in common law. The statutory provisions may require plaintiff to:
 - Establish that the retailer knew the minor was underage or that the retailer intentionally or willfully served the minor.
 - Establish that the minor was intoxicated at the time of sale or service.
 - Provide clear and convincing evidence or evidence beyond a reasonable doubt that the allegations are true.

These limitations can restrict the circumstances that can give rise to liability or greatly diminish a plaintiff's chances of prevailing in a dram shop liability lawsuit, thus reducing the likelihood of a lawsuit being filed. Other restrictions in addition to the three listed above may also apply. For example, many States do not allow "first-party claims"—cases brought by the person who was furnished alcohol for his or her own injuries. This report does not track these additional limitations.

Some States have enacted responsible beverage service (RBS) affirmative defenses. In these States, a defendant can avoid liability if it can establish that its retail establishment had implemented an RBS program and was adhering to RBS practices at the time of the service to a minor. Texas has enacted a more sweeping RBS defense. A defendant licensee can avoid liability if it establishes (1) it did not encourage the illegal sale and (2) it required its staff, including the server in question, to attend RBS training. Proof that RBS practices were being adhered to at the time of service is not required. See the RBS Training policy topic in this Report for additional information.

Status of Dram Shop Liability

As of January 1, 2011, 45 jurisdictions imposed dram shop liability as a result of statutory or common law or both (see Exhibit 4.3.27). The District of Columbia and 28 States have either common law liability or statutory liability or both with no identified limitation. The remaining 17 States impose one or more limits on statutory dram shop liability: 7 States limit the damages that may be recovered; 4 States limit who may be sued; and 10 States require stricter standards for proof of wrongdoing than for usual negligence. Seven States provide an RBS defense for alcohol outlets (see Exhibit 4.3.28). Six States provide an affirmative RBS defense and one State provides a complete RBS defense.

Exhibit 4.3.27: Common Law/Statutory Dram Shop Liability and Limitations as of January 1, 2011

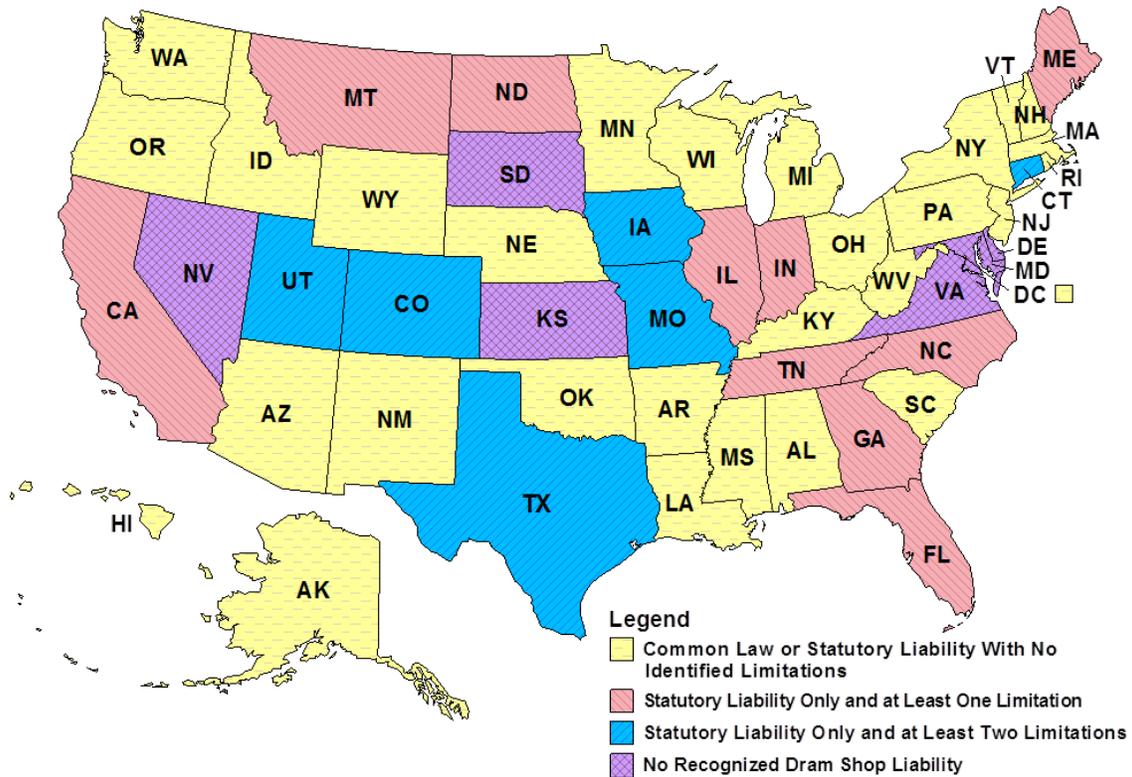
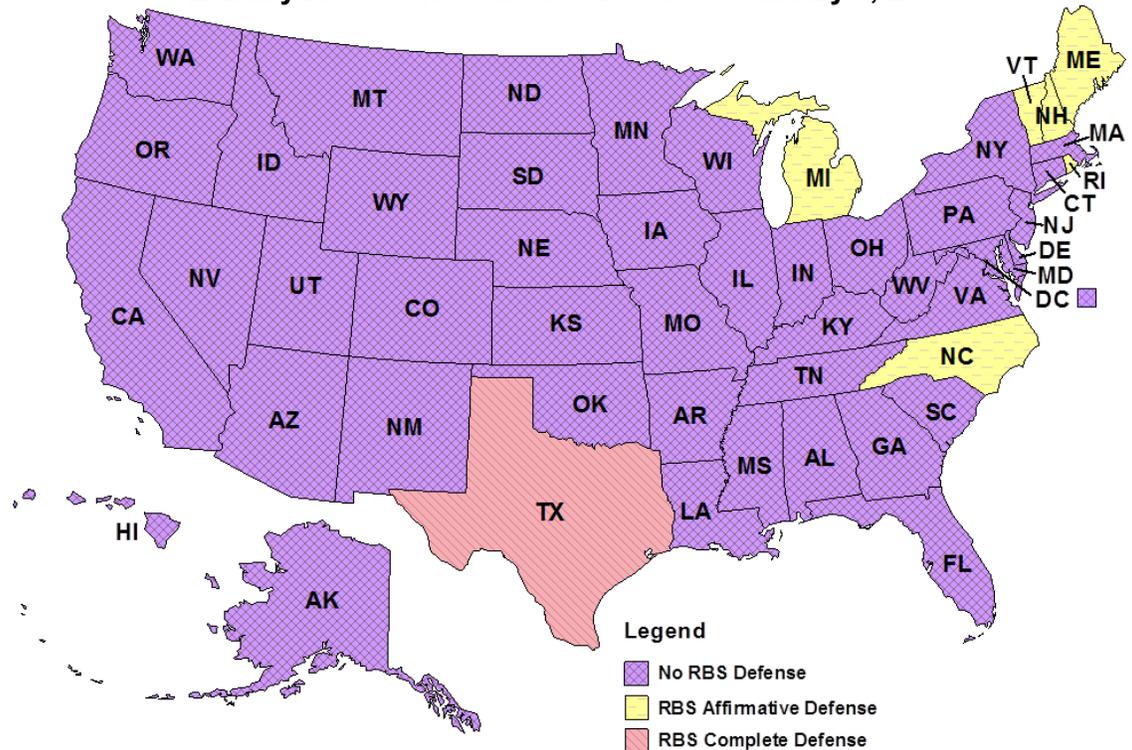


Exhibit 4.3.28: Responsible Beverage Service Program Defenses Against Dram Shop Liability Across the United States as of January 1, 2011



Trends in Dram Shop Liability for Furnishing Alcohol to a Minor

Between 2009 and 2011, the number of jurisdictions that permit dram shop liability remained constant and three States increased the dollar limits on damages.

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see:

Holder, H., Janes, K., Mosher, J., Saltz, R., Spurr, S., & Wagenaar, A. (1992). Final report: Evaluation of dram shop liability and the reduction of alcohol-related traffic problems. National Highway Traffic Safety Administration, DTNH22-87-R-07254.

Holder, H., et al. (1993). Alcoholic beverage server liability and the reduction of alcohol-involved problems. *J Stud Alcohol*, 54, 23–36.

Mosher, J., et al. (2011). *Liquor liability law*. Newark, NJ: LexisNexis.

14. SOCIAL HOST LIABILITY

Policy Description

Social host liability refers to the civil liability faced by noncommercial alcohol providers for injuries or damages caused by their intoxicated or underage drinking guests. The analysis in this Report does not address social host liability for serving adult guests. The typical factual scenario in legal cases arising from social host liability involves an underage drinking party at which the party host furnishes alcohol to a minor who in turn injures a third party in an alcohol-related incident (often a motor vehicle crash). In States with social host liability, injured third parties (“plaintiffs”) may be able to sue social hosts (as well as the minor who caused the crash) for monetary damages. Liability comes into play only if injured private citizens file lawsuits. The State’s role is to provide a forum for such lawsuits; the State does not impose social host-related penalties directly. (As discussed below, this distinguishes social host liability from underage furnishing and host party policies, which can result in criminal liability imposed by the State.)

Social host liability is closely related to the furnishing alcohol to a minor and host party policy topics, but the three topics are distinct. Social hosts who furnish alcohol to minors or allow underage drinking parties on their property may face fines or other punishment imposed by the State as well as social host liability lawsuits filed by injured parties stemming from the same incident. Social host liability and dram shop liability (presented elsewhere in this Report) are identical policies except that the former involves lawsuits brought against noncommercial alcohol retailers, and the latter involves lawsuits filed against commercial alcohol providers.

Social host liability serves two purposes: (1) it creates disincentives for social hosts to furnish to minors due to the risk of litigation and potentially substantial monetary losses and (2) it allows those injured as a result of illegal furnishing of alcohol to minors to gain compensation from the person(s) responsible for their injuries. Minors causing injuries are the primary and most likely parties to be sued. Typically, social hosts are sued through social host liability claims when minors do not have the resources to fully compensate the injured parties.

Social host liability is established by statute or by a State court through “common law.” Common law refers to the authority of State courts to establish rules by which injured parties can seek redress against persons or entities that negligently or intentionally caused injuries. Courts have the authority to establish these rules only when State legislatures have not enacted their own statutes, in which case the courts must follow legislative dictates (unless found to be unconstitutional). Thus, social host statutes normally take precedence over social host common law court decisions.

Many States require evidence that social hosts furnished alcohol to the underage guest, although others permit liability if social hosts allowed underage guests to drink on the hosts’ property even if the hosts did not furnish the alcohol. This analysis does not report the States that have adopted this more permissive standard. The analysis includes both statutory and common law social host liability for each State.

A common law liability designation signifies that the State allows lawsuits by injured third parties against social hosts for the negligent service or provision of alcohol to minors in noncommercial settings. Common law liability assumes the following procedural and substantive rules:

- A negligence standard applies (i.e., defendants did not act as reasonable persons would be expected to act in similar circumstances). Plaintiffs need not show that defendants acted intentionally, willfully, or with actual knowledge of minors’ underage status.
- Damages are not arbitrarily limited. If successful in establishing negligence, plaintiffs receive actual damages and have the possibility of seeking punitive damages.
- Plaintiffs can pursue claims against defendants without regard for the age of the person who furnished the alcohol and the age of the underage person furnished with alcohol.
- Plaintiffs must only establish that minors were furnished with alcohol and that the furnishing contributed to injuries without regard to the minors’ intoxicated state at the time of the party.
- Plaintiffs must establish the key elements of lawsuits by “preponderance of the evidence” rather than a more rigorous standard (such as “beyond a reasonable doubt”).

