



ONLINE / DIRECT TO CONSUMER ALCOHOL SALES

**PREPARED FOR THE ECONOMIC & RURAL DEVELOPMENT
COMMITTEE**

9/4/2018



TWENTY-FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

- **THE TWENTY-FIRST AMENDMENT (AMENDMENT XXI)** TO THE UNITED STATES CONSTITUTION REPEALED THE EIGHTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHICH HAD MANDATED NATIONWIDE PROHIBITION ON ALCOHOL ON JANUARY 16, 1919. THE TWENTY-FIRST AMENDMENT WAS RATIFIED ON DECEMBER 5, 1933.^[1] IT IS UNIQUE AMONG THE 27 AMENDMENTS OF THE U.S. CONSTITUTION FOR BEING THE ONLY ONE TO REPEAL A PRIOR AMENDMENT AND TO HAVE BEEN RATIFIED BY [STATE RATIFYING CONVENTIONS](#).

(1) (STATE RATIFYING CONVENTIONS ARE ONE OF THE TWO METHODS ESTABLISHED BY ARTICLE V OF THE UNITED STATES CONSTITUTION FOR RATIFYING PROPOSED CONSTITUTIONAL AMENDMENTS. THE ONLY AMENDMENT THAT WAS RATIFIED THROUGH THIS METHOD IS THE 21 AMENDMENT)

- THE SECOND SECTION BANS THE IMPORTATION OF ALCOHOL IN VIOLATION OF STATE OR TERRITORIAL LAW.
- THIS HAS BEEN INTERPRETED TO GIVE STATES ESSENTIALLY ABSOLUTE CONTROL OVER ALCOHOLIC BEVERAGES

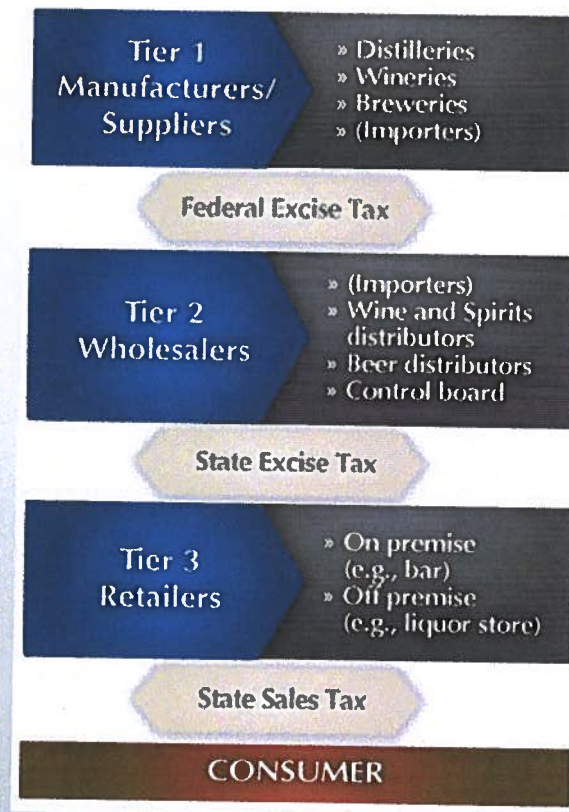
**New Mexico Liquor Excise Tax
Paid Monthly by NM
Wholesalers.**

Wine \$4.05 per 9L case.

Spirits \$14.40 per 9L case

Beer \$0.82 per Gallon

**New Mexico Gross
Receipts Tax Paid by NM
Liquor Licensee Monthly:
State Average 6.37%**



New Mexico's Three Tier System to regulate alcoholic beverages is in jeopardy. Direct to consumer sales are taking place daily, bypassing the Three Tier System that NM established after the repeal of prohibition. Direct to consumer sales from web based companies, which are out of state, largely unlicensed vendors bypasses NM Liquor Excise Tax, GRT, and take business from properly licensed NM small businesses.

ONLINE / DIRECT SALES BACKGROUND

- Under 60.6A-11.1 a Winegrower or a person licensed in another state that holds a winery license may be issued a Direct Wine Shipment permit
- A permittee may ship up to two nine-liter cases of wine to a New Mexico resident on a monthly basis
- The original intent of this statute was to allow bona fide producers to ship their products to consumers who did not have access to them under traditional means.
- In recent years there has been an massive increase in the amount of internet alcohol vendors (IAV). A simple google search of 'online liquor stores' will return pages of vendors.
- The expansion of IAV has translated into an increase in questionable adherence and at times blatant disregard for established liquor control measures.
- Examples of this are wine clubs, aggregators, online liquor stores, etc.
- The online alcohol sales market in 2016 was estimated at \$2B, 2017 sales increased by 32%.

