

OUT-OF-STATE SALES TO WASHINGTON RESIDENTS

Law and Rules

In Washington's three-tiered alcohol distribution system, consumers typically purchase beer and wine from an in-state retail licensee. The retail licensee works with a distributor, or in some cases the manufacturer, to obtain the beer and wine the establishment sells.¹ When discussing out-of-state sales of beer and wine to Washington residents, the laws vary depending on the entity involved in the sale.

Out-of-state sales by wine manufacturers

Out-of-state wineries, like their in-state counterparts, may sell and ship wine directly to Washington residents. Direct to consumer sales laws were the subject of a United States Supreme Court decision in 2005, known as the *Granholm v. Heald* decision. In *Granholm*, the Supreme Court struck down Michigan and New York laws that allowed in-state wineries to sell directly to consumers but prohibited out-of-state wineries from doing the same. The court found that Michigan and New York laws discriminated against out-of-state wineries, and this discrimination violated the commerce clause of the U.S. Constitution. The court also found that states with reciprocal sales privileges, including Washington, risk "generating the trade rivalries and animosities, the alliances and exclusivity, that the Constitution, and in particular, the Commerce Clause were designed to avoid." Following the decision, Washington's laws were amended so that any winery, whether domestic or out-of-state, could sell and ship wine directly to consumers.

Current laws require any winery seeking to ship wine directly to Washington residents to be licensed as a winery in their home state and obtain a wine shipper's permit from the Liquor Control Board (LCB). Wineries shipping wine to Washington residents must ensure that any private carrier used to deliver the wine obtains the signature of the person who receives the wine, verifies the age of the recipient, and verifies that the recipient does not appear intoxicated at the time of delivery.

Online and out-of-state retailer wine sales

A Washington consumer can purchase wine through an online retailer and have it delivered only if the online retailer has a warehouse or other physical presence in the state. Out-of-state retail establishments are not authorized to ship wine directly to Washington residents. Litigation is ongoing in other parts of the country seeking to apply the *Granholm* decision to retailers.

¹ Prior to 2004, the state allowed only in-state breweries and wineries to self-distribute directly to retailers. In 2005, this feature of the state's beer and wine distribution system was struck down in the *Costco v. Hoen* litigation. In 2006, the Legislature enacted legislation extending self-distribution authority to out-of-state breweries and wineries. Consequently, domestic and out-of-state beer and wine manufacturers can sell directly to a retailer.

Brief History

- 1930s The act of buying or possessing alcoholic beverages other than those purchased from the LCB, state liquor store, or another person authorized by the board to sell them is criminalized.
- 1991 Washington reciprocal wine shipping statute enacted.
- 2005 *Granholm v. Heald* decision issued, finding laws that allow in-state wineries to ship directly to consumers but prohibit out-of-state wineries from doing the same violate the commerce clause of the U.S. Constitution.
- 2006 ESB 6537 enacted. Repeals existing reciprocal wine shipping statute and allows domestic and out-of-state wineries to ship directly to Washington residents.
- 2008 SB 6384 introduced. The legislation would have allowed out-of-state online retailers to obtain a wine shipper's permit, thereby allowing the online retailer to ship wine to Washington residents. The legislation received a hearing in the Senate Labor, Commerce, Research & Development Committee, but was not reported out of committee.

Federal Law/Laws of Other States

Out-of-state sales by wine manufacturers

Other control states: Of the 19 control states, 13 allow some form of direct to consumer sales by out-of-state wineries (Washington, Idaho, Iowa, Michigan, Montana, New Hampshire, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, West Virginia, and Wyoming).

California: Out-of-state wineries can ship to California residents by obtaining a wine shipper's permit.

Online and out-of-state retailer wine sales

Other control states: Of the 19 control states, 17 either prohibit or have no provision allowing out-of-state retailers to sell directly to in-state residents.

- Oregon allows retail licensees to obtain a direct shipper permit, allowing the retailer to sell and ship wine directly to Oregon residents.
- Ohio allows residents to have wine shipped directly from out-of-state retailers, provided the resident pays the appropriate taxes and completes the required tax forms.

Reciprocal states: Several states have reciprocal shipping laws, allowing out-of-state retailers to sell and ship to in-state residents, provided the state where the retailer is located allows out-of-state sales and shipping by retailers (California, New Mexico, and Missouri).

Texas: In January 2008, provisions in Texas' state alcohol code that precluded out-of-state wine retailers from selling and shipping wine to Texas residents were found unconstitutional by a federal district court. The decision has been appealed to the Fifth Circuit Court of Appeals.