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## COMING TO A DOOR NEAR YOU: ALCOHOL DELIVERY IN THE COVID-19 NEW NORMAL

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### INTRODUCTION

American consumers are used to pretty much everything being delivered to their doors. Currently, products ranging from the inane (like pickle-flavored lip balm) to the highly-regulated (such as pharmaceutical drugs) are shipped to every corner of the country.<sup>1</sup> Oftentimes, orders arrive in under two days; in densely-populated urban areas, it can be under two hours.

The move to a delivery economy has only accelerated in the midst of the COVID-19 pandemic, which has caused more consumers to stay at home, abide by social distancing protocols and obtain their necessities via delivery.<sup>2</sup>

Note: Franklin Lee of the R Street Institute provided valuable research assistance for this paper.

1. "Dill Pickle Lip Balm," Amazon.com, last accessed Oct. 27, 2020. <https://www.amazon.com/Dill-Pickle-Lip-Balm-Flavored/dp/B06XFBRJJW>; Nicole Kruczek, "What is the Role of the Mail-Order Pharmacy?", *Pharmacy Times*, Jan. 1, 2020. <https://www.pharmacytimes.com/news/what-is-the-role-of-the-mail-order-pharmacy>.

2. See, e.g., Stephanie Crets, "US online sales rise 43% amid pandemic in September," *Digital Commerce 360*, Oct. 19, 2020. <https://www.digitalcommerce360.com/article/coronavirus-impact-online-retail>.

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Even in the pre-COVID era, online shopping was experiencing a meteoric rise, particularly among younger generations.<sup>3</sup>

Despite these trends toward an Internet-powered shipping economy, there remains a notable exception: Alcohol. While many locales around the country allow localized home delivery of alcohol—often known as on-demand delivery—a substantial number still do not. Even fewer allow longer-distance alcohol shipments that cross state lines.<sup>4</sup>

This means that experiences which are a routine occurrence for modern Americans in most realms are often impossible when it comes to alcohol. For instance, unless you happen to live in a handful of states, you are precluded from ordering your favorite Kentucky whiskey or Vermont IPA online and having it delivered to your door. Until recently, few citizens questioned why America's regulatory regime goes out of its way to sideline alcohol. But COVID-19 is causing more people to start asking why, and if it makes sense to continue to exclude alcohol in this way.

3. See, e.g., James Melton, "Millennials now do 60% of their shopping online," *Digital Commerce 360*, Mar. 26, 2019. <https://www.digitalcommerce360.com/2019/03/26/millennials-online-shopping>.

4. A note on terminology: As discussed throughout this paper, there are important legal distinctions between long-distance alcohol shipments that cross state lines and what we refer to as "localized home delivery." The prior involves either a producer or retailer of alcohol shipping alcoholic products through a "common carrier"—usually FedEx or UPS—across state lines. The later involves short-distance delivery—usually via a driver—of alcohol from a local retailer such as a grocery store or liquor store. To distinguish between these two forms of alcohol transportation, we primarily use "shipping" to refer to across-state-lines transportation and "delivery" to refer to localized home delivery transportation.

As more Americans demand that alcohol be treated like other products, government officials and policymakers will face increasing pressure to modernize alcohol transportation laws. This paper hopes to show that this can be done safely—and that it is far past time to do it.

## A BRIEF HISTORY OF ALCOHOL TRANSPORTATION

### Ancient and Colonial Times

To understand alcohol policy, one first needs to understand alcohol history. Much of the modern legal and regulatory regime governing alcohol traces its lineage to Prohibition—and the rules surrounding the shipment and delivery of alcohol are no exception.

Humans have been attempting to transport alcohol, in one form or another, pretty much since they discovered how to make it. According to historians, ancient Egyptians developed wax-lined ceramic containers—known as “amphorae”—that were used for the transportation of liquids like wine and olive oil.<sup>5</sup> These containers were loaded onto ships and, once on board, buried in mounds of sand to prevent damage during rough sea journeys. This technology eventually spread to ancient Greece, Rome and beyond.<sup>6</sup>

The colonists of early America carried on these traditions. Alcohol was imported widely in colonial times, including Madeira from Portugal—which some have called “America’s clear favorite.” Madeira was on some of the earliest ships to explore the New World and would become a favorite during the Revolution.<sup>7</sup> Likewise, rum from the West Indies grew to be incredibly popular during colonial times, abetted by the infamous “triangular trade” that often resulted in the exchange of rum, sugar and slaves.<sup>8</sup>

Domestic transportation of alcohol also became popular as many rural Americans discovered that transporting fermented or distilled grain was easier than transporting grain itself. Back country farmers in the then-Western reaches of the early United States often had great difficulty shipping the agricultural products they grew, such as wheat and corn, to eastern urban markets. Roads were rough or non-existent and grain loads were immensely heavy and quick to spoil. In contrast, if farmers distilled their agricultural products into whiskey, it was lighter, no longer perishable and could

bring commensurately higher prices at market. As a result, the west-to-east booze transportation market in early 1800s America was robust.<sup>9</sup>

### Temperance Rising

While many Americans view Prohibition as a one-time, major event in our country’s history, the temperance movement was many years in the making. In the decades leading up to national prohibition, more and more localities and states passed dry laws.

The result, inevitably, was that the United States quickly became a hodge-podge of “wet” and “dry” areas. Equally as inevitable was the rise of a transportation market that moved alcohol from wet areas, where it was legal, into putatively dry areas, where it was banned. Dry states and cities thus found their alcohol prohibitions undermined by those who simply procured alcohol from elsewhere.<sup>10</sup>

It was in this context that lawmakers began to create laws restricting the transportation of alcohol in America. Dry cities and states tried to clamp down on the flow of liquor into their regions by banning the transportation of alcohol into their borders. However, this raised constitutional questions about whether one state could legally ban products from outside its borders.<sup>11</sup>

While the United States Supreme Court initially upheld many of these anti-transportation laws enacted by dry territories, the legal terrain shifted toward the end of the 19<sup>th</sup> century when the Supreme Court began to enforce what eventually became known as the Dormant Commerce Clause, which holds that one state cannot discriminate against products from another state. Doing so would be an undue burden on interstate commerce under the Commerce Clause in Article I of the U.S. Constitution, which places regulatory power over interstate commerce in the hands of Congress and not state governments. However, the Supreme Court did provide an alternative: Congress could pass a law granting states the power to clamp down on alcohol transportation across state borders.<sup>12</sup>

Congress heeded this call starting in 1890 with the enactment of the Wilson Act, which stated that all intoxicating liquors transported into a state would become, “upon

5. See, e.g., Joshua Malin, “The 8,000 Year Effort To Transport Wine Around The World,” *VinePair*, March 23, 2014. <https://vinepair.com/wine-blog/history-wine-transport-8000-years>.

6. *Ibid.*

7. See, e.g., Stephen Grasse, *Colonial Spirits: A Toast to Our Drunken History* (Abrams Image, 2016), p. 75-76.

8. *Ibid.*, pp. 89-91, 100-101.