A statutory liability designation indicates that a State has a social host liability statute. Statutory provisions can alter the common law rules listed above, restricting an injured party’s ability to make successful claims. This report includes three of the most important statutory limitations:

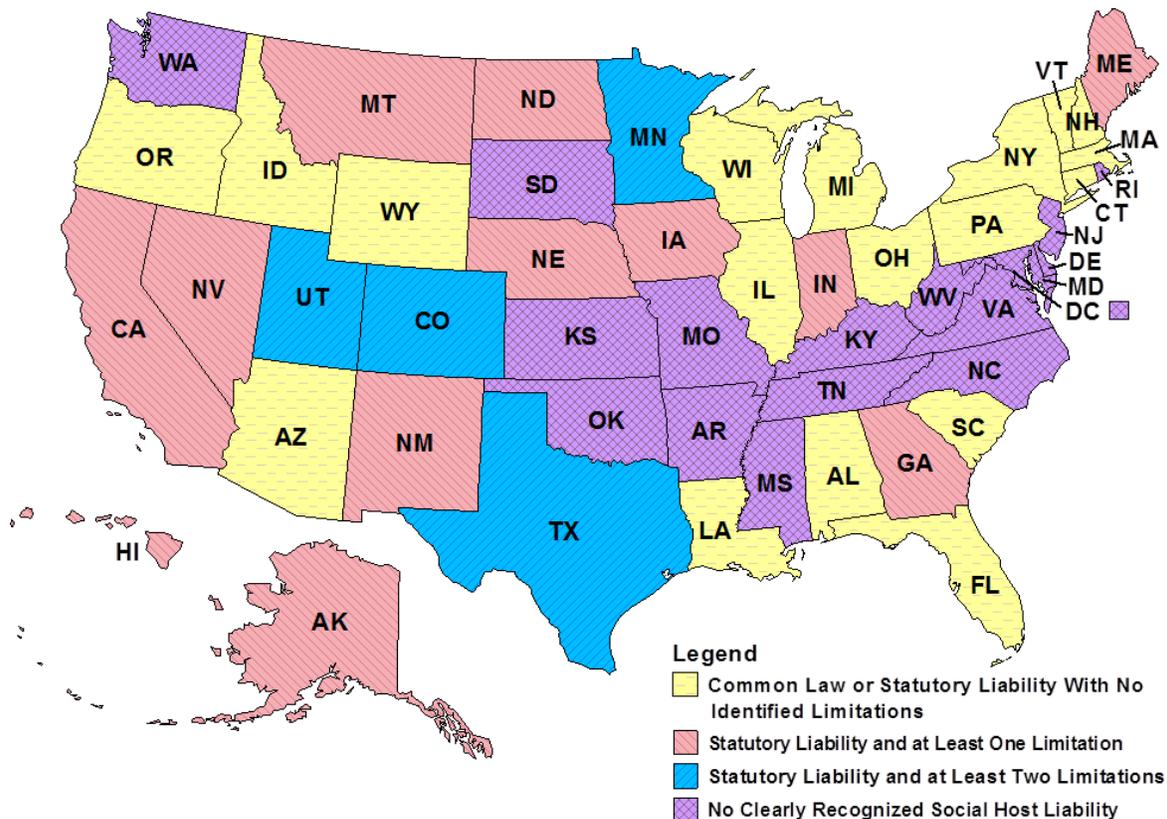
- Limitations on damages: Statutes may impose statutory caps on the total dollar amount that plaintiffs may recover through social host lawsuits.
- Limitations on who may be sued: Potential defendants may be limited to persons above a certain age.
- Limitations on elements or standards of proof: Statutes may require plaintiffs to prove additional facts or meet a more rigorous standard of proof than would normally apply in common law. The statutory provisions may require the plaintiff to:
 - Establish that hosts had knowledge that minors were underage or proof that social hosts intentionally or willfully served minors.
 - Establish that the minors were intoxicated at the time of service.
 - Provide clear and convincing evidence or evidence beyond a reasonable doubt that the allegations are true.

These limitations can limit the circumstances that can give rise to liability or greatly diminish plaintiffs' chances of prevailing in a social host liability lawsuit, thus reducing the likelihood of a lawsuit being filed. Other restrictions in addition to the three listed above may also apply. For example, many States do not allow "first-party claims"—cases brought by the person who was furnished alcohol for his or her own injuries. This report does not track these additional limitations.

Status of Social Host Liability

As of January 1, 2011, 32 States impose social host liability through statute or common law, 17 jurisdictions do not impose social host liability, and in 2 States it is unclear (see Exhibit 4.3.29). Sixteen States have either common law liability or statutory social host liability with no identified limitations. The remaining 16 States impose one or more limits on statutory social host liability: 4 States limit the damages that may be recovered; 4 States limit who may be sued; and 12 States require standards of proof of wrongdoing that are stricter than usual negligence standards.

Exhibit 4.3.29: Common Law/Statutory Social Host Liability as of January 1, 2011



Trends in Social Host Liability for Furnishing Alcohol to a Minor

In the years between 2009 and 2011, the number of States that permit social host liability increased by one. California now requires standards of proof of wrongdoing that are stricter than usual negligence standards. Three States (Colorado, Illinois, and Utah) increased the dollar limits on damages.

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract with The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For additional information and background, see:

Mosher, J., et al. (2011). *Liquor liability law*. Newark, NJ: LexisNexis.

Stout, E., Sloan, A., Liang, L., & Davies, H. (2000). Reducing harmful alcohol-related behaviors: Effective regulatory methods. *J Stud Alcohol*, 61, 402–412.

15. HOSTING UNDERAGE DRINKING PARTIES

Policy Description

Host party laws establish State-imposed liability against individuals (social hosts) responsible for underage drinking events on property they own, lease, or otherwise control. The primary purpose of these laws is to deter underage drinking parties by raising the legal risk for individuals who allow underage drinking events on property they own, lease, or otherwise control. Underage drinking parties pose significant public health risks. They are high-risk settings for binge drinking and associated alcohol problems including impaired driving. Young drinkers are often introduced to heavy drinking behaviors at these events. Law enforcement officials report that, in many cases, underage drinking parties occur on private property, but the adult responsible for the property is not present or cannot be shown to have furnished the alcohol. Host party laws address this issue by providing a legal basis for holding persons responsible for parties on their property whether or not they provided alcohol to minors.

Host party laws often are closely linked to laws prohibiting the furnishing of alcohol to minors (analyzed elsewhere in this Report), although laws that prohibit the hosting of underage drinking parties may apply without regard to who furnishes the alcohol. Hosts who allow underage drinking on their property and also supply the alcohol consumed or possessed by the minors may be in violation of two distinct laws: furnishing alcohol to a minor and allowing underage drinking to occur on property they control.

Two general types of liability may apply to those who host underage drinking parties. The first, analyzed here, concerns State-imposed liability. State-imposed liability involves a statutory prohibition that is enforced by the State, generally through criminal proceedings that can lead to sanctions such as fines or imprisonment. The second, social host liability (analyzed elsewhere in this Report), involves an action by a private party seeking monetary damages for injuries that result from permitting underage drinking on the host's premises.

Although related, these two forms of liability are distinct. For example, an individual may allow a minor to drink alcohol after which the minor causes a motor vehicle crash that injures an innocent third party. In this situation, the social host may be prosecuted by the State under a criminal statute and face a fine or imprisonment for the criminal violation. In a State that provides for social host civil liability, the injured third party could also sue the host for monetary damages associated with the motor vehicle crash.

State host party laws differ across multiple dimensions, including the following:

- They may limit their application specifically to underage drinking parties (e.g., by requiring a certain number of minors to be present for the law to take effect) or may prohibit hosts from allowing underage drinking on their property generally, without reference to hosting a party.
- Underage drinking on any of the host's properties may be included, or the laws may restrict their application to residences, out-buildings, and/or outdoor areas.
- The laws may apply only when hosts make overt acts to encourage the party, or they may require only that hosts knew about the party or were negligent in not realizing that parties were occurring (i.e., should have known based on the facts available).
- A defense may be available for hosts who take specific preventive steps to end parties (e.g., contacting police) once they become aware that parties are occurring.
- The laws may require differing types of behavior on the part of the minors at the party (possession, consumption, intent to possess or consume) before a violation occurs.
- Jurisdictions have varying exceptions in their statutes for family members or others, or for other uses or settings involving the handling of alcoholic beverages.

Status of Host Party Laws

As of January 1, 2011, 19 jurisdictions have general host party laws, 8 have specific host party laws, and 24 have no laws of either sort (see Exhibit 4.3.30). Of the jurisdictions with host party laws, 22 apply to both residential and outdoor property and 4 apply to residential property but not outdoor property. Twenty-five jurisdictions apply their law to other types of property (e.g., motels, hotels, campgrounds, out-buildings). Seven jurisdictions permit negation of violations when the host takes preventive action; 21 require knowledge standards to trigger liability; 3 rely on a negligence standard; 4 require an overt act on the part of the host to trigger liability; and 1 requires recklessness. Finally, 19 jurisdictions have family exceptions and 4 have resident exceptions.

References and Further Information

All data for this policy were obtained from APIS at <http://www.alcoholpolicy.niaaa.nih.gov>. Follow links to the policy entitled “Prohibitions against Hosting Underage Drinking Parties.” APIS provides further descriptions of this policy and its variables, details regarding State policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

16. DIRECT SALES/SHIPMENTS FROM PRODUCERS TO CONSUMERS (INTERNET SALES)

Policy Description

State proscriptions against direct sales and shipments of alcohol from producers to consumers date back to the repeal of Prohibition. The initial reason for the proscription was to ensure that the pre-Prohibition-era “tied house system” (under which producers owned and/or controlled retail outlets directly) did not continue after repeal. Opponents of the tied house system argued that producers who controlled retail outlets permitted unsafe retail practices and failed to respond to community concerns. The alternative that emerged was a three-tier production and distribution system with separate production, wholesaling, and retail elements. Consequently, producers must distribute products through wholesalers rather than selling directly to retailers or consumers; wholesalers must purchase from producers; and consumers must purchase from retailers.

Modern marketing practices, particularly Internet sales that link producers directly to consumers, have led many States to create laws with exceptions to general mandates that alcohol producers distribute their products only through wholesalers. Some States permit producers to ship alcohol to consumers using a delivery service (usually a common carrier). In some cases, these exceptions are responses to legal challenges by producers or retailers arguing that State law unfairly discriminates between in-State and out-of-State producers. The litigants have contended that such processes violate the U.S. Constitution’s Interstate Commerce Clause by allowing in-State producers to ship directly to consumers but barring out-of-State producers from doing so.³³

One central concern emerging from this controversy is the possibility that direct sales/shipments (either through Internet sales or sales made by telephone or other remote communication) will increase alcohol availability to underage persons. Young people may attempt to purchase alcohol through direct sales instead of face-to-face sales at retail outlets because they perceive that detection of their underage status is less likely. These concerns were validated by a recent study which found that Internet alcohol vendors use weak, if any, age verification, thereby allowing minors to successfully purchase alcohol online. In response to these concerns, several jurisdictions that permit direct sales/shipments have included provisions to deter youth access. These may include requirements that:

- Consumers have face-to-face transactions at producers’ places of business (and show valid age identification) before any future shipments to consumers can be made.³⁴
- Producers/shippers and deliverers verify recipient age, usually by checking recipients’ identification.

³³ See, e.g., *Granholm v. Heald*, 544 U.S. 460, 125 S.Ct. 1885 (2005).

³⁴ Laws that require face-to-face transactions for all sales prior to delivery are treated as prohibitions on direct sales/shipments.

- Producers/shippers and deliverers obtain permits or licenses or be approved by the State.
- Producers/shippers and deliverers maintain records that must either be reported to State officials or be open for inspection to verify recipients of shipments.
- Direct shipment package labels include statements that the package contains alcohol and/or that the recipient must be at least 21 years old.

