

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.

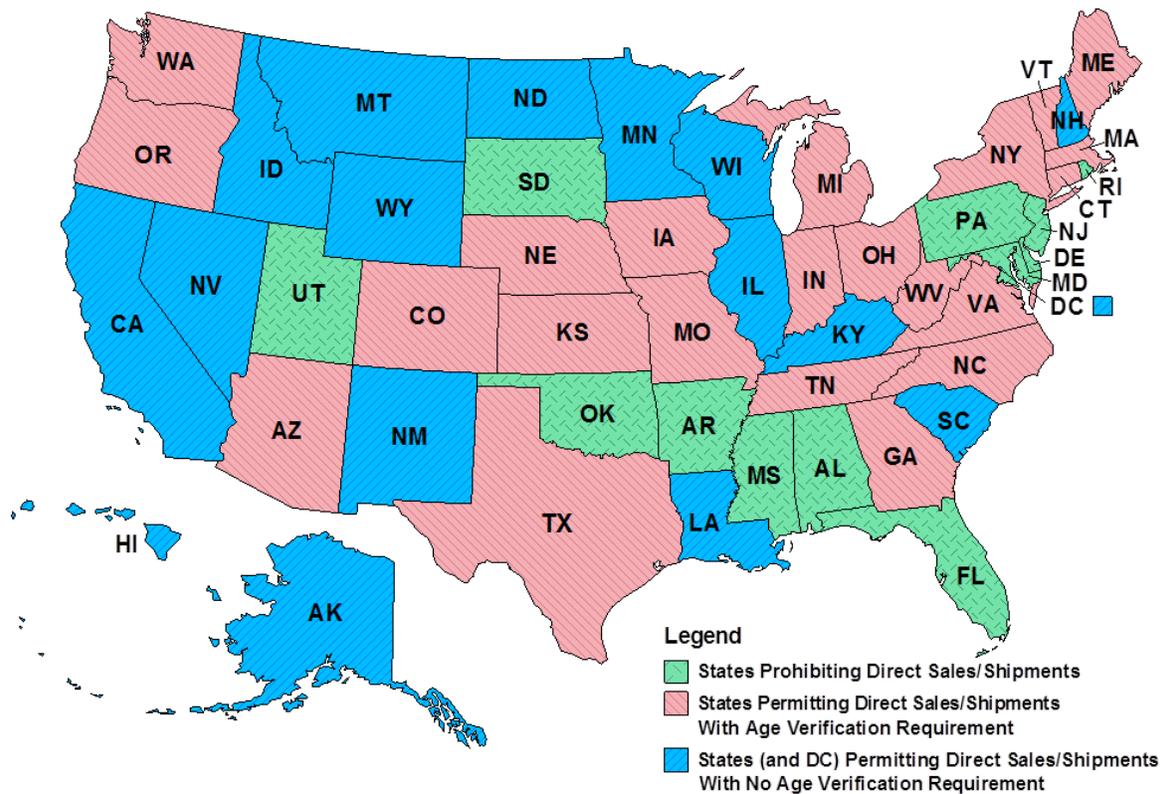
State laws also vary regarding the types of alcoholic beverages (beer, wine, distilled spirits) that producers are allowed to sell directly and ship to consumers. These and other restrictions may apply to all direct shipments. This Report includes only those requirements related to preventing underage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