

DRAFT
FOR DISCUSSION ONLY

REGISTRATION AND LICENSING OF DIRECT-TO- CONSUMER SALES OF WINE AND THE PREVENTION OF ILLEGAL SALES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

INTERIM DRAFT



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ON UNIFORM STATE LAWS

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June 12, 2020

**DRAFTING COMMITTEE ON UNIFORM REGISTRATION AND LICENSING
OF DIRECT-TO-CONSUMER SALES OF WINE AND THE PREVENTION
OF ILLEGAL SALES ACT**

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**REGISTRATION AND LICENSING OF DIRECT-TO-CONSUMER SALES OF WINE
AND PREVENTION OF ILLEGAL SALES ACT**

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1 **REGISTRATION AND LICENSING OF DIRECT-TO-CONSUMER SALES OF WINE**
2 **AND PREVENTION OF ILLEGAL SALES ACT**

3
4 **Prefatory Note**

5 Alcoholic beverages enjoy a unique constitutional status, and states have broad power to
6 regulate the alcohol trade. Section 2 of the 21st Amendment empowers states to regulate the
7 “transportation or importation” into the state of intoxicating liquor “for delivery or use therein.”
8 The 21st Amendment grants the states “‘virtually complete control over whether to permit
9 importation or sale of liquor and how to structure the liquor distribution system.’” *Granholm v.*
10 *Heald*, 544 U.S. 460, 488-89 (2005) (quoting *California Retail Liquor Dealers Ass’n v. Midcal*
11 *Aluminum, Inc.*, 445 U.S. 97, 110 (1980)).
12

13 In preparing this act, the National Conference of Commissioners on Uniform State Laws
14 (Conference) recognizes that the policy-makers in each state are best suited to determine whether
15 alcoholic beverages should be sold in the state and, if so, under what circumstances or with what
16 restrictions the distribution and sale of alcoholic beverages should occur. The Conference is a
17 state-supported organization comprised of representatives from each state who are appointed by
18 state governments. The Conference was founded on principles of federalism and state autonomy.
19 The purpose of this act is not to require states to allow direct-to-consumer (DTC) wine shipping,
20 but rather to provide more uniformity of standards for those states that choose to allow DTC
21 wine sales along with better mechanisms to stop the illegal DTC shipments that state policy-
22 makers have chosen not to allow.
23

24 At the time this act was prepared, approximately 45 states had chosen to allow some form
25 of DTC wine shipping. The act has three principal areas of focus relating to DTC wine shipping:
26 1) standards that facilitate compliance with a state’s licensing, shipping, and reporting
27 requirements; 2) standards that facilitate compliance with a state’s tax reporting and payment
28 requirements; and 3) rules to reduce sales and deliveries of alcohol products that are not
29 authorized under the state’s laws, including unlicensed DTC sales and sales to underage
30 purchasers. The act promotes uniformity of law among the states that already allow DTC wine
31 shipping by establishing uniform standards for the licensing and reporting of producers and their
32 agents, along with uniform methods to guard against sales and deliveries to underage persons.
33 The uniformity established under the act will simplify compliance, improve tax collections, help
34 prevent unlawful sales, and make cross-border enforcement more effective.

1 **REGISTRATION AND LICENSING OF DIRECT-TO-CONSUMER SALES OF WINE**
2 **AND PREVENTION OF ILLEGAL SALES ACT**

3
4 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Registration and
5 Licensing of Direct-to-Consumer Sales of Wine and Prevention of Illegal Sales Act.

6 **SECTION 2. DEFINITIONS.** In this [act]:

7 (1) “Approved age verification credential” means a form of electronic identification that:

8 (A) is capable of being displayed on or scanned from an electronic device; and

9 (B) is approved by the [Commission] for the purpose of age verification under this [act].

10 (2) “Certificate of label approval or exemption” means a certificate of label approval or
11 certificate of exemption from label approval issued by the Federal Tax and Trade Bureau under
12 the Federal Alcohol Administration Act, 27 U.S.C. Section 201 et seq., [, as amended,] and
13 regulations issued under that act.

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

15 (4) “Common carrier” means a person that holds itself out to the general public as
16 engaged in the business of transporting goods for a fee.

17 (5) “Consumer” means an individual:

18 (A) who orders wine to be shipped to the individual in this state, or to another
19 individual in this state under subparagraph (B), for the individual’s personal use and not for
20 resale; or

21 (B) on whose behalf wine is ordered under subparagraph (A) if this individual
22 could have directly ordered and received delivery of the wine for himself or herself under this
23 [act].

24 (6) “Electronic” means relating to technology having electrical, digital, magnetic,
25 wireless, optical, electromagnetic, or similar capabilities.

(7) “Federal Tax and Trade Bureau” means the Alcohol and Tobacco Tax and Trade Bureau in the United States Department of the Treasury.

(8) “Fulfillment provider license” means a license issued under Section 4.

(9) “Licensed fulfillment provider” or “fulfillment-provider licensee” means a person that holds a fulfillment provider license issued under Section 4.

(10) “Person” means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation, government or governmental subdivision, agency, or instrumentality.

(11) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

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

(14) “Valid identification document” means [an unexpired, government-issued identification document that includes the photograph and date of birth of the individual to whom it is issued].

(15) “Wine” means [an alcoholic beverage obtained from the normal fermentation of the juice or must of sound, ripe grapes, or other fruit or agricultural products, containing at least 0.5 percent and not more than 24 percent alcohol by volume. The term includes sparkling and carbonated wine, wine made from condensed grape must, vermouth, cider, perry, and sake].

(16) “Wine carrier” means a common carrier that delivers wine in this state to a consumer.

(17) “Wine direct shipper license” means a license issued under Section 3.

(18) “Wine-direct-shipper licensee” means a winery that holds a wine direct shipper license issued under Section 3.

(19) “Wine-fulfillment services” means services directly related to the packaging and shipping of wine.

(20) “Winery” means a person that manufactures and bottles wine and holds a federal basic permit as a wine producer or blender under Section 103(b) and 104(a) of the Federal Alcohol Administration Act, 27 U.S.C. Sections 203(b) and 204(a) [, as amended].

(21) “Winery license” means [a license, permit, or other authorization to manufacture wine in this state.]

(22) “Winery licensee” means a winery that holds a winery license.

Legislative Note: *The legislative drafter should replace the term “Commission” in paragraph (3) with the applicable agency name in the state of enactment. It is also possible that this term may need to refer to a county (in Hawaii) or other governmental unit (in the U.S. Virgin Islands or Puerto Rico) rather than a state agency. In addition, in some states, all regulatory authority for licensing, operations, and taxes falls under one agency, while in other states authority is divided among agencies, typically between a regulatory authority and taxing authority. Therefore, in some states, the agency name used to replace the term “Commission” may vary depending on the context. The brackets are used to identify the option to substitute a more accurate term and definition.*

If the enacting state prescribes the only identification documents acceptable in connection with an alcoholic beverage purchase, the legislative drafter should substitute a reference to this list in place of the bracketed material in paragraph (14).

The definition of “wine” in paragraph (15) is bracketed as optional because the legislative drafter may elect to use the enacting state’s definition of wine in paragraph (15).

The definition for “winery license” in paragraph (21) is bracketed because the term refers only to the authorization to produce wine issued by the enacting state. The legislative drafter may tailor this definition to the appropriate terminology applicable to an in-state winery or insert a

1 *cross-reference to the enacting state’s statutes authorizing wine production. The legislative*
2 *drafter may prefer to substitute a different term entirely for “winery license” (and “winery*
3 *licensee”), such as winery permit or winegrower’s license, but doing so may require the*
4 *legislative drafter to make additional corresponding changes throughout the act, particularly*
5 *where the term “licensee” refers to both a wine-direct-shipper licensee and a winery licensee .*

6 7 **Comment**

8
9 The term “consumer” is used repeatedly throughout the act. It is worth emphasizing that a
10 consumer is an individual in the state of enactment. The act defines consumer to include: 1) an
11 individual who orders wine for himself or herself; 2) an individual who orders wine for another
12 of-age individual, perhaps as a birthday gift or gesture of congratulations; and 3) an individual on
13 whose behalf wine is ordered if this individual could have ordered the wine for himself or
14 herself. In each case, the act requires age verification at both the time of the order and the time of
15 delivery.

