

DTC Compliance Hot Topics

2020 Direct to Consumer Wine Symposium



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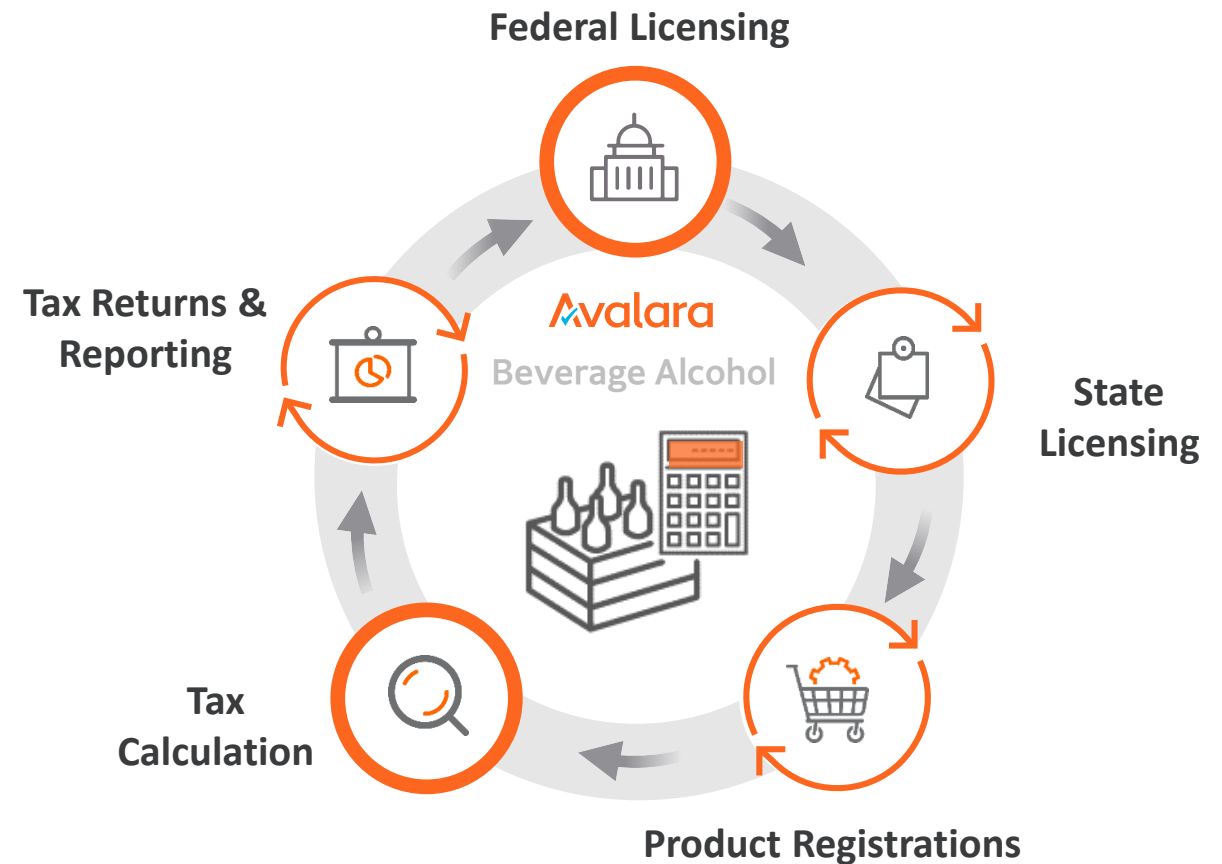
Agenda

- Introduction
- California Consumer Privacy Act (CCPA)
- California ABC Updates and Advisories
- Texas ABC Audits
- California Subscription Renewals
- *Tennessee Wine* Supreme Court case
- Pending DTC Litigation
- *Wayfair* Impacts
- Q&A

Avalara for Beverage Alcohol

Simplifying regulatory compliance for suppliers, distributors and retailers

- **Mitigate compliance risk** with the complex labyrinth of industry and tax regulations
- **Help reduce time and resources** needed to achieve tax and regulatory compliance
- **Provides a complete solution with seamless integration** across industry's common POS, eCommerce, ERP and wine club management applications



CCPA (California Consumer Privacy Act)

The CCPA grants new rights to California consumers

- The **right to know** what personal information is collected, used, shared or sold, both as to the categories and specific pieces of personal information;
- The **right to delete** personal information held by businesses and by extension, a business's service provider;
- The **right to opt-out** of sale of personal information. Consumers are able to direct a business that sells personal information to stop selling that information. Children under the age of 16 must provide opt in consent, with a parent or guardian consenting for children under 13.
- The **right to non-discrimination** in terms of price or service when a consumer exercises a privacy right under CCPA.