9. See, e.g. W. J. Rorabaugh, *The Alcoholic Republic* (Oxford University Press, 1979), p. 77-80.

10. See, e.g., W. J. Rorabaugh, *Prohibition: A Concise History* (Oxford University Press, 2018), p. 45-46.

11. Aute Lee Carr, “Liquor and the Constitution,” *Law and Contemporary Problems* 7:4 (Fall 1940), pp. 709-16. <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2048&context=lcp>.

12. *Ibid.*

arrival,” subject to the laws of that state.<sup>13</sup> Once again, the Supreme Court intervened, holding a few years after the act’s passage that “upon arrival” meant “delivery by the carrier to the consignee whose right to receive the shipment was still protected by the Commerce Clause.”<sup>14</sup> The upshot of this holding was that early versions of mail-order alcohol were still available even in dry territories. Alcohol suppliers from wet jurisdictions would simply solicit orders directly from individual buyers in dry jurisdictions and then ship to them.

Congress tried to plug up this loophole in 1913 with the passage of the Webb-Kenyon Act. The law directly targeted alcohol shipments, as Senator William Kenyon noted in the Congressional Record:

Every State in which the traffic in liquors has been prohibited by law is deluged with whisky sent in by people from other States under the shelter of the interstate-commerce law. There are daily trainloads of liquors in bottles, jugs, and other packages sent into the State consigned to persons, real and fictitious, and every railway station and every express company office in the State are converted into the most extensive and active whisky shops, from which whisky is openly distributed in great quantities.<sup>15</sup>

The Webb-Kenyon Act clamped down on this trend by specifying that the shipment or transportation of intoxicating liquor that was intended to be “received, possessed, sold, or in any manner used” either in its original packaging or otherwise was prohibited if it violated the laws of the dry state.<sup>16</sup>

The Supreme Court initially upheld the law, but later narrowed it by holding that in states which merely banned the sale or production of alcohol, the state government could not also ban the transportation of liquor that was solely for personal use.<sup>17</sup> This required Congress to step in a final time, in 1916, by passing the Reed Amendment—also known as the “Bone-Dry” Amendment—which, rather than merely empowering states to prohibit alcohol transportation, inserted the federal government into the issue directly.<sup>18</sup> In this amendment, the federal government sought to punish entities for transporting alcohol in violation of state laws, even if the alcohol was only for personal use.<sup>19</sup>

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13. Ibid.

14. Ibid.

15. Ibid.

16. Ibid.

17. Ibid.

18. John K. Graves, “The Reed “Bone-Dry” Amendment,” *Virginia Law Review* 4:8, (May 1917) pp. 634-35.

19. Ibid, p. 635.

This convoluted back-and-forth between Congress and the Supreme Court finally ended two years later when the Court upheld the Reed Amendment.<sup>20</sup> Both the Webb-Kenyon Act and the Reed Amendment would be quickly superseded by passage of national prohibition in 1920. At that point, the 18<sup>th</sup> Amendment itself prohibited the transportation or importation of intoxicating liquors into any state or territory.<sup>21</sup>

Prohibition, of course, featured many daring attempts to transport and smuggle alcohol of various kinds—along with equally determined efforts on the part of law enforcement to stifle such efforts.<sup>22</sup> Over a decade later, when the 21<sup>st</sup> Amendment was enacted repealing Prohibition, the language of the amendment still maintained echoes of Webb-Kenyon, stating that the transportation or importation of intoxicating liquors into any state “in violation of the laws thereof” was prohibited.<sup>23</sup>

## Post-Prohibition to Today

In the decades since Prohibition, a vociferous legal debate has arisen as to whether the 21<sup>st</sup> Amendment grants states the power to prohibit alcohol transportation into their borders. Some scholars feel that it does, while others continue to argue that the Dormant Commerce Clause cuts across the 21<sup>st</sup> Amendment and prohibits discrimination against out-of-state alcohol producers and sellers.<sup>24</sup>

While an extensive legal analysis of this debate is beyond the scope of this paper, several recent Supreme Court cases have grappled with this issue. First, in *Granholm v. Heald*, the Supreme Court held that a state law which allowed in-state wineries to ship wine directly to consumers, but which forbade out-of-state wineries from doing the same, violated the Dormant Commerce Clause.<sup>25</sup> Subsequent lower court decisions have limited the holding of *Granholm v. Heald* to only apply to wine shipments originating from wineries, rather than applying to all types of alcohol and all types of sellers of alcohol.<sup>26</sup>

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20. Carr, p. 710.

21. U.S. Const., Amend. XVIII, Sec. 1.

22. See, e.g., “Rumrunners Delivered the Good Stuff to America’s Speakeasies,” *Prohibition: An Interactive History, The Mob Museum*. <http://prohibition.themobmuseum.org/the-history/the-rise-of-organized-crime/rum-running>; Christopher Klein, “How Prohibition Gave Birth to NASCAR,” *History.com*, Aug. 29, 2018. <https://www.history.com/news/how-prohibition-gave-birth-to-nascar>.

23. U.S. Const., Amend. XXI, Sec. 2.

24. See, e.g., Matthew J. Patterson, “A Brewing Debate: Alcohol Direct Shipment and the 21st Amendment,” *University Illinois Law Review* 3 (2002), p. 761. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/unillr2002&div=26&id=&page=>.

25. *Granholm v. Heald*, 544 U.S. 460 (U.S. 2005).

26. See, e.g., Liza Zimmerman, “Supreme Court To Revisit Case Of Interstate Wine and Spirits Shipping” *Forbes*, Oct. 11, 2018. <https://www.forbes.com/sites/lizazimmerman/2018/10/11/supreme-court-to-revisit-case-of-interstate-wine-and-spirits-shipping/#d3667143fe18>.

Last year, the Supreme Court issued another decision with potential implications for interstate alcohol shipments. In *Tennessee Wine & Spirits Retailers Association v. Thomas*, the Supreme Court struck down a Tennessee law that required any liquor store owner in the Volunteer State to be a resident of the state for two years.<sup>27</sup> Although the case was not directly related to interstate shipping, the ruling nonetheless included broad language stating that the 21<sup>st</sup> Amendment does not allow states to enact protectionist alcohol laws that discriminate against out-of-state economic interests unless there is a proper health and safety reason to do so.<sup>28</sup>

It is hard to predict how interstate shipping laws will evolve—or not—in the coming years based on court holdings alone, although some states have already made moves to liberalize their shipping laws. Regardless of constitutional clarity as to what states can and cannot do in terms of alcohol shipments, the reality is that many states still restrict the delivery and shipment of alcohol from both inside and outside their borders.

