

# Uniform Alcohol Direct-Shipping Compliance Act\*

Drafted by the

Uniform Law Commission

and by it

Approved and Recommended for Enactment  
in All the States

at its

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*Without Prefatory Note and Comments*



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## **Uniform Alcohol Direct-Shipping Compliance Act**

### **Section 1. Title**

This [act] may be cited as the Uniform Alcohol Direct-Shipping Compliance Act.

### **Section 2. Definitions**

In this [act]:

(1) “Alcoholic beverages” has the meaning in [cite to state’s law defining alcoholic beverages].

(2) “Carrier” means a person that:

(A) holds itself out to the general public as engaged in the business of transporting goods for a fee; and

(B) is engaged in the business of transporting and delivering alcoholic beverages directly to consumers.

(3) [“Commission”] means [this state’s alcoholic beverage commission].

(4) “Consignor” means a person that provides alcoholic beverages to a carrier for shipment.

(5) “Consumer” means an individual who orders, or for whom is ordered, covered alcoholic beverages to be shipped to the individual in this state. The term does not include an individual who [:

(A)] holds, or acts on behalf of a person that holds, an alcoholic-beverage [license] [permit] authorizing the receipt of shipments of alcoholic beverages for resale or production [; or

(B) orders, or for whom is ordered, alcoholic beverages sold by a retailer licensed in this state for delivery not later than [24] hours after the order and not more than [50]

miles from the retailer's licensed premises].

(6) "Covered alcoholic beverages" means [list types of alcoholic beverages for which the state authorizes direct-to-consumer shipments].

(7) "Direct-shipper license" means a [license] [permit] issued by the [commission] authorizing the sale and shipment of covered alcoholic beverages directly to a consumer.

(8) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(9) "Fulfillment provider" means a person that acts on behalf of a licensed direct shipper to ship covered alcoholic beverages to a consumer and arranges for transport of covered alcoholic beverages by a carrier to the consumer.

(10) "Licensed direct shipper" means a person that holds a direct-shipper license.

(11) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity. The term includes a protected series, however denominated, of an entity if the protected series is established under law that limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

(12) "Record" means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(13) "Registered fulfillment provider" means a fulfillment provider registered

under Section 3.

(14) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

**Legislative Note:** *In paragraph (3), a state should replace the term “commission” and bracketed agency description with the agency reference in the state.*

*The bracketed text in paragraphs (5) and (7) allows a state to adjust these paragraphs to reflect whether the authorization is in the form of a license or permit. If appropriate, the state also may insert another form of authorization, such as registration. The state may prefer to substitute cross references to state law authorizing direct shipping to a consumer.*

*The bracketed text in paragraph (5)(B) should be included in a state that allows local delivery by or through a licensed retailer of alcoholic beverages supplied by an in-state wholesaler for which orders are received electronically, by telephone, or by other means. The bracketed text allows the state to tailor the exclusion from the definition of “consumer” to fit the specific authorization granted to the licensed retailer under state law.*

*In paragraph (5)(intro.), a state may substitute “person” for “individual” in each instance in which the term is used if the state allows shipment of covered alcoholic beverages to an entity without naming a specific individual as the intended recipient of the shipment.*

*In paragraph (6), depending on the types of alcoholic beverages that may be shipped, the state also may need to add to this section the state’s definitions of those alcoholic beverages.*

### **Section 3. Registration of Fulfillment Provider**

(a) A fulfillment provider must register with the [commission] before shipping covered alcoholic beverages into or within this state.

(b) Subject to subsection (c), an application for registration as a fulfillment provider must include:

(1) each address from which the fulfillment provider will ship covered alcoholic beverages to a consumer;

(2) the name, business address, and license number of each licensed direct shipper, with the name stated as it appears on the direct-shipper license, on whose behalf the

fulfillment provider will ship covered alcoholic beverages to a consumer; and

(3) other information the [commission] requires.