The CCPA applies to certain businesses

- Businesses are subject to the CCPA if one or more of the following are true:
 - Has gross annual revenues in excess of \$25 million;
 - Buys, receives, or sells the personal information of **50,000** or more consumers, households, or **devices**;
 - Derives 50 percent or more of annual revenues from selling consumers' personal information.
- As proposed by the draft regulations, businesses that handle the personal information of more than 4 million consumers will have additional obligations.

CCPA (California Consumer Privacy Act)

The CCPA imposes new business obligations

- Businesses subject to the CCPA must provide **notice** to consumers at or before data collection.
- Businesses must **create procedures** to respond to requests from consumers to opt-out, know, and delete.
 - For requests to opt-out, businesses must provide a “Do Not Sell My Info” link on their website or mobile app.
- Businesses must **respond** to requests from consumers to know, delete, and opt-out within specific timeframes.
 - As proposed by the draft regulations, businesses must treat user-enabled privacy settings that signal a consumer’s choice to opt-out as a validly submitted opt-out request.
- Businesses must **verify** the identity of consumers who make requests to know and to delete, whether or not the consumer maintains a password-protected account with the business.
 - As proposed by the draft regulations, if a business is unable to verify a request, it may deny the request, but must comply to the greatest extent it can. For example, it must treat a request to delete as a request to opt-out.
- As proposed by the draft regulations, businesses must **disclose** financial incentives offered in exchange for the retention or sale of a consumer’s personal information and explain how they calculate the value of the personal information. Businesses must also explain how the incentive is permitted under the CCPA.
- As proposed by the draft regulations, businesses must **maintain records** of requests and how they responded for 24 months in order to demonstrate their compliance.
 - In addition, businesses that collect, buy, or sell the personal information of more than 4 million consumers have additional record-keeping and training obligations.

California Update and Advisories

Precedential Decisions:

- Administrative Procedure Act, Government Code sections 11425.10(a)(7) and 11425.60
- Form of Rulemaking
- Published on Department website—9 issued to date:
 - Modification of conditions
 - Drink solicitation/condition violation
 - Protests/residential interference/noise conditions
 - Minor decoy appearance
 - Notice of problems and aggravation of penalty
 - Factors in aggravation and mitigation
 - Restrictions on licensing smoke shops
 - Notice pleading requirements
 - Private events and private functions

ABC Precedential Decisions found at: <https://www.abc.ca.gov/law-and-policy/precedential-decisions/>

California Update and Advisories

Industry Advisories:

Retail Advertising Glassware

- Only applies to beer
- ABC specifically prohibited from allowing suppliers from giving glassware to retailers in connection with distilled spirits and wine

Cannabis and Alcoholic Beverages

- Cannot mix alcohol with THC or CBD regardless of source—includes both legal cannabis and industrial hemp
- Cannot permit consumption of cannabis or cannabis products on ABC-licensed premises
- While ABC licensees may also hold cannabis licenses, cannot sell or allow consumption of one on the premises of the other
- Cannot simply surrender ABC license to hold a cannabis event
- With respect to products derived from industrial hemp, licensees must ensure that any products they sell are lawful

ABC Advisories found at: <https://www.abc.ca.gov/industry-advisories/>

Responsible Beverage Service Training Program

ABC estimates 1,000,000 alcohol servers and managers will be affected by the mandate to be trained by August 31, 2021.