16
17 The term “valid identification document” is intended to apply to tangible identification
18 issued by a government – whether state, local, federal, or tribal - that contains both a photograph
19 and date of birth. This typically will mean a driver’s license from any state, a state-issued
20 identification card, or a passport. The term could also include a military ID or tribal ID. Most
21 other government-issued documents do not contain both a photograph and date of birth.
22 However, a public university student ID that contains a date of birth and photograph, for
23 example, would meet the definition of “valid identification document.” If the enacting state lists
24 the only identification documents acceptable as proof of age for the purchase of alcoholic
25 beverages in the state, the term is intended to incorporate this list.

26
27 The term “approved age verification credential” is intended to apply to intangible
28 identification that the enacting state’s regulator has determined to be acceptable for purposes of
29 proving identity and age. The technology exists to use a person’s driver’s license or passport to
30 create a digital ID used to confirm the person’s identity and age. The digital ID may be stored on
31 a mobile device like a smartphone and scanned to confirm the identity and age of the person
32 receiving alcoholic beverages. Technological advances in age verification may provide a more
33 secure and reliable method for identity and age verification than traditional methods, while
34 offering greater security for the consumer’s personal data. The act allows the regulator in the
35 enacting state to approve the use of digital ID or similar methods, in lieu of the visual inspection
36 of a physical document like a driver’s license, to verify the age of the person receiving the wine
37 shipment.

38
39 The definition of “wine” is derived from elements of federal law. See 27 U.S.C. Section
40 211 (a)(6); 27 C.F.R 4.10. See also 26 U.S.C. Sections 5381, 5392. Each state has an existing
41 definition of wine, and the states’ definitions sometimes vary from each other and from federal
42 definitions. For example, under federal law, fortified wine remains wine until it exceeds 24
43 percent alcohol by volume (ABV) or more than half of the product’s alcohol is derived from
44 added spirits rather than fermentation, but many states define wine as limited to products
45 containing not more than 21 percent ABV. This definition of wine will govern what products can
46 be shipped under a wine direct shipper license or winery license.

1 The terms “certificate of label approval” and “certificate of exemption from label
2 approval” are both defined in 27 C.F.R. 13.11. The exemption is for wine exported from the U.S.
3 or wine sold only in intrastate commerce. The Federal Alcohol Administration Act (FAAA), and
4 therefore certificate of label approval (COLA) requirements, do not apply to wine containing less
5 than 7 percent ABV. *See* 27 C.F.R. 24.257, 27 C.F.R. 4.10 (defining wine). The key provision
6 relating to the COLA requirement and the exemption is 27 C.F.R. 4.50.

7
8 Regarding the terms “common carrier” and “wine carrier,” the definition of “common
9 carrier” is similar but not identical to: 1) the definition under 15 U.S.C. Section 375 relating to
10 cigarette taxes; and 2) the definition under South Dakota statute section 35-12B-1. The definition
11 of “wine carrier” is intended to be much narrower than “common carrier.” It excludes motor
12 carriers, water carriers, and railroads that transport wine into and within the state as part of the
13 three-tier system (that is, to other businesses in the alcoholic beverage industry). The definition
14 focuses only on common carriers that deliver direct-to-consumer shipments of wine to
15 individuals. It is only such deliveries that are subject to the act. The act allows, but does not
16 require, the common carrier to have the consignor designate that a package containing alcohol is
17 being sent to a licensee (that is, distributed through the three-tier system) or to a consumer. If the
18 common carrier chooses to do so, the common carrier may limit the impact of the act’s
19 provisions to the latter wine shipments.

20
21 The term “winery license” is limited to an authorization to produce wine held by an in-
22 state winery of the enacting state.

23
24 Regarding the term “Commission,” the name of the department or agency responsible for
25 administering the state’s alcoholic beverage laws varies from state to state. Common agency
26 names include the Alcoholic Beverage Commission, Department of Revenue, Liquor Control
27 Commission, and others. A list of agency appellations is available on the website of the U.S.
28 Treasury’s Alcohol and Tobacco Tax and Trade Bureau (TTB),
29 <https://www.ttb.gov/wine/alcohol-beverage-control-boards#US>. The act uses the term
30 “Commission” as the default because it is the most common agency name.

31 32 **SECTION 3. WINE DIRECT SHIPPER LICENSE; ISSUANCE.**

33 (a) Except as otherwise provided in subsection (c) or (d), on application satisfactory to
34 the [Commission], the [Commission] shall issue a wine direct shipper license to an applicant
35 that:

36 (1) is a winery located in another state;

37 (2) holds a current license, permit, or other authorization to manufacture wine in
38 the state where the winery is located; and

39 (3) pays a license fee of \$[100].

(b) An application for a wine direct shipper license must be in the form prescribed by the [Commission] and include:

- (1) the address from which the winery will ship wine to consumers;
- (2) a copy of the winery's current license, permit, or other authorization to manufacture wine in the state where the winery is located;
- [(3) a copy of the winery's tax registration certificate or seller's license;]
- (4) information necessary for the [Commission] to make determinations under subsection (c); and
- (5) other information the [Commission] determines is necessary to implement this [act].

(c) The [Commission] may refuse to issue a wine direct shipper license if the [Commission] determines any of the following:

- (1) The applicant made a materially false statement or material omission on the application for the license or provided a fraudulent or materially altered record to the [Commission].
- (2) A license issued under this section to the applicant was revoked by the [Commission], or a similar license issued by another state to the applicant was revoked by that state, within the [12-month] period immediately preceding the date of application.
- (3) The applicant has shipped wine or other alcoholic beverages into another state in violation of that state's law within the [12-month] period immediately preceding the date of application.
- (4) At the time of application, the applicant is not current in its payment of tax owed to this state or a political subdivision of this state.

(5) The applicant has been convicted of a crime that, if the applicant were located in this state, would disqualify the applicant from holding a [winery license]. In making this determination, if the applicant is not an individual, the [Commission] shall consider the conviction of a director, officer, member, manager, shareholder, or other owner of the applicant to the same extent as if the applicant were a domestic entity applying to the [Commission] for a [winery license].

(6) There is good cause for denying issuance of the license.

(d) To obtain a wine direct shipper license, the applicant must agree to:

(1) appoint and maintain under Section 14(d) an agent for service of process and to accept service of process through the agent;

(2) maintain the records required under Section 11 and provide access to or copies of the records under Section 14;

(3) allow the [Commission] to conduct an audit of the applicant's records and inspect the applicant's premises under Section 14(b) and (c);

(4) file reports required under Section 12 and pay all tax required under Section 13; and

(5) submit to the jurisdiction of the [Commission] [and other applicable authority], the courts, and other enforcement authority of this state, with respect to enforcement of this [act] against the applicant.

Legislative Note: Many states require a seller of goods and services, including an alcoholic beverage retailer and winery that make retail sales, to obtain a tax license or undertake registration to assure tax payment. Subsection (b)(3) is optional and intended for an enacting state that has such a process. The legislative drafter should substitute in subsection (b)(3) the appropriate terminology in the enacting state and perhaps a statutory cross-reference.

If the enacting state determines that a disqualifying criminal record for a license other than a winery license is more suitable, the legislative drafter should reference that license in the

1 *bracketed language in subsection (c)(5),*

2
3 **Comment**

4
5 This act provides for issuance of a wine direct shipper license only to an out-of-state
6 winery, while providing the same authorization to an in-state winery under its winery license
7 issued by the enacting state.
8

9 Regarding subsections (a)(2) and (b)(2), the definition of winery in Section 2 includes
10 only a winery that holds a federal basic permit issued by the Federal Tax and Trade Bureau
11 (TTB). Subsections (a)(2) and (b)(2) require the winery to also hold the applicable license,
12 permit, or certificate of registration issued by the winery's home state or, in Hawaii, the
13 applicable county in its home state.
14

15 A central aspect of this act is ensuring that the enacting state can establish jurisdiction
16 over out-of-state actors. Subsection (d) is included in the act, in addition to Section 14, to create
17 stronger support for the enacting state's authority to assert jurisdiction. Subsection (d) requires
18 the actor to agree to the state's jurisdiction, rather than relying only on a statutory assertion of
19 jurisdiction. It is contemplated that the agreement will take the form of a check-box on the
20 license application.
21

22 **SECTION 4. FULFILLMENT PROVIDER LICENSE; ISSUANCE.**

23 (a) Except as otherwise provided in subsection (c) or (d), on application satisfactory to
24 the [Commission], the [Commission] shall issue a fulfillment provider license to an applicant
25 that:

26 (1) provides or will provide wine-fulfillment services on behalf of a wine-direct-
27 shipper licensee or winery licensee; and

28 (2) pays a license fee of \$[100].

