



# Public Action Management

Drafting Committee: Uniform Registration and Licensing of Direct-to-Consumer Sales of Wine and the Prevention of Illegal Sales Act Uniform Law Commission

February 28, 2020

Dear Committee Members:

I am one of your observers for the drafting of a proposed uniform law for the sale and shipment of wine directly to consumers. Unfortunately, I am unable to come to your drafting meeting so I thought I would share some of my experience with alcohol regulation. From 1996 to 2003, I was director of the Oregon Liquor Control Commission. Very early on, Oregon adopted a means for wineries to ship products out of state directly to consumers. It was done at the behest of wineries that had difficulty getting their product to market.

At that time, Oregon only had very small wineries and we expected that these wineries would use direct shipment to familiarize consumers with their product and eventually grow to the point where they would use a distributor. And, of course, those that failed to grow, I assumed, would leave the business. That is not what happened. Wineries remained very small, produced fairly expensive high-quality wine and found various ways to operate without growing large. Today there are about 800 wineries in Oregon and over 1,100 vineyards according to the Oregon Wine Board. We did not anticipate the scenario where hundreds of wineries would use the direct shipping channel permanently.

I have written several reports and articles about the phenomenon of small suppliers and the issues of operating outside the current three-tier system. I have attached my February 2020 Newsletter entitled "Direct shipment of wine is not a good test for all alcohol products" and May 2019 Newsletter, entitled "Direct shipment of alcohol: Are we there yet?" and, finally, my report on small suppliers.

As my publications point out, direct shipment has a number of potential problems. Those states which have checked on compliance found a lot of violations. Indeed, when Oregon did a check on direct shipment, we found only about half of those checked were in compliance. Direct shipment is vulnerable to unsafe products, tax evasion and sale to minors. And, on top of that, enforcement is difficult and costly. Should direct shipment become a major segment of the market, states could find themselves with two separate systems.

Several states have increased their compliance efforts and Texas recently announced an audit of its 1,600 wine shipper licensees. In a February 6, 2020 communication from the Wine Institute and the Avalara Company, they noted, "The continued growth of the direct-to-consumer (DTC) sales channel means that **states will continue to make DTC shipping laws a priority for enforcement in 2020**. An increasing number of states are investigating DTC shipments and conducting compliance checks on direct shipper permit holders and common carriers."

I urge people to go slow and carefully consider any market changes. There are interim measures that could be used for people that want a wine not found in the usual retail establishments. Working with local licensees is a possibility as many retailers have a special-order process. Utah is considering a process where someone orders on line, but the product is shipped to one of the state's liquor stores for pick-up.



The growth of small suppliers provides opportunities for local small businesses, but there is evidence that large suppliers are increasingly using this channel. Will they dominate the channel and put small suppliers out of business? The alcohol regulatory system is aimed at providing an "even playing field" where large and small businesses can be profitable. While market place changes are notoriously difficult to predict, it is important to think through various scenarios and try to avoid marketplace domination.

Sincerely,

Pamela S. Erickson, President/CEO of Public Action Management

Enclosures (3)