Much of this legal structure is a direct holdover from the immediate post-Prohibition Era when states across the United States implemented systems to regulate alcohol once the federal government exited the booze business. Skepticism of alcohol transportation from one locale to another can be seen in *Toward Liquor Control*, the 1933 book commissioned by John D. Rockefeller (a teetotaler), which laid out several options for how states should govern alcohol in the post-Prohibition landscape.<sup>29</sup>

Among other recommendations, *Toward Liquor Control* proposed a three-tier system for alcohol regulation that required producers, wholesalers and retailers to all be legally distinct entities. The purpose beyond this requirement was to prevent vertical monopolies—so-called “tied houses”—from forming. In other words, a large beer producer could not also own a saloon that exclusively sold that brewer’s beer.

According to the authors of *Toward Liquor Control*, tied houses were especially problematic because they often featured distant, far-away alcohol producers operating saloons and bars within a local community. This meant that the tied house system had “all the vices of absentee ownership” since outside alcohol producers “knew nothing and cared nothing

about the community.”<sup>30</sup> Instead, these producers were allegedly only focused on “increased sales” while being “beyond local social influence.”<sup>31</sup>

The three-tier system, among other things, made it more complicated for producers of alcohol to sell their products directly to consumers, which further dampened the growth of alcohol shipping and delivery.

Despite developments in other industries, fear and skepticism toward outside alcohol interests continues to pervade modern day lawmakers and alcohol regulators. Government officials often argue that an in-state presence for alcohol producers and sellers—like that suggested in *Toward Liquor Control*—is a critical component of accountability and practicality in the alcohol marketplace.

In 2010 testimony before Congress, a former Michigan Liquor Control Commissioner summarized this mentality by stating:

[An in-state presence for alcohol sellers helps] to ensure that in-state retailers and wholesalers are physically inspected and checked to verify that [a state’s] regulatory system is being followed, that only approved alcoholic beverages are being sold, that alcoholic beverages are not being sold to underage persons, and that taxes are being paid.<sup>32</sup>

While this Commissioner called it an “impossible task” for a state to regulate out-of-state retailers that were shipping their products into a state, that is no longer the case.<sup>33</sup> The Internet has created more accountability for even remote businesses, and technology has made it increasingly feasible to track and regulate alcohol products that originate from out of state.

Additional points raised in this Congressional testimony also may not withstand scrutiny. For instance, the former Commissioner expresses concern about the ability to physically inspect and check in-state wholesalers and retailers to verify compliance with state regulations. However, the presumption that in-state physical presence increases compliance and limits violations as compared to out-of-state businesses is not necessarily valid. Just recently, an historic fine of \$3

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27. *Tennessee Wine & Spirits Retailers Assn. v. Thomas*, No. 18-96 (2018).

28. C. Jarrett Dieterle, “The Supreme Court Just Struck a Blow for Alcohol Freedom” *DrinksReform*, June 27, 2019. <http://www.drinksreform.org/blog-1/2019/6/27/the-supreme-court-just-struck-a-blow-for-alcohol-freedom>.

29. Raymond B. Fosdick and Albert L. Scott, *Toward Liquor Control* (Center for Alcohol Policy, Republished 2011); See, e.g., Ryan Lozar, “Whatever Happened to Toward Liquor Control? Access, Abuse, and the Problem of Direct Shipment,” in *The Importance of Toward Liquor Control to Modern Alcohol Policy: 2011 National Essay Contest Winners*, The Center for Alcohol Policy, 2011. <https://www.centerforalcoholpolicy.org/wp-content/uploads/2012/06/Center-for-Alcohol-Policy-2011-Winning-Essays.pdf>.

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30. *Ibid.*, p. 29.

31. *Ibid.*

32. Testimony of Nida Samona, House Subcommittee on Courts and Competition of the Committee on the Judiciary, “Legal Issues Concerning State Alcohol Regulation,” 111th Congress, March 18, 2010. [http://judiciary.house.gov/hearings/printers/111th/111-125\\_55481.PDF](http://judiciary.house.gov/hearings/printers/111th/111-125_55481.PDF).

33. *Ibid.*

million was assessed against a distributor in Michigan—one with a significant physical presence in the state.<sup>34</sup>

The former Commissioner also mentions the importance of ensuring only approved alcohol products are being sold within a state as another reason why an in-state presence should be prioritized for alcohol.<sup>35</sup> This overlooks the fact that alcohol product approvals are provided first and foremost by the federal government via the Alcohol and Tobacco Tax and Trade Bureau (TTB). If alcoholic products are properly placed into interstate commerce, after receiving approval from the TTB, it is unclear whether additional approvals are needed at the state level.

The Commissioner's further implication that an in-state presence is critical for ensuring proper enforcement of underage drinking laws is similarly unconvincing. The Michigan Liquor Control Commission's own reports indicate violations for sales of alcohol beverages to underage persons frequently occur even when those sales are conducted solely by in-state licensed establishments.<sup>36</sup>

A final concern mentioned in the testimony is timely tax payments. While the collection of taxes is a legitimate governmental interest, tax compliance has never been easier given the technological developments and compliance tools available today.

In the end, the most oft-repeated objections to alcohol shipping and delivery are readily addressable. The key will be for government officials and lawmakers to update their mindset—which has generally been marked by a reflexively negative attitude toward alcohol transportation—and move toward a posture focused on how shipping can be accomplished safely and effectively.

## The Not-So-Distant Future

Within policy circles, it is a well-known reality that both technological advancements and public attitudes frequently move faster than regulatory change. Developments like remote-controlled drones and self-driving cars challenge government agencies to modify their rules to keep up. It is now clear that the same thing is happening with alcohol.

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34. Michigan Department of the Attorney General, "AG Nessel, MLCC Chair Gagliardi Announce Historic \$3 Million Fine Against Liquor Distributor RNDK for 88 Violations," Press Release, July 8, 2020. [https://www.michigan.gov/ag/0,4534,7-359-92297\\_99936-533685--,00.html](https://www.michigan.gov/ag/0,4534,7-359-92297_99936-533685--,00.html).

35. Testimony of Nida Samona. [http://judiciary.house.gov/hearings/printers/111th/111-125\\_55481.PDF](http://judiciary.house.gov/hearings/printers/111th/111-125_55481.PDF).

36. "Violation Statistics and Violation Details," Michigan Department of Licensing and Regulatory Affairs, last accessed Oct. 29, 2020. [https://www.michigan.gov/lara/0,4601,7-154-89334\\_10570\\_15039--,00.html](https://www.michigan.gov/lara/0,4601,7-154-89334_10570_15039--,00.html).