Restaurants, bars, and fast casual dining

Movie theaters

Tasting rooms, including in off-sale locations

Hotels

Stadiums

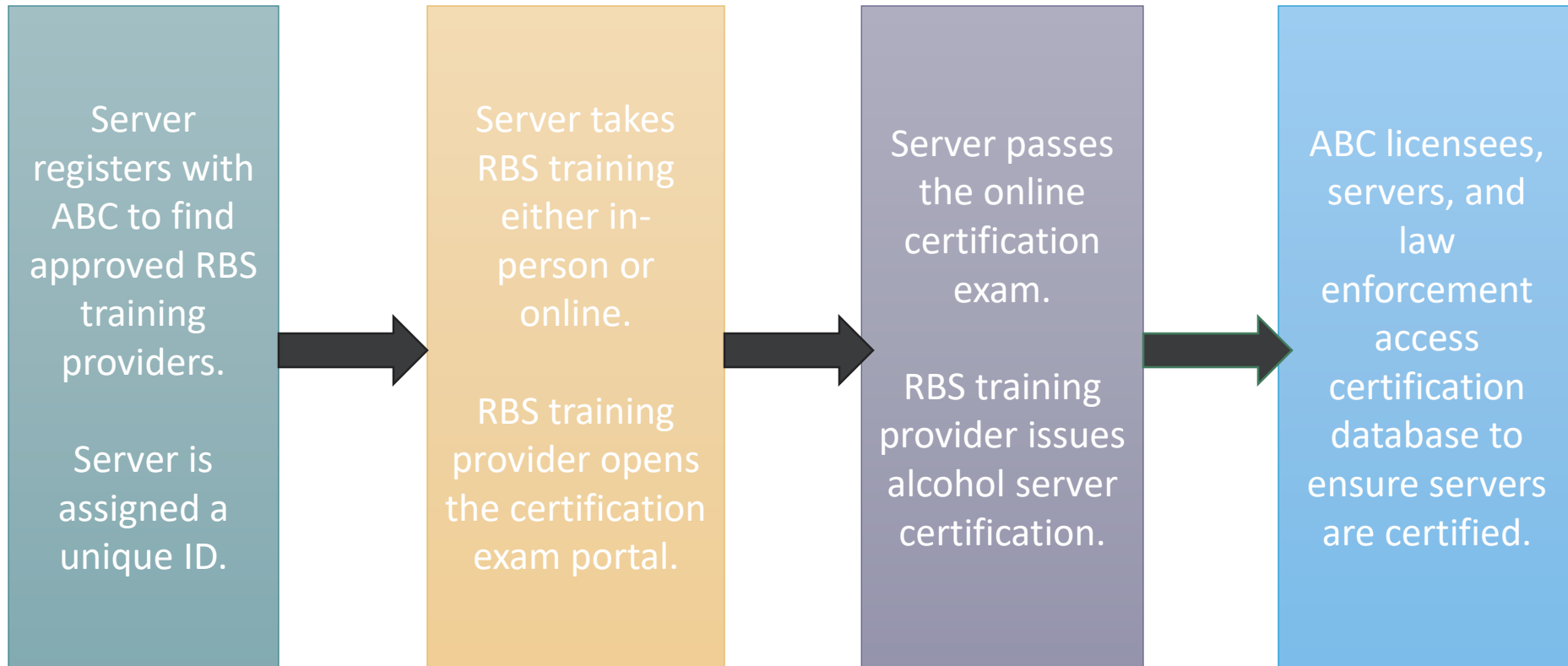
Responsible Beverage Service Training Program

Who has to be trained?

Alcohol Servers

Managers of Alcohol Servers

Overview of Server Training



Responsible Beverage Service Training Program

Mandated Curriculum Topics:

Social impact of alcohol

Impact of alcohol on the body

State laws and regulations related to driving under the influence

Intervention Techniques to prevent the service or sale of alcohol to underage or intoxicated patrons

Instruction on the development of management policies supporting the prevention of service or sales of alcohol to underage or intoxicated patrons

Responsible Beverage Service Training Program

Regulation package currently pending before the Office of Administrative Law (“OAL”)

Proposed regulations and all related materials may be found on the Department’s website at:

<https://www.abc.ca.gov/law-and-policy/regulations/>



NEW GLASSWARE LAW

Industry Advisory with Reporting Instructions



[LEARN MORE](#)

TRUST — INNOVATION — PROFESSIONALISM

**ABC Announces Relocation of Services in Greater
Los Angeles and San Francisco Bay Area**

Industry Advisory



Search

ABC News and Events Mailing List

Sign up to receive email news and updates from ABC.

How To Subscribe

- 1. Enter your email address. (Required)
- 2. Select topics for which to receive announcements.
- 3. Click Subscribe.

Subscription Form

*** We will send you a confirmation email.**
Please follow the instructions in that email to complete your registration.

Email Address*

First Name

Last Name

Organization

Subscription List

☐ **Announcements and Press Releases**

Important Announcements and Press Releases on current events.

☐ **Grants and Funding Opportunities**

These announcements would be related to grant or funding opportunities for local law enforcement, prevention organizations, or other stakeholders who might apply.

☐ **Industry Advisories**

These announcements are related to clarification on laws, rules, and regulations, or information that provides guidance on emergencies and other industry related matters.

☐ **Responsible Beverage Service Training**

These announcements will provide information on the implementation of the Responsible Beverage Service Training Act (Assembly Bill 1221). This new law requires all alcoholic beverage servers to take RBS training in order to work as a server and takes effect in July 2021. Between now and then, the ABC will be holding meetings with stakeholder organizations and the public to develop regulations for the program.

☐ **Enforcement Actions**

These announcements will provide information about select enforcement actions taken by ABC and our partner agencies in your communities.

☐ **Beer Price Posting**

These announcements will provide information and updates on the new online price posting system that the Department plans to implement in 2020.

The privacy and security of your personal information extremely important to us.