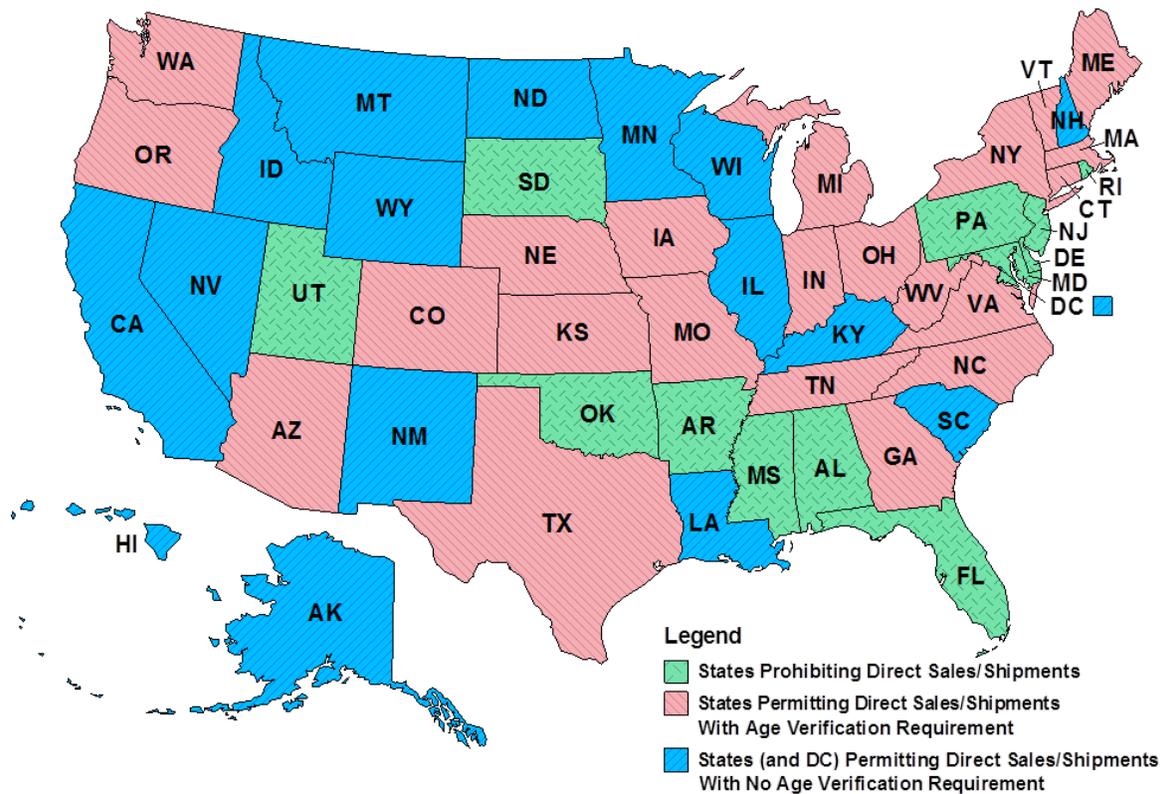
State laws also vary regarding the types of alcoholic beverages (beer, wine, distilled spirits) that producers are allowed to sell directly and ship to consumers. These and other restrictions may apply to all direct shipments. This Report includes only those requirements related to preventing underage sales.³⁵

Status of Direct Sales/Shipment Policies

As of January 1, 2011, 39 States permit direct sales/shipments from producers to consumers, and 12 prohibit such transactions (see Exhibit 4.3.32). One State (Indiana) requires face-to-face transactions at producers' places of business (and verification of valid age identification) before shipments to the consumer can be made. Thirty-five states require producers to obtain a shipper's permit or State approval prior to shipping. Of the 39 States permitting direct sales or shipments, 8 require shippers to verify purchaser age, 19 require deliverers to verify recipient age, and 5 require age verification by both shippers and deliverers. Sixteen States do not require any age verification. Labels stating that packages can only be received by persons over age 21 years are required by 32 States, 30 require labels stating that package contains alcohol, and 4 have no labeling requirements related to underage drinking.

³⁵ These include caps on amount that can be shipped; laws that permit only small producers to sell directly to consumers; reporting and taxation provisions unrelated to identifying potential underage recipients; and brand registration requirements. In some cases, exceptions are so limited that a State is coded as not permitting direct sales (e.g., shipments are allowed only by boutique historical distilled spirits producers).

Exhibit 4.3.32: Direct Sales/Shipment Policies and Age Verification Requirements as of January 1, 2011



Trends in Direct Sales/Shipments Policies

Between January 1, 2009, and January 1, 2011, five states added additional regulation to their policies. Three states (Kansas, Maine, and Tennessee) adopted permit systems for allowing the direct shipment of wine from producers to purchasers. Alaska adopted label requirements stating that the recipients of wine shipments must be over 21 and that the package contains alcohol. Iowa adopted age verification requirements at the point of delivery.

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see variables for this policy, go to Appendix B. For further information and background, see:

Jurkiewicz, C., & Painter, M. (Eds.). (2008). *Social and economic control of alcohol: The 21st Amendment in the 21st century*. New York: CRC Press.

Moramarto, M. (2008). *The Twenty-First Amendment, Granholm, and the future of the three-tier system*. Working Paper, Social Science Research Network, December 13, 2008. Retrieved February 10, 2009, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1340198

Norton, E. (2006). The Twenty-First Amendment in the twenty-first century: Reconsidering State liquor controls in light of *Granholm v. Heald*. *Ohio State Law J*, 67, 1465–1494.

Williams, R. S., & Ribisl, K. M. (2012). Internet alcohol sales to minors. *Arch Pediatr Adolesc Med*, E1–E6.

17. KEG REGISTRATION

Policy Description

Keg registration laws (also called keg tagging laws) require wholesalers or retailers to attach tags, stickers, or engravings with an identification number to kegs exceeding a specified capacity. These laws discourage purchasers from serving underage persons from the keg by allowing law enforcement officers to trace the keg to the purchaser even if he or she is not present at the location where the keg is consumed.

At purchase, retailers are required to record identifying information about the purchaser (e.g., name, address, telephone number, driver's license). In some States, keg laws specifically prohibit destroying or altering the ID tags and provide penalties for doing so. Other States make it a crime to possess unregistered or unlabeled kegs.

Refundable deposits may also be collected for the kegs themselves, the tapper mechanisms used to serve the beer, or both. Deposits are refunded when the kegs and/or tappers are returned with identification numbers intact. These deposits create an incentive for the purchaser to keep track of the whereabouts of the keg and a financial penalty if the keg is not returned.

Some jurisdictions collect information (e.g., location where the keg is to be consumed, tag number of the vehicle transporting the keg) to aid law enforcement efforts, further raising the chances that illegal furnishing to minors will be detected. Some jurisdictions also require retailers to provide warning information at the time of purchase about laws prohibiting service to minors and/or other laws related to the purchase or possession of the keg.

Disposable kegs complicate keg registration laws. Some of these containers meet the capacity definition for a keg but cannot be easily tagged or traced, as they are meant to be disposed of when empty. Most States do not differentiate disposable from nondisposable kegs, although some have modified keg registration provisions to accommodate this container type.

Status of Keg Registration Policies

Keg Registration Laws

The District of Columbia and 30 States require keg registration; 19 States do not require that kegs be registered. Minimum keg sizes subject to keg registration requirements range from 2 to 7.75 gallons with the exception of South Dakota, where the requirements are 8 or 16 gallons. Utah alone prohibits keg sales altogether, making a keg registration law irrelevant.

Prohibited Acts

Ten States prohibit both the possession of unregistered kegs and the destruction of keg labels. Six States prohibit only the possession of unregistered kegs, 8 prohibit only the destruction of keg labels, and 25 States and the District of Columbia prohibit neither act.

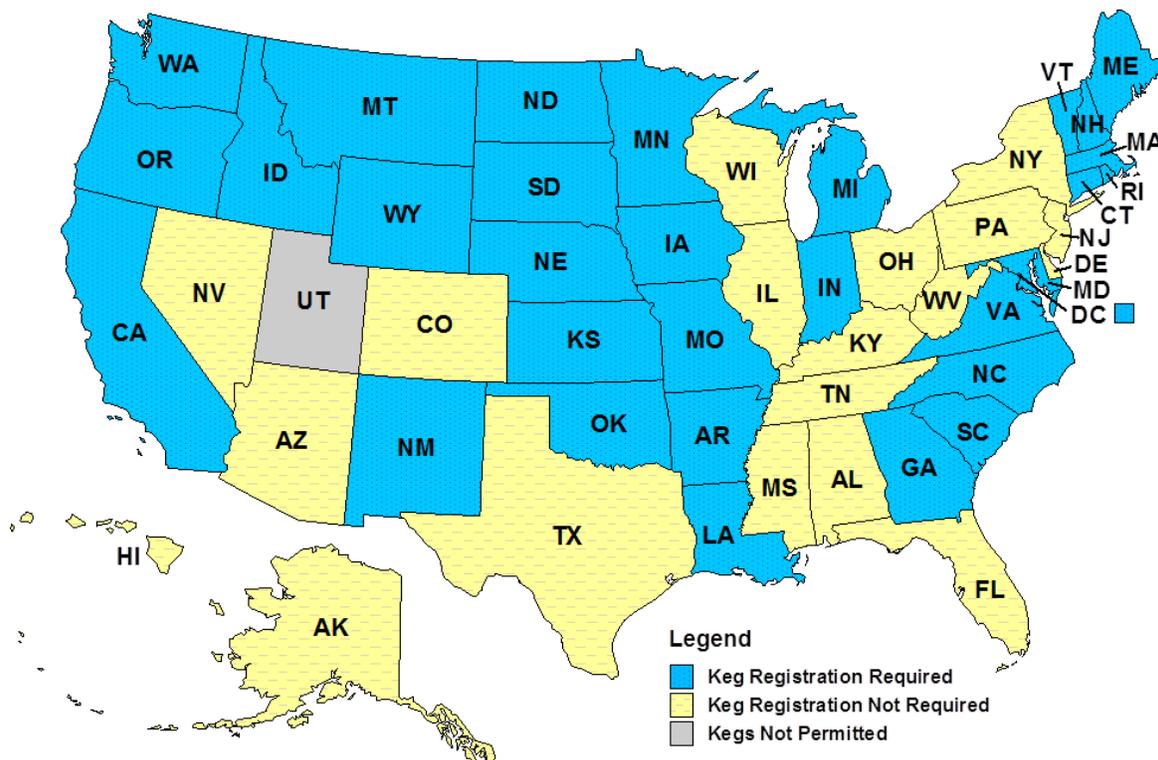
Purchaser Information Collected

All 31 jurisdictions with keg registration laws require retailers to collect some form of purchaser information. Of these, 27 require purchasers to provide a driver's licenses or other government-issued identification. Six jurisdictions (District of Columbia, Georgia, North Carolina, Oregon, Virginia, and Washington) require purchasers to provide the address at which the keg will be consumed.

Warning Information to Purchaser

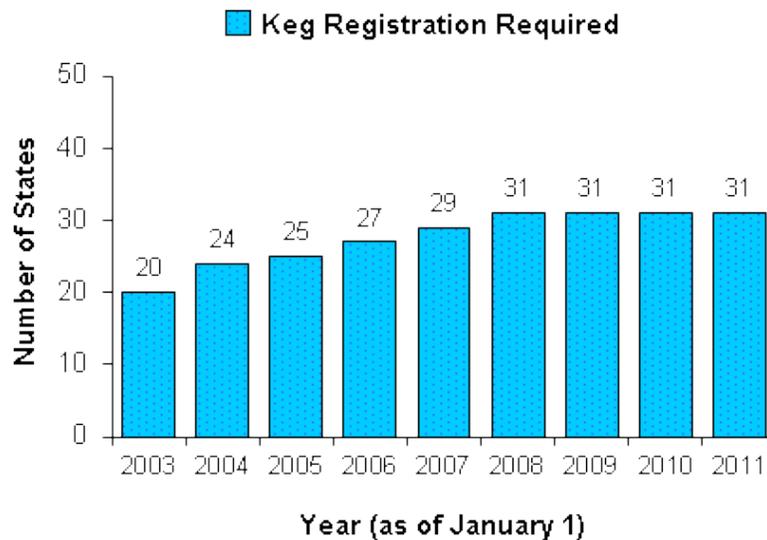
Of the 31 jurisdictions with keg registration laws, 23 States and the District of Columbia require some kind of warning information be presented to purchasers concerning the violation of any laws related to keg registration (see Exhibit 4.3.33). Fourteen States and the District of Columbia specify "active" warnings (requiring an action on the part of the purchaser, such as signing a document), and 9 States specify "passive" warnings (requiring no action on the part of the purchaser). Seven States do not require that any warning information be given to purchasers.