Given the popularity of online shopping and the ever-improving efficiencies in transportation logistics, government officials will undoubtedly feel increasing pressure to allow long-distance alcohol shipments in the years ahead. Furthermore, as on-demand platforms that specialize in home delivery—such as DoorDash, InstaCart, Amazon and Shipt—continue to expand, more locales will face calls to allow localized on-demand alcohol delivery. As discussed below, the COVID-19 pandemic has only accelerated these developments and surveys suggest that modernizing alcohol delivery is immensely popular among Americans.<sup>37</sup>

To be sure, staunch defenders of the status quo will continue to resist many of these changes, but it is important to realize that laws can and should be updated with the times. Acknowledging consumer demands and updating commercial practices do not have to be mutually exclusive with developing protocols to ensure that health, safety and compliance concerns are adequately addressed. Even the authors of *Toward Liquor Control* recognized the need for eventual updates:

No recommendations which we or anyone else could make carry with them an element of finality. The only service that law can render is to give effect to the necessities and ideals of a given time and place, and necessities and ideals cannot escape the processes of change. We need to be on our guard against any system of control that has outlived its usefulness or that no longer represents the prevalent ideas and attitudes of the community.<sup>38</sup>

In the months ahead, lawmakers should heed these words and consider responsible ways to increase alcohol shipping and delivery options. However, before addressing how such laws should be changed, it is important to understand the current lay of the land when it comes to shipping and delivery across the United States.

## ALCOHOL SHIPPING AND DELIVERY LAWS IN THE UNITED STATES

### Interstate Shipping

Direct-to-consumer (DTC) wine shipping has grown exponentially since the 1980s, due in large part to the popularity of California wineries and Napa Valley tourism. However, this liberalization of interstate wine delivery has not fully spread to other types of alcohol, such as beer and distilled

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37. See, e.g., C. Jarrett Dieterle, "Alcohol to-go won't solve COVID-19 problems, election partisanship; but it helps," *The Detroit News*, Oct. 6, 2020. <https://www.detroitnews.com/story/opinion/2020/10/06/opinion-during-covid-19-election-year-america-needs-alcohol-to-go-delivery/5896275002>.

38. Fosdick and Scott. p. 97-98.

spirits. Additionally, while most states now allow DTC wine shipments, wine retailers are often still prohibited from shipping across state lines. Some statutory restrictions also set artificial limitations on what amounts of product can be shipped.<sup>39</sup>

This year, Mississippi claimed it had become the most recent state to allow DTC wine shipments from wineries, although these laws often take various forms.<sup>40</sup> Mississippi’s law, for example, only allows consumers to have out-of-state wine shipped to a local package store rather than directly to their house, meaning it falls short of a true DTC law.<sup>41</sup> In other states, like Rhode Island, wine can be shipped from a winery, but only if the consumer was physically present at the winery when ordering it—again, not a true DTC law.<sup>42</sup>

Despite these caveats, over 40 states do allow DTC shipments of wine from out of state. In contrast, under a dozen states allow out-of-state DTC shipments for beer or distilled spirits. Adding a final layer of complexity, only a minority of states allow interstate shipments from retail stores. This leads to situations where wineries can ship to another state, but wine retail shops cannot. The chart to the right summarizes the current state of play with regards to out-of-state DTC and retail shipments for alcohol.

**CHART I: INTERSTATE DTC AND RETAIL SHIPPING**

States	Interstate DTC Wine Shipping	Interstate DTC Distilled Spirits Shipping	Interstate DTC Beer Shipping	Interstate Retail Shipping
Alabama				
Alaska	X	X	X	X—Wine only
Arizona	X	X*		
Arkansas	****			
California	X			X—Wine only***
Colorado	X			
Connecticut	X	*		X—Wine only
D.C.	X	X	X	X—All types alcohol
Delaware	****		**	
Florida	X			X—Wine only
Georgia	X			
Hawaii	X	*		
Idaho	X			X—Wine only***
Illinois	X			
Indiana	X			
Iowa	X			
Kansas	X			
Kentucky	X	X	X	
Louisiana	X			X—Wine only
Maine	X			
Maryland	X			
Massachusetts	X			
Michigan	X			
Minnesota	X			
Mississippi				
Missouri	X			
Montana	X		**	
Nebraska	X	X	X	X—All types alcohol
Nevada	X	X		X—Wine only
New Hampshire	X	X	X	X—All types alcohol
New Jersey	X			
New Mexico	X			X—Wine only***
New York	X			
North Carolina	X			
North Dakota	X	X	X	X—All types alcohol
Ohio	X		X	
Oklahoma	X			
Oregon	X		X	X—Beer and wine
Pennsylvania	X			
Rhode Island	****			
South Carolina	X			
South Dakota	X			
Tennessee	X			
Texas	X			

39. See, e.g., MCL 436.1203(4)(h).

40. See, e.g., Alan Lange, “Mississippi direct wine ship bill headed to the governor for signature,” *Yall Politics*, June 19, 2020. <https://yallpolitics.com/2020/06/19/mississippi-direct-wine-ship-bill-headed-to-the-governor-for-signature/>; “Mississippi Becomes 47th State to Allow Direct to Consumer Wine Shipping...Sort Of,” *DrinksReform*, June 25, 2020. <http://www.drinksreform.org/blog-1/2020/6/25/mississippi-becomes-47th-state-to-allow-direct-to-consumer-wine-shipping-sort-of/>.

41. *Ibid.*

42. See, e.g., Heather Morton, “Direct Shipment of Alcohol State Statutes,” National Conference of State Legislatures, Feb. 14, 2020. <https://www.ncsl.org/research/financial-services-and-commerce/direct-shipment-of-alcohol-state-statutes.aspx>.

Utah				
Vermont	X		X	
Virginia	X		X	X—Beer and wine
Washington	X			
West Virginia	X			X—Wine only
Wisconsin	X			
Wyoming	X			X—Wine only

\* Arizona limits DTC spirits shipments to small distilleries; Connecticut and Hawaii allow personal consumption permits/shipping for consumers, but these are not counted within this chart.

\*\* Montana law permits consumers to obtain a “beer connoisseur” permit, which can allow some DTC shipments, and Delaware maintains a process through which consumers can have beer imported into the state via a willing wholesaler, but these limited mechanisms are not counted within this chart.

\*\*\* California, New Mexico and Idaho are reciprocal states that limit retailer shipments to and from only those states with equivalent retailer shipping laws.

\*\*\*\* Arkansas, Delaware and Rhode Island allow visitors to out-of-state wineries to purchase wine on-site, and then it ship back, but do not allow off-site purchases/shipping.

Sources: “DTC Shipping 101: A survival guide for the beverage and alcohol industry,” Avalara, last accessed Nov. 19, 2020. <https://www.avalara.com/us/en/learn/whitepapers/dtc-shipping-101-a-survival-guide-for-the-beverage-alcohol-industry.html>; <https://wineinstitute.com/pliancerules.org/state-map>; “Pre-COVID: States Allowing Direct-to-Consumer (DTC) for Spirits,” Distilled Spirits Council of the United States. <https://www.distilledspirits.org/wp-content/uploads/2020/07/DTC-chart.jpg>; Alex Koral, “Don’t Get Gotcha’d: Regulatory and Compliance Best Practices for Distributing Craft Breweries,” Brewers Association: Craft Brewers Conference, May 13, 2020. <https://www.brewersassociation.org/wp-content/uploads/2020/05/CBC-Online-Seminar-Presentation-Regulatory-and-Compliance-Best-Practices-for-Growing-Craft-Breweries.pdf>.