29 (b) An application for a fulfillment provider license must be in the form prescribed by the
30 [Commission] and include:

31 (1) the address from which the fulfillment provider will ship wine to consumers;

32 (2) information necessary for the [Commission] to make determinations under
33 subsection (c); and

34 (3) other information the [Commission] determines to be necessary to implement

1 this [act].

2 (c) The [Commission] may refuse to issue a fulfillment provider license if the
3 [Commission] determines any of the following:

4 (1) The applicant made a materially false statement or material omission on the
5 application for the license or provided a fraudulent or materially altered record to the
6 [Commission].

7 (2) A license issued under this section to the applicant was revoked by the
8 [Commission], or a similar license issued by another state to the applicant was revoked by that
9 state, within the [12-month] period immediately preceding the date of application.

10 (3) The applicant has shipped wine or other alcoholic beverages into another state
11 in violation of that state's law within the [12-month] period immediately preceding the date of
12 application.

13 (4) The applicant is a winery or holds a direct or indirect interest in a winery or
14 another producer, distributor, or retailer of alcoholic beverages. In making this determination, if
15 the applicant is not an individual, the [Commission] shall consider a director, officer, member,
16 manager, shareholder, or other owner of the applicant to the same extent as if the applicant were
17 a domestic entity applying to the [Commission] for a [winery license].

18 (5) The applicant is a common carrier.

19 (6) The applicant has been convicted of a crime that, if the applicant were located
20 in this state, would disqualify the applicant from holding a [winery license]. In making this
21 determination, if the applicant is not an individual, the [Commission] shall consider the
22 conviction of a director, officer, member, manager, shareholder, or other owner of the applicant
23 to the same extent as if the applicant were a domestic entity applying to the [Commission] for a

1 [winery license].

2 (7) There is good cause for denying issuance of the license.

3 (d) To obtain a fulfillment provider license, the applicant must agree to:

4 (1) appoint and maintain under Section 14(d) an agent for service of process and
5 to accept service of process through the agent;

6 (2) maintain the records required under Section 11 and provide access to or copies
7 of the records under Section 14;

8 (3) allow the [Commission] to conduct an audit of the applicant's records and
9 inspect the applicant's premises under Section 14(b) and (c);

10 (4) file all reports required under Section 12; and

11 (5) submit to the jurisdiction of the [Commission] [and other applicable
12 authority], the courts, and other enforcement authority of this state, with respect to enforcement
13 of this [act] against the applicant.

14 **Legislative Note:** *If the enacting state determines that a disqualifying criminal record for a*
15 *license other than a winery license is more suitable, the legislative drafter should reference that*
16 *license in the bracketed language in subsection (c)(6). A similar substitution should be made in*
17 *subsection (c)(4) if another license is more analogous for purposes of the interest restriction in*
18 *that paragraph.*

19
20 **SECTION 5. LICENSE TERM.**

21 (a) A wine direct shipper license or fulfillment provider license is valid during the
22 calendar year in which the license is issued and, except as otherwise provided in Section 15, may
23 be renewed annually.

24 (b) On initial issuance of a wine direct shipper license or fulfillment provider license, if
25 less than 10 months remain in the calendar year, the license fee under Section 3(a)(3) or (4)(a)(2)
26 must be prorated based on the period for which the license is valid.

(c) The [Commission] may prescribe an abbreviated form for renewal of a wine direct shipper license or fulfillment provider license.

(d) A wine direct shipper license or fulfillment provider license may not be transferred to another person.

SECTION 6. WINE DIRECT SHIPPING.

(a) A wine direct shipper license or winery license authorizes the licensee to sell and ship wine to a consumer in compliance with this section and Section 7.

(b) A wine-direct-shipper licensee or winery licensee may take an order to sell and ship wine only from a consumer who is at least 21 years of age. Before shipping wine to a consumer, the licensee shall:

(1) before its first shipment of wine to the consumer, verify the age of the consumer placing the order by:

(A) visually inspecting a valid identification document issued to the consumer, which may be presented to the licensee electronically by a consumer who is not in the physical presence of the licensee;

(B) confirming the consumer's approved age verification credential; [or]

(C) using an age verification service [approved by the [Commission]]]; or

(D) using another age verification process approved by the [Commission]];

(2) for each order after the first order from the same consumer, verify the consumer's age from the licensee's records or by conducting age verification under paragraph (1); and

(3) with each consumer order, inform the consumer placing the order that the

shipment will not be delivered unless the recipient also provides proof of age at the time of delivery.

(c) A wine-direct-shipper licensee or winery licensee shall create a record of the age verification under subsection (b)(1) or (2).

(d) A wine-direct-shipper licensee or winery licensee may sell and ship to a consumer only wine:

(1) manufactured by the licensee; [and]

(2) for which the licensee has been issued a certificate of label approval or exemption, unless the wine is not subject to the Federal Alcohol Administration Act, 27 U.S.C. Section 201 et seq. [, as amended][; and

(3) that complies with any other labeling requirement of this state.]

(e) A wine-direct-shipper licensee or winery licensee shall label each package to be shipped to a consumer to conspicuously display words indicating that:

(1) the package contains alcohol; and

(2) the package may not be delivered to an individual under 21 years of age.

[(f) A wine-direct-shipper licensee or winery licensee may not sell or ship wine to a consumer at an address where wine may not be sold, as identified by the [Commission]. The [Commission] shall create and maintain a list identifying each municipality, county, residential district, or other location, by name and zip code, where state or local law prohibits the sale of wine. The [Commission] shall make the list available on the [Commission's] Internet website or make it publicly available by other readily accessible means.]

[(g) A wine-direct-shipper licensee or winery licensee may not sell or ship to a consumer more than a total of [amount] of wine in a calendar year.]

1 (h) A wine-direct-shipper licensee or winery licensee may engage the services of a
2 licensed fulfillment provider to ship wine on its behalf to a consumer if the wine-direct-shipper
3 licensee or winery licensee provides notice to the [Commission], in the form prescribed by the
4 [Commission], of each licensed fulfillment provider shipping wine into this state on its behalf.
5 The use by a wine-direct-shipper licensee or winery licensee of a licensed fulfillment provider
6 for shipping wine does not relieve the wine-direct-shipper licensee or winery licensee from
7 compliance with this section.

8 (i) A wine-direct-shipper licensee or winery licensee may ship wine to a consumer only
9 from its licensed address or, if the wine is shipped through a licensed fulfillment provider, from
10 the licensed address of the fulfillment provider.

11 (j) A wine direct shipper license does not authorize the licensee to ship wine into this
12 state to a person other than a consumer.

13 (k) A consumer who receives wine shipped directly to the consumer under a wine direct
14 shipper license or winery license may not resell or attempt to resell the wine [unless authorized
15 by law of this state other than this [act]].

16 **Legislative Note:** The optional bracketed provision in subsection (b)(1)(C) allows the enacting
17 state to require that use of an age verification service be approved by the state regulator.
18 Subsection (b)(1)(D), also bracketed as optional, allows the enacting state to establish an
19 additional, different age verification process.

20
21 Subsection (g) is bracketed as optional for the enacting state to include a limit on the amount of
22 wine that may be shipped and, if a limit is included, to insert the appropriate maximum amount
23 allowed.

24
25 Subsection (f) is bracketed as optional because the enacting state may determine that a winery
26 may ship wine directly to consumers in parts of the state that are otherwise “dry”. If the
27 enacting state omits subsection (f) and the corresponding provision in Section 18, the legislative
28 drafter may need to include an additional provision recognizing that certain areas are not “dry”
29 for purposes of direct-to-consumer wine shipping under the act.

