

State-by-State Report

ShipCompliant's Direct Shipping "Virtual" Seminar

December 2, 2009

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WINE INSTITUTE
THE VOICE FOR CALIFORNIA WINE

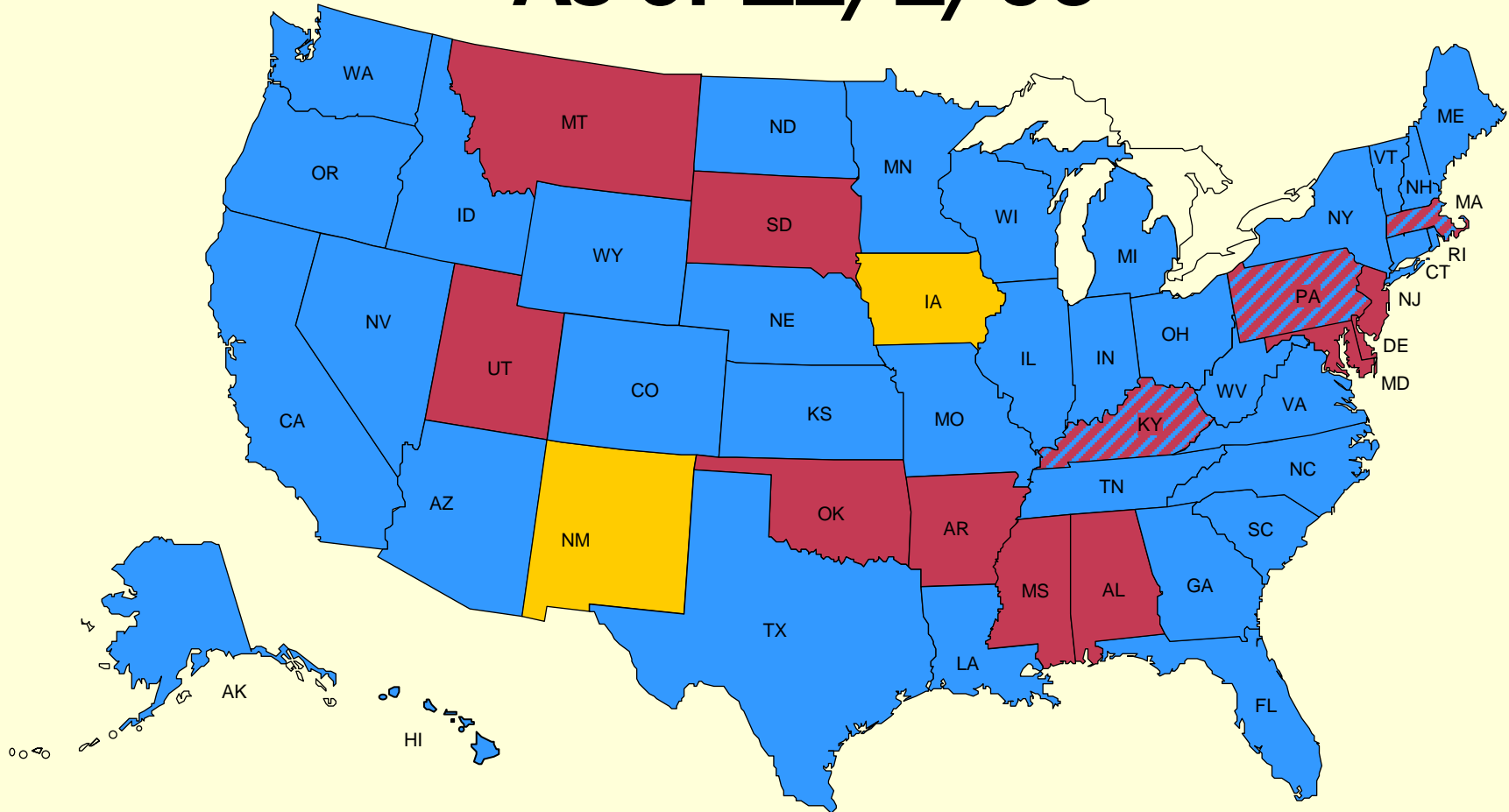
Goals for Today



- ***Update on Recent Legislative Activities***
- ***Update on Litigation Affecting Shipments***
- ***Shared Speculation***

