

2020 NEW KY LAWS: EXPANDED DIRECT-TO-CONSUMER ALCOHOL SHIPMENT WHAT DOES THIS MEAN FOR YOU?

2020 KY HB415 to permit direct-to-consumer shipment of wine, spirits and beer by in and out-of-state licensed manufacturers, distributors and packaged retailers was enacted into law without the Governor's signature on April 8, 2020. The law will go into effect in July 2020.

HOW DOES KENTUCKY'S LAW COMPARE TO OTHER STATES?

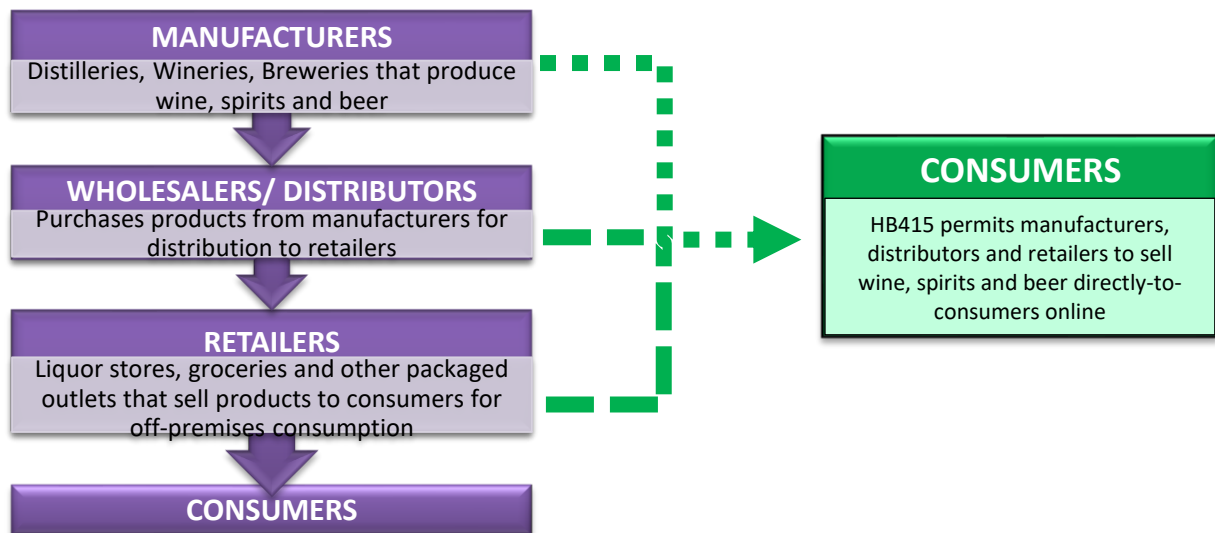
1. THIS IS ONE OF THE **MOST EXPANSIVE DIRECT-TO-CONSUMER SHIPMENT LAWS KNOWN IN THE U.S.**, permitting all types of alcohol to be shipped from all three tiers of the alcohol industry.

ALCOHOL DIRECT-TO-CONSUMER SHIPMENT STATUTES: NCSL, Feb. 14, 2020	#STATES	STATES
Allow wine, beer, & spirits (RI requires on-site purchases)	6	AZ, FL, HI, NE, NH, RI
Allow wine & beer (DE requires orders through wholesalers)	8	DE, MA, MT, ND, OH, OR, VT, VA
Allow wine (AZ, AR, GA, KY, SC require on-site purchases)	30	All remaining states
Prohibit direct shipment	3	AL, OK, UT
Statutes ruled unconstitutional	2	MA, PA
Doesn't specify direct shipments are allowed	1	MS

THREE TIER SYSTEM & DEREGULATION:

This new law permits manufacturers & distributors to ship and deliver directly to consumers, bypassing a portion of the three tier system.