(c) To register under this section, a fulfillment provider must agree to:

(1) allow the [commission] to inspect and audit its records under Section 6(b);

(2) allow the [commission] to inspect a location under Section 6(c);

(3) appoint and maintain an agent for service of process under Section 6(d);

and

(4) submit to the jurisdiction of the [commission] and the courts and other enforcement authority of this state in a matter relating to enforcement of this [act] or law of this state other than this act regulating the shipment of alcoholic beverages directly to a person in this state.

(d) A registered fulfillment provider shall provide [monthly] to the [commission] a current list of all licensed direct shippers on whose behalf the fulfillment provider ships covered alcoholic beverages to consumers. The list must include the name, business address, and license number of each licensed direct shipper, with the name stated as it appears on the direct-shipper license. A fulfillment provider is not required to provide a list under this subsection in a [month] in which the list is unchanged from the previous [month].

(e) A fulfillment provider may ship covered alcoholic beverages to a consumer only if:

(1) the fulfillment provider maintains a current registration under this section that is not suspended, revoked, or canceled;

(2) the covered alcoholic beverages were provided to the fulfillment provider by a licensed direct shipper;

(3) the package containing the covered alcoholic beverages clearly indicates:

(A) on the shipping label, the name of the fulfillment provider and the address from which the fulfillment provider originated the shipment, as they appear in the registration, as consignor and the name and address of the consumer as intended recipient; and

(B) on the package or shipping label, the name and license number of the licensed direct shipper that provided the fulfillment provider the covered alcoholic beverages contained in the package; and

(4) the shipment is authorized under other law of this state.

(f) A registration under this section is valid for [two] years and may be renewed for [two]-year periods. [The fee for the initial registration and each renewal is \$[50].] If there is a material change in the information provided to the [commission], the registered fulfillment provider shall provide updated information to the [commission] not later than [14] days after the change.

(g) Use by a licensed direct shipper of the services of a registered fulfillment provider does not relieve the direct shipper of a requirement imposed on the direct shipper under [cite to applicable law of the state].

[(h) The [commission], after notice and an opportunity for an evidentiary hearing, may suspend, revoke, impose conditions on, or deny renewal of the registration of a fulfillment provider [for good cause, including a violation listed in Section 10(a)(1)].]

[(i) A registered fulfillment provider may cancel its registration. Cancellation does not affect the [commission's] jurisdiction relating to activity before the cancellation. If an enforcement proceeding is pending against a registered fulfillment provider, the fulfillment provider may cancel its registration only with consent of the [commission].]

***Legislative Note:*** *This section requires a registered fulfillment provider to identify to the commission each licensed direct shipper on whose behalf it makes shipments. A state may choose*

*to amend its law to require each licensed direct shipper to notify the commission of all fulfillment providers it has engaged to make shipments on its behalf. The state may need to clarify in its law that a licensed direct shipper may engage the services of a registered fulfillment provider to make a shipment to a consumer.*

*In subsection (d), “monthly” is bracketed because a state may prefer an alternative period, such as quarterly or the fulfillment provider’s reporting period under Section 5.*

*The text in the second sentence of subsection (f) is bracketed because a state may prefer not to impose a registration fee.*

*Subsections (h) and (i) are bracketed because the subjects may be covered under a state’s administrative procedure act or may fit better under other state law addressing similar matters.*

*In subsection (h), the bracketed text after “provider” allows a state to adopt a different standard, including listing specific conduct or a violation for which the commission may suspend, revoke, impose conditions on, or deny renewal of the registration.*

*In subsection (g), a state should cite to law that imposes restrictions on direct-to-consumer shipments, such as the quantity of covered alcoholic beverages that may be shipped to a consumer.*

*The information a state requires under subsection (b)(3) could include, for example, criminal history information. In subsection (h), a state may include the bases for disqualification of an applicant from initial registration consistent with the state’s existing standards for disqualification of an applicant from initial issuance of other alcohol beverage licenses.*