[Click here to view our Privacy Policy](#)

Subscribe

[Click here to unsubscribe from all lists](#)

CAMPAIGNS

Register to Vote
Save Our Water
Flex Alert
2020 Census

MEDIA

Industry Advisories
News Releases
Videos

SUPPORT

Technical Support
Sitemap
Customer Survey
File a Complaint

EXTERNAL

Office of Governor
BCSH
Office of Traffic Safety
TTB

Get ready for a Texas ABC direct shipping audit

■ Beverage Alcohol Sep 25, 2019 | Jeff Carroll



Example: Information requested from Notice of Routine Audit

Note: Dates will vary.

1. Electronic copy of the data used to report Texas wine sales on Excise Tax Reports from <dates redacted>
2. Organizational chart including affiliates and subsidiary companies that includes officers and directors
3. Any contract agreement or arrangement with another winery to produce or bottle wine to be shipped into Texas
4. Copy of Texas sales tax permit
5. Copy of current TTB Federal Basic Permit
6. Copies of invoices and shipping information (bill of lading, manifest, etc.) for all wines shipped into Texas for the months of <dates redacted (3 months)>
7. Copies of bottling reports and Federal COLAs for all wines shipped into Texas for the months of <dates redacted, same time period as #6>
8. Copies of production records for all wines shipped into Texas for the months of <dates redacted, same time period as #6>
9. Copies of all invoices for the top 20 customers who received wine in Texas from <dates redacted, same time period as #1>
10. Contract agreements or arrangements with Fulfillment Centers or Similar Service Companies

If you're a current client of [Avalara for Beverage Alcohol](#), please check your email for some additional guidance on how to assemble all the information required. Want to find out more about our compliance services? [Contact us now](#) and we'll help you get started.

Club Renewals

Business and Professions Code sections 17601 and 17602 impose strict disclosure and notice requirements in connection with automatic renewals of subscriptions, which includes such things as wine clubs

Active enforcement by the Federal Trade Commission and the California Automatic Renewal Taskforce

Violations could also lead to license discipline

LAW

Supreme Court Hands Total Wine, Other Out-Of-State Liquor Retailers A Big Win

June 26, 2019 · 11:16 AM ET



NINA TOTENBERG



DOMENICO MONTANARO



Tennessee Wine and Spirits Retailers Assn. v. Russell F. Thomas, et al.

Main takeaways:

Although case dealt with residency requirements for licensing purposes, the Court's analysis is equally applicable to any regulatory structure that differentiates between in-state and out-of-state businesses.

Twenty-first Amendment "must be viewed as one part of a unified constitutional scheme."
(Not a new concept.)

Courts must examine whether state laws that burden interstate commerce "serve a State's legitimate" interests.

Does not undermine legitimacy of three-tier system.

"[Section 2 of 21st Amendment] allows each State leeway to enact the measures that it citizens believe are appropriate to address the public health and safety effects of alcohol use and to serve other legitimate interests, but it does not license the States to adopt protectionist measures with no demonstrable connection to those interests."

Pending Wine Retailer DTC Litigation

Case 3:19-cv-01675-L Document 1 Filed 07/12/19 Page 1 of 8 PageID 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROBERT BROCKIE,)	
THE HOUSE OF GLUNZ, INC, and)	
CHRISTOPHER DONOVAN,)	
)	Case No:
Plaintiffs,)	
)	
vs.)	
)	
GREGORY ABBOTT, Governor of Texas,)	
KEN PAXTON, Attorney General of Texas,)	
and ADRIAN BENTLEY NETTLES, Executive)	
Director of the Texas Alcoholic Beverage)	
Commission)	
)	
Defendants.)	