Exhibit 4.3.33: Keg Registration Laws as of January 1, 2011

*Trends in Keg Registration Policies*

The number of States enacting keg registration laws has risen steadily between 2003 and 2008, with an increase from 20 to 31 jurisdictions (see Exhibit 4.3.34).

Exhibit 4.3.34: Number of States with Keg Registration Laws, January 1, 2003, through January 1, 2011



References and Further Information

All data for this policy were obtained from APIS at <http://www.alcoholpolicy.niaaa.nih.gov>. Follow links to the policy entitled “Keg Registration.” APIS provides further descriptions of this policy and its variables, details regarding State policies, and a review of the limitations associated with the reported data. To see definitions of the variables for this policy, go to Appendix B.

18. HOME DELIVERY

Policy Description

Home delivery restrictions prohibit or limit the ability of alcohol retailers to deliver alcoholic beverages to customers who are not present at their retail outlet. The University of Minnesota Alcohol Epidemiology Program notes that home delivery of alcohol may increase alcohol availability to youth by increasing opportunities for underage persons to subvert minimum age purchase requirements. Ordering by phone, fax, or email may facilitate deception. Delivery persons may have less incentive to check purchasers’ age identification when they are away from the licensed establishment and cannot be watched by a surveillance camera, the liquor store’s management, or other customers.

Research on home delivery of alcohol is limited. One study examined the use of home delivery by adult males. The authors report that regular drinkers without a history of alcohol problems were significantly less likely to have had alcohol delivered than problem drinkers. Another study found similar results for underage drinkers. Ten percent of 12th graders and 7 percent of 18- to 20-year-olds in 15 midwestern communities reported they obtained alcohol through delivery services in the last year. Use of delivery services was more prevalent among young males and among more frequent, heavier drinkers.

A State Home Delivery law may:

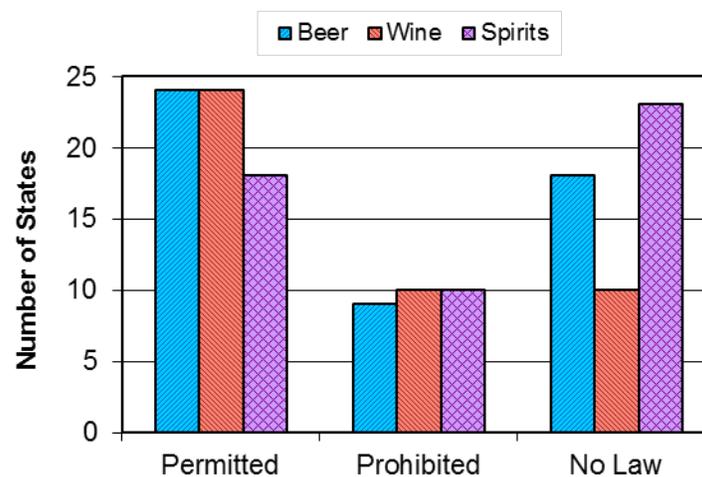
- Specifically prohibit or permit the delivery of beer, wine, and/or spirits to residential addresses, hotel rooms, conference centers, etc.
- Permit home delivery, but with restrictions, including:
 - Limits on the quantity that may be delivered;
 - Limits on the time of day or days of the week when deliveries may occur;
 - A requirement that the retail merchant obtain a special license or permit.

In some States that allow home delivery, local ordinances may restrict or ban home delivery in specific sub-State jurisdictions.

Status of Home Delivery Policies

Exhibit 4.3.35 shows the number of States that permit, prohibit, or have no law regarding home delivery of beer, wine, and spirits. As can be seen in the Exhibit, 18 States permit home delivery of all three beverages, 9 prohibit delivery of all three, and 16 have no law for any beverage. Eight States have different laws for different beverages: Five States (North Carolina, New Hampshire, Oregon, Virginia, and Washington) permit delivery of beer and wine, but have no law regarding spirits, and Kentucky prohibits home delivery of wine and spirits but has no law regarding beer. Louisiana permits home delivery of wine but has no law regarding beer and spirits.

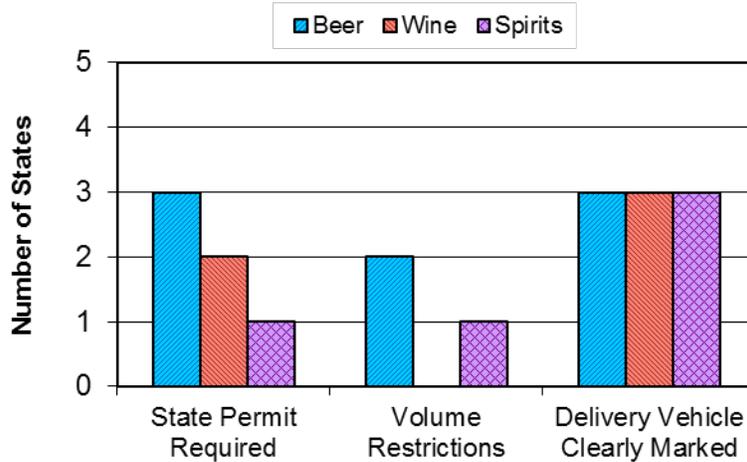
Exhibit 4.3.35: Home Delivery of Beer, Wine, and Spirits



Of the 24 States that permit home delivery of *beer and wine*, 10 place at least one restriction on retailers. Of the 18 States that permit home delivery of *spirits*, eight place at least one restriction on retailers. Exhibit 4.3.36 shows the distribution of those restrictions imposed by two or more States on home delivery laws: (1) a State permit is required (Colorado, Texas, and Virginia), (2) volumes that can be delivered are restricted (Indiana, New York, and Virginia), and (3) the delivery vehicle must be clearly marked (New Jersey, New York, and Texas). Three additional States that permit delivery of beer, wine, and spirits place a single, unique restriction on retailers: (1) Orders must be in writing (Alaska), (2) written information on Fetal Alcohol Syndrome must accompany the delivered product (Alaska), and (3) a local permit is required to deliver to the

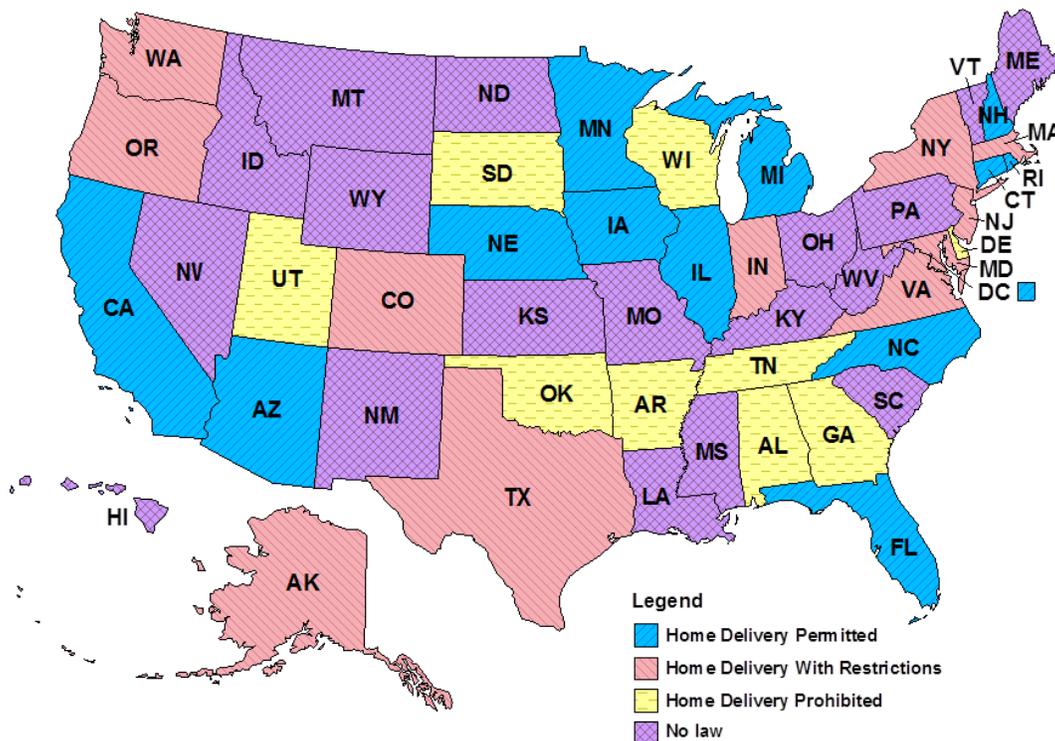
retailer’s county or city (Maryland). One State (Washington) that permits delivery of beer and wine requires a special license only for Internet orders. Massachusetts requires that each vehicle used for transportation and delivery have a State-issued permit. Oregon requires “for hire” carriers to be approved by the State.

Exhibit 4.3.36: Restrictions Imposed by Two or More States on Delivery of Beer, Wine, and Spirits



Exhibits 4.3.37 through 4.3.39 summarize the status of home delivery for beer, wine, and spirits as of January 1, 2011.

Exhibit 4.3.37: Beer



Trends in Home Delivery Policies

Between 2010 and 2011, no State changed its home delivery policies.

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see:

<http://www.epi.umn.edu/alcohol/policy/homdeliv.shtm>

Fletcher, L. A., Nugent, S. M., Ahern, S. M., & Willenbring, M. L. (1996). Brief report. The use of alcohol home delivery services by male problem drinkers: a preliminary report. *J Substance Abuse, 8*(2), 251–261.

Fletcher, L. A., Toomey, T. L., Wagenaar, A. C., Short, B., & Willenbring, M. L. (2000). Alcohol home delivery services: A source of alcohol for underage drinkers. *J Stud Alcohol, 61*, 81–84.

Alcohol Pricing Policies

19. ALCOHOL TAXES

Policy Description

There is ample evidence that the “economic availability” of alcoholic beverages (i.e., retail price) has an impact on underage drinking and a wide variety of related consequences. The Surgeon General’s *Call to Action*³⁶ includes economic availability as a strategy in the context of increasing the cost of underage drinking, which includes the price, time, effort, and resources required for young people to obtain alcohol as well as penalties associated with its use.

Chaloupka and colleagues (2002)³⁷ report effects of price on underage drinking, college drinking, and binge drinking (including drinking among youth who show signs of alcohol use disorders). They also report significant effects on youth traffic crashes, violence on college campuses, and crime among people under 21. Although alcohol taxes are an imperfect index of retail prices, tax rates are relatively easy to measure and provide a useful proxy for economic availability.

Based on this and other research, the National Research Council/IOM Report, *Reducing Underage Drinking: A Collective Responsibility*, made the following recommendation: “[S]tate legislatures should raise excise taxes to reduce underage consumption and to raise additional revenues for this purpose.”³⁸

³⁶ <http://www.surgeongeneral.gov/topics/underagedrinking/calltoaction.pdf>

³⁷ Chaloupka, F., Grossman, M., & Saffer, H. (2002). The effects of price on alcohol consumption and alcohol-related problems. *Alcohol Research & Health, 26*.

³⁸ National Research Council and Institute of Medicine. (2003). *Reducing underage drinking: A collective responsibility*. Washington, DC: National Academies Press.

This policy addresses beer, wine, and distilled spirits taxes. Although some States have separate tax rates for other alcoholic products (e.g., sparkling wine and flavored alcohol beverages), these account for a small market share and are not addressed.