Source: **shipCOMPLIANT**
by SOVOS

ONLINE / DIRECT SALES CONCERNS

Sales to Minors:

A 2011 study by UNC at Chapel Hill found that underage students were able to obtain wine via the internet with a 45% success rate.

Further the study found that non-wine products were more likely to be delivered to minors (53% Spirits & 57% Beer).

The vast majority of age verification is not done at the point of sale but rather at delivery, putting the responsibility on common carriers to verify legal age. This conflicts with NM law on Alcohol Server Education(60-6E-2) as the delivery driver has not received alcohol server training.

Deterioration of the Three Tier System:

Direct to consumer sales has and will continue to deteriorate the functional, proven three tier system if left unchecked. When the Three Tier System is in place and operating as designed thousands of jobs are sustained, consumers are protected, and the market remains competitive and robust.

Loss of Tax Revenue:

As internet commerce continues to expand and with it the sales of alcohol, the NM Liquor Excise Tax is bypassed. Estimates on annual lost revenue could be as high as \$7M in NMGRT and \$1M in LET. An intact Three Tier System ensures proper tax collection.

ONLINE / DIRECT SALES CONCERNS

Tobacco Regulation:

Internet alcohol sales have received little legislative attention in recent years compared to internet cigarette sales, which are now regulated by 34 state laws, 2 federal laws, and 4 federal agreements. One reason that internet cigarette sales garnered such attention was that few web based vendors properly verified buyers ages, resulting in as much as a 90% sales rate.

Alcohol and Gaming Lack of Jurisdiction :

Currently AGD has little recourse to reign in IAV as they are neither licensed or permitted by the state. Cease and desist letters essentially are the only option available for regulators attempting to subdue the flow of unregulated sales into the state.

Unfair to Licensees:

With the average cost of a liquor license at \$450k, this creates an uneven playing field for licensees, giving an advantage to IAV who have not procured a license. Additionally, NM liquor licensees are prohibited from delivering to a NM residence or business, furthering the unfair advantage web based operations realize.

Online Companies Delivering to New Mexico Doorsteps with Aggressive Discounts and Free Delivery



wine.com

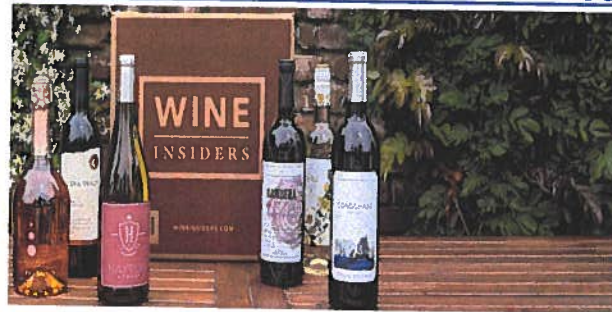
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\$12.9

2014



\$16.8

2015



\$22.1

2016

GROWTH OF THE U.S. ONLINE FOOD MARKET

(IN \$ BILLIONS)



65.0%



21.2%



13.8%

MARKET SHARE OF WINE, BEER, AND SPIRITS ONLINE SALES

BY PERCENTAGE OF
TOTAL REVENUE

2017 Online/Direct to Consumer Wine Sales by Month

2017 MONTH-BY-MONTH ANALYSIS								
	Volume (Cases)	% of Total Volume	± in Volume	Value (USD \$)	% of Total Value	± in Value	Avg. \$ / Bottle	± in \$ / Bottle
January	266,572	4.6%	19.0%	\$100,056,019	3.7%	16.5%	\$31.28	-2.1%
February	475,601	8.2%	28.3%	\$239,464,934	8.9%	36.9%	\$41.96	6.7%
March	575,661	9.9%	13.0%	\$310,763,487	11.5%	9.7%	\$44.99	-2.9%
April	491,291	8.5%	13.0%	\$227,208,121	8.4%	12.7%	\$38.54	-0.3%
May	498,848	8.6%	15.5%	\$212,982,195	7.9%	16.4%	\$35.58	0.8%
June	340,560	5.9%	17.1%	\$118,265,423	4.4%	17.6%	\$28.94	0.4%
July	274,469	4.7%	16.1%	\$100,363,139	3.7%	22.9%	\$30.47	5.9%
August	320,754	5.5%	9.9%	\$129,754,536	4.8%	16.1%	\$33.71	5.6%
September	493,999	8.5%	13.3%	\$221,596,239	8.2%	11.7%	\$37.38	-1.4%
October	709,693	12.3%	7.6%	\$394,843,858	14.7%	1.1%	\$46.36	-6.1%
November	803,063	13.9%	20.1%	\$417,002,092	15.5%	25.6%	\$43.27	4.5%
December	537,979	9.3%	15.7%	\$219,416,697	8.2%	17.6%	\$33.99	1.6%
ANNUAL	5,788,489	100.0%	15.3%	\$2,691,716,740	100.0%	15.5%	\$38.75	0.2%

