

# Kentucky Direct Shipping

**H.B. 415 (2020)**



**DISTILLED SPIRITS COUNCIL**  
OF THE UNITED STATES



## **Jay Hibbard**

**Distilled Spirits Council  
Vice President, State Government  
Relations**

# Background

- First Kentucky version of direct-to-consumer legislation passed in 2018 (HB400)
- Problems/flaws with HB400:
  - Required face-to-face transaction
  - Required product to go through the 3-tier system
  - Cumbersome to implement for distillers
- HB415 – next iteration of HB400 (passed 2018) and SB99 (Wine DTC/failed 2019)

# Process

- Stakeholder meetings organized by House Speaker (Aug '19); DISCUS invited to participate
- Initial version allowed in and out-of-state suppliers, importers, wholesalers and retailers to ship beer, wine and spirits directly to KY consumers and retailers
- Wholesalers and retailers removed from final version
  - Kentucky Wholesalers Assn. opposed any changes to existing system for spirits; proposed cumbersome, restrictive alternative
  - Retailers asked to be removed despite being included in HB400; delivery privileges only

# HB415 Provisions

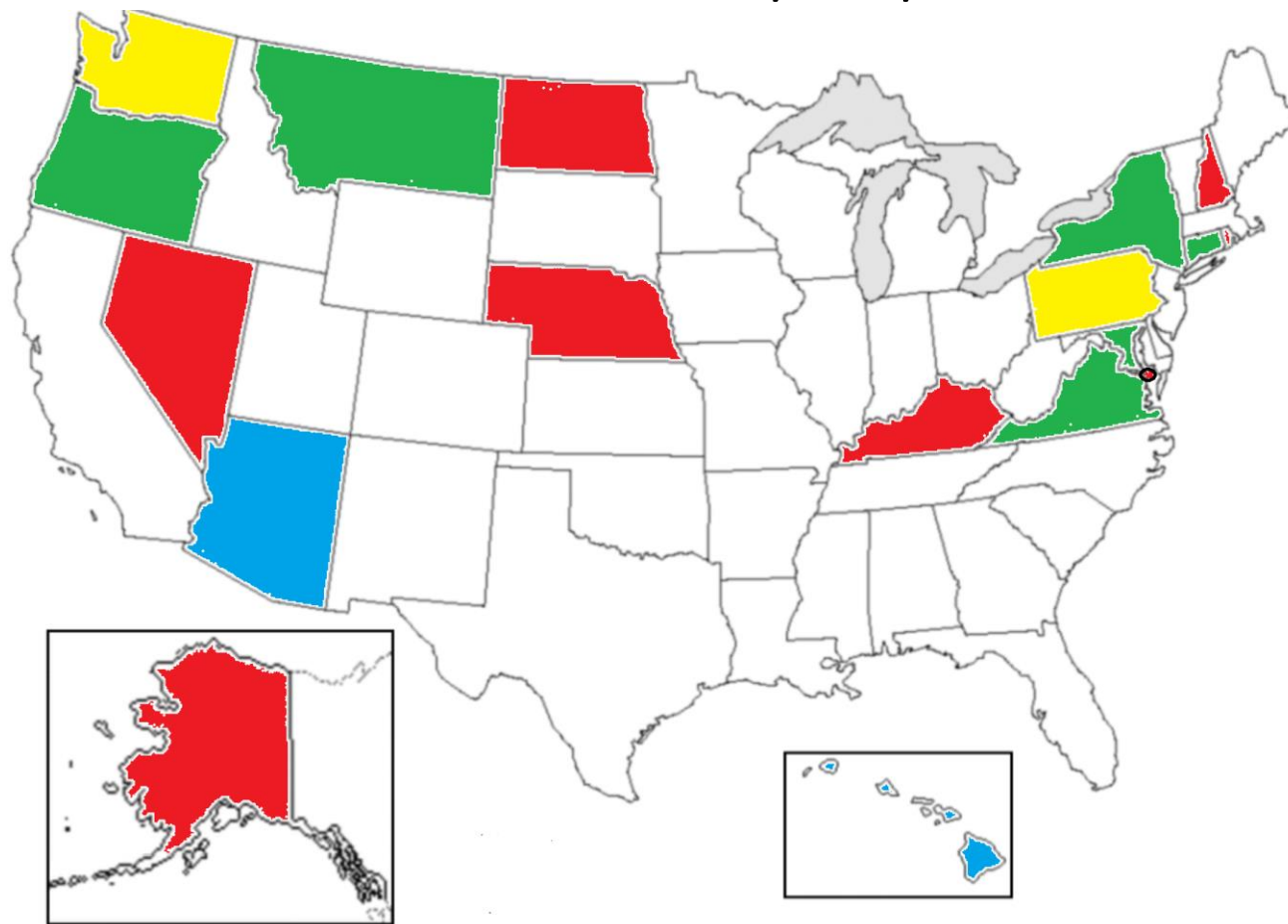
- Provides for direct-to-consumer shipping by producers only
- Meets 5 basic DISCUS Board principles
  - Treat all alcohol products equally
  - Avoid commerce clause issues
  - Maintain a regulatory framework that assures product integrity
  - Assures that all taxes are collected
  - Safeguards against underage access