State alcohol taxes fall into four main categories. The names applied to these categories may vary by jurisdiction, but the following terms are commonly used:

- *Specific excise taxes*: Taxes applied per gallon at the wholesale or retail level.
- *Ad valorem excise taxes*: Value-based taxes, usually levied as a percentage of the alcoholic product's retail price (which may also be referred to as gross receipts, gross proceeds, retail receipts or retail proceeds). Different ad valorem excise tax rates may apply to on- and off-premises sales.
- *Sales tax*: A value-based tax that is not typically specific to alcoholic beverages.
- *Sales tax adjusted retail ad valorem excise tax*: In some States, ad valorem excise taxes are levied in lieu of sales tax (see Exhibit 4.3.40). In these cases, an accurate index of the actual tax reflected in the retail price requires that the retail ad valorem excise tax be adjusted to reflect the fact that sales taxes are not levied. The sales tax adjusted retail ad valorem excise tax = the retail ad valorem excise tax minus the (unlevied) sales tax. As shown in Exhibit 4.3.40, the trade-off between retail ad valorem excise tax and sales tax is not uncommon.

Exhibit 4.3.40: Number and Percentage of States that Levy an Ad Valorem Excise Tax but Do Not Apply General Sales Tax

Beverage type	Type of ad valorem excise tax	Number of States that levy this ad valorem excise tax	Number of States that do not apply general sales tax when the ad valorem excise tax is levied	Percentage of States that do not apply general sales tax when the ad valorem excise tax is levied
Beer	Ad valorem excise tax: on-site	8	5	63%
	Ad valorem excise tax: off-site	7	3	43%
Wine	Ad valorem excise tax: on-site	8	4	50%
	Ad valorem excise tax: off-site	7	3	43%
Spirits	Ad valorem excise tax: on-site	11	4	36%
	Ad valorem excise tax: off-site	7	3	43%

For beer, wine, or distilled spirits, a given State may have half a dozen or more tax rates based on alcohol content, container size, or geographic location. For this policy, taxes are reported for an *index beverage* that represents the largest market share for beer (5 percent alcohol by volume), wine (12 percent alcohol by volume), and spirits (40 percent alcohol by volume). Additional tax

rates for commonly available beverages (beer, 3.2 to 6 percent; wine, 6 to 24 percent; spirits, 15 to 50 percent) are provided in the notes field.

Taxes are not reported for States where the index beverage is wholly or partially sold in *State-run retail stores or through State-run wholesalers*. In these cases, the State sets a price that is some combination of cost, markup, and taxes. It is not possible to determine the dollar value assigned to each of these components. In this report, States where the index beverage is wholly or partially sold in State-run retail stores or through State-run wholesalers are referred to as “control States” (beer = 2 control States; wine = 13 control States; spirits = 18 control States). The remaining States and the District of Columbia are referred to as “license States.”

Status of Alcohol Taxation

As of January 1, 2011, all license States have an excise tax for beer, wine, and spirits. The Federal Government also levies an excise tax of \$0.58/gallon for beer, \$1.07/gallon for wine, and \$13.50/gallon for spirits.

Like the Federal excise tax, State excise taxes are generally highest for spirits and lowest for beer, roughly tracking the alcohol content of these beverages. Beer excise taxes range from \$0.02 to \$1.07/gallon, wine excise taxes range from \$0.11 to \$2.50/gallon, and spirits excise taxes range from \$1.50 to \$12.80/gallon. The States with the highest excise tax for one beverage may not be the States with the highest excise taxes for other beverages. States may be control for one, two, or three categories (beer, wine, spirits).

Exhibits 4.3.41 through 4.3.43 show the levels of excise taxes for beer, wine, and spirits across the 50 States and the District of Columbia.

Exhibit 4.3.41: Beer-Specific Excise Tax

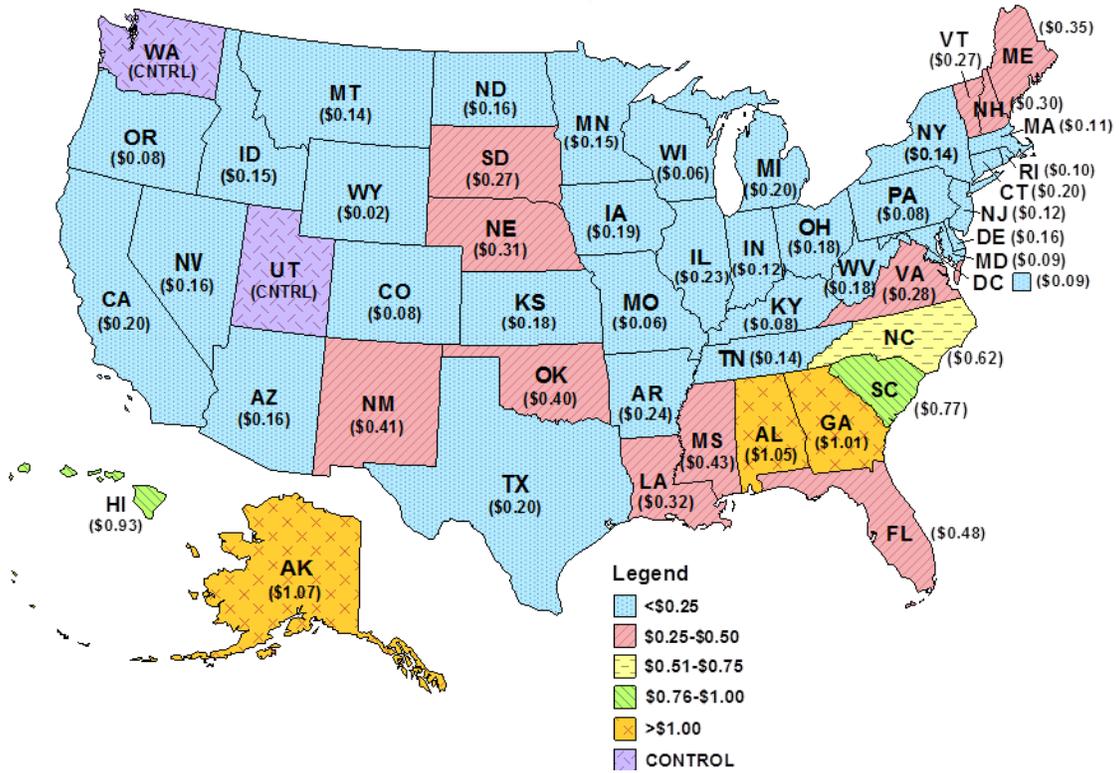


Exhibit 4.3.42: Wine-Specific Excise Tax

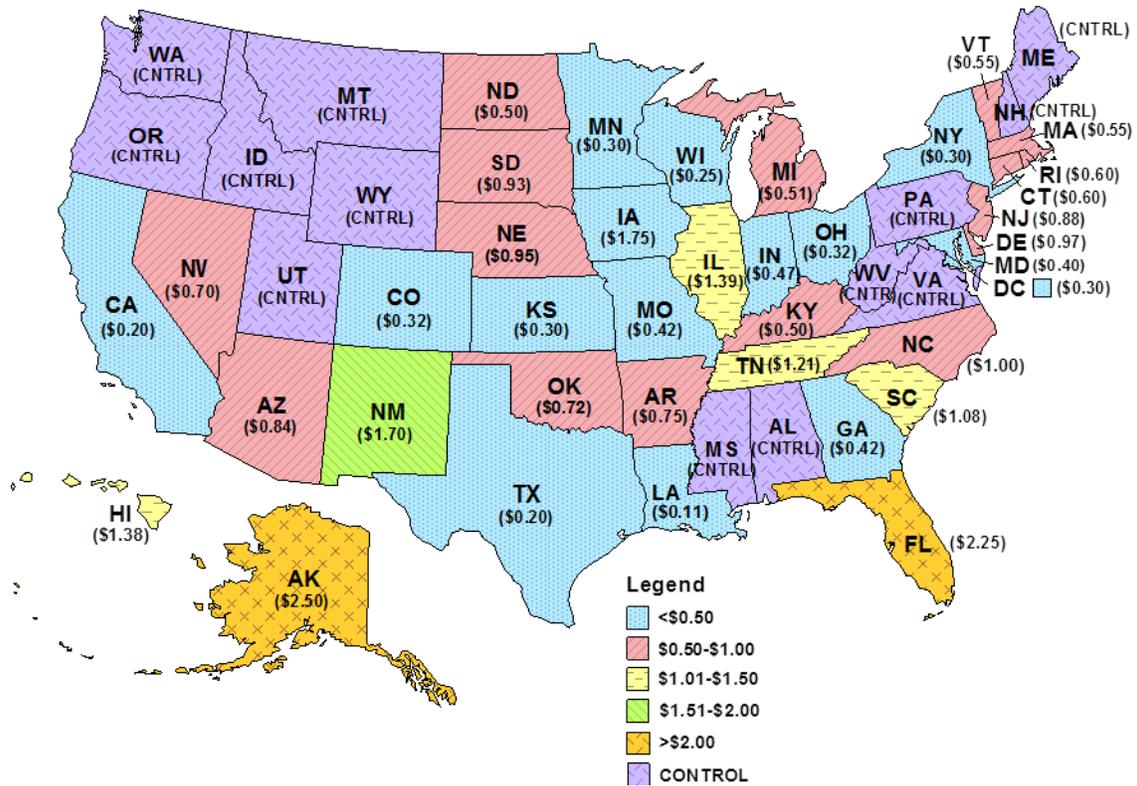


Exhibit 4.3.43: Spirits-Specific Excise Tax

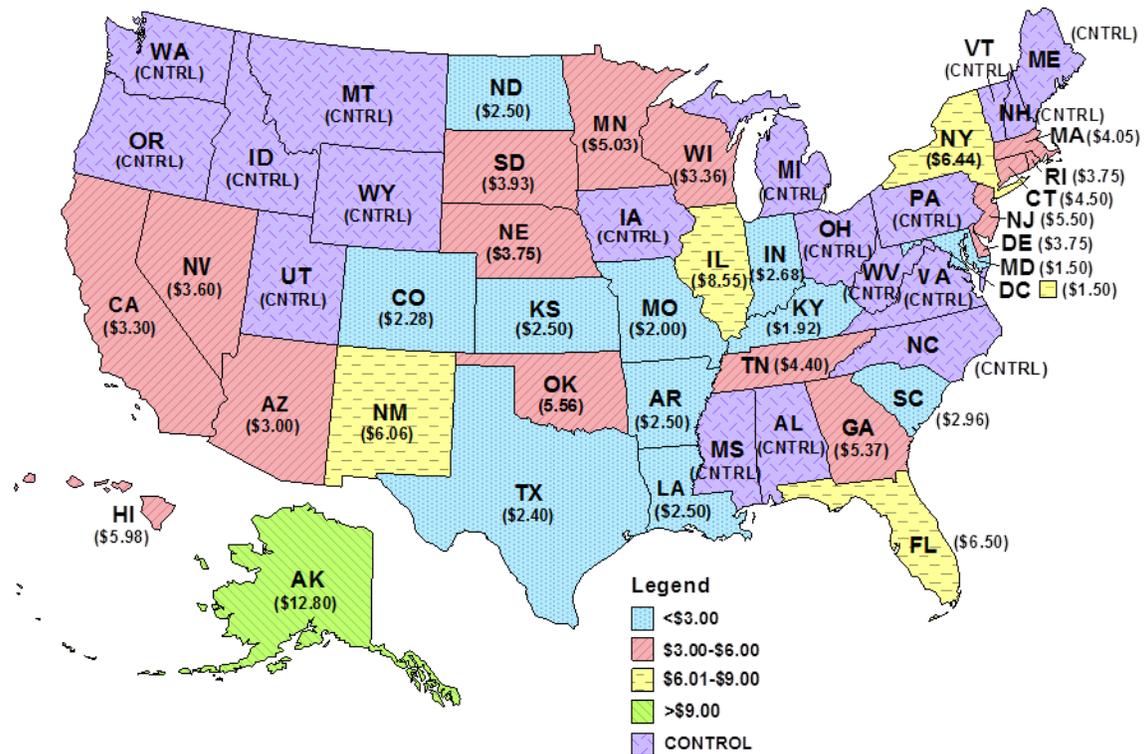
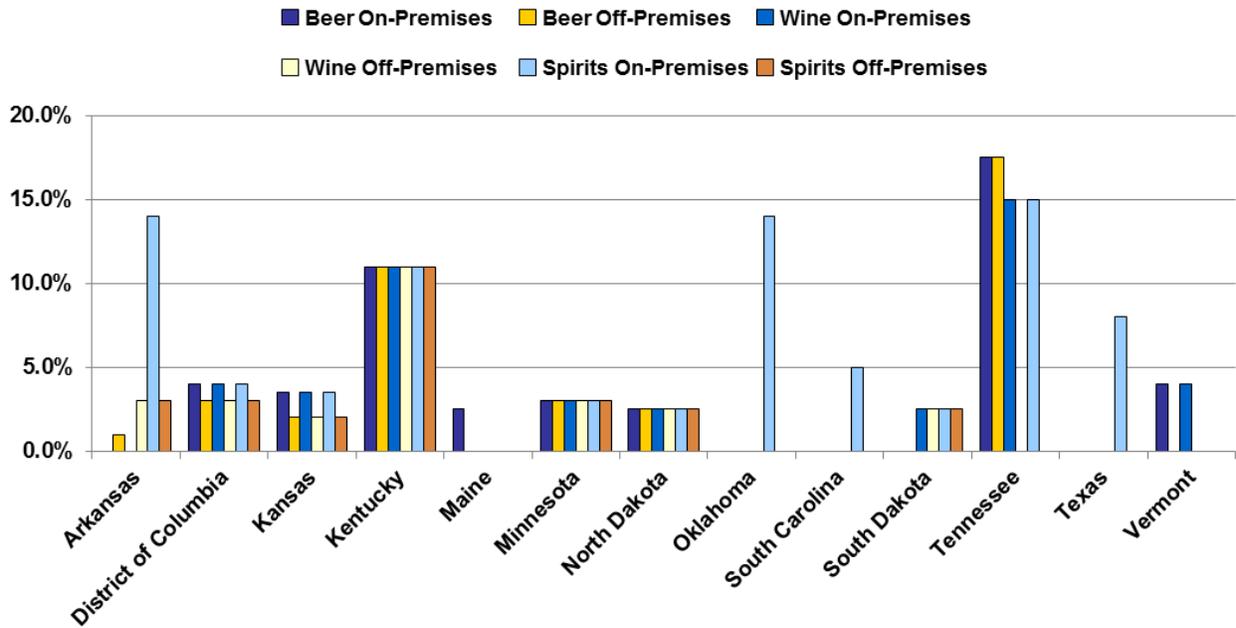


