



Succeeding in the World of Alcohol Legal Compliance

Jacob Appelsmith
Senior Counsel
Pillsbury Winthrop Shaw Pittman LLP
500 Capitol Mall, Suite 1800
Sacramento, CA 95814
(916) 329-4735
Jacob.appelsmith@pillsburylaw.com



Historical Arcana

Was there really more beer than water on the Mayflower?



People Drank More Back Then

- Per capita ethanol consumption: 1790: 5.8 gallons; 1830: 7.1 gallons; 2017: 2.9 gallons
- It was not uncommon for people to drink at breakfast, lunch, and dinner
- Drinking was part of daily life





Pre-Prohibition

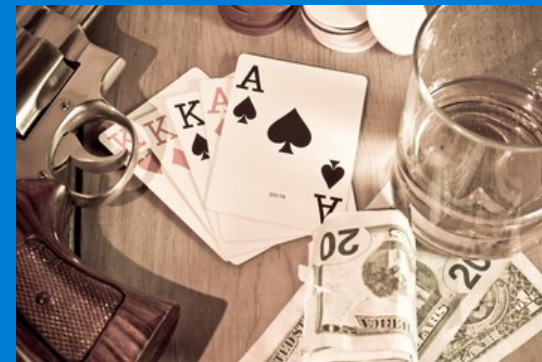
- **Mid-to-late 1800's**
 - Set the political stage
 - Saloons proliferated
 - Tied Houses a problem
 - Prohibition groups formed





Prohibition

- **The “Noble Experiment”**
- **18th Amendment – 1919**
- **1920-1933 – Alcohol was prohibited**
- **Rationale for adopting Prohibition:**
 - Reduce crime
 - Decrease poverty
 - Decrease death rate associated with alcoholic beverage use.
 - Increase quality of life
- **Positive effects: primarily health**
- **Negative: proliferation of crime**

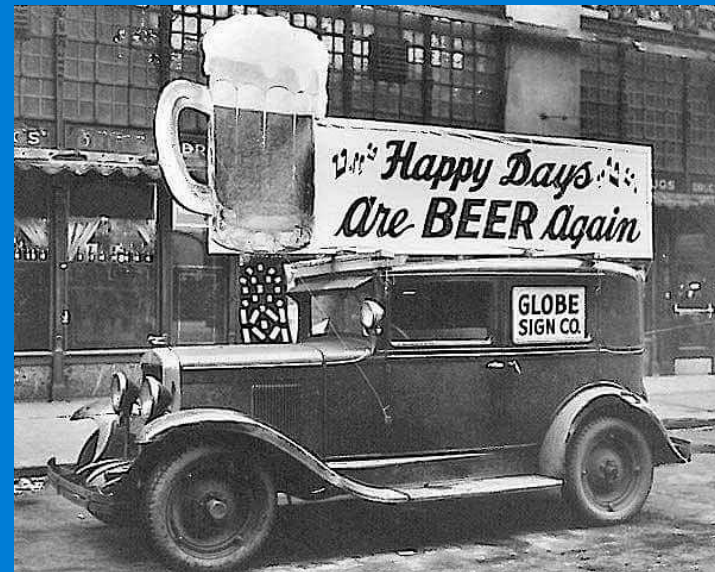




Repeal of Prohibition

- Same groups who supported Prohibition spoke out most for Repeal.
- Rationale for initiating Repeal (same as rationale for initiating Prohibition):
 - Reduce crime.
 - Decrease poverty.
 - Decrease death rate associated with alcoholic beverage use.
 - Increase quality of life.
- 21st Amendment – 1933
- Granted States Constitutional Authority to Regulate

Birth of Tied House Laws



Strong Public Support for Regulation

- 2019 poll by the Center for Alcohol Policy found among Americans:
 - 63% think the amount of regulation is about right
 - 15% think it is too restrictive
 - 9% think it is not restrictive enough

Poll (cont.)

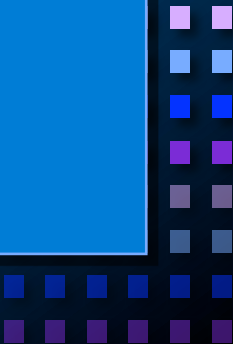
The public believes the most important considerations for lawmakers in crafting alcohol regulations are:

- 77% Reducing drunk driving
- 70% Protecting health and public safety
- 62% Reducing underage drinking
- 52% Encouraging moderation
- 48% Creating more jobs
- 42% Increasing economic development
- 28% Giving consumers more choices
- 22% Lowering prices
- 19% Allowing more businesses to produce and sell alcoholic products



Generally, There is Strong Industry Support for Regulation:

And Why Would That Be?