*This section does not include an interest-restriction provision; but, if a state chooses, for example, to prohibit common ownership and operation by a licensed direct shipper and fulfillment provider, the state may amend its law establishing eligibility requirements for a direct-shipper license to preclude a registered fulfillment provider from holding a direct-shipper license or include interest restrictions in subsection (h) as disqualifying criteria for initial registration.*

*A state may choose to reference its administrative procedure act to clarify that a decision relating to initial registration or under subsection (h) is reviewable in the same manner applicable to other alcoholic beverage licenses in the state.*

#### **Section 4. Delivery by Carrier from Licensed Direct Shipper or Registered**

##### **Fulfillment Provider**

(a) Subject to subsections (b), (c), and (d), a carrier may not deliver to a consumer a package known by the carrier to contain alcoholic beverages unless the consignor is:

(1) a licensed direct shipper and the carrier has verified the direct-shipper license for the current license period; or

(2) a registered fulfillment provider and the carrier has verified the registration under Section 3 for the current registration period.

(b) A carrier that verifies that a direct shipper has a direct-shipper license for the current license period may consider the license to be valid for the remainder of the license period unless the carrier receives notice from the [commission] that the license has been [suspended, revoked, or canceled].

(c) A carrier that verifies that a fulfillment provider is registered under Section 3 for the current registration period may consider the registration to be valid for the remainder of the registration period unless the carrier receives notice from the [commission] that the registration has been suspended, revoked, or canceled.

(d) A carrier may consider an expired direct-shipper license or fulfillment provider's registration to be valid if:

(1) an application for renewal of the direct-shipper license or fulfillment provider's registration was submitted to the [commission] in the time required;

(2) the carrier reasonably believes that the [commission] is experiencing delays in processing renewal applications and has not acted on the application for renewal because of the delays; and

(3) the [commission] has not informed the carrier that it may no longer consider the expired direct-shipper license or fulfillment provider's registration as valid under this subsection.

**Legislative Note:** In subsection (b), a state should insert the proper terminology for suspension, revocation, or cancellation of a direct-shipper license.

*A state that requires statutory reference to its administrative procedure act in order to confer administrative authority on an agency should include such a reference in this section.*

## **Section 5. Shipment Report**

(a) Except as provided in subsection (e), a registered fulfillment provider shall file with the [commission] a [monthly] report that includes:

(1) the name, business address, and registration number of the fulfillment provider;

(2) the total [gallons] [liters] of each type of covered alcoholic beverages the fulfillment provider shipped to consumers during the reporting period, categorized according to the state's tax classification for alcoholic beverages; and

(3) for each shipment of covered alcoholic beverages to a consumer during the reporting period:

(A) the name, business address, and license number of the licensed direct shipper, with the name stated as it appears on the direct-shipper license, on whose behalf the fulfillment provider shipped the covered alcoholic beverages;

(B) the name and address of the consumer to whom the covered alcoholic beverages were shipped;

(C) the address from which the fulfillment provider originated the shipment, stated identically as an address provided by the fulfillment provider under Section 3(b)(1);

(D) the date the shipment was delivered;

(E) the type and quantity by volume of covered alcoholic beverages shipped, with the type categorized according to the state's tax classification for alcoholic beverages; and

(F) the name and business address of the carrier that delivered the covered alcoholic beverages and the carrier's parcel tracking number for the shipment.

[(b) Except as provided in subsection (e), a licensed direct shipper shall file with the [commission] a [monthly] report that includes:

(1) the name, business address, and license number of the licensed direct shipper;

(2) the total [gallons] [liters] of each type of covered alcoholic beverages shipped to consumers by the licensed direct shipper, or by a registered fulfillment provider on behalf of the licensed direct shipper, during the reporting period, categorized according to the state's tax classification for alcoholic beverages; and

(3) for each shipment of covered alcoholic beverages to a consumer during the reporting period:

(A) the name and address of the consumer to whom the covered alcoholic beverages were shipped;

(B) the date the shipment was delivered;

(C) the type and quantity by volume of covered alcoholic beverages shipped, with the type categorized according to the state's tax classification for alcoholic beverages;

(D) the purchase price of the covered alcoholic beverages shipped and the amount and type of each tax charged relating to the covered alcoholic beverages;

(E) if the covered alcoholic beverages were shipped for the licensed direct shipper by a fulfillment provider, the name, business address, and registration number of the fulfillment provider, with the name stated as it appears on the fulfillment provider's registration; and

(F) if the covered alcoholic beverages were delivered by a carrier, the name and business address of the carrier and the carrier's parcel tracking number for the shipment.]