## Localized Home Delivery

In contrast to out-of-state shipping, localized home delivery of alcohol—often called on-demand delivery—refers to laws that allow retailers like grocery stores to deliver alcohol directly to consumers’ doors. More states allow localized home delivery than alcohol shipment, although many still do not. Presently, over 30 states allow some form of localized home delivery from retailers, as illustrated by Chart 2.

It is important to note that this map only encompasses localized home delivery from retailers, not from producers. More and more states have started to allow localized delivery from producers of alcohol as well, especially during the recent COVID-19-initiated wave of alcohol reforms.<sup>43</sup> Additionally, several of the states that do allow localized home delivery from retailers only permit those deliveries to be conducted by employees of the retailer. This limits popular, third-party, app-based delivery services from engaging in the deliveries, which arbitrarily limits the scalability and growth of this form of alcohol delivery.

**CHART 2: LOCALIZED DELIVERY FROM OFF-PREMISES RETAILERS**

States	Localized Delivery From Off-Premise Retailers
Alabama	
Alaska	X
Arizona	X
Arkansas	
California	X
Colorado	X—employees only
Connecticut	X
D.C.	X
Delaware	
Florida	X
Georgia	X
Hawaii	X—employees only in some localities
Idaho	X
Illinois	X
Indiana	X—employees only
Iowa	X—employees only
Kansas	
Kentucky	X
Louisiana	X
Maine *	X
Maryland	X—employees only in some localities
Massachusetts	X
Michigan	X
Minnesota	X
Mississippi	
Missouri	X
Montana	
Nebraska	X
Nevada	
New Hampshire	X—employees only
New Jersey	X
New Mexico	
New York	X
North Carolina	X
North Dakota	
Ohio	X
Oklahoma	X—employees only
Oregon	X
Pennsylvania**	X
Rhode Island	X—employees only
South Carolina	
South Dakota	
Tennessee	X
Texas	X

43. See, e.g., “Virginia Allows Distilleries to Ship and Deliver,” DrinksReform, April 6, 2020. <http://www.drinksreform.org/blog-1/2020/4/6/virginia-allows-distilleries-to-ship-and-deliver>.

Utah	
Vermont	X—employees only
Virginia	X
Washington	X
West Virginia	
Wisconsin	
Wyoming	X—employees only

States marked with an X allow at least one type of alcoholic product (beer, wine or distilled spirits) to be delivered locally via driver.

\* Maine allows third-party delivery, but only if the delivery request originates with the customer rather than the licensee.

\*\* Pennsylvania allows third-party delivery, but the structure of the laws make it impractical for many delivery companies.

Source: R Street Institute research and analysis.

## THE COVID-19 ALCOHOL SHOCK

Jan. 17, 2020 marked the 100<sup>th</sup> anniversary of Prohibition going into effect in America. Despite a century of time between the apex of our country’s temperance movement and now, progress in modernizing alcohol delivery and shipping laws has been surprising slow.

As noted, most states still refuse to allow anything other than direct-to-consumer wine shipments from wineries themselves, and a large number of states still prohibit localized home delivery of alcohol from retailers. Other channels for alcohol sales—including home delivery from producers and to-go alcohol from restaurants and bars—also face significant limitations.

While this corner of the American economy seemed destined for more molasses-paced change, the international COVID-19 pandemic seemingly changed the regulatory landscape for alcohol overnight. Suddenly, a flood of states ushered in new rules that temporarily granted restaurants, bars, retailers and producers the ability to sell their alcohol via curbside sales, localized home delivery, and shipments to consumers via emergency orders.<sup>44</sup> Suddenly, things that would have been impossible in certain states just weeks before—like ordering to-go cocktails in plastic containers alongside cheeseburgers from the local bar—became commonplace.<sup>45</sup>

Some of these reforms contained arbitrary limits, such as restrictions on the amount of alcohol that could be delivered, or requirements that food accompany alcohol orders from restaurants. In addition, certain states only allow stores or restaurants to deliver to consumers if the delivery is made

44. See, e.g., Michelle Minton, “Cocktails in Quarantine: How your State Governs Booze Buying during Lockdown,” Competitive Enterprise Institute, May 15, 2020. <https://cei.org/blog/cocktails-quarantine-how-your-state-governs-booze-buying-during-lockdown>.

45. See, e.g., C. Jarrett Dieterle and Teri Quimby, “A century after Prohibition, will the coronavirus finally end it? We’ll drink to that,” *USA Today*, May 18, 2020. <https://www.usatoday.com/story/opinion/2020/05/18/coronavirus-forces-changes-outdated-alcohol-regulations-column/5194183002>.

by the retailers’ employees.<sup>46</sup> However, most of these restrictions do not make sense. A food requirement is irrelevant for to-go alcohol purchases since customers are legally required to imbibe any drink they purchase after returning home. (Of note, convenience stores and liquor stores have generally not been required to sell potato chips with alcohol purchases).

Logic should also lead to a conclusion that if employees are able to deliver alcohol in a safe and reliable manner, then other agents and third parties should be able to follow protocols in the same manner for deliveries. Allowing third-party contractors to engage in alcohol delivery makes those operations more scalable and sustainable, as many retailers and restaurants lack the requisite staff to conduct their own deliveries.

Nonetheless, this legal sea change represents a significant shift for alcohol transportation. These COVID-19 era changes were spurred, in large part, by necessity. Although many sectors of the American economy suffered from shelter-in-place and stay-at-home orders, gathering-oriented businesses like bars, breweries, wineries and distilleries were particularly hurt. Given that a significant portion of alcohol sales occur in on-premise environments—whether it be at baseball games, the neighborhood Applebee’s or a local tasting room—the alcohol industry faced a significant uphill battle just to stay afloat (and continues to do so).

Although to-go and delivery reforms have helped alleviate this pain, the emergency nature of most of these orders has created short-lived expectations for them being maintained post-COVID-19. Significantly, however, more states are now making moves to permanently codify—or at least substantially extend—these COVID-19-triggered changes.

Trends started with broad statements from government officials, including the governors of Texas and Florida, who both expressed interest in making to-go alcohol from restaurants permanent.<sup>47</sup> States like Ohio and Oklahoma were among the early states in which lawmakers introduced legislation to make alcohol delivery permanent: Ohio’s bill concentrated on delivery from producers and restaurants, while Oklahoma’s focused on delivery from stores and retailers.<sup>48</sup>

46. See, e.g., “Oklahoma Considers Legislation to Permanently Allow To-Go (and Delivery) Alcohol,” *DrinksReform*, May 14, 2020. <http://www.drinksreform.org/blog-1/2020/5/14/oklahoma-considers-legislation-to-permanently-allow-to-go-and-delivery-alcohol>.