Direct-to-Consumer Wine Shipping

As of 12/2/09



Blue - Limited Direct/Permit

Yellow - Reciprocal

Red - Prohibited

Note on retailers / “virtual wineries”

- *The list of available states for “retailer” shipments is considerably shorter than for wineries. With considerable restrictions, the legal states currently include:*
AK, CA, DC, ID*, LA, MO*, ND, NE, NH, NM*, NV, OR, TX (pending litigation), VA, WV, WY (* reciprocal privilege only)*
- *CA “Wineries” that hold Type 17 & 20 licenses rather than a Type 02 Winegrowers License are typically considered retailers under state direct-to-consumer shipping statutes. They don’t hold a Federal Basic Permit as a winery. Other states have similar “custom crush” or “negotiant” licensees that are also considered retailers.*

Focus of Recent Activity

- ***Improving Existing Statutes***



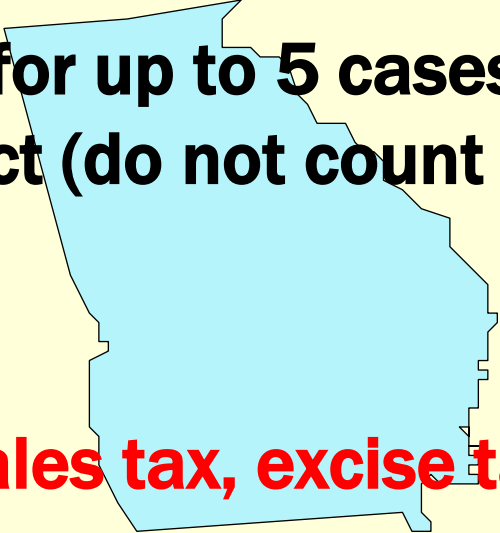
- ***Opening New Markets***




Major 2008 Legislation/Changes

- Georgia – liberalizes permit – 12 cases from any winery, removes wholesaler exclusion, removes 50 case maximum
- Louisiana – clarification: wineries with a wholesaler may ship labels not in distribution.
- **Ohio** – effort to remove cap failed – increase to 250K passed, tax change
- Washington, DC – liberalized DTC for up to 1 case per winery per person effective 7/18/08.
- Wisconsin – converted to permit on 10/1/08

Georgia

- **Permit required for all off-site shipments.**
 - **On-site provision for up to 5 cases per consumer annually still intact (do not count towards permit total)**
 - **\$50 permit fee**
 - **State and local sales tax, excise tax collected**
 - **12 cases per household per calendar year per winery**
 - **Age Verification Serve required**
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Louisiana

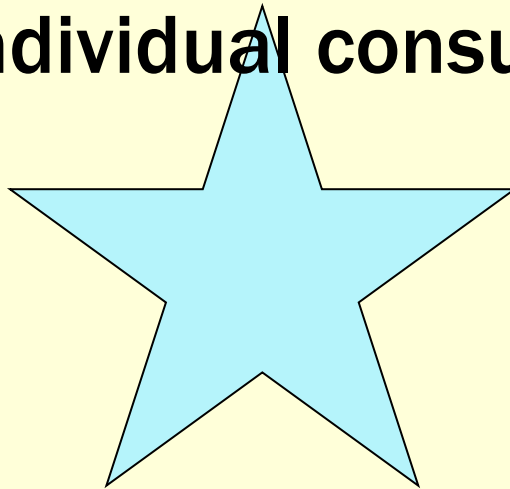
- Clarification in 2008 that wineries with a wholesaler may still get a permit and ship unlisted wines DTC.
 - \$150 annually
 - 4 cases per consumer per year
 - New Revenue Application on website for sales tax
 - Sales & excise taxes paid annually
 - Bill to exclude retailers died in 2009.
 - Retailers included - \$1,500 permit fee.
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Ohio