[(c) Except as provided in subsection (e), a carrier shall file with the [commission] a [monthly] report that includes:

(1) the name and business address of the carrier;

(2) a list containing the name, business address, and license or registration number of each licensed direct shipper and registered fulfillment provider with which the carrier has an agreement to ship alcoholic beverages, with the name stated as it appears on the direct-shipper license or fulfillment provider's registration; and

(3) for each shipment known by the carrier to contain alcoholic beverages that was delivered to a consumer during the reporting period:

(A) the name and business address of the consignor of the shipment;

(B) the name and address of the consumer;

(C) the date the shipment was delivered by the carrier;

(D) the weight, in pounds, of the package shipped; and

(E) the carrier's parcel tracking number for the shipment.]

(d) The [commission] may require a person filing a report under this section to submit additional information, including business records, to substantiate information in the report.

(e) If no covered alcoholic beverages were shipped to consumers during the reporting period, a report under this section must include the information under subsection [(a)(1)] [(a)(1) or [(b)(1)] [(a)(1) or (c)(1)] [(a)(1), (b)(1), or (c)(1)] and report that no covered alcoholic beverages were shipped to consumers during the reporting period.

**Legislative Note:** *If a state authorizes direct-to-consumer shipping of distilled spirits, the state should determine whether the quantity in subsections (a)(2) and (b)(2) must be stated in proof gallons.*

*The reporting period in subsections (a), (b), and (c) is bracketed as optional. Depending on the volume of reports, the state may prefer an alternative reporting period, such as quarterly.*

*If other state law requires a licensed direct shipper or carrier to file a report with the state regulator, the state may choose to amend the other state law to add the information under subsection (b) or (c) and omit the subsection.*

*In subsection (e), the bracketed text requires a choice based on whether optional subsections (b) and (c) are included.*

## **Section 6. Jurisdiction; Enforcement Powers**

(a) A registered fulfillment provider [, licensed direct shipper, and carrier] [is] subject to the jurisdiction of the [commission] and the courts and other enforcement authority of this state in a matter relating to the enforcement of this [act] or law of this state other than this act regulating the shipment of alcoholic beverages directly to a person in this state.

(b) The [commission] may inspect and audit the records of a registered fulfillment provider [, licensed direct shipper, and carrier] for compliance with this [act] and law of this state other than this act regulating the shipment of alcoholic beverages directly to a person in this state. A registered fulfillment provider [, licensed direct shipper, and carrier] shall allow the [commission] to inspect and audit its records and, at the [commission's] request in a record, provide complete and accurate copies of its records to the [commission] at a location specified by the [commission], not later than [15] days after the date of the request.

(c) The [commission] may inspect, during ordinary hours of operation, a location from which a registered fulfillment provider [, licensed direct shipper, or carrier] conducts business, to assess compliance with this [act] and law of this state other than this [act] regulating the shipment of alcoholic beverages directly to a person in this state.

(d) A registered fulfillment provider [, licensed direct shipper, and carrier] shall appoint and continuously maintain with the [commission] an agent for service of process. The agent may be located in this or another state. By appointing an agent under this subsection, the registered fulfillment provider [, licensed direct shipper, and carrier] affirms that the agent consents to accept service. Service of process on the agent constitutes valid service of process on the registered fulfillment provider [, licensed direct shipper, or carrier] in an action or proceeding arising out of enforcement of this [act] or law of this state other than this act regulating the shipment of alcoholic beverages directly to a person in this state. If a registered fulfillment provider [, licensed direct shipper, or carrier] fails to maintain in the records of the [commission] a current agent for service of process or if the current agent cannot be served with reasonable diligence, the [commission] is the agent for service of process.