30 The optional, bracketed language in subsection (d)(3) should be included if the enacting state
31 has labeling requirements in addition to the requirements imposed under federal law. The

1 *legislative drafter may prefer to make specific cross-reference to these labeling requirements in*
2 *the enacting state's law rather than use the general language of subsection (d)(3).*

3
4 *The bracketed language in subsection (k) allows the resale of wine received by a consumer if*
5 *other law of the enacting state allows it.*

6 7 **Comment** 8

9 Some states require both in-state and out-of-state wineries to hold a wine direct shipper
10 license to ship wine direct-to-consumer (DTC) to state residents. Other states allow DTC
11 shipments by an in-state winery under the state's winery license while requiring out-of-state
12 wineries to obtain a wine direct shipper license. This act takes the latter approach.

13
14 The act recognizes two different steps of age verification, with one occurring at the time
15 of sale and the other occurring at the time of delivery. Subsection (b)(1) requires the winery
16 shipping wine DTC to verify the consumer's age when the consumer places the order, and
17 establishes acceptable methods of ensuring that the consumer is at least 21 years of age. The act
18 guarantees the winery some uniformity among states with respect to the age verification process
19 but also provides states latitude to determine what is appropriate for purposes of age verification.
20 Although an order might be placed in-person at the winery, it will more often be placed by
21 Internet or telephone. If the order is placed in-person, the winery may complete the age
22 verification by visually inspecting the purchaser's driver's license or other valid identification
23 document. If the order is placed online, the winery may utilize technology to perform the same
24 type of visual inspection of the age verification document. The Revised Uniform Law on
25 Notarial Acts (2018) contemplates that technological advances now enable a notary public in one
26 location to appropriately establish the identity, through the use of identification documents, of an
27 individual located elsewhere. Technology allows a person to adequately view documents from a
28 remotely-located individual, and technology that is reliable enough to establish identity for the
29 notarization of legal documents is sufficient to establish identity and age for the purpose of
30 alcohol sales. The act also allows the winery, at the time of sale, to verify the consumer's age by
31 using an age verification service, which the enacting state may require to be approved by the
32 state regulator. The winery may also verify the purchaser's age by means of an approved age
33 verification credential. As discussed in Section 2, an approved age verification credential is a
34 digital ID that the state regulator has approved as appropriate for use in age verification for
35 alcohol sales. Finally, if the state regulator has approved any other age verification process, the
36 act allows the winery to use this process for age verification at the time the wine is ordered.
37 Because the consumer never gets younger, the act requires that one of these steps for age
38 verification be performed only once for each consumer. For subsequent orders by the same
39 consumer, the winery may repeat one of these age verification steps or rely on its own records
40 that it has already conducted age verification of this particular consumer and confirmed that the
41 consumer is at least 21 years of age.

42
43 Most but not all states require a package containing wine to be labeled with the following
44 or substantially similar words: "contains alcohol, signature of person age 21 or older required for
45 delivery." Some states require only that the label state that the package contains alcohol and may
46 not be delivered to a person under 21 years of age. The act takes the latter approach. As

1 discussed in Section 7, the act makes the signature requirement optional for the enacting state. If
2 the enacting state does not require a signature upon delivery, the consignor and carrier may still
3 require a signature from the recipient and may still label the package to require a signature.
4 However, if the enacting state determines that technology may be available that obviates the
5 need for a signature, such as use of a digital ID, subsection (e) does not require the package label
6 to reference a signature.

7
8 Subsection (d)(1) and (2) are intended to limit a winery to shipping to consumers only
9 wine that the winery actually produces. Under federal law, the certificate of label approval
10 (COLA) is obtained by the winery that bottles the wine, 27 C.F.R. 4.50 (a), so the wine producer
11 typically obtains the COLA. (The term “certificate of label approval or exemption” is defined in
12 the act and there is further discussion of the term in Section 2.) Subsection (d) does not limit the
13 type of wine that may be shipped to a consumer. Aside from unique state labeling requirements,
14 any limitation on the type of product shipped to a consumer derives from the way the enacting
15 state defines “wine” in Section 2. Some states currently limit the types of wine that may be
16 shipped directly to a consumer. At least one state limits the sale of wine having an alcohol
17 content greater than 16 percent alcohol by volume to liquor stores and prohibits such wine from
18 being shipped DTC. The act recognizes that some states have unique labeling requirements, such
19 as a prohibition against obscene or indecent labels, and that the enacting state may prohibit DTC
20 shipments of wine that would violate these requirements.

21
22 Subsections (h) and (i), along with Section 8(b), allow a winery to ship wine to a
23 consumer via a licensed fulfillment provider if the winery has provided notice to the state
24 regulator that it will be using that licensed fulfillment provider. (The winery may use more than
25 one licensed fulfillment provider to ship its wine.) Wine must be shipped either from an
26 authorized winery or a licensed fulfillment provider acting on behalf of the authorized winery;
27 the licensed fulfillment provider may not ship wine on its own behalf. Wine may only be shipped
28 from the licensed address of the winery or fulfillment provider. Wine also must be shipped
29 directly to the consumer. Under subsection (j) and Section 8(c)(4), for example, a winery or
30 fulfillment provider may not, to save on shipping costs, ship large quantities of wine to a
31 “staging” warehouse in a metropolitan area and then distribute the wine to consumers from that
32 warehouse as orders are received from area residents.

33
34 Most but not all states limit the amount of wine that a winery may ship directly to the
35 state’s residents. Many states impose a limit of one or two cases per month or 12 to 24 cases per
36 year, which translates to 108 to 216 liters per year given that a case is typically twelve 750-ml
37 bottles. The optional limit in subsection (g), if included, is a limit on the quantity a shipping
38 winery can sell or ship to a particular individual, not a limit on the total amount of wine that an
39 individual may order if the individual orders from multiple wineries. If an individual orders a
40 case of wine as a gift for an of-age friend, the “sell or ship” language means that the case will
41 count against the winery’s quantity limit for both the individual who orders the wine and the
42 friend who receives it.

1 If optional subsection (f) is included in the act, a winery may not ship wine to a “dry”
2 jurisdiction within the enacting state, which might be a county or municipality or even a
3 neighborhood. Subsection (f) also relieves the shipping winery of responsibility for determining
4 which locations in a state are “dry,” as the provision allows the shipping winery to rely on the
5 state regulator to make this determination. Even if the enacting state has “dry” areas, the enacting
6 state may determine, as Texas did (sec. 16.09(a)), that a winery may ship wine directly to
7 consumers in parts of the state that are otherwise “dry.” It should be noted that subsection (f)
8 does not limit the days or hours in which wine may be delivered, and does not, for example,
9 prohibit the delivery of wine shipped DTC on a Sunday in a state that has “blue laws” for
10 alcohol.

11
12 State law generally prohibits a person from selling alcoholic beverages unless the person
13 holds the appropriate license or an exception applies. Some states offer special-circumstance
14 licenses such as licenses allowing auction sales or estate sales. Some states also recognize license
15 exceptions, such as limited sales by wine collectors or bed-and-breakfast establishments. If the
16 optional language in subsection (k) is included, a consumer who receives wine shipped DTC
17 may resell the wine if the consumer may do so legally under a special-circumstance license or
18 exception of the enacting state.

19 20 **SECTION 7. DELIVERY REQUIREMENTS FOR DIRECT WINE SHIPMENT.**

21 (a) A wine carrier may not deliver wine shipped to a consumer unless:

22 (1) the individual delivering the wine is at least 21 years of age and has received
23 training in age verification and recognizing signs of intoxication;

24 (2) the package containing the wine is accompanied by a shipping label that clearly
25 indicates the name and address of the wine-direct-shipper licensee, winery licensee, or licensed
26 fulfillment provider as consignor and the name and address of the consumer as consignee;

27 (3) the package containing the wine is labeled in accordance with Section 6(e);

28 and

29 (4) at the time of delivery and before transferring possession of the package to the
30 recipient, the individual delivering the package:

31 (A) verifies the recipient’s age by:

32 (i) visually inspecting the recipient’s valid identification document
33 to verify the identity of the recipient and, by visual inspection [or by using age verification

1 technology], verifying that the recipient is at least 21 years of age; or

2 (ii) using an approved age verification credential to verify the
3 identity of the recipient and that the recipient is at least 21 years of age; [and]

4 (B) verifies by visual inspection that the recipient is not visibly
5 intoxicated[; and

6 (C) obtains the signature of the recipient].