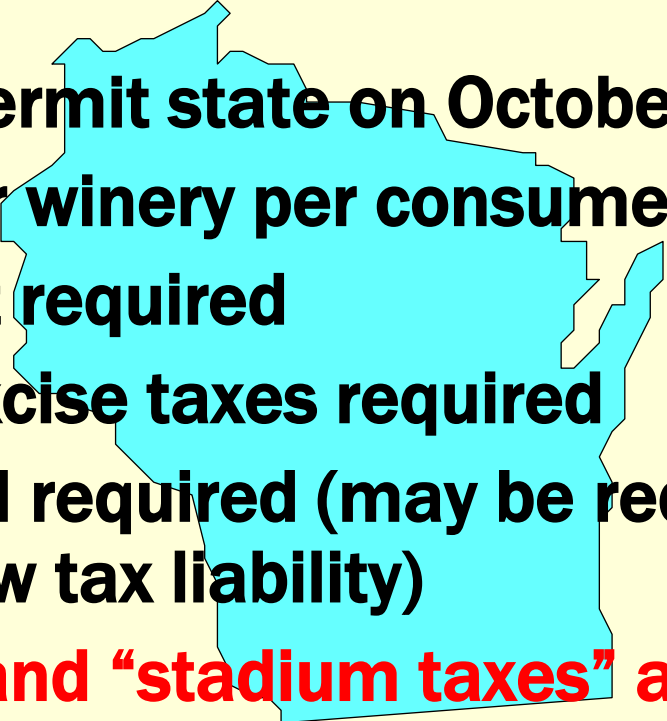
- **Converted to permit on 10/1/07**
- **Wineries under 250,000 gallons (was 150,000)**
- **\$25 permit – excise & sales taxes**
- **Consumer aggregate of 24 cases – ODLC has advised that aggregate violations will fall on consumer, not winery so long as under 24 cases**
- **Exemption for S permit holders from \$0.32 excise tax**

District of Columbia

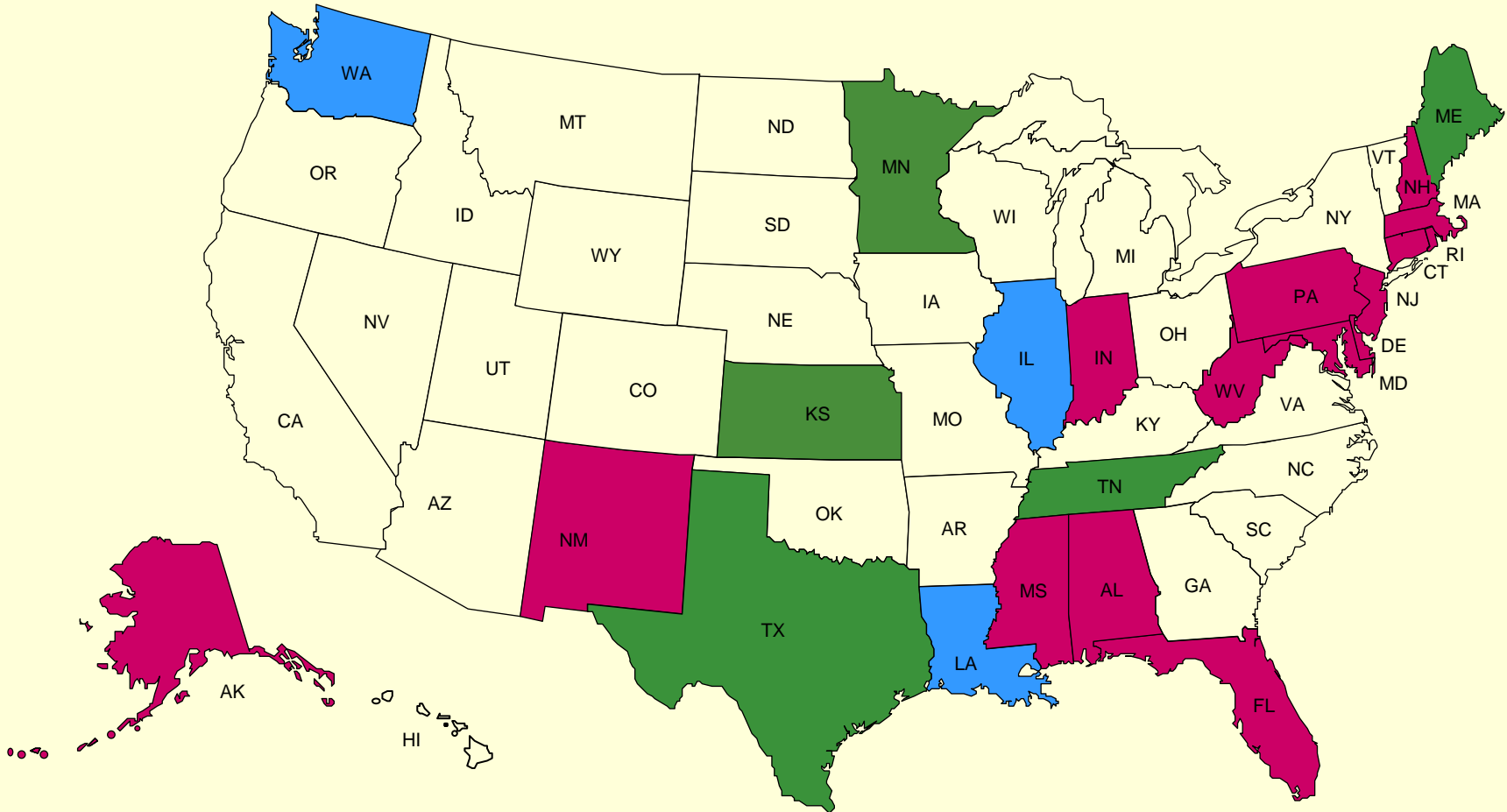
- Shipment of up to **1 case** in any calendar month per individual consumer



