



The 21st Amendment Enforcement Act: Background & Recent Developments

Background

- The 21st Amendment Enforcement Act ([27 USC 122a](#)) is a federal law that was enacted by Congress on October 28, 2000.
- The Act **authorizes state attorneys general to bring a civil action against out-of-state entities for injunctive relief** (not monetary penalties) in federal district court to enforce violations of their state laws relating to the importation or transportation of alcohol.
- An injunction restrains a party from doing certain acts (e.g., stop shipping alcohol to residents) and/or requires a party to act in a certain way (e.g., comply with state alcohol laws)
- In the motion for injunctive relief, the attorney general **must show reasonable cause to believe the out-of-state entity is engaged in illegal shipping**. Specifically, that the entity “is engaged in, or has engaged in, any act that would constitute a violation of a State law regulating the importation or transportation of any intoxicating liquor.”
- Violations of state law that constitute illegal shipping could include instances where the out-of-state entity:
 - Ships into the state but the state prohibits that type of shipping (e.g., no DTC spirits shipping allowed).
 - Is eligible to obtain a shipping license but failed to get one.
 - Ships products outside the scope of its license (e.g., shipping spirits when only wine shipments are permitted).
- Without the 21st Amendment Enforcement Act, states can file a lawsuit in state court but may need to prove jurisdiction over the out-of-state entities, which can be difficult. **Without jurisdiction, a state has no legal remedy to stop out-of-state entities from illegally shipping alcohol into its states.**
- WSWA supported the passage of the 21st Amendment Enforcement Act and encourages its use because **illegal shipping creates a wide range of transparency, accountability, health, and safety problems** for regulators and consumers including:
 - the lack of a clear chain of custody to prevent product adulteration,
 - the weakened ability for regulators to enforce state alcohol laws,
 - the increased risk of irresponsible consumption and underage access,
 - the loss of state taxes, and
 - the undercutting of local businesses.



21st Amendment Enforcement Act Legal Actions

Ohio

- On July 8, 2020, the **21st Amendment Enforcement Act was utilized for the first time** when Ohio Attorney General David Yost filed [a motion in federal court](#) for a preliminary injunction **against seven out-of-state entities** including Wine.com, ReserveBar, Winc, Cocktail Courier, Wine Country Gift Baskets, Pacific Wine & Spirits, and Ace Spirits after a month-long investigation determined they were circumventing Ohio's law that limits the type of entity permitted to ship only wine directly to Ohio residents to only wine brand owners, wine importers, and certain wine manufacturers and requires those entities to obtain a state license. All cases were resolved by consent decree in which the **defendants agreed to cease all illegal shipments of alcoholic products into Ohio.**

Michigan

- On October 8, 2020, Michigan Attorney General Dana Nessel filed motions in federal court seeking preliminary and **permanent injunctions and civil penalties of \$25,000 under the 21st Amendment Enforcement Act** against two California entities, [Vintner's Collective LLC](#) and [Go to Gifts Inc.](#), after a MLCC investigation found they illegally shipped wine into the state and sent cease and desist letters in 2019.
- On May 5, 2021, General Nessel **filed a second round of cases** under the 21st Amendment Enforcement Act. Stemming from earlier carrier reporting enforcement actions and sting operations, the lawsuits allege **four out-of-state entities, three wineries and one retailer**, shipped wine directly to consumers without obtaining a direct shipper license. Three out of the four cases were resolved by consent decrees while the fourth case was voluntarily dismissed.
- On November 30, 2021, General Nessel filed a federal complaint for a **permanent injunction against Cellar Collections, a wine retailer from Napa, California**, for illegally shipping alcoholic beverages into the state. The case was resolved by a consent decree on February 16, 2022.
- On January 4, 2022, General Nessel filed a federal complaint for a permanent injunction against California winery Hunt Cellars for illegally shipping wine into the state. The case was resolved by a consent decree on April 6, 2022, in which **Hunt Cellars agreed to a \$5,000 fine, to cease all illegal shipments**, and to educate its staff and members to understand that it is illegal to sell or ship intoxicating liquors to consumers in Michigan.
- On March 16, 2022, General Nessel filed suits against **three California retailers for violating the Michigan Consumer Protection Act and the 21st Amendment Enforcement Act** for illegally shipping wine directly to Michigan consumers.
- In May 2022, a settlement between General Nessel and Wine.com resulted in Wine.com **acknowledging it was illegally shipping wine** to Michigan customers for years, agreeing to not renew its direct shipper license and **paying a \$10,000 fee.**

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