**5.78
Million
Cases
Delivered**

**15%
Annual
Growth**

Source: **SHIPCOMPLIANT**
by SOVOS 

\$2.6 Billion in Sales

NEW MEXICO CURRENT DIRECT WINE SHIPPER PERMIT APPLICATION

1 Year Permit Fee: \$50.00 Expires June 30th each year; Application Fees are Non-Refundable

Annual Renewal Due by April 1st:

NMSA §60-6A-11.1.

A. A Licensee with a Winegrower's License or a person licensed in a state other than New Mexico that holds a Winery License may apply to the director for and the director may issue to the applicant a direct wine shipment permit.

B. A direct wine shipment permit shall be valid for a permit year. A permittee shall renew a direct wine shipment permit annually as required by the department to continue making direct shipments of wine to New Mexico residents.

C. A Permittee may ship:

(1) not more than two nine-liter cases of wine monthly to a New Mexico resident who is twenty-one years of age or older for the recipient's personal consumption or use, but not for resale; and

(2) wine directly to a New Mexico resident only in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL-SIGNATURE OF PERSON 21 YEARS OR OLDER REQUIRED FOR DELIVERY".

Qualified Applicants must submit the following:

- Copy of your State Liquor License

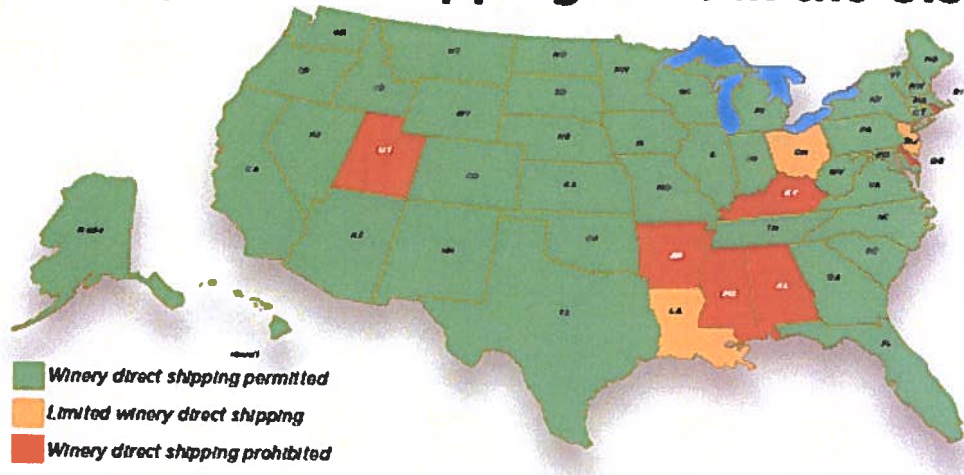
- Fee of \$50.00 – ***New Mexico Wine Growers do not pay an application fee***

- Attach proof of New Mexico CRS # from NM Taxation & Revenue Department (apply on-line at www.tax.newmexico.gov, or call (505) 827-0700)

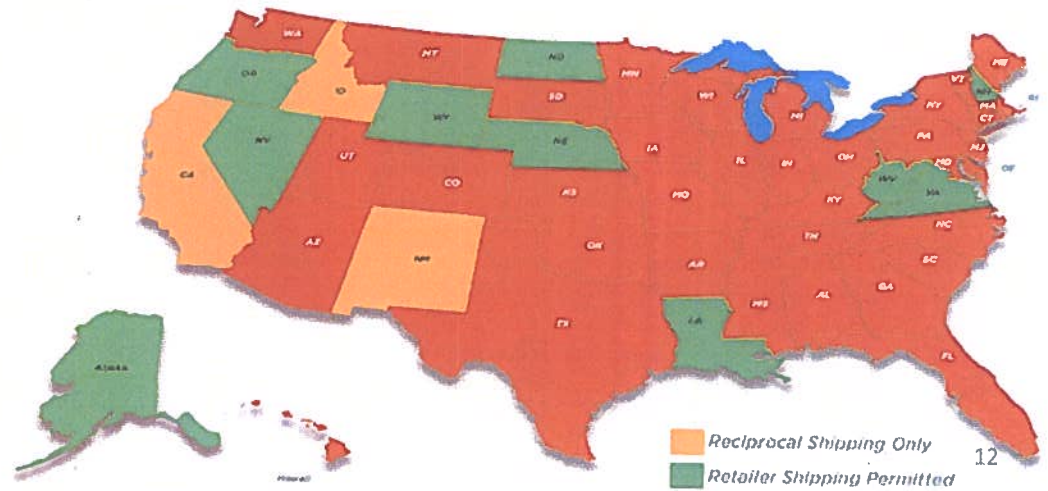
- New Mexico Winery direct shipping permitted, up to 2 cases per month; reciprocal retailer shipping**