Wisconsin

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- Became a permit state on October 1, 2008
 - 12 cases per winery per consumer annually
 - \$100 permit required
 - Sales and excise taxes required
 - \$1,000 bond required (may be reduced in future years if below tax liability)
 - Local sales and “stadium taxes” are now required in addition to state sales tax. (Tax tool handles all new taxes.)

States with Direct-to-Consumer Legislation as of 12/2/09



Purple – Winery DTC


Blue – Retailer DTC

Green – Legislation passed in 2009

Major 2009 Legislation/Changes

- *Florida – Prohibitive legislation defeated, shipping remains intact for now*
- *Kansas – Off-site permit system*
- *Maine – New shipping permit system*
- *Minnesota – Statutes changed to align with previous court decision*
- *Tennessee – New Shipping permit system*
- *Texas – Quantity limits changed / reporting period simplified*
- *New Mexico – Reciprocity transition defeated*
- *Illinois, Washington & Louisiana – Retailer Legislation*
- *Montana – no longer Federal On-site*

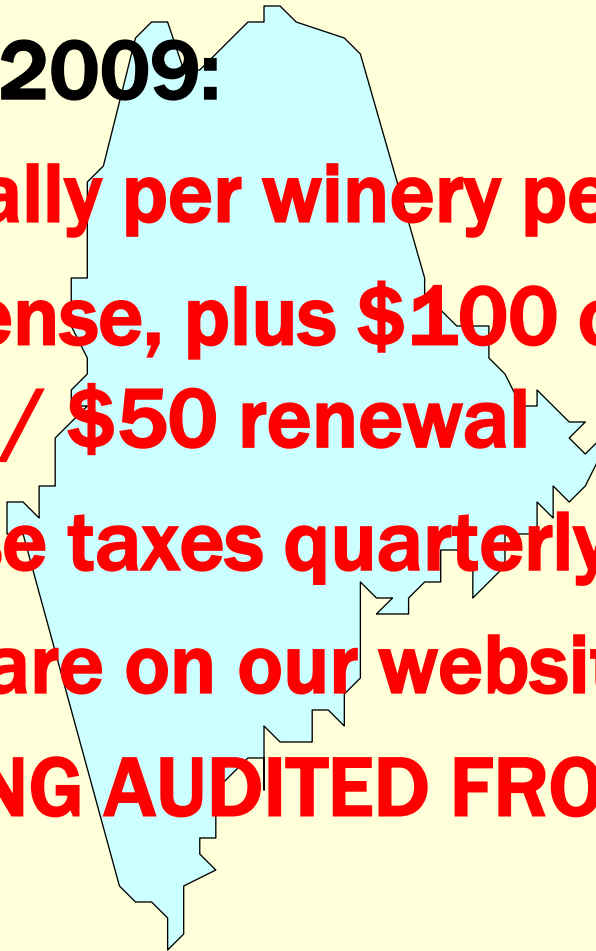
Florida

- **Court ruling in 8/05 – DBPR rules in 2/06**
 - **Unlimited shipping to consumers**
 - **Wineries must file monthly shipment report to DBPR, along with monthly excise taxes.**
 - **Consumers to file sales/use tax**
 - **5 dry counties prohibit shipments (zips on website)**
 - **Legislative effort to restrict shipments was defeated again in 2009. Status quo remains...**
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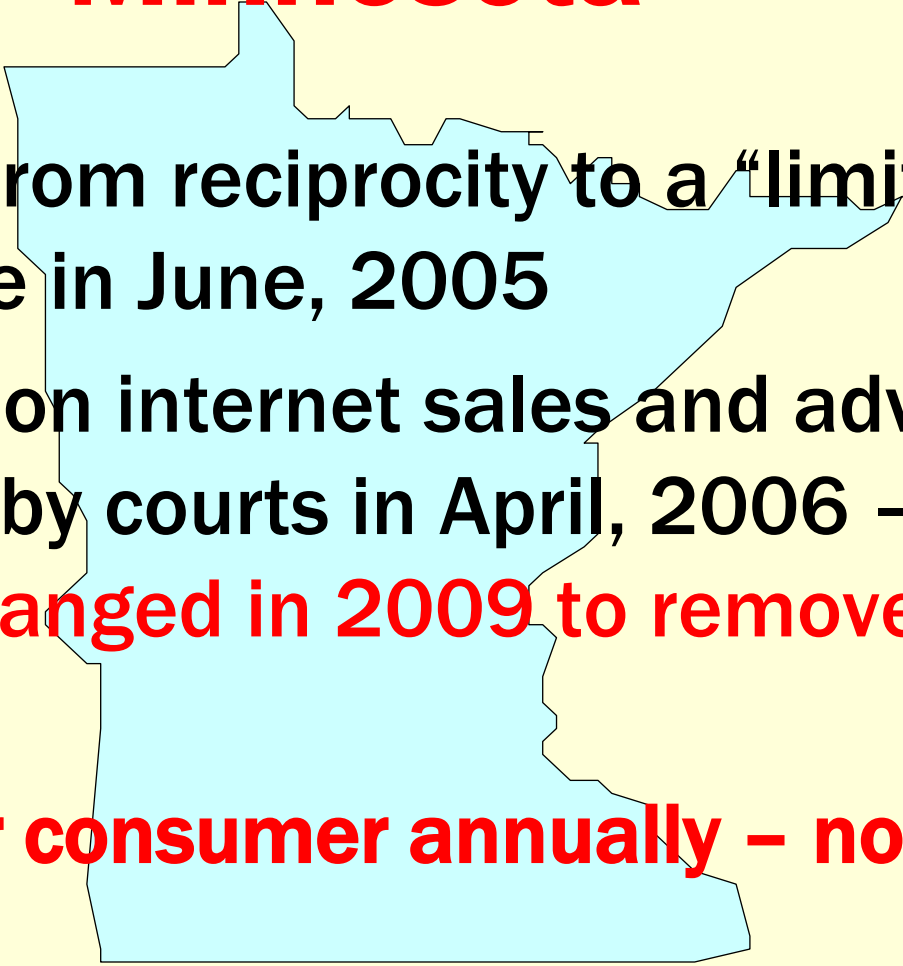
Kansas

- Hybrid legislation passed in June, 2006 gone except for on-site
- Onsite shipments allowed by any winery – consumer pays taxes – **no quantity limit on on-site** (Consumer tax forms on website)
- **Current Status: Workable on-site provision stays intact. Does not aggregate to permit.**
- **New Statute Became effective 7/1/09: Creates a permit for off-site sales, 12 case annual limit per consumer/household, annual sales (“liquor enforcement”) tax & excise tax filing (\$50 annual fee for permit).**
- **Age verification is required. (LexisNexis approved)**