- It protects you from danger:
 - Undue regulation and wild new laws
 - Taxation
 - Unfair competition
- 

Business Plan

- Do you have one?
- What should it cover?
- For new wineries: timing is everything
- Advisors and Associations
- Regulatory compliance
- How do I want to sell?
- How can I sell?
- How may I sell?



Licensing

The TTB

The State

Local Permitting







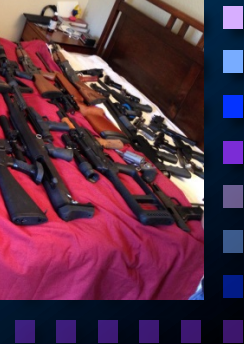
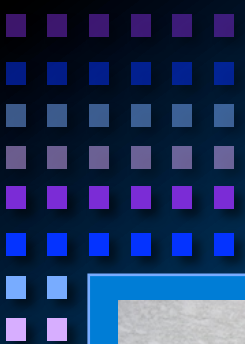
Your State's ABC
Is Not The TTB
(and vice versa)

TTB Focus

- Bonding premises
- Tax Collection
- Wine Labeling (COLAs)
- Standards of Fill
- Formulas

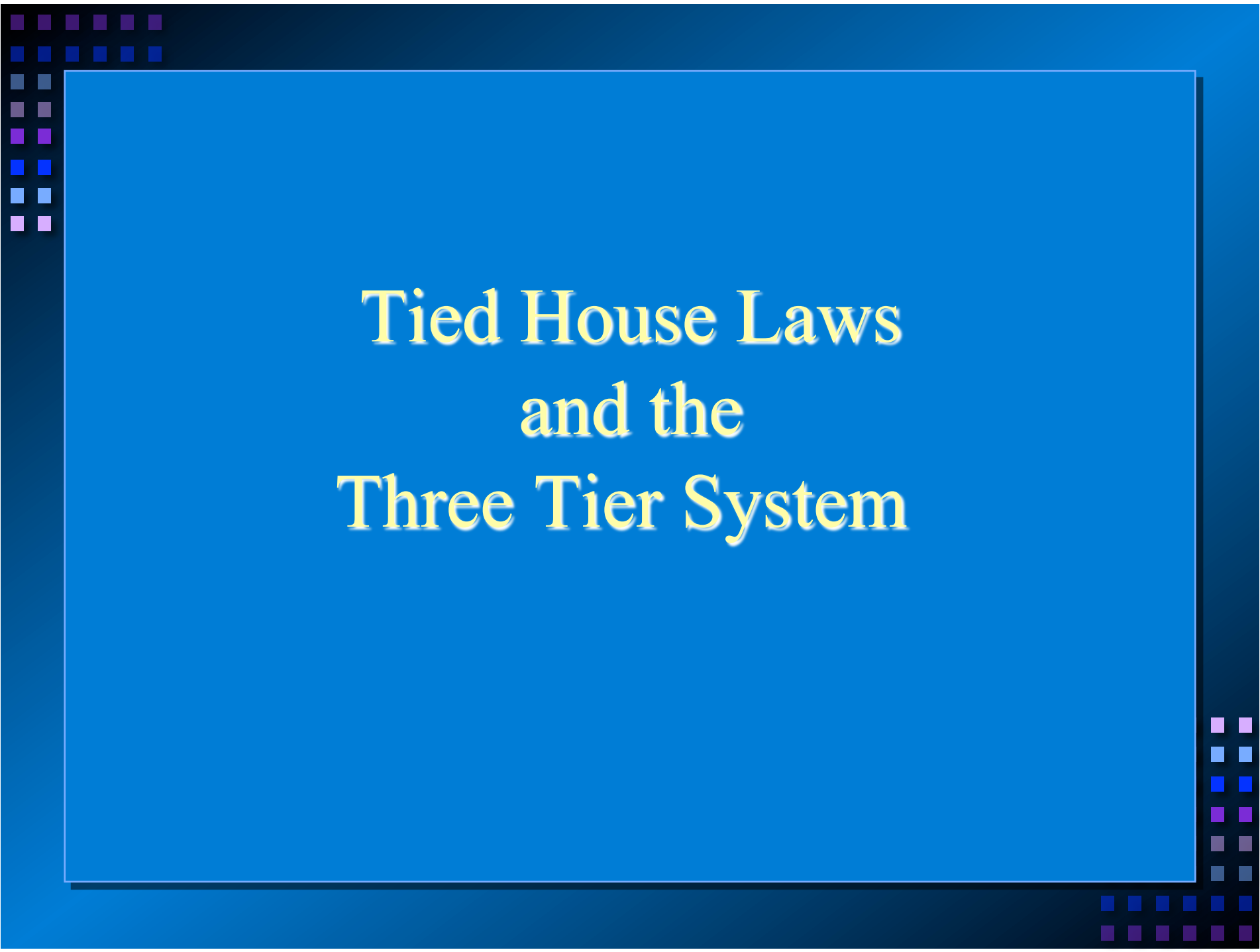
State ABC Focus

- Public health and safety
- Underage drinking
- Impacts of bars, restaurants, and liquor stores on communities
- Land use and zoning
- Criminal enforcement



