



## November 2021 Newsletter

# Nevada Prevents Weakening of the Three-tier System

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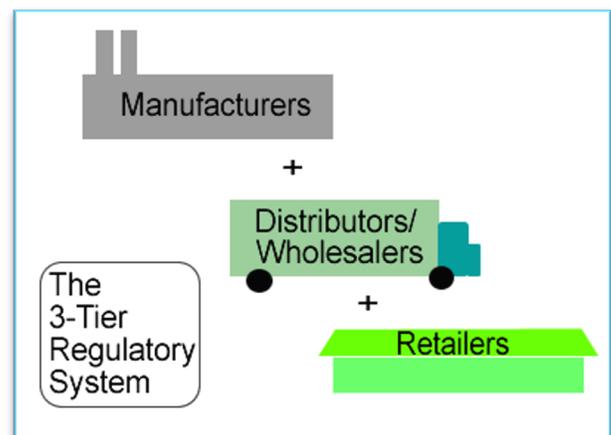
During the last legislative session, Nevada took steps to prevent deterioration of their three-tier system, one of the strongest in the nation. Due to the passage of Senate Bill 307, all alcohol products must be sourced from the three-tier system. The one exception is in-state and out-of-state wineries. They may become licensed to ship directly to Nevada consumers. In addition, local off-premise retail licensees can deliver to consumers in their sales area provided they meet certain conditions including buying products from a Nevada-licensed wholesaler. Breweries, distillers and retailers cannot do direct shipments to consumers, but must go through the state's system. Why is this necessary? Here are some reasons:

1. **Massive non-compliance:** The states that have checked out-of-state shipments usually find a great deal of non-compliance. Recently, Michigan announced that nearly 160,000 bottles of wine were illegally shipped into that state during the first quarter of 2020. (And, they were cheering because 160,000 bottles represented a 78% decline from 2019 when 734,365 bottles were shipped illegally!) Tennessee issued a press release announcing that after investigations, they found "seven out-of-state businesses" that resulted in approximately 1,000 illegal direct shipments of alcohol. These businesses were issued "cease and desist orders." Ohio was the first state to use the 21st Amendment Enforcement Act against illegal shippers and gained a consent order from a federal court against various companies in 2021.

2. **Cost of enforcement:** Some states have responded to issues of non-compliance by developing inspection protocols and training for shipments and deliveries. In fact, the National Liquor Law Enforcement Association has taken a lead role by

developing some "best practice guidelines for ensuring safe sales and service" for home delivery and curbside pick-up. Yet, it can be a labor-intensive process that takes enforcement resources away from other actions. And, some states have instituted required reporting as a way to ensure licensee compliance. But, again, reviewing monthly or quarterly reports is labor intensive. This leads one to question whether states can afford to have two separate systems of purchase and distribution: three-tier and direct shipment/delivery. Rarely have legislatures provided additional enforcement resources when they act to allow direct shipment/delivery. In fact, several alcohol regulation enforcement entities have experienced a reduction in resources in recent years.

3. **Unsafe products:** The three-tier system is very good at keeping unsafe products from reaching consumers. And, when recalls happen, they can quickly identify the products and pull them from store shelves before anyone is injured. In contrast, other countries experience death and injuries due to unsafe products. For example, Food Safety News reported in April 2021 that more than 25 people died in the Dominican Republic after drinking adulterated alcohol.



And, Costa Rica reported 227 deaths in April 2020 due to tainted alcohol. (A report by Patrick Maroney, former Director for the Colorado Liquor Enforcement Division, details this problem. See sources.)

**4. Prevention of fake alcohol products.** Sales that occur outside the three-tier system have spawned a "secondary market" that is rife with fakes. Maureen Downey is known as the leading expert in fake wine products. And, she has helped put fraudsters in jail. They operate by purchasing empty wine bottles, filling them with cheap wine and selling them for a high price. She notes there are estimates that 20 percent of the global trade is fake. But it's not just a problem for high end wines, says Downey, because lower priced products "can be just as profitable as the collectibles." With profits high and consequences low, fraudsters are flourishing!

**5. Collection of taxes.** In the U.S., we enjoy almost 100% alcohol excise tax collections with low collection costs. That is because, in most states, the wholesaler collects and remits the tax. In contrast, other countries report substantial losses in potential tax revenue. For example, the UK revenue authority estimated that "as much as 1.2 billion Pounds in tax is uncollected each year on smuggled beer and spirits." While most states that allow out of state shipment require reporting and payment of taxes, it can be a labor intensive process. For example, the state of Texas assigned six auditors to check over 1,600 out-of-state licensees' compliance. Few states have that kind of resources. This raises the question: Can we afford to have two separate tax systems--Three-tier and Direct Shipment?

So Nevada should be lauded for making a cautious choice. By requiring most alcohol products to flow through the three-tier system the benefits listed earlier are retained. And, in the future, if a safe low-cost system of direct shipment is devised, Nevada can always change its law. But, for now, Nevada makes the wise choice.

**Sources:**

1. "Nevada Department of Taxation, [Tax Bulletin LIQ 21-0001, October 4, 2021, "Sale of Liquor in Nevada"](#) tax.nv.gov
2. "[Nearly 160,000 bottles of wine illegally shipped into Michigan, a steep decline after AG crackdown,](#)" mlive.com, October 6, 2021 by Lindsay Moore.
3. "TABC Investigates and halts illegal direct-to-consumer alcohol shipments in Tennessee." [Tennessee State Government press release](#), January 6, 2020.
4. [Ohio Concludes 21<sup>st</sup> Amendment Enforcement Act Litigation](#), Alcohol Law Review, January, 29, 2021
5. According to a Member Advisory from NLEEA, [estimates of violations involving sales to minors are as high as 80%](#). pdf
6. "[Deaths in Dominican Republic linked to tainted alcohol,](#)" by News Desk, Food Safety News, April 10, 2121.
7. "[Fake Alcohol and Interstate E-Commerce](#), A Report on the Need for States to Evaluate the Risks of Fake Alcohol in Interstate E-Commerce Activity from Alcohol Retailers Direct-to-Consumer Sales in the United States", by Patrick Maroney, Center for Alcohol Policy, March, 2020.
8. "[A Counterfeit Expert's Solution for eliminating Fake wine](#)", by Shana Clarke, Seven Fifty Daily, March 18, 2018.
9. "[How much fake fine wine is on the market?](#)" by Patrick Schmitt, The Drinks Business, December 7, 2016
10. "[Get ready for a Texas ABC direct shipping audit,](#)" by Jeff Carroll, Avalara, Sept. 25, 2019.
11. "[MPs demand action on lost alcohol taxation,](#)" Published 29 August 2012, BBC News. "HM Revenue & Customs (HMRC) estimates that as much as £1.2bn in tax is uncollected each year on smuggled beer and spirits."