Maine

- **New Statute in 2009:**
 - **12 cases annually per winery per consumer**
 - **\$200 initial license, plus \$100 on-time application fee / \$50 renewal**
 - **Sales and excise taxes quarterly.**
 - **All documents are on our website.**
 - **PROGRAM BEING AUDITED FROM THE OUTSET**
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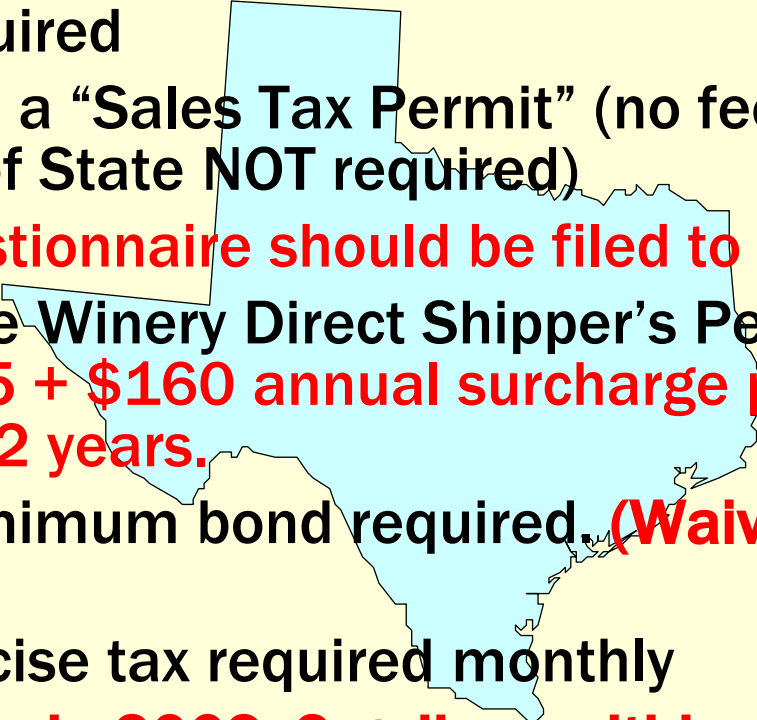
Minnesota

- **Converted from reciprocity to a “limited direct” state in June, 2005**
 - **Prohibition on internet sales and advertising overturned by courts in April, 2006 – Statutes changed in 2009 to remove these provisions**
 - **2 cases per consumer annually – no permit required**
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Tennessee

- **New Statute in 2009**
- **\$300 fee, \$150 renewal.**
- **3 cases per winery per consumer annually.**
- **Annual sales and excise tax collection and reports.**
- **No delivery to dry areas (on website).**

Texas

- Effective May, 2005 the entire state was declared “wet” for wine shipments
 - Permit required
 - First obtain a “Sales Tax Permit” (no fee – registration with Secretary of State NOT required)
 - **Nexus questionnaire should be filed to avoid franchise tax**
 - Out-of-State Winery Direct Shipper’s Permit valid for 2 years - **\$75 + \$160 annual surcharge per year for total of \$470 over 2 years.**
 - \$1,000 minimum bond required. **(Waiver request after 3 years.)**
 - Sales & excise tax required monthly
 - **New Statute in 2009: 9 gallons within any calendar month – no more than 36 gallons in any 12-month period per consumer**
 - **Retailers permitted only in alignment with pending litigation**
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New Mexico

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- **Reciprocal State**
 - **2 cases per month per individual**
 - **Efforts to pass winery permit legislation died in 2009**
 - **Retailers are included**

Iowa

- **Reciprocal state**
- **2 cases per month per consumer**
- **Ongoing discussions regarding transition to a permit system**

Retailer Shipping Legislation

- **Illinois – effort to pass retailer shipping failed**
- **Washington – effort to pass retailer shipping failed**
- **Louisiana – effort to take away retailer shipping failed.**