***Legislative Note:*** The bracketed text in this section allows the state to impose requirements on a licensed direct shipper or carrier, or both, if the state's law does not include a similar provision.

*In subsection (d), a state may replace the bracketed term "commission" with, or add as a filing alternative, the name of the state agency responsible for filing business-entity-agent appointments.*

## **Section 7. Confidential Information**

(a) Except as provided in subsection (b), (c), or (e) [and in [cite to applicable exceptions to state open records law]], the [commission] shall maintain as confidential [and as exempt from public inspection and disclosure under [cite to state open records law]]:

- (1) information specified in Section 3(b)(2) and (d);
- (2) a report filed under Section 5 and information contained in the report;
- (3) records inspected or obtained by the [commission] under Section 6(b) and information contained in the records; and
- (4) other information obtained by the [commission] relating to an investigation or

enforcement of a violation of this [act].

(b) Subject to subsection (d), the [commission] may disclose a report, a record, or information specified in subsection (a) to:

(1) a court, law enforcement agency, or other state or local agency of this state or another state with enforcement authority over a matter relating to alcoholic beverages or taxation, to investigate or enforce a violation of this [act] or of other law relating to the shipment or taxation of alcoholic beverages; and

(2) a court, federal law enforcement agency, or other federal agency with enforcement authority over a matter relating to alcoholic beverages or taxation, to investigate or enforce a violation of federal law or to assist the [commission] in investigating or enforcing a violation of this [act] or of other law of this state relating to the shipment or taxation of alcoholic beverages.

(c) The [commission] may disclose information specified in subsection (a)(1) to a carrier.

(d) A person to which a report, record, or information is disclosed under subsection (b) may not disclose to any other person the report, record, or information unless the subsequent disclosure meets the requirements under subsection (b)(1) or (2) that apply to the original disclosure. A carrier to which information is disclosed under subsection (c) may not disclose the information to any other person.

(e) This section does not prohibit the [commission] from disclosing:

(1) aggregate data that does not disclose:

(A) personally identifiable information relating to a consumer; or

(B) information identifiable to a specific registered fulfillment provider, licensed direct shipper, or carrier;

(2) an order of the [commission] resulting from a completed investigation [,] [or] other enforcement action [, or other order or advisory opinion of the [commission]], if the [commission] redacts personally identifiable information relating to a consumer; or

(3) information identifying a fulfillment provider and its registration status and registration number or a direct shipper and its license status and license number.

***Legislative Note:*** *Because open records laws vary considerably from state to state, the bracketed text in subsection (a) allows a state to harmonize subsection (a) with existing state law; or, a state may amend its open records law and incorporate the bracketed text in subsection (a) to accomplish the confidentiality required under this section. If harmonization is required, changes may be necessary in subsection (a).*

*In subsection (e)(2) the bracketed text “order or advisory opinion of the commission” allows the commission to make industry guidance publicly available.*

## **Section 8. Notice of Consignor’s Unlawful Shipment; Order**

(a) If the [commission] has good cause to believe that a consignor has shipped alcoholic beverages unlawfully into or within this state, the [commission] may give notice in a record to the consignor requiring the consignor to show cause why the consignor should not be prohibited from shipping alcoholic beverages into or within this state. If the [commission], after an opportunity for an evidentiary hearing, determines that the consignor shipped alcoholic beverages into or within this state unlawfully, the [commission] may issue an order prohibiting the consignor from additional shipment of alcoholic beverages into or within this state.

(b) The [commission] may give notice in a record to a carrier of an order under subsection (a). Beginning 15 days after the date of the notice, and until the carrier receives notice from the [commission] that the order is [rescinded or modified], the carrier may not deliver in this state a package received from the consignor identified in the notice and known by the carrier to contain alcoholic beverages.