Types of Regulators

- Practical, proactive, and reasonable
 - Prisoners of laws and lawyers
 - Jerks



Tied House Laws and the Three Tier System

The Three-Tier System

Supplier

- Holds federal basic TTB permit and bond;
- Holds state wine manufacturer license

Wholesaler

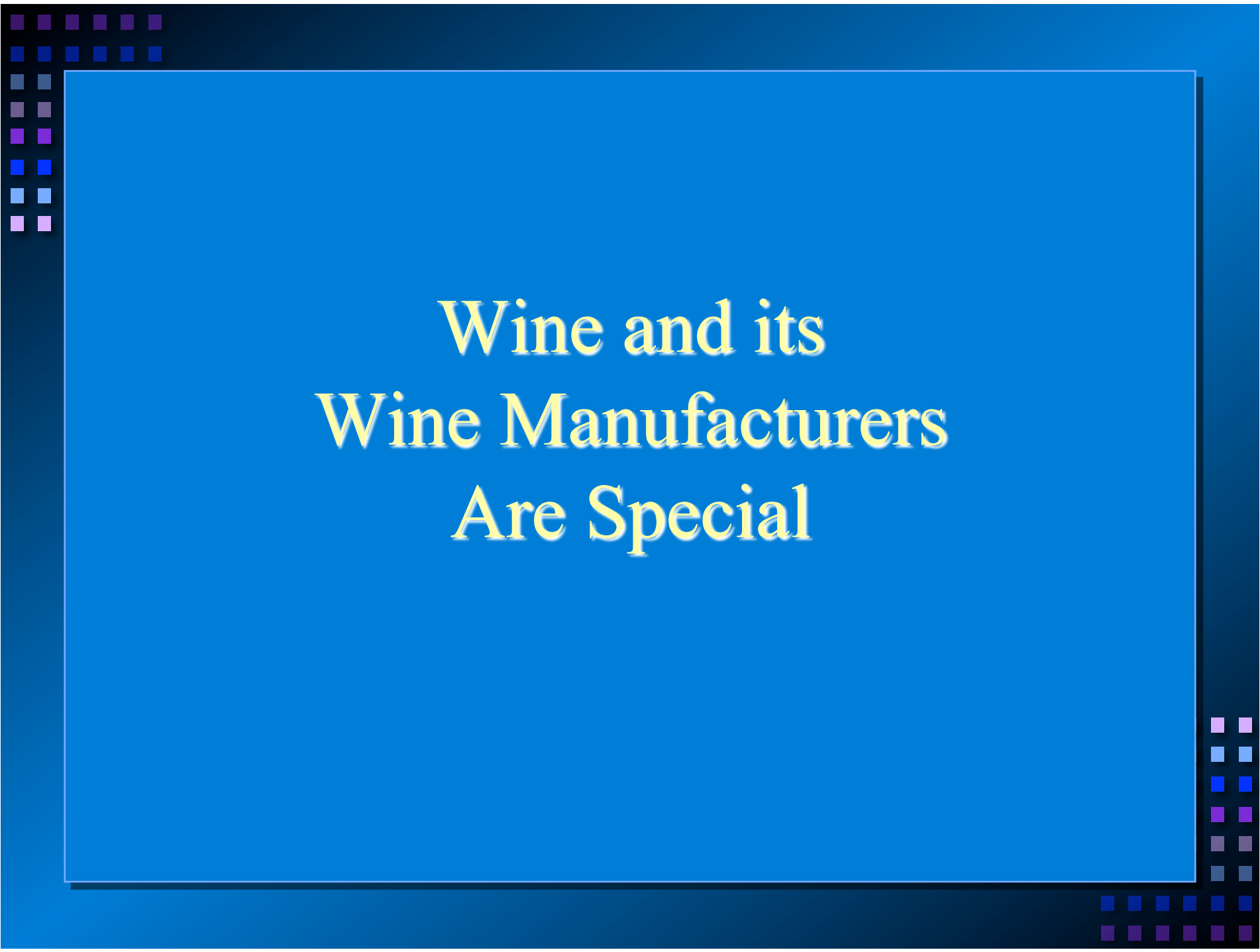
- Holds federal wholesale basic permit and state wholesale license
- Has sales force that calls on and delivers to retailers
- 80/20 rule: generally, 20% of a wholesaler's brands generate 80% of its revenue