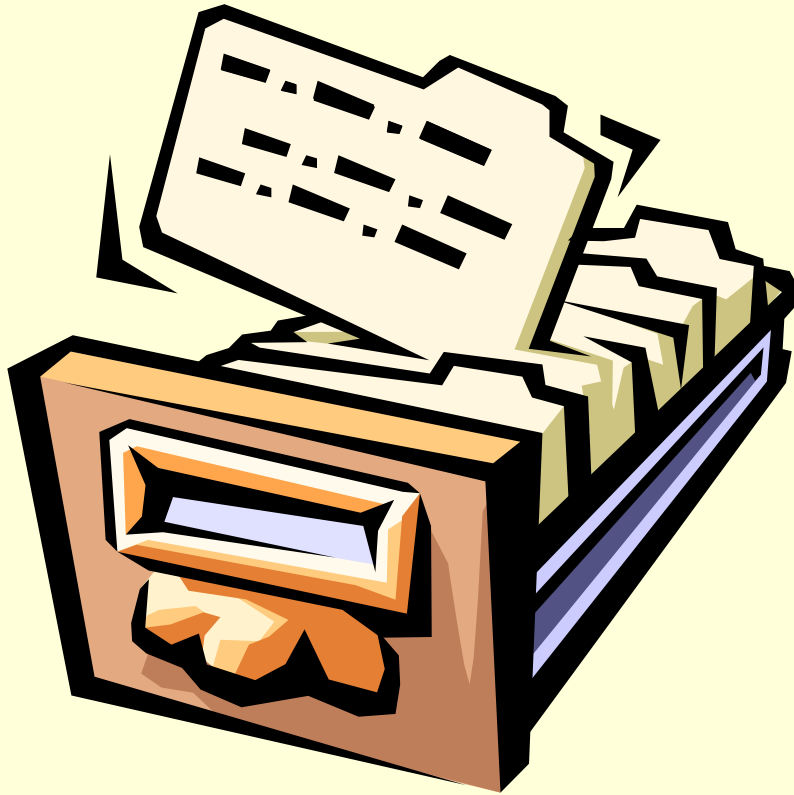
Impact of On-Site Provision

- **Delaware - no limit**
(consumer pays excise taxes)
- **New Jersey - up to 1 gallon**
- **Oklahoma - up to 1 liter**
- **South Dakota - up to 1 gallon**