(c) [[For good cause, the] [The] [commission] may [rescind or modify] an order issued

under subsection (a).] If an order issued under subsection (a) is [rescinded or modified], the [commission] shall give notice in a record of the [rescission or modification] to each carrier that received notice under subsection (b).

#### **Alternative A**

(d) A proceeding under this section is governed by [cite to state administrative procedure act].

#### **Alternative B**

(d) The [commission] may not hold a hearing under subsection (a) less than [30] days after the date of the notice under subsection (a) unless:

- (1) the consignor agrees to an earlier hearing date; or
- (2) the notice describes with particularity how the consignor's alleged unlawful shipment poses a serious risk to public health or safety.

(e) If the notice under subsection (a) includes a description under subsection (d)(2) and the [commission] issues an order under subsection (a):

- (1) the order must identify the risk;
- (2) the 15-day period specified in subsection (b) does not apply; and
- (3) the [commission's] notice under subsection (b) must require the carrier to implement the order as soon as possible.

(f) An order issued or denied under this section, including an order [rescinding or modifying] or denying [recission or modification of] an order, is subject to judicial review under [cite to state administrative procedure act].

#### **End of Alternatives**

***Legislative Note:*** A state may replace the bracketed text relating to rescission and modification of an order in subsections (b), (c), and (f) with the appropriate terms applicable under the state's

*administrative procedure act.*

*If a state's administrative procedure act is sufficiently comprehensive to govern a proceeding under this section, the state should adopt Alternative A and omit the bracketed first sentence of subsection (c). If not, the state should incorporate Alternative B and the bracketed text in subsection (c). A state may need to authorize the commission to issue an order under this section if the state's administrative procedure act does not include the authority.*

*A state that adopts Alternative B may replace the bracketed term "good cause" in subsection (c) with more specific criteria for rescinding or modifying an order.*

## **Section 9. Suspension, Revocation, or Nonrenewal of [License] [Permit] Because of Unlawful Shipping into Another State**

[(a)] [Except as provided in subsections (b) and (d) and subject to subsection (g), the] [The] [commission] [or other applicable authority] may suspend, revoke, or deny renewal of a [license] [permit] issued by the [commission] [or other applicable authority] to produce, distribute, or sell alcoholic beverages if the [commission] [or other applicable authority] finds, after notice and an opportunity for an evidentiary hearing, that the person holding the [license] [permit] shipped alcoholic beverages into another state in violation of the other state's law.

[(b) The [commission] [or other applicable authority] may not suspend, revoke, or deny renewal of a [license] [permit] under subsection (a) if the person holding the [license] [permit] shows that the violation of the other state's law:

(1) is the subject of a pending enforcement action in the other state;

(2) was the subject of an enforcement action in the other state that has concluded and resulted in a determination that no violation of the other state's law occurred; or

(3) occurred more than [two] years before the date of the notice under subsection (a).]

[(c) Suspension or revocation of, or refusal to renew, a [license] [permit] under subsection (a) is not effective until all administrative proceedings under subsection (a) are

concluded and administrative remedies exhausted.]

[(d) The [commission] [or other applicable authority] may not suspend, revoke, or deny renewal of a [license] [permit] under subsection (a) unless the [licensee] [permittee] ships alcoholic beverages into another state in violation of the other state's law after the [commission] [or other applicable authority] issues a cease and desist [order] [letter].]

[(e) The [commission] [or other applicable authority] shall determine the duration of a suspension under subsection (a). The suspension may not exceed [60] days for a first violation or [120] days for a violation that occurs not later than [three] years after an earlier violation. A violation that occurs more than [three] years after an earlier violation is treated as a first violation. If the [commission] [or other applicable authority] revokes or refuses to renew a [license] [permit] under subsection (a), the [licensee] [permittee] may not reapply for issuance of the same [license] [permit] for [one year] after the date of the revocation or refusal to renew.]

[(f) Suspension or revocation of, or refusal to renew, a [license] [permit] under this section is subject to judicial review under [cite to state administrative procedure act].]