COMPLAINT

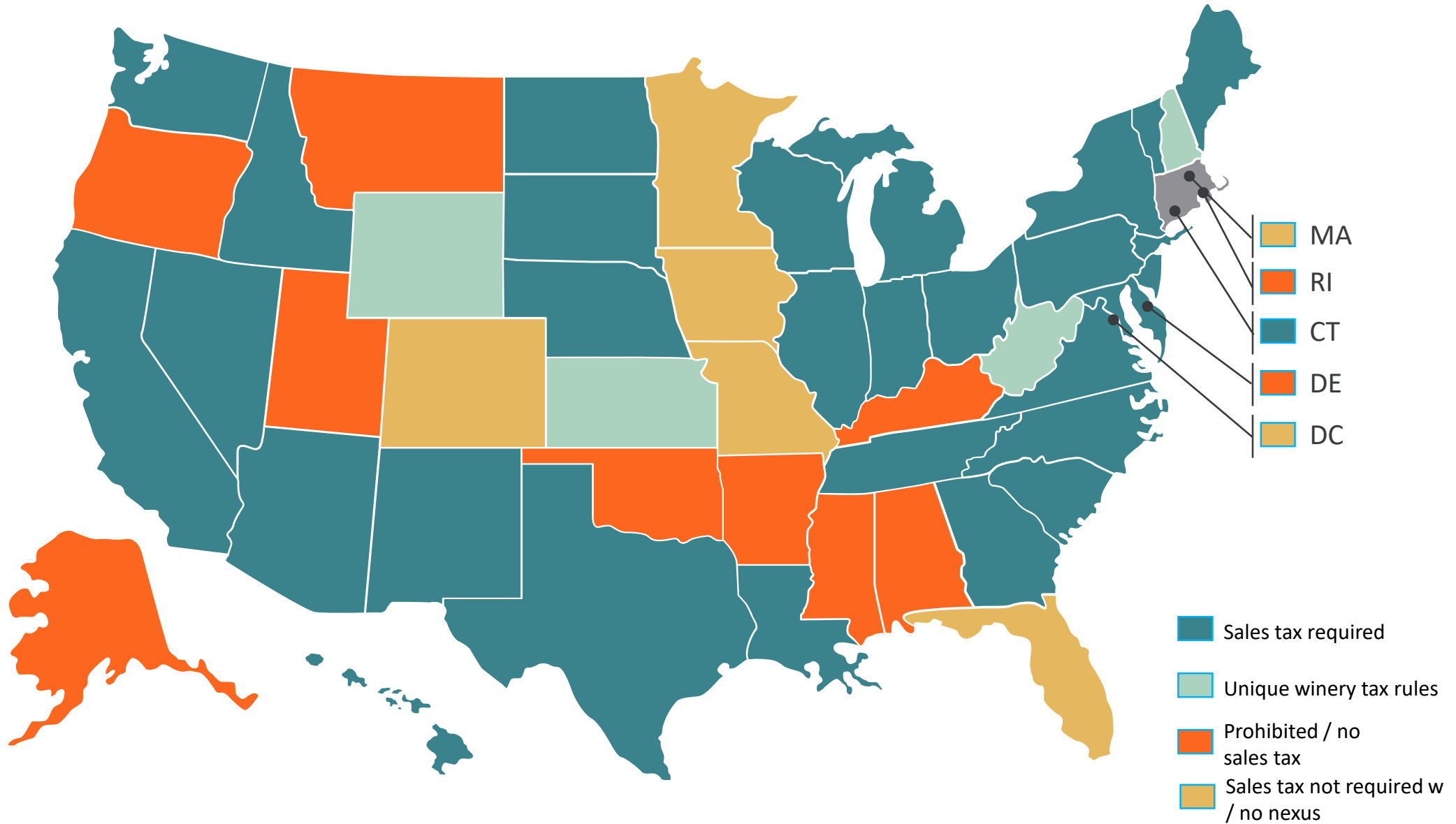
Plaintiffs make the following allegations based upon information and belief,
except for the allegations pertaining to Plaintiffs, which are based upon personal
knowledge.

Almost all states are enforcing economic nexus laws

Map of the United States showing state abbreviations. States are color-coded: blue for most states, grey for AK, HI, and PR, and brown for OR, MT, MO, and FL. A legend on the right shows circles for VT, NH, MA, CT, RI, NJ, MD, DC, and DE.