1. **HOW DOES THE THREE-TIER SYSTEM WORK?** **MANUFACTURERS** provide alcoholic products to **WHOLESALE/DISTRIBUTORS**, who distribute the products to **RETAILERS**, who sell to **CONSUMERS**. No entity can be involved in more than one tier under most state models. [NABCA: The Three Tier System, 2015](#)
 - a. The diagram below illustrates how the three tier system currently operates in purple with the HB415 additions for direct-to-consumer shipment from all three tiers in green.



2. THREE TIER SYSTEM BENEFITS: The three tier system was put into effect after the prohibition to regulate alcohol sales, and has been hailed globally for its success at preventing many of the issues that originally led to the U.S. Prohibition Era. [NABCA: The Three Tier System, 2015; Public Action Management, 2013](#)

- a. **REGULATORY BENEFITS** – each tier ensures regs. provide safe handling of alcohol before it gets to the consumer
- b. **ECOMOMIC BENEFITS** – system checks & balances prevent untaxed, black market alcohol reaching consumers
- c. **COMMERCIAL BENEFITS** – ensures large and small manufactures have equal access to the marketplace
- d. **PUBLIC HEALTH BENEFITS** – safeguards against tainted or fake alcohol, and prevents marketplace domination and tactics to solicit customers to overdrink by balancing alcohol availability, price and promotion practices

FAKE ALCOHOL AND INTERSTATE E-COMMERCE - America’s three-tier system has helped to ensure [the U.S. has been fortunate to see few reported health issues or deaths](#) attributed to tainted alcohol, unlike other countries such as [India](#), [Mexico](#) and [Costa Rica](#). The Center for Alcohol Policy reported online direct-to-consumer (DTC) sales for consumer convenience could undo the three-tier system, and increase the exposure of fake and counterfeit alcoholic beverages to the alcohol industry and consumer. [Fake Alcohol and Interstate E-Commerce, March 4, 2020](#)

ACCESS TO MINORS AND ENFORCEMENT:

1. ACCESS TO MINORS: Home delivery, according to national research, increases the potential for minors to access alcohol. [SAMHSA Report to Congress on the Prevention & Reduction of Underage Drinking: Policy Summary- Home Delivery, Dec. 2015](#)

- a. **LESS INCENTIVE TO VERIFY AGE DURING DELIVERY** - “The University of Minnesota Alcohol Epidemiology Program notes 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 & cannot be watched by a surveillance camera, the liquor store’s management, or other customers.**” [SAMHSA Report to Congress on the Prevention and Reduction of Underage Drinking: Policy Summary- Home Delivery, December 2015](#)
- b. **DELIVERY USED MORE BY PROBLEM DRINKERS** - One study reported regular adult male “drinkers without a history of alcohol problems were significantly less likely to have had alcohol delivered than problem drinkers.” [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. Journal of Substance Abuse, 8\(2\), 251–261.](#)
- c. **DELIVERY SERVICES USED MORE BY UNDER 21 MALE FREQUENT, HEAVY DRINKERS** - A study reported use of delivery services was more prevalent among under-21 men & more frequent, heavier drinkers. 10% of 12th graders & 7% of 18-20 year olds in 15 Midwestern communities reported they obtained alcohol through delivery services in the last year, & 20% of outlets delivered the alcohol. [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. Journal of Studies on Alcohol, 61, 81–84.](#)

2. SUCCESSFUL UNDERAGE DRINKING ENFORCEMENT STRATEGIES:

- a. **COVERT UNDERAGE BUYER PROGRAMS/ COMPLIANCE CHECKS** - “Vigorous use of compliance checks can reduce the illegal sale of alcohol to underage youth... Compliance checks encourage licensees to be diligent in complying with the law and therefore help to reduce the availability of alcohol to minors.” Ordinarily, compliance checks are conducted by trained minor decoys and enforcement officers in-person at alcohol retailers. “Underage youth enter retail stores, bars or restaurants and determine if they can buy alcohol without presenting an identification card. The underage volunteers should look their age and should not lie about their age if a vendor inquires. If an ID is requested, they should terminate the attempt to purchase.” [NHTSA Community Guide On Enforcement, March 2001](#)