7 (b) A wine carrier shall create a record of verification [and signatures] under subsection
8 (a)(4). The recipient under subsection (a)(4) is not required to be the consumer.

9 (c) Wine shipped to a consumer under this [act] may be delivered to a residential or
10 business address. The consumer may arrange with the wine carrier to receive the shipment at a
11 location other than the consignee address on the original shipping label if the new location is one
12 to which the wine-direct-shipper licensee or winery licensee could have shipped the wine.

13 (d) If a consignee address is a location used to conduct business providing parcel pick-up
14 services, the recipient of the shipment, if other than the consumer, shall verify the identity and
15 age of the consumer, or of the individual receiving the package containing wine for the
16 consumer, using a method prescribed under subsection (a)(4)(A) before transferring possession
17 of the package to the consumer or individual.

18 (e) If a wine carrier has received a notice from the [Commission] under Section 10(b), the
19 wine carrier, for the period specified in Section 10(b), may not accept from the consignor
20 identified in the notice a package declared to contain alcohol for delivery in this state.

21 [(f) If a wine carrier is unable to complete delivery of wine shipped to a consumer:

22 (1) the wine carrier may return the wine to the consignor; and

23 (2) the wine-direct-shipper licensee or winery licensee that originated the

transaction may consider that no sale occurred, cancel the transaction, and credit the account of the consumer who ordered the wine.]

Legislative Note: Subsection (a)(4)(A)(i) includes optional, bracketed language that allows a courier delivering wine to use technology to determine the recipient's age. This language is optional because some states may determine that use of a device such as a scanner is less reliable than requiring the courier to look at the date of birth on the recipient's identification document and make the age determination.

Subsection (a)(4)(C) is bracketed as optional because the enacting state may wish to recognize the possibility that technology, like digital identification that is scanned by a device carried by the courier, might render the need for a recipient's signature unnecessary.

Comment

The second age verification under the act occurs at the time of delivery. The act requires delivery of the wine to an of-age adult but not necessarily to the same individual who purchased the wine, so the recipient could be, for example, a family member at the consumer's residence, a receptionist at the consumer's office, or a clerk at a parcel pick-up location. Under subsection (a)(4), before transferring possession of the package containing wine, the courier delivering the package must verify the recipient's identity and age. The courier can do this by 1) visually inspecting the recipient's driver's license (or other valid identification document) to confirm identity, and 2) verifying age by looking at the date of birth on the driver's license or, if the enacting state chooses, using age verification technology like a scanner to read the date of birth from the driver's license and confirm age. As an alternative, if the state has approved use of an age verification credential, which is a digital ID, the courier may verify the recipient's identity and age from the digital ID. The act provides the enacting state the option of not requiring a signature at the time of delivery. If a digital ID is used, an ID scan at the time of delivery may be more reliable than a signature to establish the identity of the recipient. If the enacting state elects not to require a signature, the consignor or carrier could still require a signature at the time of delivery, but this would not be a statutory mandate. Regardless of the method of age verification, the act requires the courier to generate a record that the age verification process was performed, but does not require the carrier to retain specific data like the recipient's date of birth. An electronic record from a driver's license scan, if allowed by the enacting state, could be a sufficient record of age verification. If the recipient of the wine package is a clerk at a parcel pick-up location, the clerk must perform age verification of the consumer, or of the person picking up the package for the consumer, before transferring possession of the package to the consumer or other person.

The act includes specific requirements for age verification in connection with direct-to-consumer wine sales and delivery, but does not directly create an exception to the general rule in most or all states that it is illegal to provide or furnish (not just sell) alcoholic beverages to an underage person. Aside from the act, a wine carrier is generally prohibited from delivering alcoholic beverages to an underage person and faces legal liability for doing so. The wine carrier and its courier therefore have a strong incentive to use reliable technology for the purpose of age

1 verification, even if the state regulator is not required to approve the technology. However, the
2 act also includes optional language in Section 17(c) allowing the enacting state to create a “safe
3 harbor” from penalties under the act, and penalties of general application, for a wine carrier that
4 delivers wine to an underage person if the courier completed appropriate age verification and
5 reasonably concluded the recipient was at least 21 years of age.

6
7 The act allows the state regulator to administratively enjoin “bad actors” from illegally
8 shipping alcoholic beverages into the enacting state and to give notice of this to a carrier that has
9 previously transported alcohol for the bad actor. Under subsection (e), within a specified
10 timeframe, a carrier may not accept a package declared to contain alcohol from a bad actor for
11 which it has received such a notice.

12
13 The delivery requirements in Section 7 and reporting requirements in Section 12 apply to
14 a wine carrier, which is defined in Section 2 to include only a common carrier delivering wine to
15 a consumer. In other words, the act is not intended to apply to common carriers delivering wine
16 that is being distributed through the three-tier system; these deliveries are governed by law of the
17 enacting state other than the act. The act allows, but does not require, the common carrier to
18 require the consignor to identify whether the consignee is a consumer or licensee; the provisions
19 of the act govern the common carrier only when the consignee is a consumer.

20
21 If included in the act, optional subsection (f) attempts to address the very practical issue
22 of what happens if a delivery cannot be made, including when the consumer is discovered at the
23 time of delivery to be underage or an incorrect consignee address is provided. Some states have
24 “no return” policies for alcoholic beverage sales to consumers. If the enacting state is such a
25 state, subsection (f) (or an amendment to other provisions of the enacting state’s law) is intended
26 to allow the return of undeliverable wine. However, the extent to which the enacting state can
27 address this issue might be limited. If an out-of-state winery ships wine to a consumer in the
28 enacting state that cannot be delivered, the enacting state’s law might be ineffective to allow the
29 winery in the state where the shipment originated to accept return of the undeliverable product.
30 However, for in-state shipments of wine to consumers, subsection (f) clearly allows the shipping
31 winery to accept return of the undeliverable wine and “reverse the sale.”

32 **SECTION 8. LICENSED FULFILLMENT PROVIDER.**

33
34 (a) A fulfillment provider license authorizes the licensee to provide wine-fulfillment
35 services and ship wine to a consumer in compliance with this section.

36 (b) A licensed fulfillment provider may ship wine to a consumer only on behalf of a
37 wine-direct-shipper licensee or winery licensee that has identified the licensed fulfillment
38 provider in a notice to the [Commission] under Section 6(h).

39 (c) A licensed fulfillment provider may not:

1 (1) sell wine to an individual in this state;

2 (2) collect money or receive payment on behalf of, or for the benefit of, a wine-
3 direct-shipper licensee or winery licensee from an individual in this state;

4 (3) receive or process orders on behalf of, or for the benefit of, a wine-direct-
5 shipper licensee or winery licensee from an individual in this state;

6 (4) ship wine into or within this state to a person other than a consumer; or

7 (5) ship wine to a consumer except by means of a wine carrier.

8 (d) Section 6(e)[,] [(f),] [(g),] and (i) apply when wine is shipped by a licensed fulfillment
9 provider to the same extent as if the wine had been shipped directly by a wine-direct-shipper
10 licensee or winery licensee.

11 (e) When shipping wine to a consumer on behalf of a wine-direct-shipper licensee or
12 winery licensee, a licensed fulfillment provider is not responsible for tax liability of the wine-
13 direct-shipper licensee or winery licensee.

14 **Legislative Note:** In subsection (d), Section 6(f) and (g) are bracketed to reflect the fact that
15 Section 6(f) and (g) are optional provisions. The legislative drafter should ensure that the cross-
16 references in subsection (d) are consistent with Section 6.