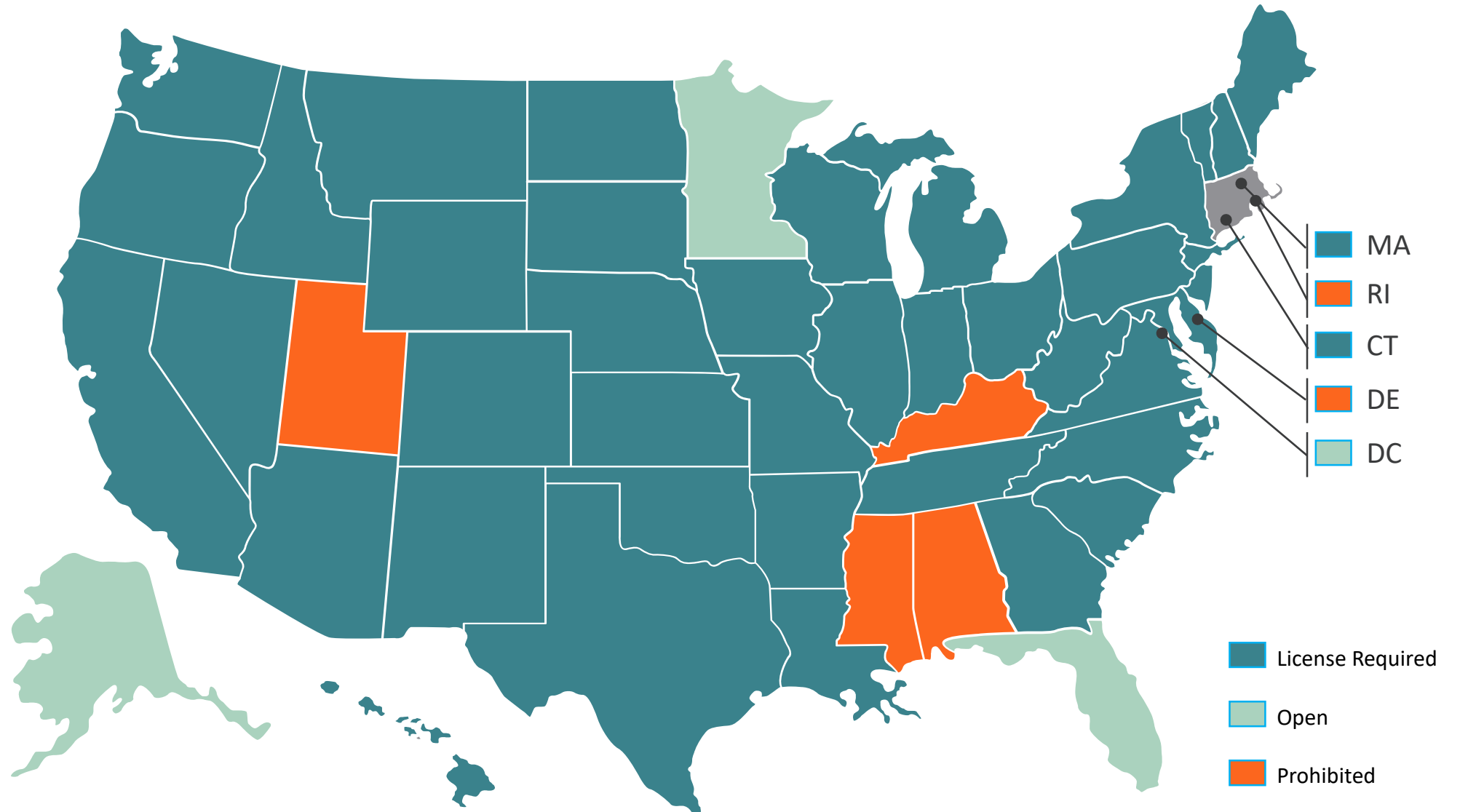
©Avalara. Confidential and proprietary.