- b. **ENFORCEMENT BARRIERS WITH HOME ALCOHOL SHIPMENT** - (1) it could be difficult and costly to conduct operations out-of-state; and (2) the required age verification system requirements are not specified in KY's new direct to consumer alcohol shipment law, so, it cannot be determined what safe guards might be in place to prevent minors from getting access to the alcohol. The online purchase age verification system required by the KY's law should automatically deny the electronic transaction as soon as the minor decoy enters their real age (under 21), though in real life, a youth might enter the age from their fake/ fraudulent ID or enter an incorrect age showing they are at least 21.

ADEQUATE FUNDS FOR ALCOHOL ENFORCEMENT ARE NEEDED to adapt, receive training on and implement compliance operations, designed to check if licensees are checking IDs and refusing to sell to underage youth, when alcohol is available for shipment/delivery directly to consumers.

3. YOUTH APPEAL – PRICE, PLACEMENT, PRODUCT, PROMOTION

- a. **PRICE: "YOUTH ARE PRICE SENSITIVE & TEND TOWARDS INSTANT GRATIFICATION** - According to an annual report on direct shipping, the average bottle price for direct shipment of wine in 2019 was \$40.70 and in some states, delivery will take several days." Pricey wine shipped directly from out-of-state to homes & delivery time may reduce youth appeal to order wine for direct shipping from the internet. However, a tech savvy youth might also find cheaper alcohol products from online selections to order and ship directly to their residence where they might use a fake ID or have an older youth sign for the product.
- b. **ONLINE PLACEMENT: AGE VERIFICATION PROCEDURES BY INTERNET ALCOHOL VENDORS** - Investigations have revealed that shippers have failed to check ID, left alcohol at the door w/o the required signature, & taxes were not collected. The IL Liquor Control Commission issued over 100 cease-and-desist letters to retailers, wineries & fulfillment centers in 2015. A study done at the Univ. of NC concluded "age verification procedures used by internet alcohol vendors don't adequately prevent online sales to minors."
- c. **PRODUCT: KY'S LAW PERMITS SHIPMENT OF ALL TYPES OF ALCOHOLIC PRODUCTS, INCLUDING PRODUCTS WITH PARTICULAR APPEAL TO YOUTH** - February 2020 Healthy Alcohol Marketplace Newsletter by Pamela S. Erickson, states "The system involving direct shipment of only wine by wineries is not a fair test of alcohol direct shipment safety for youth because underage kids typically don't drink traditional wine. A study by Michael Siegel, et al, found that 'Beer and spirits were the alcohol of choice among youth; 68.9% said they drank beer and 68.7% reported to have drank spirits. These were followed by flavored alcoholic beverages (49.9%) and wine (31.6%).'"
- d. **PROMOTION: ALCOHOL ADVERTISING IMPACTS YOUTH DECISIONS TO DRINK** – [Society for the Study of Addiction, 2016](#); [CAMY, April, 2007](#)
- **DIGITAL MARKETING INCREASES LINK BETWEEN ALCOHOL MARKETING & YOUTH** - A new 2016 review of studies on alcohol marketing and youth discovered link between alcohol marketing and youth drinking is growing stronger. "The finding suggest, young people who have greater exposure to alcohol marketing appear to be more likely to subsequently to initiate alcohol use and engage in binge and hazardous drinking." David Jernigan, Ph.D., Director of the Center on Alcohol Marketing and Youth (CAMY) at the John Hopkins Bloomberg School of Public Health, suggested the growth since 2007-2008 when the information was last reviewed, suggest "numerous innovations in reaching and engaging potential customers – particularly children and teens through digital media." [Partnership for Drug-Free Kids, Jan. 19, 2017](#)
 - **INCREASE IN TEENS ONLINE CONSTANTLY** - 88% of U.S. teens have access to a desktop or laptop and 95% of teens to a smartphone, and a growing share of teens (45% in 2018 vs. 24% in 2014-2015) say they're online almost constantly. [PEW Research, 2018](#)