Exhibit 4.3.44 shows the ad valorem excise tax or sales tax adjusted ad valorem excise tax rates for license States that have ad valorem excise taxes. These may be levied at on- or off-sale outlets and may be for beer, wine, and/or spirits. Beer ad valorem excise tax rates range from 1 to 17 percent for on- and/or off-premises sales. Wine rates range from 2 to 15 percent for on- and/or off-premises sales. Distilled spirit rates range from 2 to 15 percent for on- and/or off-premises sales.

Exhibit 4.3.44: Ad Valorem Excise Tax or Sales Tax Adjusted Ad Valorem Excise Tax Rates as of January 2011



Trends in Alcohol Taxes

Alcohol taxes have remained relatively constant for several decades. As can be seen in Exhibit 4.3.45, there have been limited tax increases or decreases in beer, wine, or spirits excise taxes since 2003. During this period there have been 20 tax rate increases across all jurisdictions (an average of 2.5 increases per year) and 13 tax rate decreases across all jurisdictions (an average of 1.6 decreases per year). These changes took place in a total of 14 jurisdictions, 7 of which made 3 changes, 5 of which made 2 changes, and 2 of which made 1 change.

Exhibit 4.3.45: Alcohol Tax Changes 2003–2011

		Beer		Wine		Spirits		Total
		Specific excise tax	Ad valorem excise tax	Specific excise tax	Ad valorem excise tax	Specific excise tax	Ad valorem excise tax	
Number of jurisdictions that:	Increased rates	5	1	6	1	5	2	20
	Decreased rates	1	3	1	3	1	3	13

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see:

Chaloupka, F., Grossman, M., & Saffer, H. (2002). The effects of price on alcohol consumption and alcohol-related problems. *Alcohol Research & Health, 26*.

Community Preventive Services Task Force. (2010). Increasing alcohol beverage taxes is recommended to reduce excessive alcohol consumption and related harms. *Am J Prev Med, 38*, 230–232.

Elder, R. W., Lawrence, B., Ferguson, A., Naimi, T. S., Brewer, R. D., Chattopadhyay, S. K., Toomey, T. L., & Fielding, J. E. (2010). The effectiveness of tax policy interventions for reducing excessive alcohol consumption and related harms. *Am J Prev Med, 38*, 217–229.

National Research Council and Institute of Medicine. (2003). *Reducing underage drinking: A collective responsibility*. Washington, DC: National Academies Press.

20. LOW-PRICE, HIGH-VOLUME DRINK SPECIALS

Policy Description

Low-price, high-volume drink specials restrictions prohibit or limit the ability of on-premises retailers from using various price-related marketing tactics such as happy hours, two-for-one specials, free drinks, and so on, that encourage heavier consumption. These promotions are particularly prevalent in college communities, where large numbers of underage students are present.

Research has examined the impact of on-premises retail drink specials on binge drinking among college students. For example, one study measured self-reported binge drinking rates among college students from 119 colleges, conducted an assessment of marketing practices of on-premises outlets in neighboring communities, and determined whether these communities restricted low-price, high-volume drink specials. The results demonstrated that price-related promotions were significantly correlated with higher binge-drinking and self-reported drinking and driving rates among students (Wechsler et al., 2003).

Based on this and other research, the Surgeon General's *Call to Action* concluded that "increasing the cost of drinking can positively affect adolescent decisions about alcohol use," and recommended "[e]limination of low price, high-volume drink specials, especially in proximity to college campuses, military bases, and other locations with a high concentration of youth."

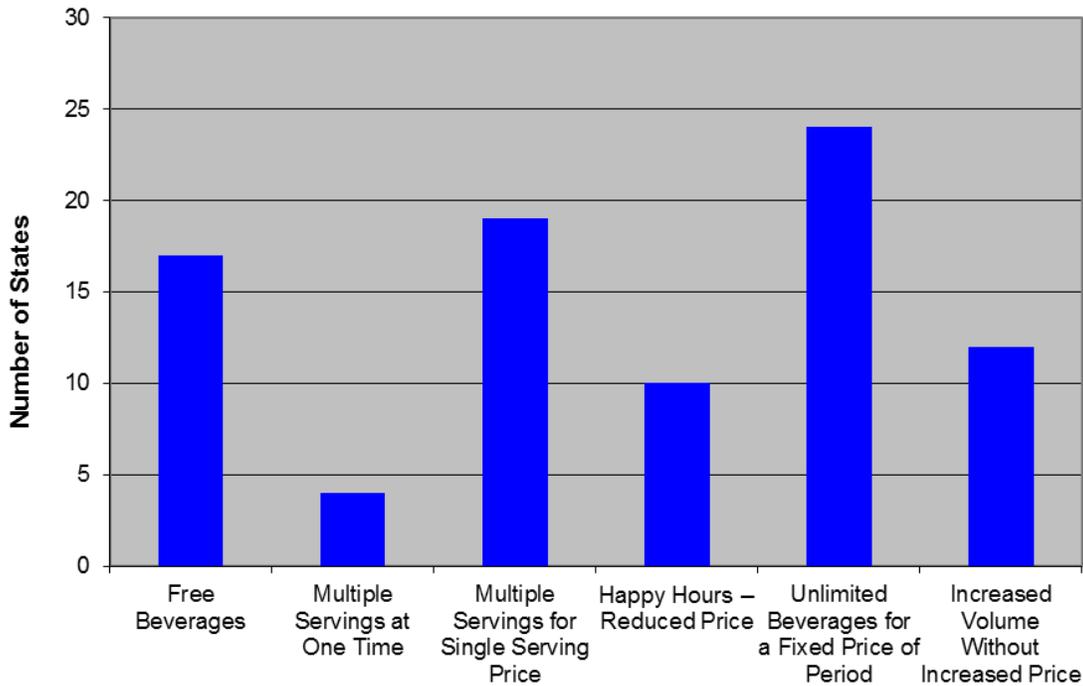
A State low-price, high-volume drink specials law may prohibit or restrict the following practices:

- Providing customers with free beverages either as a promotion or on a case-by-case basis (e.g., on a birthday or anniversary, as compensation for poor services)
- Offering additional drinks for the same price as a single drink (e.g., two-for-ones)
- Offering reduced-price drinks during designated times of day ("happy hours")
- Instituting a fixed price for an unlimited amount of drinks during a fixed period of time (e.g., "beat the clock" and similar drinking games)
- Offering drinks with increased amounts of alcohol at the same price as regular-sized drinks (e.g., double shots for the price of single shots)
- Service of more than one drink to a customer at a time

Status of Low-Price, High-Volume Drink Specials Law

Exhibit 4.3.46 shows the number of states that prohibited the six low-price, high-volume specials discussed above.

Exhibit 4.3.46: Number of States Prohibiting Various Low-Price, High-Volume Drink Specials



Seventeen States prohibited *free beverages*. Five additional States (New Jersey, New Mexico, South Carolina, Texas, and Washington) allowed a licensee to offer a free drink on a case-by-case basis only (e.g., on a birthday or anniversary, as compensation for poor services).

Four states prohibited *multiple servings at one time*. In one of these States (Tennessee), this prohibition applied only after 10 p.m. Nineteen States prohibited *multiple servings for single serving price*. Twenty-four States prohibited *unlimited beverages for a fixed price or period*. In one of these (Louisiana), this prohibition applied only after 10 p.m. Twelve states prohibited *increased volume without increase in price*, with Tennessee making it unlawful after 10 p.m.

As can be seen in Exhibit 4.3.47, 10 States prohibited *happy hours (reduced prices)*. Eight additional States allowed happy hours but restricted the hours in which they may be offered.

Department of Health and Human Services. (2007). *The Surgeon General's call to action to prevent and reduce underage drinking*. Rockville, MD: HHS, Office of the Surgeon General. Available at: <http://www.surgeongeneral.gov> and at <http://www.hhs.gov/od>

Kuo, M., Wechsler, H., Greenberg, P., & Lee, H. (2003). The marketing of alcohol to college students: The role of low prices and special promotions. *Am J Prev Med* 25(3), 1–8.

National Highway Traffic Safety Administration. (2005). Research report: Preventing over-consumption of alcohol – sales to the intoxicated and “happy hour” (drink special) laws. Springfield, VA: National Technical Information Service, DOT HS 809 878, February 2005.

Wechsler, H., Lee, J., Nelson, T., & Lee, H. (2003) Drinking and driving among college students: The influence of alcohol control policies. *Am J Prev Med* 25(3), 212–218.

21. WHOLESALER PRICING RESTRICTIONS

Policy Description

The 21st Amendment to the Constitution repealed Prohibition and gave States broad authority to regulate alcohol sales within their borders. Most States established a three-tier structure: producers, wholesalers, and retailers. Many States included restrictions on wholesaler pricing practices, intended to strengthen the three-tier system, reduce price competition among wholesalers and retailers, and combat corruption and crime in the alcohol market.

Research suggests that the specific wholesaler pricing restrictions described below increase the price of alcohol to consumers. Research also shows that underage consumption and problems are strongly influenced by alcohol prices. One study has suggested that restrictions on certain wholesale pricing practices may have a stronger effect on alcohol pricing than alcohol taxes.

Some States operate alcohol wholesale operations directly through a State agency, usually limited to distilled spirits, beer with high alcohol content, and wine with high alcohol content.³⁹ In these cases, the State sets wholesaler prices as part of its administrative function, and statutory provisions are only relevant to that portion of the wholesaler market in the control of private entities. For this policy, an index beverage has been selected: beer (5 percent), wine (12 percent), and spirits (40 percent). If the index beverage is controlled, in whole or in part, by the State at the wholesale level, the State is coded as CONTROL and no additional coding is displayed.

In general, wholesaler pricing policies fall within four types: (1) Restrictions on volume discounts; (2) restrictions on discounting practices; (3) price posting requirements, and (4) restrictions on the ability of wholesalers to provide credit extensions to retailers. These policy categories are closely interrelated but may operate independently of each other. Each is described briefly below.