## DISCUS Testimony on HB415

- 3-tier system will continue to be the core of distribution
- Alcohol commerce is evolving
- DTC is additional market access channel
- Markets must adapt to meet consumer demand

# States Allowing DTC for Spirits

Permanent/Pre-/Post COVID 19



## Permanent

AK, AZ\*\*, CT\*

HI\*, KY(1), NE, NV, NH,  
ND, RI\*\*\*, DC

## Pre-COVID 19

## Small Distillers In-State

PA, WA

## Post COVID-19

## Temporary In State Only

CT, MD, MT, NY, OR,  
VA\*\*\*\*

(1) Imports allowed

\* Personal consumer permit only \*\* Small distillers only \*\*\* Physical presence required \*\*\*\*Permanent expected

# Suppliers & Wholesalers: A contrast in messages

- Upon enactment, DISCUS “...applauded the leadership of the Kentucky House and Senate for passing into law HB 415” calling it “...a complement to the three-tier system in meeting this consumer-driven demand.”
- Upon enactment, WSWA said HB415 “...threatens the integrity of a smartly regulated marketplace for alcohol that has protected consumers for generations” and “...increases opportunities for fraud, and illicit products getting into the hands of unsuspecting consumers.”
- The full DISCUS statement can be seen [here](#).
- The full WSWA statement can be seen [here](#).



**Bob Budoff, J.D.**

**Distilled Spirits Council  
Senior Vice President for State  
Regulatory Affairs**





# Persons Eligible for a Direct Shipper License

- Manufacturer of alcohol beverages licensed in KY or in any other state
- Alcohol beverage supplier licensed under KRS 243.212 (current statute/not amended by H.B. 415)
  - Authorizes a supplier to import product into KY
  - May be issued to an out-of-state manufacturer, importer for a distillery, or importer of a non-U.S. brand
    - Who is the primary source of supply
    - Is licensed to do business in the state in which it is located
    - Is registered with the KY Department of Revenue (DOR)
    - Note: \$1,550 annual license fee under KRS 243.212 (except \$260 if imports of spirits (or wine) do not exceed 50,000 gallons)

# Activities Authorized by Direct Shipper License

- The holder of a direct shipper license is authorized to ship alcohol beverages to consumers
  - Consumer is defined as a purchaser who does not hold an ABC license or permit, purchases only for personal consumption only and not for resale, receives the product at a location other than a licensed premise and in a territory where product may be lawfully sold or received, and is of lawful drinking age
- Direct shipper may ship only from the licensed premises described in the direct shipper license application
- Direct shipper may ship only through common carriers
- Direct shipper may not sell or ship to a consumer if its address is in an area in which alcohol beverages may not be sold or received
  - The consumer, however, is subject to a fine for intentionally causing shipment to an unlawful address; the direct shipper and common carrier will be held harmless

# Application Requirements

- ABC will set the requirements and the form for the direct ship license application through issuance of a regulation
  - Address and description of the premise from which the manufacturer or supplier will ship to consumers
  - Out-of-state applicant must provide current license or other authorization to manufacture or supply alcohol beverages in the state where the applicant is located
  - Any other information ABC determines is necessary to implement and administer the direct shipper licensing program
- Out-of-state manufacturer applicant must show completion of the same registration required for a KY manufacturer regarding payment of applicable KY taxes in connection with direct shipments to KY consumers
- Out-of-state applicant is subject to same causes for license denial, suspension or revocation applicable to similarly situated in-state applicants (under KRS 243.100 and 243.500)

