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States Pursue Changes to Allow Direct Shipment and Delivery of Craft Spirits

While sales of liquor nationwide have increased during the pandemic, craft beer sales decreased by approximately 7% to 8% during 2020 due to limitations and closure of on-premises consumption and retail sale of beer. Most states closed bars and restaurants that served alcoholic beverages on premises, while allowing off-site delivery and sales by manufacturers and retailers to offset these restrictions during the shutdown. Partly in response to restrictions placed upon the sale and consumption of alcohol beverages during the pandemic, Kentucky, Ohio and West Virginia now are pursuing progressive changes to alcohol laws to permanently allow direct shipping and home delivery of alcoholic beverages.

Kentucky Updates requirements for Direct Shipment of Alcohol

Kentucky recently enacted legislation during the 2021 Regular Session via House Bill 415 to liberalize the direct shipping of alcoholic beverages by either Kentucky manufacturers and suppliers or out-of-state manufacturers and suppliers duly licensed in the state where they are located. For the first time, Kentucky now allows the use of third-party fulfillment agencies that are not required to be located on the premises of the manufacturer/direct shipper and which are required to be licensed as storage and transporter facilities, but not required to obtain other licenses in the Commonwealth of Kentucky.

Kentucky manufacturers are now allowed to ship alcoholic beverages through a common carrier in order to place limited samples to marketing or media representatives, to participate in distilled spirits, wine or malt beverage competitions or contests, to wholesalers or distributors located outside of Kentucky, and to testing labs and formulation development partners in order to eliminate unnecessary restrictions upon these activities. The

limitations on the amount that may be shipped by a common carrier for the listed activities is one liter per type of product for distilled spirits or wine and 96 ounces for a particular product per calendar year for malt beverages. As a result of these changes, HB 415 also established the state excise (wholesale) tax rates for these direct shipper sales based on wholesale price (i.e., 11% for distilled spirits and 10% for wine and beer) and made direct shipper licensees generally responsible for payment and reporting of the wholesale taxes (including the distillers themselves in certain instances).

West Virginia Advances Laws for Delivery of Wine and Beer

On April 10, 2021, West Virginia passed a progressive bill that implements several emergency measures adopted by the Alcohol Beverage Control Administration during the pandemic. The emergency measures allow delivery of beer and wine by Class A (on-premises) retailers, Class B (off-premises retailers), retail liquor outlets and by the brewer, craft brewer, farm wineries, and cideries and distilleries. The temporary measures allowing delivery and pickup were made permanent to address the closure of bars, restaurants, tap rooms and other on-premises retailers along with numerous progressive changes to modernize the craft spirits laws in West Virginia.

[The new bill](#), if signed by Governor Jim Justice, goes into effect May 10, 2021. It would permanently authorize delivery directly by the licensee and also through third-party delivery services. Direct shipment of beer and liquor in state to West Virginia residents still faces practical obstacles since the new laws would require delivery via a local beer distributor or a local liquor outlet, making these arrangements difficult to implement. West Virginia retailers can also extend their licensed footprint for on-premises consumption of alcoholic beverages to outdoor dining areas and outdoor street dining. The bill also enables private club restaurants or private manufacturers' clubs to sell craft cocktail growlers for off-premises consumption. The delivery of beer, wine, and liquor and the sale for off-premises consumption of craft cocktails mimic similar laws which have passed in Ohio.

The West Virginia Craft Brewers Guild was instrumental in supporting the new legislation along with a consortium of like-minded stakeholders from the hospitality, economic development, and tourism sectors of the economy while avoiding, for now, a dramatic increase in alcohol taxes. Gov. Justice's proposal to hike taxes on beer by 530% has not been put into this year's budget, and craft brewers are relieved that they do not face a new tax hike that would make West Virginia craft beer uncompetitive with adjacent states, harming the ability of craft brewers to return to profitability as they emerge from the pandemic.

Ohio Adds Cocktails to Go and Direct Delivery of Alcohol to Consumers

Ohio already allows for the direct shipment of beer to Ohio residents which craft brewers expanded during the pandemic. At the end of 2020, modifications were made to Ohio's liquor laws to allow for increased access of alcoholic beverages directly to consumers. The changes include HB669 (effective October 2020), which codified temporary rules into permanent law to allow bars, restaurants, small breweries, micro-distilleries, and wineries (qualified permit holders) to sell alcoholic beverages in sealed, covered cups or other containers for off-premises consumptions, including via delivery.

Commonly referred to as "cocktails-to-go," qualified permit holders can sell no more than three to-go alcoholic beverages to any individual per meal. Upon passage, Ohio became the second state in the nation to allow for the permanent use of cocktails-to-go (Kentucky is now the third, and West Virginia has this measure in the above pending bill). HB674 (effective April 2021), contains several COVID-19 pandemic-related measures related to alcohol policy. One highlight grants the Ohio Division of Liquor Control (DOLC) the authority to create rules allowing the delivery of spirituous liquor directly to consumers. The Ohio DOLC is currently in the drafting phase of these rules and we expect to see proposed guidelines over the next few months.

Chris Coffman and Frost Brown Todd's public affairs subsidiary CivicPoint were instrumental in getting Kentucky to adopt changes

to its direct shipment and delivery of craft spirits. Charles Johnson assisted the West Virginia Craft Brewers Guild members in their role in the changes in West Virginia. CivicPoint members Joseph R. Ewig and Deborah Hackathorn successfully lobbied on behalf of our clients in the above changes to laws governing to-go cocktails and delivery of spirits in Ohio.

For more information, please contact [Charles M. Johnson](#), [Christopher Coffman](#), and [Joseph Ewig](#), or any attorney with Frost Brown Todd's [Manufacturing](#) industry team.

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