Types of Wholesaler Pricing Policies

Volume discounting restrictions: Large retailers often have an advantage over smaller retailers due to the large volumes they are able to purchase at once. This purchasing power allows them to

³⁹ For a State-by-State review of control State wholesaler systems, see www.apis.niaaa.nih.gov.

negotiate lower prices on most commodities and therefore offer items at lower prices to consumers. Many States have imposed restrictions on the ability of wholesalers to provide volume discounts—the same price must be charged for products regardless of the amount purchased by individual retailers. The primary purpose of these laws is to protect small retailers from predatory marketing practices of large-volume competitors and to prevent corruption. They have a secondary effect of increasing retail prices generally by making retail price discounting more difficult.

Minimum pricing requirements: States may require wholesalers to establish a minimum markup or maximum discount for each product sold to retailers based on the price of the producer's price for the product or may enact a ban against selling any product below cost. These provisions are designed to maintain stable prices on alcohol products by limiting price competition at both retail and wholesale levels. In most cases, this increases the retail price to consumers, and thus affects public health outcomes.

Post-and-hold provisions: This policy requires wholesalers to publicly “post” prices of their alcohol products (i.e., provide a list of prices to a State agency for review by the public, including retailers and competitors) and hold these prices for a set amount of time, allowing all retailers the opportunity to make purchases at the same cost. Post-and-hold requirements are typically tied to minimum pricing and price discounting provisions and enhance the States' ability to enforce those provisions. The wholesalers' submissions can be reviewed easily to determine whether wholesalers are paying the proper taxes on their products and whether they are providing any illegal price inducements to retailers. Post-and-hold provisions reduce price competition among both retailers and wholesalers because the posted prices are locked in for a set amount of time. They also promote effective enforcement of other wholesaler pricing policies. Some States require wholesalers to post prices but have no “hold” requirement – i.e., posted prices may be changed at any time. This is a weaker restriction.

Credit extension restrictions: Wholesalers often provide retailers with various forms of credit. (e.g., direct loans or deferred payment of invoices). Many States restrict alcoholic beverage wholesalers' ability to provide credit to retailers, typically by banning loans and limiting the period of time required for retailers to pay invoices. The primary purpose of the restrictions is to limit the influence of wholesalers on retailer practices. When a retailer is relying on a wholesaler's credit, the retailer is more likely to promote the wholesaler's products and to agree to the wholesaler's demands regarding product placement and pricing. The restrictions have a secondary effect of limiting the retailer's ability to operate on credit, indirectly increasing retail prices.

Federal Court Challenges to State Wholesaler Pricing Restrictions

As noted earlier, in general, States have broad authority under the 21st Amendment to the Constitution to regulate alcohol availability within their boundaries. That authority has been constrained by U.S. Supreme Court and Federal Court of Appeals cases, which have interpreted the Interstate Commerce Clause (ICC) and Sherman Antitrust Act⁴⁰ to prohibit certain State restrictions on the alcohol market.^{41,42} These cases have led to considerable uncertainty regarding

⁴⁰ July 2, 1890, ch. 647, 26 Stat. 209, 15 U.S.C. § 1-7.

⁴¹ See, e.g., *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 100 S.Ct. 937 (1980).

the validity of State restrictions on alcohol wholesaler prices, and additional challenges to those restrictions are anticipated. In the meantime, this uncertainty has prompted States to reexamine their alcohol wholesaler practices provisions.

Status of Wholesaler Pricing Restrictions

Federal Law

Federal law addresses restrictions on wholesaler credit practices:

The Federal Alcohol Administration Act provides for regulation of those engaged in the alcohol beverage industry and for protection of consumers. 27 U.S.C. § 201 et seq. Under the Act, wholesalers may not induce retailers to purchase beverage alcohol by extending credit in excess of 30 days from the date of delivery. 27 U.S.C. § 205(b)(6), 27 C.F.R. § 6.65.

Some States allow wholesalers to extend credit to retailers for a longer period than is permitted under Federal law.

State Law

Exhibits 4.3.48 through 4.3.51 show summary distributions of volume discounts, minimum markup/maximum discount, post and hold, and retailer credit for the license States (beer = 49 license States; Wine = 41 license States; Spirits = 33 license States).⁴³

⁴² Several Federal and State courts have addressed the Constitutionality of selected wholesaler pricing practices, with conflicting results. For example, in *Costco Wholesale Corp. v. Maleng*, 522 F.3d 874 (9th Cir. 2008), the plaintiff challenged nine distinct Washington State restrictions governing wholesaler practices, including policies in all four categories described above. The Court upheld the State's volume discount and minimum markup provisions but invalidated the post-and-hold requirements. In *Manuel v. State of Louisiana*, 982 So.2d 316 (3rd Cir. 2008), a Louisiana appellate court rejected six separate challenges to the Sherman Act, including the ban on volume discounts. It upheld the State's ability to regulate alcoholic beverages within the State and concluded that the Sherman Act had to yield to the State's authority granted under the 21st Amendment. Maryland's post-and-hold law and volume discount ban were challenged in *TFWS, Inc. v. Franchot*, 572 F.3d 186 (4th Cir. 2009), a complicated case involving multiple appeals and rehearings. On Maryland's fourth appeal, the court upheld its previous decisions to strike down the two policies.

⁴³ Comparisons among beverage types must be made with some caution, since the number of license States differs for each beverage.

Exhibit 4.3.48: Volume Discounts

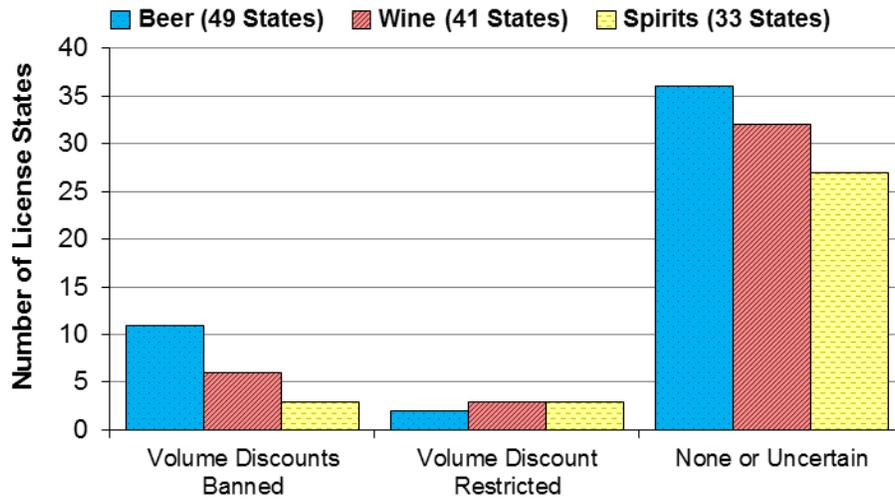


Exhibit 4.3.49: Minimum Markup/Maximum Discount

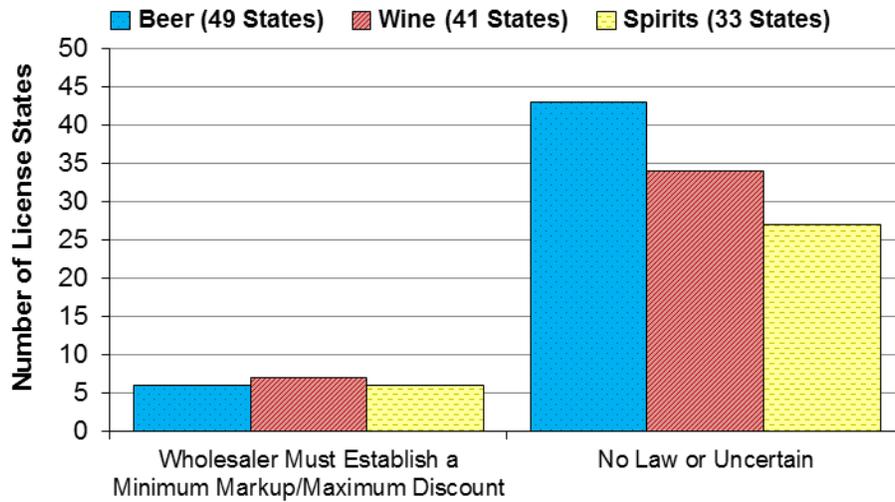


Exhibit 4.3.50: Post and Hold

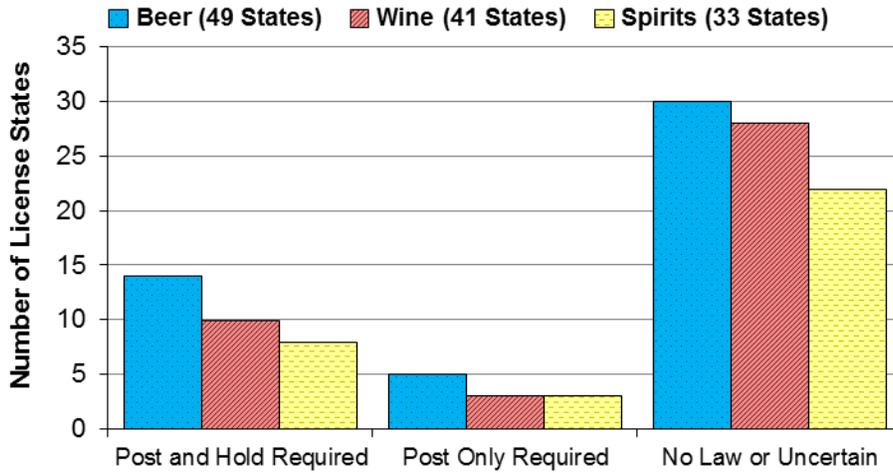
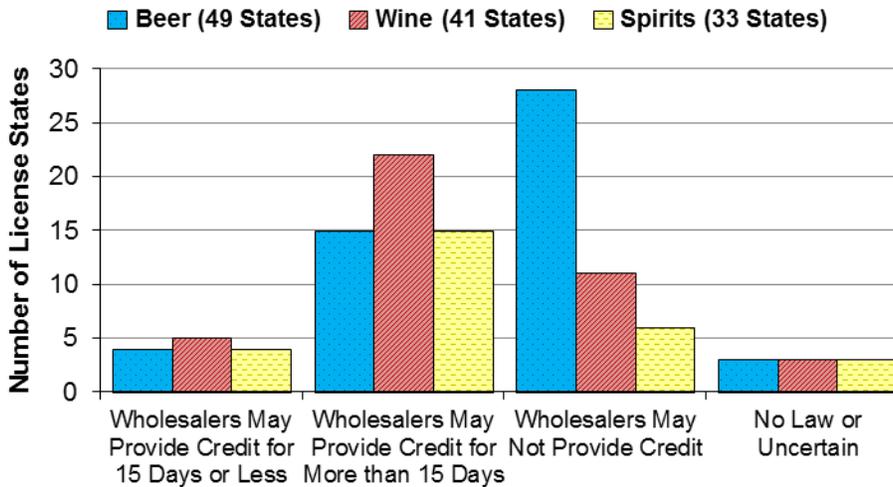


Exhibit 4.3.51: Retailer Credit



Only two license States (Alaska and Rhode Island) have no wholesaler pricing restrictions. Among the remaining States, bans on extending credit and post and hold (excluding post only) are the most common wholesaler pricing restrictions (ranging from about a fifth to about half the States depending on beverage type). Other restrictions range from under 10 percent of the license States to about a quarter of the States depending on beverage type.

Exhibits 4.3.52 through 4.3.55 present detailed State-by-State information for wholesaler pricing policies for beer.