Winery sales tax requirements post-Wayfair

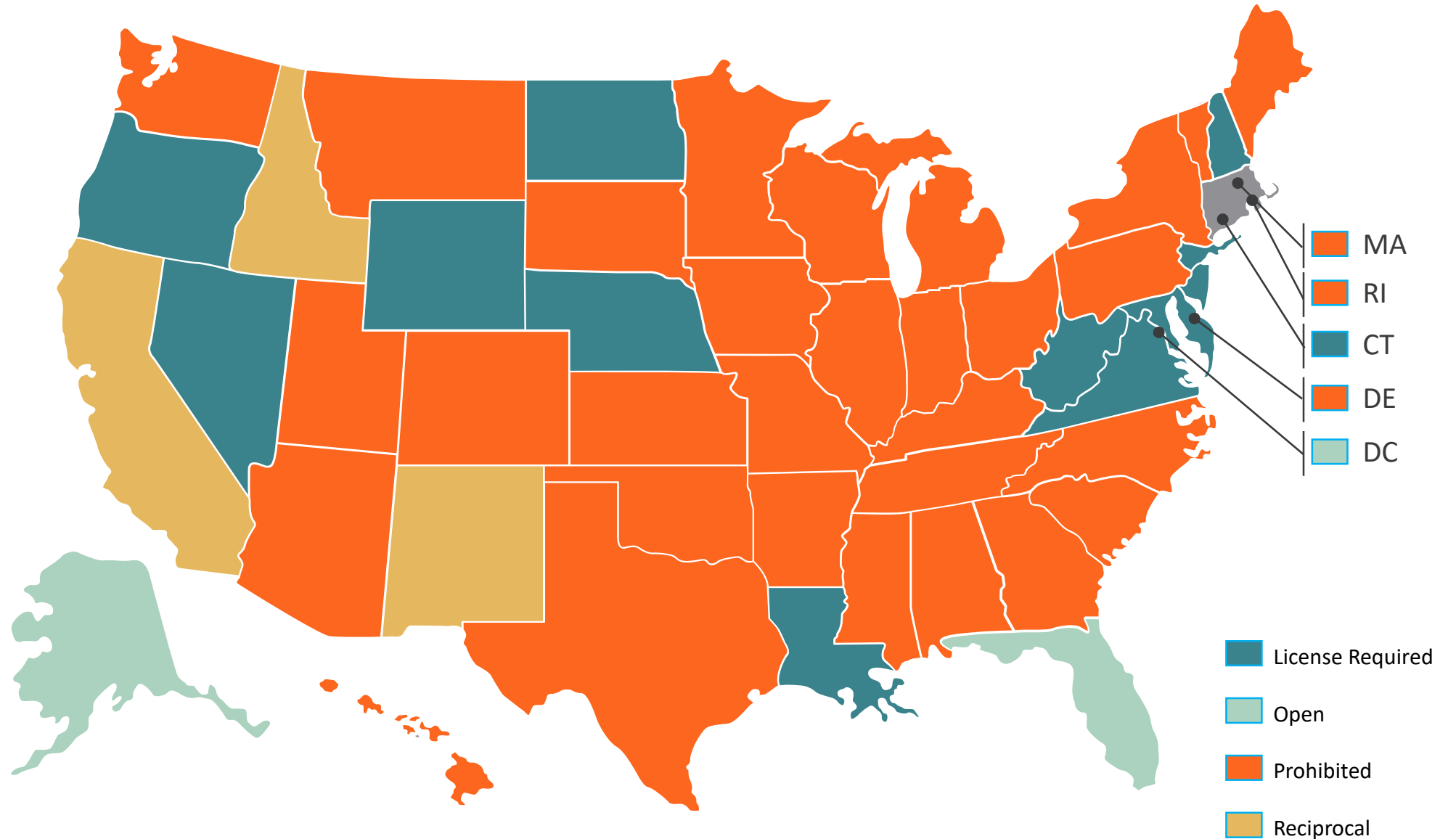


Questions?