permitted. Source: **SHIPCOMPLIANT** 
by SOVOS

Winery Direct Shipping Laws in the U.S.



Out-of-State Retailer Shipping Rights in the U.S.



Source: [Emma Balter](#) Posted March 26, 2018

Wine Spectator

THE DAILY
MISSISSIPPIAN

Mississippi AG Jim Hood stings online wine vendors in complaint

- Mississippi Attorney General Jim Hood has filed a complaint against four national online wine distributors for apparent violations of state law.
- The investigation, which was spearheaded by the AG's office and Department of Revenue, sent out inquiries to 63 online wine distributors, of which 22 sold and shipped wine into Mississippi, some without verification of a 21-year-old purchaser or without verification of a 21-year-old living at the shipping address used.
- The release said that for every \$25 bottle of wine sold online by vendors, the state loses \$6 in revenue if they do not collect internet sales tax.
- Posted on Feb 8 2018 - 7:59am by [Anders Culiner and Jack Hall](#)

Internet Alcohol Sales to Minors Case Study

[Rebecca S. Williams, MHS, PhD](#); [Kurt M. Ribisl, PhD](#)

Article Information

Arch Pediatric Adolescent Med. 2012;166(9):808-813. doi:10.1001/archpediatrics.2012.265

Objectives: To determine whether minors can successfully purchase alcohol online and to examine age verification procedures at the points of order and delivery.

Design: A cross-sectional study evaluated underage alcohol purchase attempts from 100 popular Internet vendors.

Setting: The study was conducted at the University of North Carolina at Chapel Hill, July 14-27, 2011.

Participants: Eight 18- to 20-year-old individuals participated.

Outcome Measures: Rates of successful sales to minors and use of age verification procedures at order and delivery were determined.

Results: Of the 100 orders placed by the underage buyers, 45% were successfully received; 28% were rejected as the result of age verification. Most common carriers (59%) used weak, if any, age verification at the point of order, and, of 45 successful orders, 23 (51%) used none. Age verification at delivery was inconsistently conducted and, when attempted, failed about half of the time.

Conclusions: Age verification procedures used by Internet alcohol vendors do not adequately prevent online sales to minors. Shipping companies should work with their staff to improve administration of age verification at delivery, and vendors should use rigorous age verification at order and delivery. Further research should determine the proportion of minors who buy alcohol online and test purchases from more vendors to inform enforcement of existing policies and creation of new policies to reduce youth access to alcohol online.

Master of Malt Whisky Blog - Important changes to US shipping

Source: <https://www.masterofmalt.com/>

By Kristiane Sherry

February 26, 2018

First thing this morning we heard from our logistics partner in the US and it was not good news. There has been an immediate cut to the number of 'allowable' states that we can send our whiskey to - and while the team on the ground is doing everything they can to sort it out, in the short-term we won't be able to reach as many of you as usual.

From the morning of 26 February until further notice we can only ship to US customers in the following 11 states: California, Washington, District of Columbia, Idaho, Louisiana, Nebraska, **New Mexico**, New York, Oregon, Virginia and Wyoming

We're really disappointed. We love our customers in the US, and absolutely understand this is, quite frankly, not good enough.

We've already been in touch with all affected customers with live orders, but would encourage anyone concerned to get in contact and we'll clear things up as much as we can. Feel free to use the live chat on the site, email us on contactus@masterofmalt.com or call 888 255 8181 if you're in the US (+44 (0)1892 888 376 otherwise). We're over on Facebook and Twitter, too. Just let us know how we can help with this.

We're working as hard as possible to get back across our usual footprint, and will resume normal operations as soon as we can.
<https://www.masterofmalt.com/blog/post/important-changes-to-us-shipping.aspx>



Conclusion:

This most certainly is a difficult and complex issue to reign in. At present we are exploring avenues to best remedy the concerns presented today. We will continue to perform research and have further dialogue to ensure that a practical and effective solution can be brought forth to the legislature. As the interim process proceeds we will keep the committee apprised and intend to have draft legislation in the fall for endorsement consideration.

Thank you.