KENTUCKY GENERAL ASSEMBLY 2020 REGULAR SESSION BILL SUMMARY

Bill No.	Description – <i>Sponsor(s)</i>	Status
<p><u>HB415 (BR-191)/LM</u></p> <p><u>HCS(1)</u></p> <p><u>HFA1</u></p> <p><u>HFA2</u></p> <p><u>HFA3</u></p> <p><u>HFA4</u></p> <p><u>HFA5</u></p> <p><u>HFA6</u></p> <p><u>HFA7</u></p> <p><u>HFA8</u></p> <p><u>SFA1</u></p>	<p>AN ACT relating to alcoholic beverages. – <i>Rep. Adam Koenig; Chad McCoy; Kevin Bratcher (Erlanger); Thomas Huff; Mark Hart (Bardstown)</i></p> <ul style="list-style-type: none"> ▪ Require out-of-state licensees not licensed in KY to have the new shipping permit ▪ SHIPPING PERMIT HOLDERS MAY SHIP ALL TYPES OF ALCOHOLIC BEVERAGES they are authorized to sell with the below limits to a KY consumer through a licensed common carrier in containers labeled “CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY”: <ul style="list-style-type: none"> a. Distilled spirits, in quantities <4.5L/consumer/day for sales before January 1, 2021, & <9L/consumer/day on & after January 1, 2021; b. Wine, in quantities <4 cases/consumer/day; and c. Malt beverages, in quantities 2 cases/consumer/month ▪ SHIPPING PERMIT HOLDERS shall: <ul style="list-style-type: none"> a. Have an independent party to verify payment & ID b. Obey KY state laws relating to times & days alcohol may be sold c. NOT ship products banned in KY d. Collect taxes & fees as if located in the place of receipt e. Request common carriers inspect gov.-issued ID for PROOF OF AGE, despite NO mandated Responsible Beverage Server Training (RBS) ▪ <u>KY LICENSED MANUFACTURERS (DISTILLERS, RECTIFIERS, BREWERS, OR WINERIES), WHOLESALERS/DISTRIBUTERS, OR PACKAGED RETAILERS MAY....</u> <ul style="list-style-type: none"> a. SELL & DELIVER TO CONSUMERS IN KY; & b. SHIP TO OUT-OF-STATE CONSUMERS w/ a licensed common carrier ▪ <u>DRY/ MOIST TERRITORIES</u> - It shall be unlawful for any person to bring into, transfer to another, deliver, ship, or distribute in any dry or moist territory unless the alcohol’s sale is authorized under a limited local option election <ul style="list-style-type: none"> a. Licensed common carriers are NOT LIABLE for violations b. Proof the consumer’s delivery address represented in writing is located in territory where it’s lawful to receive alcohol shall be an ABSOLUTE DEFENSE TO A VIOLATION 	<p>ENACTED INTO LAW W/O GOVERNOR’S SIGNATURE 04/08/20</p> <p>DELIVERED TO GOVERNOR 03/26/20</p> <p>PASSED 21-11 (S) 03/26/20</p> <p>PASSED LOA (S) 03/26/20</p> <p>PASSED 52-33 (H) w/ <u>HCS(1), HFA2, HFA7, HFA8</u> 03/18/20</p> <p>PASSED LOA (H) w/ <u>HCS(1)</u> 03/11/20</p>

2020 KY Legislation - <https://legislature.ky.gov/Pages/index.aspx> - Alcohol-Related Bills | Status as of 04-29-2020
 This list is for informational purposes only | For information on lobbying www.irs.gov/Charities-&-Non-Profits/Lobbying
 Contact the Alcohol Prevention Enhancement Specialist (PES) for other questions at tara.mcguire@newvista.org