- **Recently removed:**
Maine, Montana & Tennessee



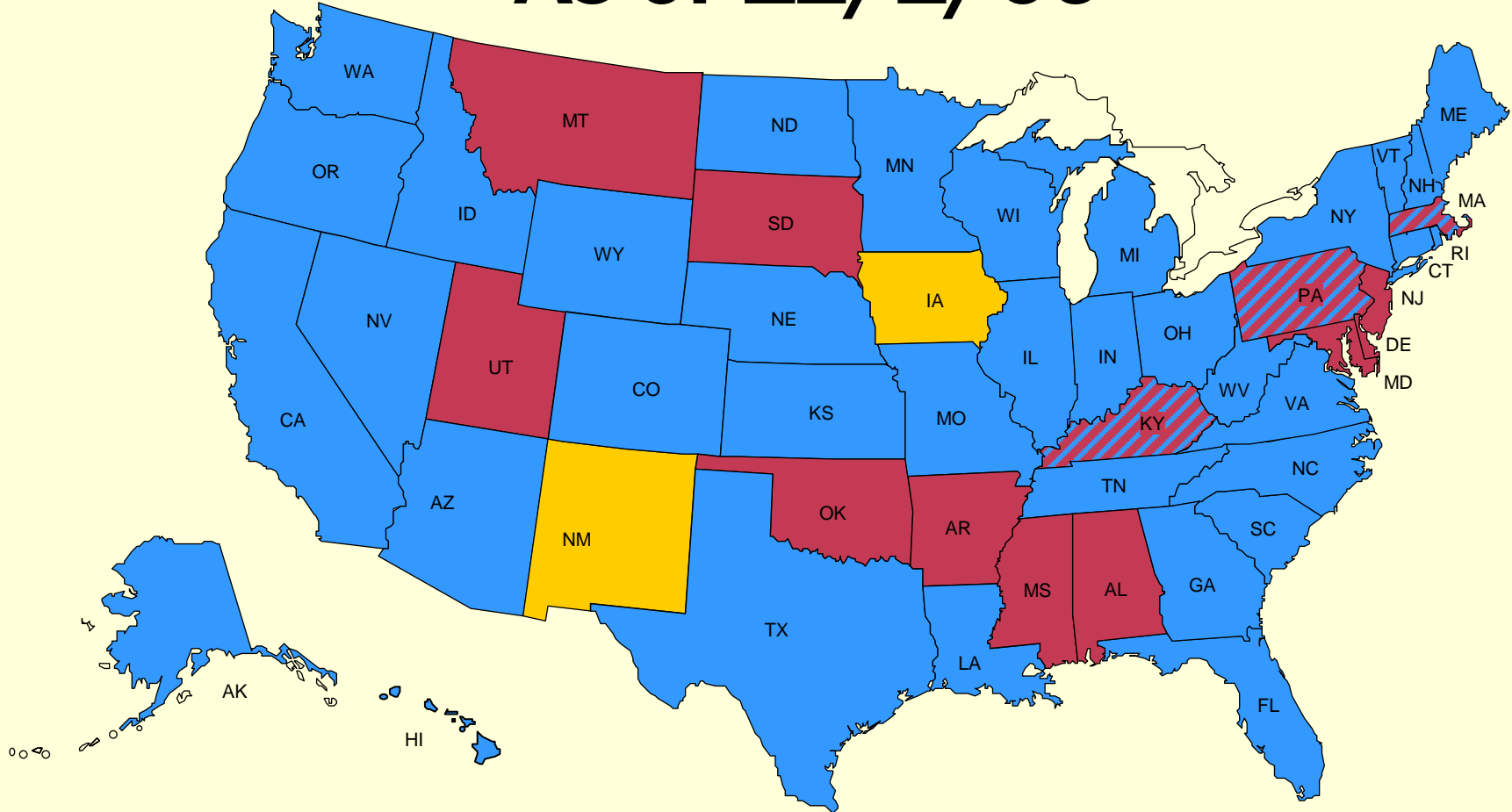
Suggested Procedures for On-Site Sales



- ***Keep proof of face-to-face transaction:***
 - *Copy of license*
 - *Original Signature*
 - *Other documentation?*
- ***Ensure it is a one-time only sale! (Does not allow for joining a wine club)***

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Problematic Features in DTC Statutes for Wineries

- **Capacity Caps in DTC shipping:**
 - AZ – 20,000 gallons
 - KY – 50,000 gallons
 - MA – 30,000 gallons
 - OH – (150,000) now **250,000** gallons [addt'l changes]
- **Consumer Aggregate Limits:**
 - MA, **IN (now workable)**, **OH (now workable)**
- **Wholesaler Exclusions:**
 - [**GA – recently removed**], **LA (partially clarified)**, MA, IN
- **“Mandatory Trip to Winery” requirements:**
 - AZ (upheld), IN (upheld), **KS [new off-site just passed]**,
KY (struck down), RI (continued)

Problematic Features in DTC Statutes for Wineries (cont.)

- **SOS Registration / Dept. of Revenue**
 - (CA, IN, WV, TX - franchise tax, etc.)
- **Local Sales tax jurisdictions**
 - (NY, AZ, VA, etc.)
- **Extensive Background Checks**
 - (GA, VA – removed)
- **Bonding Requirements**
- **Label & Brand Registration (new OH requirement)**
