



# Arizona State Senate Issue Brief

July 25, 2016

## Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## ARIZONA'S DIRECT SHIPMENT OF ALCOHOLIC BEVERAGES

### INTRODUCTION

Section 2 of the 21<sup>st</sup> Amendment to the U.S. Constitution grants the states complete regulatory authority over alcohol through establishment of law regarding intoxicating liquor's "...transportation or importation into any State, Territory, or possession of the United States for delivery or use therein...". The 21<sup>st</sup> Amendment does not overrule the Dormant Commerce Clause as it relates to interstate sale of alcohol, meaning that a state must treat in-state and out-of-state alcohol sales equally. State regulation of alcohol is structured on a three-tier system of manufacture, distribution and retail sale in 49 states. The three tier system was eliminated in the state of Washington by passage of initiative measure 1181 in November 2011.

Under the three-tier system, all alcohol must move from producer to wholesaler to retailer, and the consumer is only permitted to purchase alcohol at retail. The three-tier system is typically effected through one of two state frameworks: license and control. License states, such as Arizona, license all aspects of private production, distribution and sale; separating tiers through hierarchical business licenses. The state maintains control of liquor through the approval and sale of licenses as well as the oversight of licensees' business practices and collection of taxes. In Arizona, the Department of Liquor Licenses and Control (Department) regulates all licensees within the three-tier system. In control states the state operates as all or part of the distribution and retail tiers. The state buys alcohol from licensed manufacturers then stores, distributes and sells the product. Sales and excise taxes are collected in state-run stores.

Changes in the beverage industry have led to modifications of regulatory schemes and exceptions to three-tier separations. Some control states have granted exemptions from state control for farm wineries, brew-pubs and bed-and-breakfasts. In Arizona microbreweries are permitted to sell beer directly to consumers and may self-distribute limited amounts of their own beer, pursuant to statutory limitations. Shipment of wine from producers to retail buyers is allowed in a limited fashion in all but 9 states

(AL, AR, DE, KY, MS, OK, PA, SD, UT).

## **HISTORY OF DIRECT SHIPMENT IN ARIZONA**

Direct shipment of alcohol to customers in this state was first addressed in 1999 with the establishment of A.R.S. §4-203.04, describing a three-tiered system where liquor produced out of state may be purchased in person, by mail, by catalog or online for delivery to a resident of this state. Spirituous liquor purchased in this manner is required to be shipped from producer to wholesaler to retailer and ultimately to the customer as follows:

- The Director of the Department of Liquor Licenses and Control (DLLC) may issue a direct shipment license (Series 17) to an out-of-state producer of alcohol.
- A producer licensed as a direct shipper may ship spirituous liquor only to a wholesaler licensed in this state.
- The wholesaler receiving spirituous liquor from a licensed direct shipper is required to pay all luxury taxes associated with the spirituous liquor and to deliver that liquor to a licensed retailer with off-sale privileges.
- The licensed retailer receiving the spirituous liquor from a wholesaler must pay all transaction privilege taxes and deliver the spirituous liquor to the customer.

Delivery of directly shipped spirituous liquor may only occur during hours when liquor is legally sold in this state, to a person 21 years of age or older who exhibits proper identification. The retailer must make and maintain for two years a record of the following: the type, brand and amount of spirituous liquor delivered; the date, time and address where the delivery occurred; and the name, identification and signature of the consumer. Common carriers are required to maintain, and remit to DLLC upon request, a record of shipments of spirituous liquor including the shipment weight and the addresses of the shipper and recipient.

In response to a violation of statute, the Director of DLLC may serve a cease and desist order to the direct shipper. A civil penalty not to exceed \$150,000 may be assessed by the Director for a knowing violation of the cease and desist order.

The enactment of Laws 2002, Chapter 155 permitted the purchase and shipping of wine from out-of-state wineries to customers in this state through a limited exception to the three-tiered system. The legislation allowed a consumer to arrange for annual shipment by common carrier of one case of wine, purchased by the consumer when physically present at the winery. Laws 2003, Chapter 161 increased this limit from one to two cases of wine per year and specified that the wine must be purchased for personal use. Further, this legislation required that shipments of wine include delivery confirmation as well as a requirement for the signature of an adult who is of legal age to purchase alcohol. Laws 2005, Chapter 284 clarified that a purchaser must have been legally able to carry the wine into and within this state in order to have it shipped directly to themselves.

The United States Supreme Court ruled in 2005 that direct shipment laws in New York and Michigan discriminated against interstate commerce by treating in-state wineries differently from out-of-state wineries. The court held this discrimination was in violation of the Commerce Clause of the Constitution of the United States, and that such discrimination was not authorized by the 21<sup>st</sup> amendment to the U.S. Constitution [*Granholm v. Heald*, 125 S. Ct. 1885 (2005)]. Laws 2006, Chapter 310 was enacted and modified the Farm Winery License (Series 13) in response to concern that existing direct shipment statute in this state treated in-state and out-of-state wineries in a different fashion. Pursuant to this legislation, any winery in the United States that meets statutory requirements may be licensed by DLLC as a domestic farm winery.

The domestic farm winery license was renamed the farm winery license by Laws 2014, Chapter 253. A licensed farm winery that

produces less than 20,000 gallons of wine per year may deliver wine that it produces to customers in this state, provided that the customer purchases the wine for personal use, provides valid proof of legal age to purchase alcohol and can carry wine lawfully into or within this state. The delivery of wine may be made by the farm winery or by common carrier, in a container that requires the signature of a person who is of legal age to purchase alcohol and provides for delivery confirmation. Payment for the sale of alcohol must be made no later than the time of delivery and the farm winery is required to pay all luxury and transaction privilege taxes associated with the sale (A.R.S. § 4-205.04).

Production limits for direct shipment eligibility have since been removed. Laws 2016, Chapter 75 extends direct wine shipment privileges to any winery that holds a basic permit and current license to produce wine issued in this or another state. A direct shipment license is nontransferable, valid for one year, renewable and allows licensees to sell and ship wine directly to consumers. A licensee may ship up to six 9-liter cases until 2018, up to nine cases in 2018 and up to 12 cases in 2019 and thereafter per customer annually. Licensees must provide the DLLC with shipment records that include licensee name and address, license number, shipment date, recipient address and the amount shipped. Common carriers, except for railroads, must also keep, and remit to the DLLC upon request, records of wine shipped to purchasers in this state. Licensees must pay applicable luxury and transaction privilege taxes, allow the Department of Revenue or DLLC to audit wine shipment records and consent to the jurisdiction of Arizona governmental agencies, courts, laws, rules and regulations sale (A.R.S. § 4-203.04).

### ***ADDITIONAL RESOURCES***

- Arizona Department of Liquor Licenses and Control  
800 W. Washington, 5th floor  
Phoenix, AZ 85007  
602-542-5141  
[www.azll.com](http://www.azll.com)
- Direct Shipment Liquor Statutes: Arizona Revised Statutes, Title 4