47. “Texas Governor Express Support for Making To-Go Alcohol Permanent” *DrinksReform*, April 29, 2020. <http://www.drinksreform.org/blog-1/2020/4/29/to-go-alcohol-sales-may-soon-become-permanent-in-texas>; “Florida Governor Signals that To-Go Alcohol Privileges May Become Permanent,” *DrinksReform*, May 6, 2020. <http://www.drinksreform.org/blog-1/2020/5/6/florida-governor-signals-that-to-go-alcohol-privileges-may-become-permanent>.

48. See, e.g., “Ohio Introduces Legislation to Make To-Go and Delivery Alcohol Permanent,” *DrinksReform*, May 20, 2020. <http://www.drinksreform.org/blog-1/2020/5/20/ohio-introduces-legislation-to-make-to-go-and-delivery-alcohol-permanent>; “Oklahoma Considers Legislation to Permanently Allow To-Go (and Delivery) Alcohol,” *DrinksReform*, May 14, 2020. <http://www.drinksreform.org/blog-1/2020/5/14/oklahoma-considers-legislation-to-permanently-allow-to-go-and-delivery-alcohol>.



Both Colorado and Michigan passed laws extending to-go and delivery alcohol privileges to 2022 and 2025, respectively.<sup>49</sup> Iowa, a control state, enacted a permanent to-go cocktail law.<sup>50</sup> Now, Ohio—also a control state—is the second state to make this alcohol advancement permanent.<sup>51</sup> Oklahoma also passed a version of its aforementioned delivery bill—albeit excluding third-party delivery services. Internationally, Ontario, also a control jurisdiction, is joining the growing crowd.<sup>52</sup>

Virginia—a control state in which all retail sales of distilled spirits are controlled by the governor—creatively used an existing regulatory mechanism to grant distilleries in the state the permanent right to home deliver their spirits to customers.<sup>53</sup> Virginia also announced future plans to start localized home delivery from its network of state-operated ABC liquor stores.<sup>54</sup> Georgia’s legislature passed a bill—which was pending pre-COVID-19—to allow permanent home delivery of alcohol from retail stores.<sup>55</sup> Louisiana expanded on its home delivery law by granting third-party delivery companies the ability to deliver alcohol.<sup>56</sup>

Finally, while most of the recent COVID-19-triggered reforms to date have focused on localized home delivery, Kentucky’s legislature passed a bill to allow for interstate direct-to-consumer shipping of all types of alcohol.<sup>57</sup> The law allows out-of-state producers to ship to Kentucky residents, and also permits Kentucky producers to ship to both in-state and out-of-state residents, although such interstate

shipments require a reciprocal shipping law by the other state. Although Kentucky’s bill was pending pre-COVID-19, several state legislators cited the pandemic as a factor that pushed the bill over the finish line.<sup>58</sup>

While the vast majority of state governments used COVID-19 to modernize their alcohol laws, some states moved in the opposite direction. These situations proved equally instructive—although not in the way their defenders anticipated.

Pennsylvania’s epic experiment with closing its system of state-run liquor stores during the COVID-19 crisis drove people in Pennsylvania to other states for spirits purchases. This led states like Ohio and West Virginia to deny purchases unless valid in-state IDs were shown.<sup>59</sup> This also caused numerous stores near the Pennsylvania border to temporarily close after they were unable to keep up with the unexpected rush of customers.<sup>60</sup> Thus, at a time when the Pennsylvania government should have been enacting policies to encourage residents to stay home, the state managed to incentivize state residents to travel across state lines and potentially undermine efforts to contain the COVID-19 virus.

With state stores still closed, the Pennsylvania government attempted to pivot to online sales. Unfortunately, the process created more consumer frustration—at one point, nearly 7,800 people out of 1.9 million trying were able to successfully place an online alcohol sale.<sup>61</sup> This left people in Pennsylvania wondering why they could line up at grocery stores to buy beer and wine, but could not do the same for distilled spirits at the state-run stores.<sup>62</sup>

Despite the Pennsylvania anomaly, the experience of COVID-19 has shown that most states are poised to move toward, rather than against, modernizing their alcohol markets in the years ahead. In fact, the pace of reform could pick up as state legislatures start returning to “normal” operations following the pandemic.

These reforms may be aided by the fact that, based on early returns, modernizing alcohol delivery is very popular among

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49. See, e.g., “Colorado Extends Takeout and Delivery Alcohol From Restaurants to 2021,” *DrinksReform*, July 1, 2020. <http://www.drinksreform.org/blog-1/2020/7/1/colorado-extends-takeout-and-delivery-alcohol-from-restaurants-to-2021>; “Michigan Green-lights To-Go and Delivery Cocktails Through 2025,” *DrinksReform*, June 26, 2020. <http://www.drinksreform.org/blog-1/2020/6/26/michigan-green-lights-to-go-and-delivery-cocktails-through-2025>.

50. “In Iowa, To-Go Cocktails Are Forever,” *DrinksReform*, June 30, 2020. <http://www.drinksreform.org/blog-1/2020/6/30/in-iowa-to-go-cocktails-are-forever>.

51. “New law makes to-go cocktails permanent in Ohio,” *WLWT Digital News*, Oct. 13, 2020. <https://www.wlwt.com/article/new-law-makes-to-go-cocktails-permanent-in-ohio/34363215#>.

52. “Ontario will make takeout booze sales permanent to help pandemic-ravaged restaurants and bars,” *Northumberland News*, Oct. 7, 2020. <https://www.northumberlandnews.com/news-story/10217921-ontario-will-make-takeout-booze-sales-permanent-to-help-pandemic-ravaged-restaurants-and-bars>.

53. See, e.g., “Virginia Allows Distilleries to Ship and Deliver,” *DrinksReform*, April 6, 2020. <http://www.drinksreform.org/blog-1/2020/4/6/virginia-allows-distilleries-to-ship-and-deliver>.

54. “Virginia Planning Permanent Delivery From ABC Stores,” *DrinksReform*, June 3, 2020. <http://www.drinksreform.org/blog-1/2020/6/3/virginia-planning-permanent-delivery-from-abc-stores>.

55. “Georgia Enacts Permanent Alcohol Delivery Law,” *DrinksReform*, June 26, 2020. <http://www.drinksreform.org/blog-1/2020/6/26/georgia-enacts-permanent-alcohol-delivery-law>.

56. “Louisiana Just Expanded Alcohol Delivery,” *DrinksReform*, June 9, 2020. <http://www.drinksreform.org/blog-1/2020/6/9/louisiana-just-expanded-alcohol-delivery>.

57. Jacqueline Pitts, “General Assembly passes COVID-19 response bill, allows direct shipping of alcohol to and from Kentucky,” *Kentucky Chamber*, March 26, 2020. <https://kychamberbottomline.com/2020/03/26/general-assembly-passes-covid-19-response-bill-allows-direct-shipping-of-alcohol-to-and-from-kentucky>.

58. *Ibid.* See, e.g., “Understanding HB 415,” *Kentucky Distillers Association*. <https://kybourbon.com/wp-content/uploads/2020/04/HB-415-Summary.pdf>.