- **Monthly and No-Activity Reports (TX improving)**
- **High Permit Fees (NE & SC – renew in 8/even)**
- **Age Verification (GA, MI & KS)**
- **Spam Requirements (MI, UT)**

Likely State Legislation in 2010

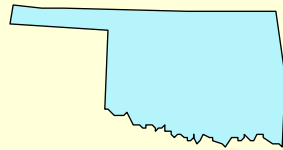
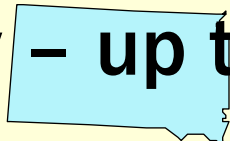
- **Offense: Maryland, New Jersey and Pennsylvania**
- **Defense: Florida and Maine**
- **Improvements: Virginia (addressing 3rd party circular), South Carolina (reducing fee), New Hampshire (LCC revisions),**
- **Note: UNC study**

Items under dispute in winery DTC litigation

- **Capacity Caps (MA, AZ)**
- **Mandatory Trip to Winery Requirements: Supreme Court Denied Cert in April in the Indiana/Kentucky cases (still in AZ appeal)**
- **Exclusion of wineries with existing wholesale contracts (MA)**
- **Retailers pursuing Granholm arguments**

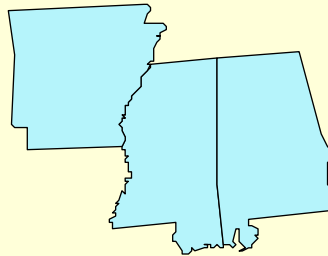
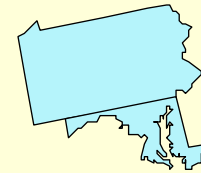
Reminder – Federal On-site states

- Delaware – **no limit (taxes due by consumer)**
- New Jersey – up to 1 gallon
- Oklahoma – up to 1 liter
- South Dakota – up to 1 gallon



States with NO Direct-to-Consumer (other than 3-tier) as of 11/2/09

- Alabama
- Arkansas
- Maryland
- Mississippi
- Pennsylvania
- Utah



Questions?

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