17 18 **Comment**

19
20 The relationship between a shipping winery and a licensed fulfillment provider is
21 discussed in Section 6. The act does not specifically require a contract between the shipping
22 winery and the licensed fulfillment provider, but it is likely there will be such a contract defining
23 the parties' respective responsibilities and liabilities. The act also does not expressly refer to the
24 licensed fulfillment provider as the "agent" of the winery, although the parties' contract might.

25
26 The act prohibits a licensed fulfillment provider from processing orders or accepting
27 payments from customers on behalf of wineries that ship wine directly to consumers. At least
28 one state, Virginia, recognizes a different type of entity, an approved "marketing portal," that is
29 authorized to solicit and receive orders and process payments as the agent of direct wine
30 shippers, thereby facilitating multi-winery wine clubs.
31

1 **SECTION 10. NOTICE OF UNAUTHORIZED SHIPPERS; VIOLATOR LIST.**

2 (a) If the [Commission] has reason to believe that alcoholic beverages have been illegally
3 shipped into this state by a consignor located in another state, the [Commission] may give notice
4 to the consignor requiring the consignor to show cause not later than 30 days after the date of the
5 notice why shipments by the consignor into this state should not be [administratively enjoined].
6 After the 30-day period and an opportunity for hearing, if the [Commission] determines that the
7 consignor illegally shipped alcoholic beverages into this state, the [Commission] may issue an
8 [administrative injunction] prohibiting additional shipments of alcoholic beverages into this state
9 by the consignor.

10 (b) The [Commission] may give notice of the [administrative injunction] under
11 subsection (a) to the common carrier that delivered the shipment resulting in the [administrative
12 injunction]. Beginning 15 days after the date of the notice, and until the common carrier receives
13 notice that the [administrative injunction] is rescinded, the common carrier may not accept from
14 the consignor identified in the notice, for shipment into this state, any package declared to
15 contain alcohol.

16 (c) For good cause, the [Commission] may rescind an [administrative injunction] issued
17 under subsection (a). On rescinding an [administrative injunction], the [Commission] shall give
18 notice of the rescission to a common carrier that received notice of the [administrative
19 injunction] under subsection (b).

20 (d) An [administrative injunction] issued under subsection (a) is subject to judicial review
21 under [cite to this state's administrative procedure act].

22 [(e) The [Commission] shall maintain and periodically update on the [Commission's]
23 Internet website, or by other publicly available means, a violator list that includes current

1 information identifying each person:

2 (1) [administratively enjoined] from shipping alcoholic beverages into this state
3 under subsection (a);

4 (2) found by the [Commission], after notice and an opportunity for hearing, to
5 have violated Section 9; and

6 (3) known by the [Commission] to have been found by a court to have violated
7 Section 9.]

8 [(f) If the [Commission] updates the list under subsection (e) by adding or removing a
9 person located in another state, the [Commission] shall provide notice of the update, the identity
10 of the person, and the nature of the violation to:

11 (1) the agency that regulates alcoholic beverages in the state where the person is
12 located; and

13 (2) the Federal Tax and Trade Bureau.]

14 ***Legislative Note:*** The term “administrative injunction,” which is an agency order to halt
15 violating conduct, is bracketed to allow the legislative drafter to substitute a different term if
16 there is a more suitable term under the enacting state’s law.

17
18 *A state that enacts optional subsection (e) may, but need not, also enact subsection (f).*

20 **Comment**

21
22 This section provides an enforcement mechanism to aid the enacting state in stopping
23 illegal alcohol shipping into the state from out-of-state actors. If the state regulator detects an
24 illegal shipment of alcoholic beverages into the state, the state regulator may give notice to the
25 consignor to show cause why shipments from the consignor should not be enjoined. After
26 affording the consignor an opportunity for hearing, the state regulator may determine that the
27 consignor has illegally shipped alcoholic beverages into the enacting state and issue an
28 administrative injunction (an agency order) prohibiting additional shipments of alcoholic
29 beverages into the state by the consignor. The state regulator may give notice of the
30 administrative injunction to the common carrier that delivered the illegal shipment. Beginning 15
31 days after this notice, the common carrier may not accept from the consignor identified in the
32 notice any package declared to contain alcohol. The act neither limits common carriers to
33 accepting packages from only an authorized list of licensees, nor prohibits common carriers from

1 accepting packages from an ever-changing list of banned consignors. The notice to a carrier
2 under the act is specific to a single consignor and permanently prohibits the carrier from
3 accepting alcohol packages from that consignor unless the carrier receives a subsequent notice
4 that the administrative injunction against that consignor has been rescinded.

5
6 If included, optional subsection (e) requires the state regulator to create and make
7 available to the public a list of violators that, in essence, identifies the “bad actors” that have
8 illegally shipped alcoholic beverages into or within the enacting state. The list is generated for
9 informational purposes; the list is not used to impose restrictions on a common carrier in
10 accepting alcohol for delivery, although persons on the list may be subject to an administrative
11 injunction that has this effect. Most likely, a “bad actor” would be placed on the list after a
12 proceeding resulting in a license suspension or revocation or court determination under Section
13 15, 16, or 17. If included, optional subsection (f) requires the enacting state to provide notice to
14 an out-of-state actor’s home state and the TTB that the actor has been involved in illegal
15 interstate shipping.

16 17 **SECTION 11. RECORDKEEPING REQUIREMENTS.**

18 (a) A wine-direct-shipper licensee [or winery licensee] shall maintain:

- 19 (1) records necessary to complete the report under Section 12(a) properly;
20 (2) age verification records under Section 6(c); and
21 (3) other records required by the [Commission].

22 (b) A fulfillment-provider licensee shall maintain:

- 23 (1) records necessary to complete the report under Section 12(b) properly; and
24 (2) other records required by the [Commission].

25 (c) A wine carrier shall maintain:

- 26 (1) records necessary to complete the report under Section 12(c) properly;
27 (2) verification [and signature] records under Section 7(b); and
28 (3) other records required by the [Commission].

29 (d) A wine-direct-shipper licensee, [winery licensee,] fulfillment-provider licensee, and wine
30 carrier shall:

- 31 (1) maintain the records under subsections (a), (b), and (c) for [three] years after

1 the date of the wine delivery, unless earlier destruction is authorized in a record by the
2 [Commission]; and

3 (2) ensure the records are accurate, complete and preserved in a manner that
4 renders them readily available for inspection by the [Commission].

5 (e) A person required to maintain a record under subsection (a), (b), or (c) shall, on
6 request of another person required to maintain records under those subsections, provide the
7 person a record needed to comply with Section 12 .

8 [(f) A winery licensee shall maintain age verification records under Section 6(c).
9 Subsection (d) applies to the records.]

10 **Legislative Note:** *The legislative drafter should include the bracketed language, “winery*
11 *licensee”, in subsections (a) and (d), and omit the optional language in subsection (f), if the*
12 *enacting state creates the same record-keeping and reporting requirements for in-state wineries*
13 *and out-of-state wineries. The legislative drafter should omit the optional language in*
14 *subsection (a) and (d), and include the optional language in subsection (f), if the enacting state*
15 *does not create the same record-keeping and reporting requirements for in-state wineries and*
16 *out-of-state wineries shipping wine to the state’s residents. Subsection (f) assumes that other*
17 *provisions of the enacting state’s law, outside the act, will govern recording-keeping and*
18 *reporting of direct-to-consumer wine sales by the in-state winery.*

19
20 *The legislative drafter should include the optional language for signature records in subsection*
21 *(c)(2) if the optional language in Section 7(a)(4)(C) is included to require a signature upon*
22 *delivery.*

23 24 Comment

25
26 The act authorizes an out-of-state winery holding a wine direct shipper license and an in-
27 state winery holding a winery license to ship wine directly to a consumer in the enacting state.
28 Some states impose different record-keeping and reporting requirements for intrastate shipments
29 of wine to consumers than for interstate shipments of wine to consumers. Subsections (a), (d),
30 and (f) recognize that the enacting state might choose to create the same or different record-
31 keeping and reporting requirements for in-state wineries and out-of-state wineries. Subsection
32 (f), if included, requires the in-state winery to maintain age verification records under the act,
33 even if record-keeping and reporting requirements for the in-state winery are established by other
34 law of the state and not the act. The options in this section do not reflect a determination that
35 different record-keeping and reporting requirements for in-state wineries and out-of-state
36 wineries is permissible under *Granholm v. Heald*, 544 U.S. 460 (2005). It reflects only a
37 recognition of current practice by some states.