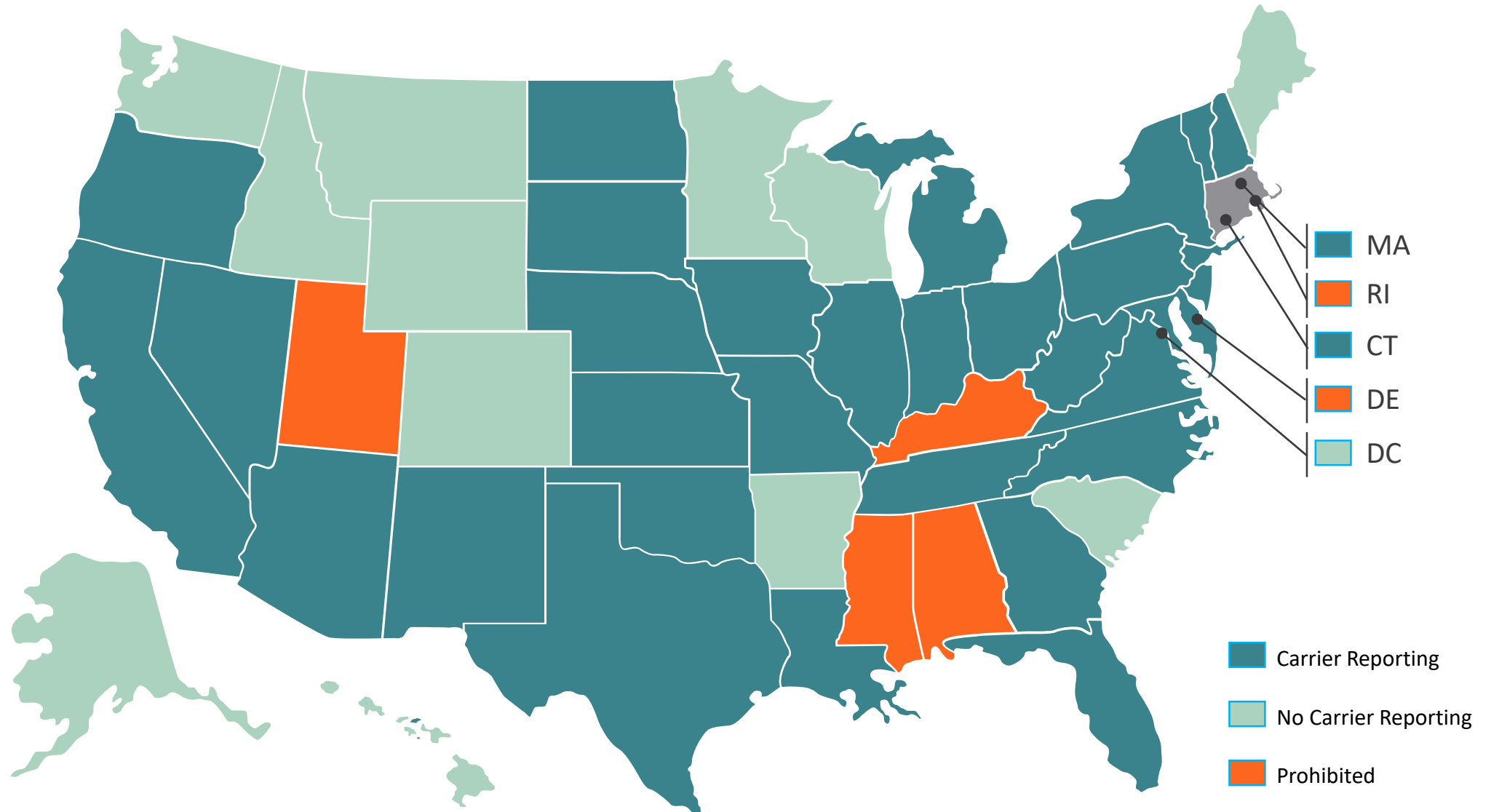
US Wineries can ship to 46 states



US Retailers can ship to 16 states



Common carriers report to and/or get licensed in 33 states



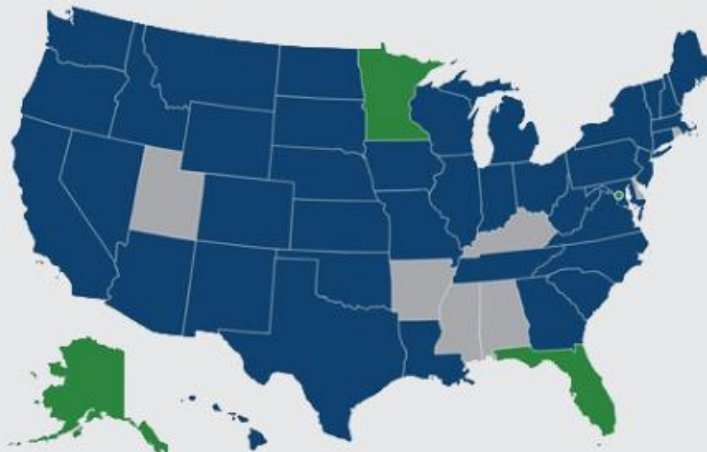
Wine Compliance Rules

Wine Institute + Avalara Collaboration

Wholesale Laws
for Wineries



Direct Shipping Laws for
Wineries



FAQs



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

LEBAMOFF ENTERPRISES, INC.,)	
JOSEPH DOUST)	
and)	
IRWIN BERKLEY)	
)	
Plaintiffs,)	Case No: 16-cv-08607
)	
vs.)	
)	Judge: Hon. William T. Hart
DONALD G. O'CONNELL, Commissioner and)	
Acting Chairman of the Illinois Liquor Control)	
Commission and)	
THOMAS GIBBONS,)	
PATRICIA PULIDO SANCHEZ,)	
& MELODY SPANN COOPER)	
Commissioners of the Illinois Liquor Control)	
Commission)	
)	
Defendants,)	
)	
and)	
)	
WINE AND SPIRITS DISTRIBUTORS)	
OF ILLINOIS)	
)	
Intervenor-Defendant.)	

FIRST AMENDED COMPLAINT BY CONSENT

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

TANNINS OF INDIANAPOLIS, LLC,)
d/b/a TASTINGS—A WINE EXPERIENCE,)
JACK BAILEY,)
STEVEN A. BASS,)
DAVID KITTLE,)
and)
BARRY BERNSON)

Plaintiffs,)

vs.)

MATTHEW BEVIN, Governor of Kentucky,)
ANDREW BESHEAR, Attorney General)
of Kentucky,)
and)
NORMAN E. ARFLACK, Executive of)
Director of the Kentucky Department of Alcoholic)
Beverage Control)

Defendants.)

Case No:

COMPLAINT

WINNE BANTA BASRALIAN & KAHN, P.C.

Court Plaza South - East Wing

21 Main Street, Suite 101

Hackensack, NJ 07601-0647

Tel: 201-487-3800

Fax: 201-487-8529

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ROBERT FREEMAN, JUDY FREEMAN,
JEAN-PAUL WEG., LLC d/b/a THE WINE
CELLARAGE, LARS NEUBOHN, and
PETER BERNSTEIN,

Plaintiffs,

v.

PHILIP D. MURPHY, Governor of New
Jersey, GURBIR SINGH GREWAL, Attorney
General of New Jersey, and JAMES
GRAZIANO, Acting Director of the New
Jersey Alcohol Beverage Control Division,

Defendants.

Case No.:

Civil Action

COMPLAINT