

MEMORANDUM

January 9, 2019

To: DTC Study Committee

FROM: Steve Frost

Re: SUMMARY OF POTENTIAL DTC UNIFORM ACT PROVISIONS

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Before we begin our uniform act discussions, I wanted to have a better understanding of the provisions that might be included in a uniform act. This understanding is necessary for two reasons. First, we need to see if we can improve upon existing statutes and address concerns of stakeholders (for example, confirm deliveries in a state are consistent with that state's laws, improve reporting to identify improper sales and assure tax collections). Second, this understanding is necessary before we can discuss whether uniformity is possible or appropriate or the broader policy issues we have already identified.

Please let me know if there are other provisions, whether or not addressed by existing statutes, that we should consider.

Provisions

Covered products. We are beginning with distilled spirits, but should wine and beer be included?

Requirements for a license. The following potential requirements should be considered:

- 1) An applicant may be required to be licensed in the state where the customer is located (or where spirits are being shipped? Other?).
- 2) The director of the licensing authority may have ability to determine that the person is capable and reliable and is qualified to hold a direct shipment license.
- 3) The licensee may be required to consent to jurisdiction of agencies and courts of the licensing state and to audits of records and to maintenance of records for an appropriate period of time.
- 4) Deemed consent of jurisdiction for agencies to enforce these laws with respect to any person who knowingly ships to a purchaser in the licensing state.
- 5) Exemptions? Smaller licensees? (Nebraska provides an exception for wholesalers who may receive less than 3 gallons of wine per year from a person not licensed – is a similar exemption appropriate for wholesalers of spirits?)

6) Is this license limited to producers or could wholesalers and retailers also ship under this act? (Nebraska and New Hampshire are examples of a state that allows “manufacturers” and others, including wholesalers and retailers of alcoholic liquor.)

7) How should fulfillment houses be treated for these purposes? Could a licensee use a fulfillment house for order processing, packaging and shipping? Would a wine club or other club be a fulfillment house for these purposes? How would licensing, reporting, and jurisdiction rules apply in these instances?

8) State would set license fees.

Information included in application for license. Licensing may require disclosure of information regarding: 1) places of business, 2) person or persons authorized to represent the applicant in the licensing state, 3) disclosure of criminal convictions, 4) copies of current licenses (including a license in the state where located), 5) orders shipped to purchasers in the licensing state during prior [three] years, 6) applicant’s tax number issued by the department of revenue in licensing state, and 7) other information requested by licensing state.

Statutory reasons to prohibit issuance of a license. Might include prior revocation of a license within [one] year of application and conviction of a felony within [five] years of application.

Bases of revocation of a license. [TBD]

Duration of license. [TBD]

Transferability of licenses. Licenses should explicitly be non-transferable.

Production and shipment limits. Limitations might include: 1) direct sales could be limited to smaller producers (if so, what limits would apply in measuring smaller producers?), 2) could include quantity limits on shipments, 3) could make explicit that licensee may only ship spirits produced by the licensee (if the licensee is a distillery) [Nebraska requires “manufacturers” to identify brands that will be sold in state], 4) New Hampshire allows lifting of limits for products not sold in New Hampshire, and 5) impose limits on shipments to licensees within state?

Sale requirements imposed on licensees. Requirements might include: 1) licensee must verify the age of the purchaser and act should specify method of verification (e.g., copy of valid government photo identification), 2) a purchaser must have been eligible to carry wine lawfully within licensing jurisdiction, 3) only ship product owned by shipper, 4) not ship product wholesalers in licensing state have voluntarily agreed to not bring into state at request of state, 5) only permit shipment by common carrier, and 6) not permit sales into parts of a state where alcohol may not be sold.

Labeling requirements. For example, box must include statement to effect “contains alcohol, signature of person aged 21 or older required for delivery.”

Delivery requirements. Requirements may include: 1) delivery must be made to a person at least 21 years of age, 2) could require inspection by delivering agent of a valid government photo

identification, and 3) could address whether stores, such as Walgreens or CVS, may accept shipment and deliver product after satisfying ID inspections of recipients.

Payment. May require that payment must be collected by licensee not later than at time of delivery.

Licensee Reports with licensing state. Information required may include: 1) licensee must file a report [annually] describing shipments into jurisdiction during year, 2) require reporting of violations by shipper of home state violations or of direct shipping laws of other states, and 3) consider what information may be required by act.

Penalties. Penalties for failure to comply with licensing jurisdiction's direct shipment laws. [TBD]. New Hampshire also provides penalties for persons in New Hampshire that violate direct sale statutes of other states, including fines and suspension and revocation of New Hampshire liquor licenses.

Common carrier requirements. Requirements may include: 1) should common carriers be required to maintain records, including records of product shipped to purchasers in licensing jurisdiction, including recipient names and addresses, shipment and delivery dates and products shipped.

2) Agreement by common carriers to remit records kept to authorities in licensing state.

3) Common carriers to report on whose behalf shipments are made within the jurisdiction to enable licensing state to audit licensees and check for illegal sales. Need to consider *Rowe v New Hampshire*, 128 S. Ct. 989 (2008).

#### Taxes.

1) Require licensees to pay taxes paid by domestic sellers and to add these taxes to sales price.

2) Require licensees to submit sworn returns with revenue agencies showing amount of product sold in state, accrued taxes and other information required by authorities.

3) Impose penalties for failure to pay tax when due, together with interest.

4) Consider electronic filing of returns (though more an issue for tax statutes that will not be addressed by uniform act).

#### Bonds.

Each direct shipment licensee that makes deliveries into state may be required to file a bond or bonds payable to state and conditioned on payment of all taxes, penalties and other obligations of direct shipment licensee. Amount of bond to be equal to [twice direct shipment licensee's estimated monthly tax, but not less than \$500]. Direct shipment licensees that have made timely payment of all taxes for the twelve consecutive months immediately preceding current month are exempt from bond requirement.

Effective date provisions. [TBD]