Exhibit 4.3.52: Volume Discounts for Beer as of January 1, 2011

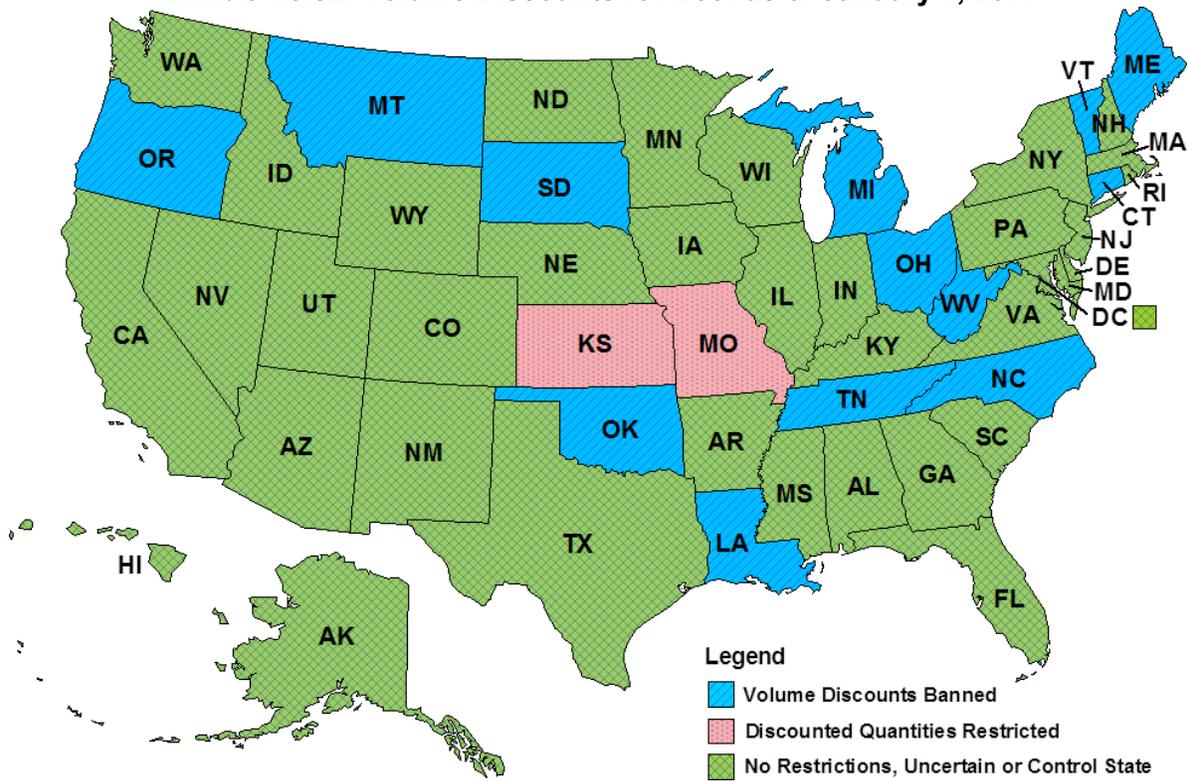


Exhibit 4.3.53: Minimum Markup, Maximum Discount for Beer as of January 1, 2011

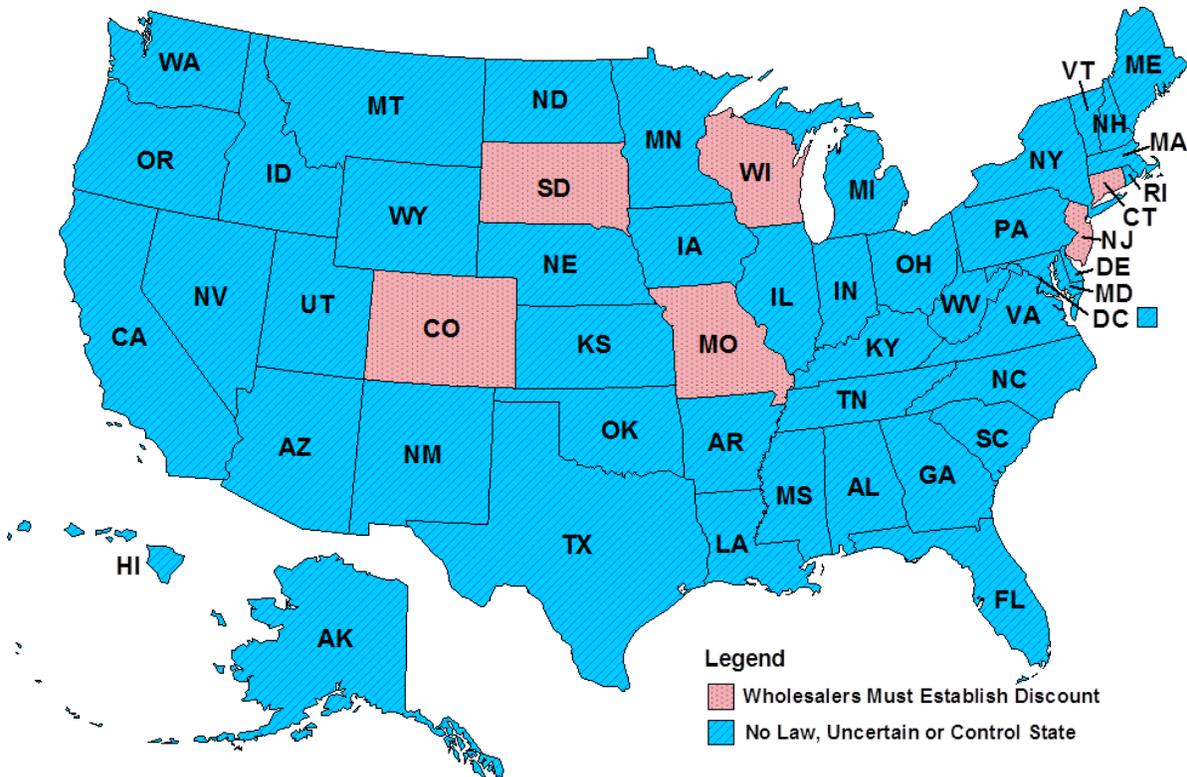


Exhibit 4.3.54: Post and Hold Requirements for Beer as of January 1, 2011

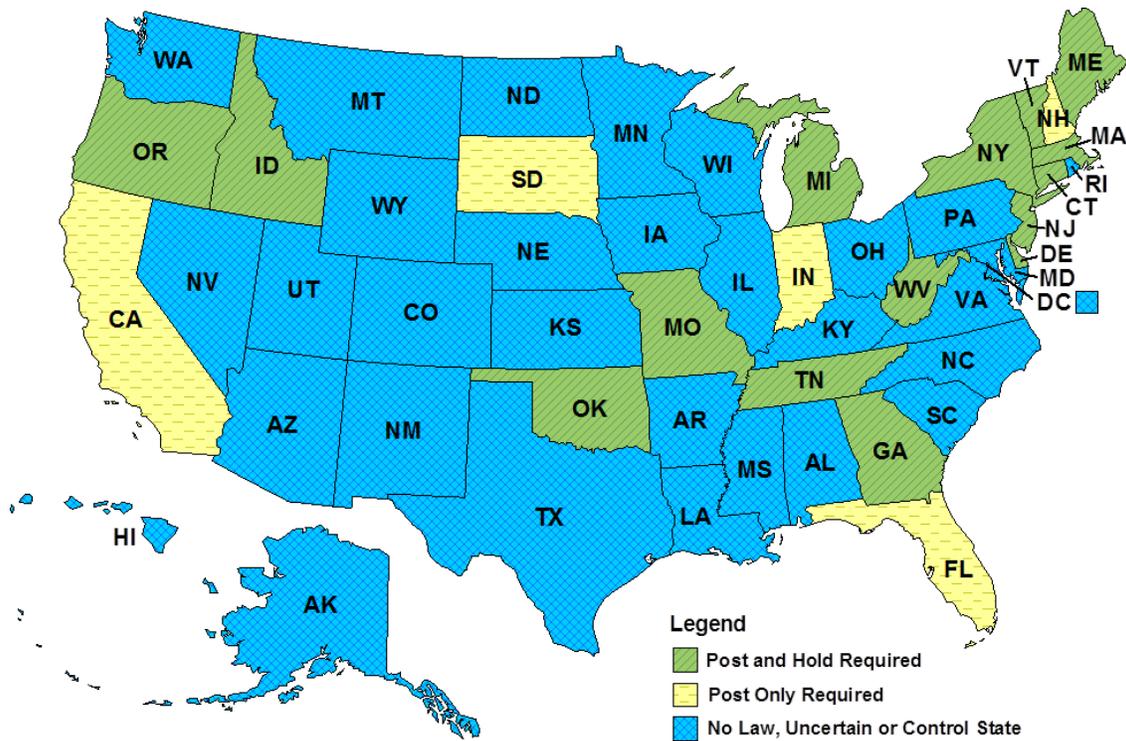
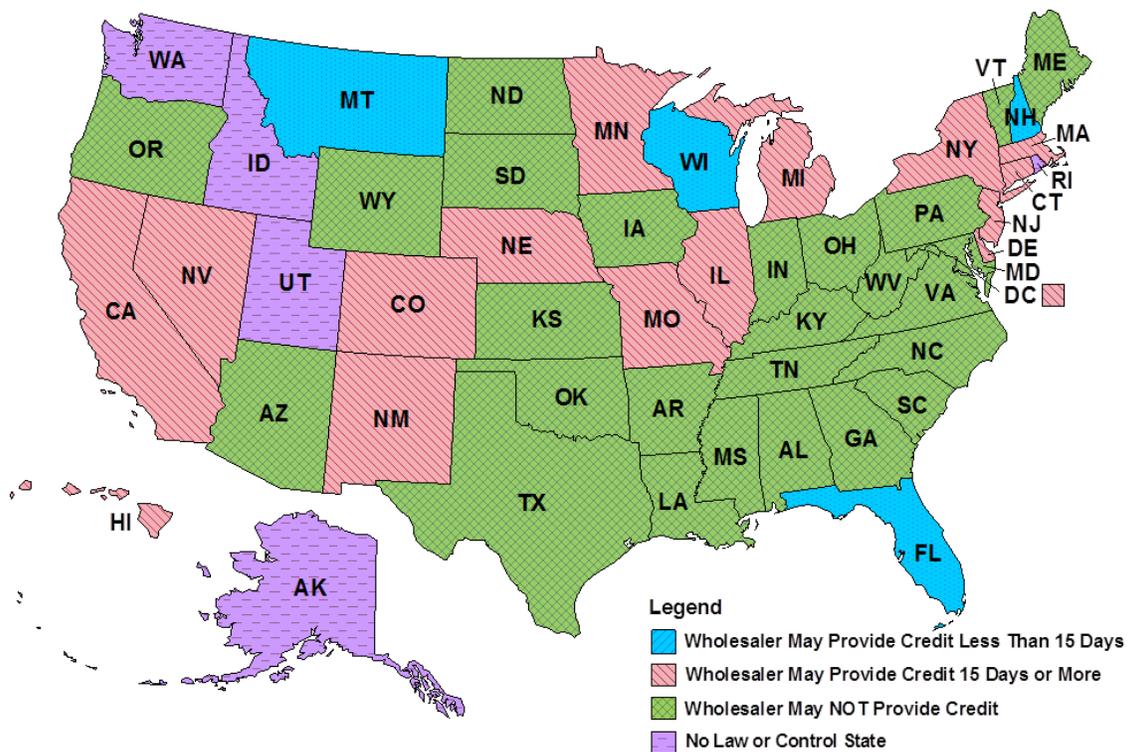


Exhibit 4.3.55: Retail Credit for Beer as of January 1, 2011



*MI allows 30 days credit to on-sale retailers but no credit to off-sale retailers

Trends in Wholesaler Pricing Restrictions

Between 2010 and 2011, only one State changed its wholesaler pricing restriction policies. South Dakota adopted a price posting requirement.

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see:

Chaloupka, F. (2008). Legal challenges to State alcohol control policy: An economist's perspective. Presentation at the Alcohol Policy 14 Conference, San Diego, CA, January 28, 2008.

Gruenwald, P., et al. (2006). Alcohol prices, beverage quality, and the demand for alcohol: Quality substitutions and price elasticities. *Alcoholism: Clin Exp Res* 30, 96–105.

National Research Council and Institute of Medicine. (2003). *Reducing underage drinking: a collective responsibility*. Washington, DC: National Academies Press.