59. Alisha Ebrahimji, “Pennsylvanians are driving out of state to buy liquor, so neighboring states are cracking down,” *CNN*, April 15, 2020. <https://www.cnn.com/2020/04/15/us/pennsylvania-liquor-sales-ohio-west-virginia-trnd/index.html>.

60. “Pennsylvania Tries to Turn Off the Internet During COVID,” *DrinksReform*, April 6, 2020. <http://www.drinksreform.org/blog-1/2020/4/6/pennsylvania-tries-to-turn-off-the-internet-during-covid>.

61. Jan Murphy, “Has closing of Pa.’s state-run wine and spirits reopened interest in liquor privatization?,” *Penn Live Patriot-News*, April 9, 2020. <https://www.pennlive.com/news/2020/04/has-closing-of-pas-state-run-wine-and-spirits-stores-reopened-interest-in-liquor-privatization.html>.

62. Charles Thompson, “Pa.’s closure of its liquor stores sends ‘tsunami’ of business across state lines,” *Penn Live Patriot-News*, April 2, 2020. <https://www.pennlive.com/business/2020/04/border-bleed-pennsylvanians-are-making-tracks-to-get-their-booze-during-fine-wine-good-spirits-stores-coronavirus-closure.html>.

Americans of all stripes. For instance, initial surveys conducted by the National Restaurant Association found that over two-thirds of Americans want to-go and delivery alcohol reforms to last beyond the pandemic.<sup>63</sup> Given the movement toward more alcohol delivery, it is important to consider arguments in favor and against such reforms, and how such laws should be formulated.

## DELIVERY AND SHIPPING LAW REFORMS FOR THE LONG-HAUL

Alcohol is a legal product, albeit one that is heavily regulated. However, the fact that it is heavily regulated should not automatically disqualify it from being shipped. Alcohol delivery and shipping can no longer be simply met with arguments that it should not be done, but rather the discussion should focus on how it can be done safely. The following sections detail various points of concern about alcohol shipping and how they can be addressed.

### Taxation Concerns

Governments have a legitimate interest in the regulation of alcohol. Alcohol products are subject to various laws and rules in an effort to advance important government goals like protecting the health and safety of the general populace. However, when governments make the decision to regulate a product—including alcohol—they must be able to defend their actions.

Various government officials have raised taxation concerns as a potential sticking point for allowing alcohol shipments. The worry is that our 50-state system will make it infeasible to handle cross-border alcohol shipments in a way that ensures all state and local taxes are properly collected.

Tax collection, however, can also be an argument in favor of expanding alcohol shipment and delivery. For example, taxes were used as a motivating reason to end Prohibition.<sup>64</sup> Revenue from alcohol sales landing in government coffers made a compelling argument for why alcohol should simply be regulated rather than banned outright. And today, as state governments across the country face impending budget crunches in the midst of the economy's COVID-19-induced contraction, increased alcohol sales could provide a source of additional revenue to states.<sup>65</sup>

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63. See, e.g., C. Jarrett Dieterle, "Alcohol to-go won't solve COVID-19 problems, election partisanship; but it helps," *The Detroit News*, Oct. 6, 2020. <https://www.detroitnews.com/story/opinion/2020/10/06/opinion-during-covid-19-election-year-america-needs-alcohol-to-go-delivery/5896275002>.

64. "Alcohol, Prohibition, and the Revenuers," Foundation for Economic Education, Jan. 1, 2008. <https://fee.org/articles/alcohol-prohibition-and-the-revenuers>.

65. Louise Sheiner and Sophia Campbell, "How much is COVID-19 hurting state and local revenues?", Sep. 24, 2020. <https://www.brookings.edu/blog/up-front/2020/09/24/how-much-is-covid-19-hurting-state-and-local-revenues>.

Regardless, in this day and age, government is hard pressed to use taxation as a meritorious argument against shipment and delivery of alcohol. For years, interstate alcohol shippers have been required to collect sales tax in nearly every state they sold alcohol in—a time-consuming task that involved dozens of different jurisdictions and rules. Today, however, endeavors like the Streamlined Sales and Use Tax Initiative (SST)—the purpose of which is the simplification and modernization of sales and use tax administration for all sellers and all types of commerce—can point a way forward.<sup>66</sup>

The SST was created in the 1990s to simplify cross-border sales tax collection as such sales become more common with the advent of the Internet. So far, 24 member states have joined the SST to create more uniform and consistent tax rules in those states. At the same time, the private tax compliance market has evolved as well, with the rise of SST-approved Certified Service Providers (CSPs), which manage tax collection and compliance for interstate shippers.<sup>67</sup>

In regard to alcohol shipping, many state statutes explicitly require sellers to register, remit and collect sales tax as part of maintaining a state shipping license. Unfortunately, this locked alcohol shippers out of the SST framework since the SST only applied to "volunteer sellers" who did not have a statutory requirement to collect sales tax in a state. The newest SST contract with CSPs, however, removes this barrier beginning in January 2021, meaning that interstate alcohol shippers will now be eligible to join the SST system.<sup>68</sup>

CSPs such as Avalara and Sovos, which specialize in ensuring tax compliance and corporate accountability for alcohol shippers, will be able to work within the framework to streamline tax collection for alcohol.<sup>69</sup> The development of these types of technological innovations shows that when taxation is clearly mandated, systems can—and will—be created to ensure compliance.

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66. "Streamlined Sales Tax Governing Board, Inc.," last accessed Oct. 29, 2020. <https://www.streamlinedsalestax.org>.

67. Alex Koral, "DTC Shippers to Get Sales Tax Support Under Latest SST Contract," Sovos, Aug. 31, 2020. [https://www.sovos.com/shipcompliant/blog/2020/08/31/dtc-shippers-to-get-sales-tax-support-under-latest-sst-contract/?utm\\_source=accountingweb&utm\\_medium=media&utm\\_campaign=ship&utm\\_content=sspfordtc](https://www.sovos.com/shipcompliant/blog/2020/08/31/dtc-shippers-to-get-sales-tax-support-under-latest-sst-contract/?utm_source=accountingweb&utm_medium=media&utm_campaign=ship&utm_content=sspfordtc).

68. Alex Koral, "Direct-to-Consumer alcohol shippers will soon be eligible for full SST benefit," Accounting Web, Sept. 21, 2020. <https://www.accountingweb.com/tax/sales-tax/direct-to-consumer-alcohol-shippers-will-soon-be-eligible-for-full-sst-benefits>.

69. See, e.g., Jeff Carroll, "Modernize your compliance game with Avalara AvaTax for Beverage Alcohol," Avalara, Sep. 11, 2020. <https://www.avalara.com/us/en/blog/2020/09/modernize-your-compliance-game-with-avalara-avatax-for-beverage-alcohol.html?campaignid=7010b0000019LPGAA2&ismr=Paid%20Digital&Iso=Paid%20Digital>; "Grow Your Business on the World's No. 1 Solution for Beverage Alcohol Compliance," Sovos, last accessed Oct. 29, 2020. <https://sovos.com/products/shipcompliant>.

