

Direct Shipping Primer

BY KEVEN DANOW

In this, the age of the Internet, New York licensees often ask if it is legal to sell to consumers outside the state of New York. The answer depends on four factors: New York law, the law of the state in which the consumer will accept the goods, license of the shipper and the beverage alcohol which is to be shipped. This article is limited to issues related to the shipment of wine. While I have made an effort to verify the law of the various states, a licensee should discuss the specific facts related to any proposed shipment with an attorney licensed in the consumer's state.

Direct Shipment by a Winery

There is no provision which forbids a New York winery from shipping wine into another state, provided such shipment does not violate the law of the sister state.

In *Granholm v Heald*, the Supreme Court of the United States held that a state which allows wineries within the state to ship directly to consumers, must allow wineries located in sister states to do so as well. The following states adopted laws permitting direct shipment to consumers within their borders:

Alaska	Michigan
Arizona	Minnesota
California	Missouri
Colorado	Nebraska
Connecticut	Nevada
Florida	New Hampshire
Georgia	New Mexico
Hawaii	New York
Idaho	North Carolina
Iowa	North Dakota
Illinois	Ohio
Indiana	Oregon
Kansas	South Carolina
Louisiana	Tennessee
Maine	Texas
Maryland	Vermont

Virginia	West Virginia
Washington	Wisconsin
Washington D.C.	

Rhode Island allows direct shipments but only when the purchase was made at the winery. Other states forbid direct shipment or limit it to such an extent as to make it impractical. Direct shipment into Kentucky or Utah is a felony.

Direct Shipment by a Package Store

There are no provisions in the Alcoholic Beverage Control Law that prohibit a package store from shipping alcoholic beverages to a consumer outside of the state. However, like New York, most of our sister states have laws which prohibit the sale and delivery of beverage alcohol to a consumer by a person who is not licensed by that state. Subject to permit requirements and other limitations, Washington D.C and the following states permit shipment to consumers within their borders:

California	New Mexico
Louisiana	North Dakota
Maryland (through a wholesaler)	Oregon
Michigan	Virginia
New Hampshire	West Virginia
	Wyoming

As noted, each state that permits out-of-state shippers to sell to its residents has its own rules related to the sale. For instance:

- California and New Mexico only allow shipments of two cases of wine per month to any adult resident provided it comes from states which afford their licensees an equal reciprocal privilege. While New York does not, this reciprocal requirement is probably unen-

forceable. In *Granholm v Heald* the Supreme Court of the United States declared any attempt by a state to impose a reciprocal privilege provision to be a violation of the United States Constitution's commerce clause.

- The District of Columbia requires the out-of-state retailer to obtain an import permit before it delivers more than one case of beer, wine or spirits to one person.
- North Dakota's law provides "... an individual twenty-one years of age or older who imports or transports into this state 7.13 gallons [27 liters] or less of wine, two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer, or 2.38 gallons [9 liters] or less of any other alcoholic beverage per month for personal use and not for resale from a person holding a valid manufacturer's or retailer's license issued by the state of its domicile."
- Maryland requires a permit and allows shipment of wine to its citizens only if made through a licensed wholesaler and only if the brand of wine is not distributed in the state.
- Most states, New York included, require that beverage alcohol either be shipped by the licensee in its own vehicles or by a third party shipper with a trucking permit.

Conclusion

As noted above, direct shipment into Kentucky and Utah is a felony. A licensee convicted of a felony in another state could lose its license in New York. Before shipping to a consumer outside the state of New York, a licensee should review the law of that state with local counsel and obtain all appropriate licenses and permits.

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