Retailer

- Licensed by state, not the feds

Tied House

- The general rules
- Federal law
 - Consignment sales
 - Things of value
- State law
 - Ownership limitations
 - Things of value
- There are many exceptions



Wine and its
Wine Manufacturers
Are Special

Your Exceptional Privileges (e.g, California)

- You can manufacture, distribute, and retail (all three tiers!)
- In retail, you can:
 - Sell your wine for consumption at the premises or off
 - Sell anyone's wine or brandy in your winery's restaurant
 - Operate a wine and beer, but not a general, liquor store
 - Operate restaurants away from the winery:
 - Unlimited number that do not sell your wine
 - Two restaurants where you may sell your own wine, but it cannot total more than 15% of wine sales
 - Have a second tasting location
 - Allow minors in all your establishments

Marketing and Advertising

- Things of value
- Paying for the privilege of advertising
- Sponsorships
- Retailer advertising specialties
- Consumer advertising specialties
- Sampling, tastings, and courses of instruction
- Free goods
- Social media

Advertising a Retailer

New York

- Two unaffiliated retailers are listed
- Price of the wine is not included
- The listing is the only reference to the licensee
- The retailer is relatively inconspicuous
- No pictures or illustrations of the retail establishment
- No laudatory references

Advertising a Retailer

California

- Two unaffiliated retailers are listed
- Price of the wine is not included
- The listing is the only reference to the licensee
- The retailer is relatively inconspicuous
- Pictures or illustrations of the retail establishment (but no videos)
- No laudatory references
- The Winemaker's Dinner

Other State Examples

- Kentucky allows social media advertising generally without guidance
- North Carolina requires written approval from the Commission prior to entering into any agreement to engage in activities as a sponsor for any promotion
- Minnesota requires pre-approval of all advertising via submission to the Board

Some Advice

- When considering any new marketing strategy, changing business models, or engaging in any sort of relationship with a retailer: make sure it is legal
- Have a detailed plan for what you want to do and how you want to do it
- Consult an association, an attorney, a consultant, the TTB, the ABC

Sales at the Winery

- Tasting Fees
- Sales to go
- Restaurants
- Beer and Spirits
- Consumer information gathering
- Other locations (e.g., farmer's markets)

Direct to Consumer Shipping

- Legal in 47 states
- Prohibited: Delaware, Utah, and Mississippi
- Laws differ by state
- Some of the issues on which they differ:
 - Limits per consumer
 - Only available to small wineries
 - Whether a license or permit is required
 - Whether on-site ordering is required
 - Limited to wines not sold in three-tier
 - Some permit a winery to sell any winery's wine, others not
 - Sales tax

Direct to Consumer Shipping

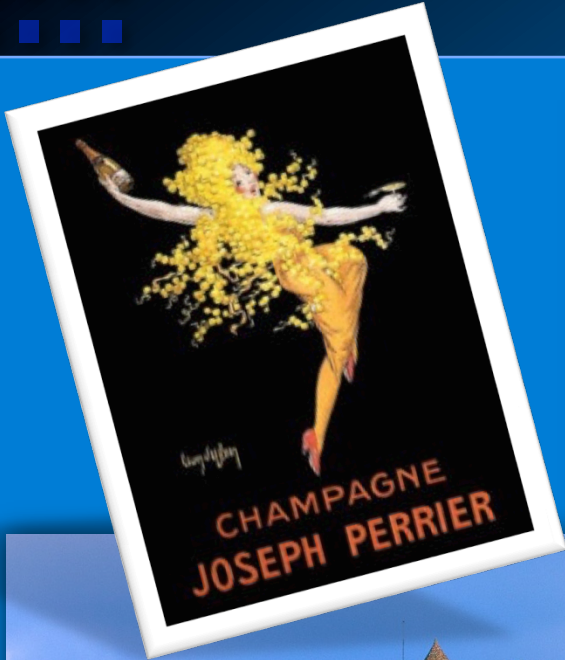
- Is it worth the trouble?
- Yes, because apparently people really like to buy wine on the internet:
 - Average value per order, repeat costumers, and consumer orders per year are the highest for all goods sold in e-commerce
 - Wine clubs lead the way (70%)
- Gather data at your tasting room

Distribution

- May I sell directly to retailers, or do I need a wholesaler?
- If I need a wholesaler:
 - Distribution Agreements
 - Franchise Provisions
 - Franchise law states
 - Termination Provisions

Unfair Competition Trends

- Uninformed retailers
- Giant retailers
- Non-licensees
- Increasing intentional, improper activity of large, sophisticated suppliers, wholesalers, and retailers



Thank you and Questions?

- Jacob A. Appelsmith
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