# Product That a Direct Shipper May Sell

- Includes all products that the licensee is authorized to sell
- For a manufacturer, this includes product that:
  - It produced
  - Is under a brand name that it owns or for which it has an exclusive license
  - Was produced for or by it under an existing written contract with another manufacturer
  - Was produced and bottled for it

# Taxes

- Direct shipper is required to charge and collect applicable KY taxes to consumer as part of selling price
  - Taxes must be separately identified and included in selling price on consumer invoice
  - Direct shipper must file return as required by KY
- Includes sales, use, excise, and wholesale taxes, regulatory license fees, and other assessments
  - Wholesale tax: 11% gross receipts of wholesaler (KRS 243.884); if wholesale price not readily available, calculated at 70% of retail price

# License Fees

- Annual license fee is \$100
- Local regulatory license fee is up to 5% annual gross sales and may be imposed by a city with population less than 20,000 or a county not containing city with population equal to or greater than 20,000
  - City or county imposing such regulatory fee shall file with ABC a report showing applicable fee amount and remittance address for direct ship (and other types of) licenses in its jurisdiction by August 1, 2020; any adoption of this fee or modification thereof after the effective date of this new law shall be reported to the ABC within 30 days of its adoption; and within 20 days after receipt, the ABC shall compile and publish the information so that is readily available to the public

# Quantity limits on direct shipments

- 10 liters of distilled spirits per consumer per month

## In person and remote sales

- Sales may be in person, electronically, online, by mail, or by telephone

# Reports and Recordkeeping, Audits and Inspections, Agent for Service of Process, and State Jurisdiction

- Direct shipper is required to:
  - File quarterly reports
    - Reports must show total amount shipped into KY per consumer, name and address of each consumer, purchase price and amount of taxes charged to consumer, and name and address of each common carrier
    - ABC shall create a reporting form through issuance of a regulation
  - Maintain records and provide access to the ABC and DOR
  - Allow DOR to audit the direct shipper's records or inspect its licensed premises upon request
    - DOR may recover reasonable costs if violation found
  - Appoint and maintain agent for service of process
    - If none, the direct shipper agrees that the Secretary of State shall serve as its agent
  - Submit to the jurisdiction of the ABC, DOR, the courts, and all other enforcement authorities of the state



# To Reduce Unlawful Shipments

- ABC shall issue regulations designed to reduce unlicensed deliveries and shipments in KY
- ABC will provide list of active direct shippers on a quarterly basis to common carriers to reduce unlicensed shipments

# To Ensure No Underage Direct Sales

- Direct shipper must notify consumer placing order that product will not be left unless the recipient provides a valid ID verifying that the recipient is over 21 years old
- All containers must be conspicuously labeled "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."
- At time of delivery the recipient shall present valid ID, and prior to transferring possession of the product, the delivery person shall:
  - Visually inspect the ID and verify recipient's identity
  - Verify by visual examination or via age verification technology that recipient is at least 21
  - Obtain the recipient's signature (recipient who signs is not required to be same person that placed the order)

# Common Carrier

- Is not liable for a violation of the underage provisions or the statutory prohibitions (KRS 243.250, 243.260 and 243.270) against activities in dry or moist territories, if the common carrier is properly licensed and acting on behalf of the consignor in the course and scope of a delivery or shipment to a consumer
- Must return product to the consignor if unable to complete delivery

# Off-sale Retailer (Quota Retail Package Licensee)

- Continued to be allowed to deliver to consumers
- These deliveries are permitted if the retailer purchased the product from a licensed wholesaler or licensee authorized to sell by package at retail (latter must be through the 3-tier system)
- The current quantity limit is unchanged (4.5 liter per consumer daily limit; increased to 9 liters beginning 1/1/21)

# In-state Distillery

- Continued to be allowed to sell to visitors from their gift shop or other retail outlet at the distillery
- The current quantity limit is unchanged (4.5 liter per consumer daily limit; increased to 9 liters beginning 1/1/21)

# Questions & Answers...