1 Section 12 requires the reporting of some information originating with a person other
2 than the person filing the report, in particular the parcel tracking number for the wine shipped.
3 Subsection (e) requires, for example, the licensed fulfillment provider to provide the wine-direct-
4 shipper licensee, if requested, with the tracking number for each shipment.

5
6 Section 2 defines a record to include electronic materials. Section 18(5) allows the state
7 regulator to prescribe the format of digital records.

8 9 **SECTION 12. REQUIRED REPORTS RELATED TO DIRECT WINE**

10 **SHIPMENTS.**

11 (a) Except as otherwise provided in subsection (e), a wine-direct-shipper licensee [or
12 winery licensee] shall file with the [Commission] a [quarterly] report that includes:

13 (1) the name, business address, and wine direct shipper [or winery] license
14 number of the licensee;

15 (2) the taxpayer identification number for the licensee;

16 (3) the total [gallons] [liters] of wine shipped to consumers during the reporting
17 period, identified by tax classification; and

18 (4) for each shipment to a consumer during the reporting period:

19 (A) the name and address of the consignee of the shipment and, if
20 different, the name and address of the recipient;

21 (B) the date the shipment was received by the wine carrier for delivery, if
22 applicable, and the date the shipment was delivered;

23 (C) the wine type, brand label, and quantity by volume of wine shipped
24 and the date the licensee was issued a certificate of label approval or exemption for the wine
25 shipped, unless the licensee declares that a certificate is not required for the wine;

26 (D) the purchase price of the wine shipped and the amount of tax charged
27 in connection with the wine shipped;

1 (E) if the wine was delivered by a wine carrier, the name and business
2 address of the wine carrier, [the last four digits of the licensee's account number with the wine
3 carrier,] and the wine carrier's parcel tracking number for the shipment; and

4 (F) if the wine was shipped by a licensed fulfillment provider, the name,
5 business address, and fulfillment provider license number of the fulfillment provider that shipped
6 the wine.

7 (b) Except as otherwise provided in subsection (e), a fulfillment-provider licensee shall
8 file with the [Commission] a [quarterly] report that includes:

9 (1) the name, business address, and fulfillment provider license number of the
10 licensee;

11 (2) the total [gallons] [liters] of wine shipped to consumers under the fulfillment
12 provider license during the reporting period, identified by tax classification; and

13 (3) for each shipment to a consumer during the reporting period:

14 (A) the name, business address, and wine direct shipper or winery license
15 number of the winery that manufactured the wine shipped;

16 (B) the name and address of the consignee of the shipment and, if
17 different, the name and address of the recipient;

18 (C) the date the shipment was received by the wine carrier for delivery and
19 the date the shipment was delivered;

20 (D) the wine type, brand label, and quantity by volume of wine shipped;
21 and

22 (E) the name and business address of the wine carrier that delivered the
23 wine, [the last four digits of the fulfillment provider's account number with the wine carrier,] and

1 the wine carrier's parcel tracking number for the shipment.

2 (c) Except as otherwise provided in subsection (e), a wine carrier shall file with the
3 [Commission] a [quarterly] report that includes:

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

5 (2) for each shipment to a consumer during the reporting period for which the
6 consignor declared the package being shipped to contain alcohol:

7 (A) the name and business address of the consignor of the shipment [and
8 the last four digits of the consignor's account number with the wine carrier];

9 (B) the name and address of the consignee of the shipment and, if
10 different, the name and address of the recipient;

11 (C) the date the package was received by the wine carrier for delivery and
12 the date the package was delivered;

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

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

15 (d) The [Commission] shall prescribe the form for filing a report under subsections (a), (b), and
16 (c) and deadlines for filing the report. The [Commission] may require the report to be filed
17 electronically. The [Commission] may require a person filing the report to submit additional
18 information, including business records, to substantiate the information included in the report.

19 (e) A report under subsection (a), (b), or (c) is not required to be filed if no wine delivery
20 to a consumer was made during the reporting period.

21 (f) A report filed under this section, and information obtained from the report, is
22 confidential and exempt from public inspection or disclosure, except that the [Commission] may
23 disclose a report or information from a report:

(1) as provided in Section 14(e); or

(2) if reasonably necessary to enforce or implement this [act].

Legislative Note: *The legislative drafter should include the optional, bracketed language for a winery licensee in subsection (a) if the enacting state elects to impose the same reporting requirements on an in-state winery (winery licensee) as an out-of-state winery (wine-direct-shipper licensee). If this optional language is not included, the reporting requirements for a winery licensee are presumed to be governed by law other than the act.*

The reporting period in subsections (a), (b), and (c) is bracketed as optional. The enacting state may prefer an alternative reporting period, such as monthly, semi-annually, or annually.

Subsections (a)(4)(E), (b)(3)(E), and (c)(2)(A) include optional language to report the business's account number with the carrier. Cross-reporting of this number may assist the state regulator in tracking wine shipping in the enacting state.

The legislative drafter may need to treat provisions of the state's public records law to accomplish the intended confidentiality under subsection (f).

Comment

The act requires reporting by a wine carrier, which is defined in Section 2 as a common carrier that delivers wine in the enacting state to a consumer. Accordingly, the act requires common carriers to report only wine shipments to consumers, not wine shipments to licensed industry participants receiving the package through the three-tier system. As discussed in Section 7, the act does not include any specific mechanism for the common carrier to identify packages designated for consumers, but the common carrier may choose to require consignors that declare a package to contain alcohol to also declare (perhaps through a check-box) whether the consignee is a consumer or a licensee.

As discussed in Section 11, optional language in the act allows the enacting state to impose on an in-state winery (winery licensee) and an out-of-state winery (wine-direct-shipper licensee) the same, or different, record-keeping and reporting requirements. In some states, the detailed reporting in the act for wine shipments to consumers is not required if the wine shipment is intrastate.

Although some states require reporting even if there is no reportable activity during the reporting period, subsection (e) specifies that no report is required under these circumstances. The act includes a presumption of quarterly reporting, but the enacting state may prefer a different reporting period or a variable reporting period, with, for example, a high-volume shipper reporting monthly and a very low-volume shipper reporting annually.

The act requires a wine-direct-shipper licensee, fulfillment-provider licensee, and wine carrier to report some of the same information, including the parcel tracking number for each shipment. Cross-reporting of information that can be included in a searchable database

1 is intended to assist the state regulator in analyzing wine shipping into the enacting state and
2 ascertaining whether wine shipments originate from a consignor authorized to ship wine to
3 consumers.

4
5 The act requires reports to include detailed and potentially sensitive personal and
6 proprietary information, such as a consumer's name and address and the brand and quantity
7 of wine purchased. Subsection (f) requires the state regulator to maintain confidentiality of
8 these reports and exempts them from disclosure under the state's public records law, subject
9 to limited exceptions.

10 11 **SECTION 13. TAX LIABILITY AND PAYMENT.**

12 (a) A wine-direct-shipper licensee shall pay to the [Commission] the [excise] tax imposed
13 under [cite to enacting state's statute] on wine sold and shipped to a consumer.

14 (b) A wine-direct-shipper licensee that sells and ships wine to a consumer shall charge all
15 applicable [state and local sales and use] tax required under [cite to enacting state's statute] [,
16 which must be separately identified on the invoice]. The wine-direct-shipper licensee shall
17 collect the tax and pay the tax to the [Commission]. [The amount of tax must be calculated
18 based on the sale of the wine occurring at the location identified as the address of the consumer,
19 as consignee, on the shipping label.]

20 (c) The wine-direct-shipper licensee is subject to all tax-related requirements provided by
21 rule of the [Commission] for tax owed by the licensee under this section. Except as prescribed
22 by the [Commission], provisions relating to return filing, tax payment, and the assessment,
23 collection, and enforcement of tax applicable to a winery licensee also apply to a [similarly-
24 situated] wine-direct-shipper licensee.