[(g) Instead of suspending, revoking, or refusing to renew a [license] [permit] under subsection (a), the [commission] [or other applicable authority] and the [licensee] [permittee] may agree to [an offer in compromise under which the [licensee] [permittee] pays to the [commission] [or other applicable authority]] an administrative penalty.]

[(h) After the [commission] [or other applicable authority] gives notice under subsection (a) of a proceeding to suspend, revoke, or deny renewal of a [license] [permit], the [licensee] [permittee] may not surrender the [license] [permit] without the consent of the [commission] [or other applicable authority].]

***Legislative Note:*** A state may include in this section each alcoholic-beverage licensing authority in the state. A state should substitute the appropriate terminology in this section if state

*administrative action against a license is characterized by terms other than suspension or revocation, such as cancellation or termination.*

*A state may limit the administrative authority granted under subsection (a) by adopting subsection (b).*

*Subsections (c) through (h) are bracketed because, if a state's law governs suspension, revocation, or nonrenewal of an alcoholic beverage license or permit, the state may prefer to amend that law instead of adopting subsections (c) through (h). A state may prefer not to adopt subsections (c) through (h) if they are inconsistent with the state's administrative process or a policy objective.*

*A state that issues both licenses and permits should retain both terms in this section.*

*In subsection (d), a state may insert "order" rather than "letter", depending on the formality of its cease-and-desist process.*

*The bracketed text in subsection (g) allows a state to refer to the settlement process by the term "offer in compromise" used by many states and the federal Alcohol and Tobacco Tax and Trade Bureau.*

## **[Section 10. Penalties**

(a) A court may impose a penalty on:

(1) a fulfillment provider that violates:

(A) Section 3(e)(1), (2), or (4);

(B) Section 3(e)(3) or 6(d); or

(C) Section 3(d), 5(a), or 6(b); [and]

(2) a carrier that violates [:

(A)] Section 4 or 8(b) [;] [or]

[(B) Section 6(d)] [; or

(C) Section 5(c) or 6(b)] [; and

(3) a licensed direct shipper that violates:

(A) Section 6(d); or

(B) Section 5(b) or 6(b)].

(b) Except as provided in subsection (c), the penalty for a violation under:

- (1) subsection (a)(1)(A) is [not more than \$1,000];
- (2) subsection (a)(1)(B) is [not more than \$100];
- (3) subsection (a)(1)(C) is [not more than \$100]; [and]
- (4) subsection [(a)(2)(A)] [(a)(2)] is [not more than \$1,000] [;] [; and]
- [(5) subsection (a)(2)(B) is [not more than \$100]] [;] [; and]
- [(6) subsection (a)(2)(C) is [not more than \$100]] [;]
- [(7) subsection (a)(3)(A) is [not more than \$100]] [; and]
- [(8) subsection (a)(3)(B) is [not more than \$100]].

(c) For a violation listed in subsection (b) that occurs not later than [three] years after an earlier violation under subsection (b), the penalty for the subsequent violation under:

- (1) subsection (a)(1)(A) is [not more than \$5,000];
- (2) subsection (a)(1)(B) is [not more than \$500];
- (3) subsection (a)(1)(C) is [not more than \$500]; [and]
- (4) subsection [(a)(2)(A)] [(a)(2)] is [not more than \$5,000] [;] [; and]
- [(5) subsection (a)(2)(B) is [not more than \$500]] [;] [; and]
- [(6) subsection (a)(2)(C) is [not more than \$500]] [;]
- [(7) subsection (a)(3)(A) is [not more than \$500]] [; and]
- [(8) subsection (a)(3)(B) is [not more than \$500]].

(d) The court may impose a separate penalty under subsection (b)(1), (2), [or] (4) [,] [or] [(5)] [, or] [(7)] or (c)(1), (2), [or] (4) [,] [or] [(5)] [, or] [(7)] for each day a violation occurs.

(e) The court may impose a separate penalty under subsection (b)(3) [,] [or] [(6)] [, or] [(8)] or (c)(3) [,] [or] [(6)] [, or] [(8)] for each violation.

