Direct Shipping Compliance Updates

Overview

- Legislative Updates
  - Passed Legislation
  - Pending Legislation
- Litigation
  - *Family Winemakers of California v. Jenkins*
  - *Black Star Farms v. Oliver*
  - *Baude vs. Heath*
  - *Cherry Hill*
  - *TFWS, Inc. v. Franchot*
  - *Siesta Village Market LLC v. Granholm*
  - *Arnold Wines, Inc. v. Boyle*
- Tax Increases/Decreases
- Other Direct Shipping Practice Updates
Where are we now? Onsite sales snapshot
Where are we now? Offsite sales snapshot

[Map of the United States with states colored to represent different sales categories: Other, Reciprocal, Limited.]
Where are we now? Retailer reciprocal sales
Summary of Key 2009 Changes
Kansas Becomes Limited

- Previously a prohibited state, allowing only “special orders” (3-tier)
- SB 212 went into effect on July 1st
- Permit cost = $10 annually + $50 registration
- 12 cases/consumer/address/year
- Age enforcement
  - Must confirm the age of the purchaser by either physically examining an approved government issued ID or using an approved internet age and identification service
- Enforcement and excise tax due
- $750 bond requirement
- Retailers excluded
Tennessee Becomes Limited

- Previously prohibited
- New Law in effect beginning 7-1-2009
- Allows for winery-to-consumer shipping (retailers excluded)
- Direct Shipments may only be sent to wet cities/counties
- Wineries may ship to up to 3 cases/individual/year (with an additional limit of 1 case per month)
- Sales tax and gallonage tax due
- Permit cost: $150 annually + $300 (non-refundable) application fee
Maine

- Expect diligent enforcement!
  - Repeal legislation in 2010
- Direct shipping previously prohibited
- Officially, law went into effect in September, however permit applications were not available until October
- Bill allows licensees to ship wine produced under their own Federal Basic Permit
  - $200 license fee; $50 renewal
  - 12 cases per household per year
  - Must ship wine in a container 750mL or greater (no 375mL bottles)
  - Sales, quarterly excise tax, and quarterly reporting required
Texas

- HB 1084
  - Became effective September 1, 2009
  - Changed the customer volume limit:
    - 9 gallons of wine within a calendar month per individual; and
    - 36 gallons of wine within a 12-month period
  - Previously a 3 gallon limit within any 30 day period
Delaware

• Currently Delaware allows a reasonable amount of wine to be shipped for onsite sales only, through the Federal Onsite provision
• Bill would allow for a $100 Wine Direct Shipper License, allowing up to 24 cases per individual per year
• HB 180 introduced on May 28th
• The bill has not gone through the Senate or the House, so it is difficult to predict the likelihood of this bill’s passage into law
Florida

- Direct shipping bills were introduced to Florida lawmakers this year, but for the fourth year in a row, no legislation was passed to further regulate direct shipping.
- The state remains open under the administrative control of the Department of Business and Professional Regulation, with payment of excise taxes required.

Louisiana

- SB 133 has been introduced on 4/27/2009, and is designed to, “remove authority for certain retailers to sell or ship certain alcoholic beverages.” But would not touch a wine manufacturer’s ability to direct ship.
  - Bill has not moved since introduction.
Legislative Updates - Pending

Maryland

- Marylanders for Better Beer & Wine Laws, an advocacy group, reports that legislation has a good chance of passing in 2010

Pennsylvania

- Reportedly, Pennsylvania will allow out-of-state wineries to apply for direct shipping licenses

Massachusetts

- Two separate bills have been introduced in the legislature this session. Both would replace the controversial and discriminatory “capacity cap” (section 19F), under litigation - *Family Winemakers of California v. Jenkins*
  - Senate Bill 176
    - Referred to committee on professional licenses 3/11/09
      - $100 permit
      - Up to 24 cases/individual/year
  - House Bill 317
    - Referred to committee on professional licenses 1/19/09
      - $100 permit
Reciprocal states still exist

- New Mexico
  - H 115 was introduced, but died in the Senate on 3/20/09
- Iowa
  - No direct shipping bills introduced this session
Legislative Updates – year in summary

- Michigan retail to consumer shipping
  - In January 2009, a bill was passed in Michigan, explicitly prohibiting retail to consumer wine shipments
  - Regulations for winery to consumer shipping remain unchanged
- Less Dry towns
  - Connecticut: February, 2009 Wilton in Connecticut is no longer dry
  - New Hampshire: City of Landaff voted to no longer be a dry town
- Montana Onsite Policy Change
  - Federal onsite shipments are not allowed
  - Must ship onsite sales using existing permit system
    - Carriers do not ship to Montana
Legislative Updates – year in summary

- **Oklahoma - self distribution**
  - As of November 4, 2008, legislation passed to allow wineries who produce under 10,000 gallons annually to self-distribute
  - The catch - self-distributors must use their own licensed vehicles

- **District of Columbia**
  - Customer limit up from 1 quart to 1 case

- **Ohio**
  - Label registration effective September 1<sup>st</sup>, 2008
  - $50 per label

- **Wisconsin becomes a Limited state**
  - Previously a reciprocal state, Wisconsin became available for direct shipments from wineries in any state on October 1<sup>st</sup>, 2008

- **Other shipping news**
  - DHL
    - On November 3<sup>rd</sup>, 2008, DHL ceased wine shipments
Tax increases and decreases

- Sales Tax
  - State tax increases affecting direct shippers:
    - California
      - 1% increase on April 1, 2009
    - Nevada
      - 0.35% increase in July, 2009
    - North Carolina
      - 1% increase in September 2009
  - States with local tax increases in 2009
    - Arizona, California, Georgia, Nebraska, New York, North Dakota, Ohio, South Carolina, Texas, Vermont, Washington
      - Though local rates are constantly being modified, changes have been more frequent, and consisted of greater increases this year
    - Wisconsin local tax remittance required for out-of-state taxpayers, effective October 2009
Excise Tax

- In recent years, excise tax rates have remained relatively constant. However in 2009, multiple states revisited alcohol tax:
  - Illinois (August)
  - New York (May)
  - North Carolina (August)
  - North Dakota (Decrease - July)
### Third Party Shippers
- This August, Virginia sent out notices to Direct Shippers, stating:
  
  "In state and out of state Virginia shipper licensees may only sell [wine]... through approved common carriers. Licensees may not contract with third parties such as fulfillment warehouses, [or] marketing companies..."

- Wine industry representatives are working with the Virginia ABC to get further clarification on this circular
- The California ABC issued an advisory in June regarding unlicensed third party service providers
  - made clear that the winery/licensee must retain control of management and pricing decisions

### Amazon.com
- Amazon announced retreat from its venture to enter the direct wine shipping market in late October
Family Winemakers of California v. Jenkins in Massachusetts - Production Volume Caps

- On November 19th, 2008, Judge Rya W. Zobel, allowed the plaintiffs’ motion for summary judgment, concluding that Massachusetts General Laws chapter 138, section 19F “has a discriminatory effect on interstate commerce…”
- On January 16, 2009, the state filed its notice of appeal to the judgment
- Oral arguments were heard by the 1st Circuit Court of Appeals on November 2, 2009
  - Tracy Genesen, lead attorney
  - According to FWC, a decision from the court could take 3-4 months

Black Star Farms v. Oliver

- The U.S. Court of Appeals heard oral arguments over Arizona’s restrictive direct shipping laws on September 15, 2009