Even prior to alcohol's inclusion in the SST, the development of the interstate wine shipment markets suggests that the cross-border tax collection issue is a tractable one. In 1986, only three states allowed direct wine shipments from out-of-state wineries to in-state consumers; today, the vast majority of states allow such shipments.<sup>70</sup> While this has yet to spread as broadly to other types of alcohol—or to retailers—most states have proven capable of responsibly taxing wine shipments originating from out of state. Simply put, inability to collect taxes is no longer a plausible argument for governments to make when it comes to alcohol transportation.

## Underage Drinking and ID Concerns

Health and safety concerns are real and valid in the alcohol arena. However, regulations and effective corporate compliance programs can address these concerns. Prevention of sales to minors is currently one of the highest priorities for regulators and law enforcement officials in the alcohol arena.

While the majority of states use vertical identification (ID) cards for underage individuals, special state IDs alone do not prevent underage alcohol sales.<sup>71</sup> Anyone serving, selling or delivering alcohol should be adequately trained to do so. Compliance plan protocols can set forth steps to take when evaluating IDs, such as visual and physical cues for authenticity. Questions should be asked about IDs to make sure the person accepting alcohol is the actual adult who was issued that ID. For example, if questions about middle names or zip codes cannot be answered, then the ID may be borrowed or fake.

To the extent visual ID checks are being used to ensure compliance, underage state sample ID copies could be provided to every server, seller and delivery agent delivering alcohol to any consumer. In addition, every employee or agent should have a mental list of things to check when verifying, such as confirming the consumer's legal drinking age from the birthdate on the ID or ensuring the delivery address matches the one on the ID. Another component of effective training for deliveries is to never leave unattended product at locations.

It is also worth noting that in the years ahead technology could play a role in improving ID verification and thereby provide another tool for compliance. In a world where instantaneous background checks—which link to official databases—are feasible for screening prospective rental ten-

ants or even authorizing firearm purchases, it seems likely that technological advancements could similarly improve ID verification processes. For instance, preliminary studies of so-called “remote age verification,” in which a live video feed of a customer is sent to a remote agent who is highly trained in age verification procedures to confirm the purchase, have shown higher compliance rates than traditional ID checks by store employees.<sup>72</sup>

In the end, policies, training, and technology can be implemented to address government concerns about sales to minors while also allowing for greater alcohol delivery.

## Road Safety Concerns

Skeptics of increased alcohol delivery have cited road safety concerns as well. For instance, some commentators have suggested that to-go and delivery alcohol could lead to an increase in drunk driving.<sup>73</sup> In reality, the most logical outcome of increased alcohol delivery will be a reduction in drunk driving rates as more Americans are able to have alcohol brought to them rather than getting behind the wheel to obtain it. Situations like the proverbial backyard barbecue where someone jumps in the car to go on a “beer run” after having several alcoholic beverages could be eliminated if a one-hour delivery service could deliver the beer instead.

But to the extent that there is preliminary information on drunk driving rates in the wake of the recent COVID-19-triggered to-go and delivery reforms, it appears that there has not been an increase in driving under the influence. Recently, the Governors Highway Safety Association (GHSA) noted that they have not heard of any concerns from highway safety agencies across the country as a result of the alcohol changes.<sup>74</sup>

Reforms that allow restaurants and other retailers to provide to-go and delivery alcohol are not as unprecedented and new as they may appear at first blush. For example, the practice of restaurants re-corking leftover wine for diners to take home is not substantially different from to-go or delivery cocktails.<sup>75</sup> Consumers are still prohibited from drinking while driving and to-go alcohol does not change existing open container laws.

70. See, e.g., Ryan Lozar, “Whatever Happened to Toward Liquor Control? Access, Abuse, and the Problem of Direct Shipment,” in *Breathing New Life Into Toward Liquor Control: States’ Recommitment to the Three-Tier System*, Center for Alcohol Policy, p. 1, [https://www.centerforalcoholpolicy.org/wp-content/uploads/2012/03/Ryan\\_Lozar\\_2.pdf](https://www.centerforalcoholpolicy.org/wp-content/uploads/2012/03/Ryan_Lozar_2.pdf); Heather Morton, “Direct Shipment of Alcohol State Statutes,” National Conference of State Legislatures, Feb. 14, 2020, <https://www.ncsl.org/research/financial-services-and-commerce/direct-shipment-of-alcohol-state-statutes.aspx>.

71. Marissa Kozma, “This Is Why Your Vertical I.D. Isn’t Accepted at Certain Bars in Colorado,” *303 Magazine*, June 22, 2018, <https://303magazine.com/2018/06/this-is-why-your-vertical-i-d-isnt-accepted-at-certain-bars-in-colorado>.

72. Joris J. Van Hoof, “The effectiveness of ID readers and remote age verification in enhancing compliance with the legal age limit for alcohol,” *European Journal of Public Health* 27:2, April 2017, pp. 357–359, <https://doi.org/10.1093/eurpub/ckw183>.

73. See, e.g., Patrick Maroney, “Crisis De-Regulations: Should They Stay, or Should They Go?,” Center for Alcohol Policy, June 2020, p. 6, [https://www.centerforalcoholpolicy.org/wp-content/uploads/2020/06/An-Essay-on-the-Current-Alcohol-Industry-Dilemma\\_FINAL-6-9-2020-1.pdf](https://www.centerforalcoholpolicy.org/wp-content/uploads/2020/06/An-Essay-on-the-Current-Alcohol-Industry-Dilemma_FINAL-6-9-2020-1.pdf).

74. “Cocktails to go: What you need to know,” Distilled Spirits Council of the United States, Sept. 1, 2020, <https://www.youtube.com/watch?v=QzVFGjVQnw&feature=youtu.be>.

75. Ibid.

In addition, making reforms like to-go cocktails permanent would provide more consistency in regulation and enforcement.<sup>76</sup> From a law enforcement perspective, these sales do not appear to be any different from buying beer at a convenience store and driving it home, and reducing the distinction between such sales could provide clarity to law enforcement officers.

## CONCLUSION

As policymakers and government officials seek to update laws during—and even after—the COVID-19 pandemic, they will be increasingly forced to grapple with America’s outdated system of alcohol laws. At a time when Americans are seeking to socially distance and avoid public places, a rational, safe system of alcohol delivery and shipping are more important than ever.

To the extent that there are valid concerns around delivery and shipping reforms, there are also clear and readily available solutions to address those concerns. Government officials can both protect important government interests—like ensuring public health and safety—while modernizing antiquated rules around alcohol transportation.

In the end, consumer demand for alcohol shipping and delivery are part of life today, and alcohol products are legitimate articles of interstate commerce that need to be recognized as such. Turning a blind eye to this reality is no longer fair, reasonable or defensible.

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76. *Ibid.*