(f) A violation of a rule adopted by the [commission] under this [act] is a violation of the provision of this [act] to which the rule relates.]

**Legislative Note:** *A state should omit this section if it prefers to add these penalties to its alcoholic beverage law.*

*A state that makes a violation of alcoholic beverage law a criminal offense may need to amend other state law to correspond to the civil penalties in this section or may substitute criminal penalties in this section.*

*A state should enact subsections (a)(2)(B) and (C) and (3), (b)(5) through (8), and (c)(5) through (8) only if the state enacts the corresponding optional text in Sections 5 and 6. The state should ensure that the text in these provisions is consistent.*

*If a state requires licensed direct shippers to submit reports under its law, it should conform the penalties under this section for fulfillment providers to the penalties under the law for licensed direct shippers.*

*In subsections (b)(4) and (c)(4), if a state enacts subsection (a)(2)(B) or (C), the state should refer to subsection (a)(2)(A).*

## **[Section 11. Rulemaking Authority]**

The [commission] may adopt rules under [cite to state administrative procedure act] to administer, enforce, implement, or interpret this [act], including rules concerning:

- (1) a form under this [act];
- (2) the method for submitting a registration application, or cancelling registration, as a fulfillment provider; [and]
- (3) the method and deadline for filing a report, including the format of an electronic report [;] [and]
- [(4) appointing and maintaining an agent for service of process [;] [and]]
- [(5) due process in administrative proceedings [; and]
- (6) a definition of, or guidelines for determining, [good cause] under [cite to Sections of this [act] that include reference to [good cause]].]

**Legislative Note:** *A state should include this section only if the state’s administrative procedure act does not provide adequate rulemaking authority to the commission. A state should include paragraph (6) only if it enacts the bracketed language referring to “good cause” in Section 3(h) or 8(c).*

## **Section 12. Uniformity of Application and Construction**

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

## **Section 13. Relation to Electronic Signatures in Global and National Commerce Act**

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

**Legislative Note:** *It is the intent of this act to incorporate future amendments to the cited federal law. In a state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law, the phrase “as amended” should be omitted. The phrase also should be omitted in a state in which, in the absence of a legislative declaration, future amendments are incorporated into state law.*

## **[Section 14. Transitional Provision]**

(a) A [license] [permit] issued by the [commission] [to a person to ship covered alcoholic beverages on behalf of another to a consumer] in effect on [the effective date of this [act]] continues until the earlier of its date of expiration or [six] months after [the effective date of this [act]]. During that period, the person holding the [license] [permit] may continue activity authorized under the [license] [permit] and is subject to the law of this state applicable to the [license] [permit] as it existed immediately before [the effective date of this [act]]. On expiration of that period, the person holding the [license] [permit] is subject to this [act].

(b) A person that does not hold a [license] [permit] [to ship covered alcoholic beverages on behalf of another to a consumer] on [the effective date of this [act]] is subject to this [act] on

and after [the effective date of this [act]].]

**Legislative Note:** *A state should include this section only if it already issues fulfillment-provider licenses or permits.*

### **[Section 15. Severability**

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

**Legislative Note:** *Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

### **[Section 16. Repeals; Conforming Amendments**

[(a)] [Cite to direct-to-consumer alcoholic beverage shipping law relating to a fulfillment provider] is repealed.]

[(b) ...]

**Legislative Note:** *A state should examine its statutes to determine whether conforming revisions are required by:*

- (1) Section 3 {Registration of Fulfillment Provider};*
- (2) Section 7 {Confidential Information};*
- (3) Section 9 {Suspension, Revocation, or Nonrenewal of License or Permit Because of Unlawful Shipping into another State}; or*
- (4) Section 10 {Penalties}.*

### **Section 17. Effective Date**

This [act] takes effect . . .

**Legislative Note:** *A state may wish to consider a delayed effective date, for example, 60 days, to allow time for agencies and industry members to prepare for implementation.*