25 (d) Use by a wine-direct-shipper licensee or winery licensee of the services of a licensed
26 fulfillment provider does not relieve the wine-direct-shipper licensee or winery licensee of tax
27 liability or other responsibility under this section or other law.

28 ***Legislative Note:*** The tax name in subsections (a) and (b) is bracketed because the legislative
29 drafter should insert the appropriate tax appellation for the enacting state. The legislative

1 *drafter will need to replace the bracketed term Commission in this section with a different*
2 *agency name if the taxing authority in the enacting state is different from the regulatory*
3 *authority. See legislative note for Section 2(3).*

4
5 *The legislative drafter will need to tailor subsection (a) to the particular wine excise tax statute*
6 *in the enacting state or to create and cross-reference a parallel provision in the enacting state's*
7 *tax code under which the amount of the excise tax or credit is calculated in the same manner,*
8 *using the same rate, as wine manufactured in the enacting state by a similarly-situated winery.*
9 *In the unlikely event the enacting state does not impose a wine excise tax, subsection (a) can be*
10 *omitted entirely.*

11
12 *In subsection (b), the legislative drafter may include a cross-reference to the appropriate*
13 *provisions of the enacting state's tax code. If the enacting state does not impose sales or use tax,*
14 *the legislative drafter should omit subsection (b). If the enacting state requires sales tax to be*
15 *charged to the purchaser, the optional, bracketed language in subsection (b) requiring the*
16 *amount of sales tax to be identified on the invoice might make it easier for the enacting state to*
17 *verify that an out-of-state winery is collecting the tax from consumers. The legislative drafter*
18 *may find the optional, bracketed final sentence in subsection (b)—that the location where the*
19 *consignee is expected to receive the wine must be used to determine the tax-- to be self-evident*
20 *and therefore omit the sentence.*

21
22 *In subsection (c), the bracketed term "similarly-situated" should be included if the enacting state*
23 *has more than one classification of authorized winery – for example, a winery, "farm winery,"*
24 *and "small winery" – and provides different return filing periods or other requirements or*
25 *procedures for these special categories of winery.*

26 27 **Comment**

28
29 There is a federal excise tax on wine production and typically a state excise tax as well.
30 Many states also impose sales tax on retail sales of alcohol. The names of the applicable taxes
31 vary by state and can be known as occupational taxes, privilege taxes, wine taxes, luxury taxes,
32 gallonage taxes, or by other names. Regardless of the tax name, the act applies equal tax
33 treatment to all direct-to-consumer wine shipments.

34
35 This section is intended to require payment to the enacting state of the same excise tax on
36 wine shipped to a consumer, regardless of whether the shipping winery is located within or
37 outside the state. The enacting state will most likely already have a statute imposing excise tax
38 on wine produced in the state. Because of this, subsection (a) applies only to an out-of-state
39 winery (wine-direct-shipper licensee) and provides for application of the same excise tax
40 applicable to an in-state winery. If the enacting state recognizes different classes of wineries –
41 like a "farm winery" that produces wine predominantly from grapes grown by the winery or a
42 "small winery" that produces less than a specified volume of wine – that are subject to different
43 excise tax rates or that qualify for an excise tax credit, the enacting state will need to ensure that
44 the out-of-state winery's excise tax or credit is calculated in the same manner, using the same
45 rate, as a similarly-situated in-state winery. The effect of subsection (a) is to require payment of
46 the wine excise tax to the state in which the consumer receives the wine instead of the state

1 where the wine is produced. States typically recognize an excise tax exception for wine produced
2 in that state but exported to another state so that the wine is not subject to “double-taxation” at
3 the state level.

4
5 This section is also intended to require payment to the enacting state of the same sales tax
6 on wine shipped to a consumer, regardless of whether the shipping winery is located within or
7 outside the state. The enacting state also will likely have a statute imposing a sales tax on wine
8 sold by an in-state winery to a consumer, so subsection (b) applies only to sales by an out-of-
9 state winery. If the enacting state applies a local sales tax that varies geographically, the location
10 where the consignee is expected to receive the wine is used to determine the tax.

11
12 This section is meant to complement, not replace, provisions of the tax code in the
13 enacting state. Subsection (c) recognizes that the enacting state’s general tax provisions, such as
14 return filing periods, payment requirements, late penalties, and delinquent tax collection
15 procedures, are presumed to apply to the tax obligations of the wine-direct-shipper licensee
16 under the act, unless the state regulator has adopted a rule under Section 18 to clarify the
17 application of, or deviate from, the enacting state’s tax code with respect to wine-direct-shipper
18 licensees. To the extent the enacting state has, for example, a graduated return filing period, in
19 which small in-state wineries are required to file returns quarterly or annually instead of
20 monthly, the term “similarly-situated” in subsection (c) is intended to allow the state regulator to
21 afford the same privilege to a small out-of-state winery that ships wine to consumers, if the
22 legislative drafter has not accounted for this circumstances in the statutory language. The act
23 does not include a provision relating to confidentiality of tax return information, which is
24 presumed to be covered by existing provisions of the enacting state’s tax code.

25 26 **SECTION 14. STATE JURISDICTION AND ENFORCEMENT.**

27 (a) A wine-direct-shipper licensee, [winery licensee,] fulfillment-provider licensee, and
28 wine carrier are subject to the jurisdiction of the [Commission] [and other applicable authority],
29 the courts, and other enforcement authority of this state with respect to the enforcement of this
30 [act].

31 (b) The [Commission] may inspect and audit the records of a wine-direct-shipper licensee,
32 [winery licensee,] fulfillment-provider licensee, or wine carrier relevant to compliance with this [act]. A
33 wine-direct-shipper licensee, [winery licensee,] fulfillment-provider licensee, and wine carrier
34 shall allow the [Commission] to inspect and audit its records and, at the [Commission]’s request
35 in a record, shall provide to the [Commission], at a location specified by the [Commission],
36 complete and accurate records not later than [10] business days after the request.

1 (c) The [Commission] may inspect, during ordinary hours of operation, the licensed premises of
2 a wine-direct-shipper licensee, [winery licensee,] or fulfillment-provider licensee to assess compliance
3 with this [act]. [If the inspection reveals that the licensee has knowingly committed a violation of this
4 [act], the [Commission] may require the licensee to reimburse the [Commission] for reasonable expenses
5 attributable to the inspection, excluding the compensation of personnel conducting the
6 inspection.]

7 (d) A wine-direct-shipper licensee and a fulfillment-provider licensee shall appoint, on a
8 form prescribed by the [Commission], and continuously maintain, an agent for service of
9 process, which need not be located in this state. The appointment of an agent under this
10 subsection is an affirmation by the licensee that the agent consents to accept service. Service of
11 process on the agent constitutes valid service of process on the licensee in an action or
12 proceeding arising out of the enforcement of this [act]. If a licensee fails to maintain, in the
13 records of the [Commission], a current agent for service of process or if the current agent cannot
14 be served with reasonable diligence, the [Commission] is the agent for service of process.

15 (e) For a regulatory or enforcement purpose, the [Commission] may disclose a report,
16 record, or other information in its possession to:

17 (1) a state agency or law enforcement agency of this state [or a local agency in
18 this state with regulatory authority over matters relating to alcoholic beverages];

19 (2) a state or local agency in another state with regulatory authority over matters
20 relating to alcoholic beverages or a law enforcement agency of another state; and

21 (3) the Federal Tax and Trade Bureau, a federal agency with regulatory authority
22 over matters relating to alcoholic beverages, or a federal law enforcement agency.

23 [(f) [XX] percent of the fees collected by the [Commission] under Sections 3(a)(3) and

1 4(a)(2) shall be [appropriated] [allocated] to the [Commission] for costs incurred in enforcing
2 this [act].]

3 **Legislative Note:** *The bracketed reference to the Commission in subsection (a) recognizes that*
4 *the enacting state may have more than one state or local agency involved in the regulation and*
5 *taxation of wine shipments to consumers. The legislative drafter should insert the name of each*
6 *applicable state or local agency.*

7
8 *In subsections (a), (b), and (c), the term “winery licensee” is bracketed as optional because a*
9 *winery licensee is an in-state winery and the substance of subsections (a), (b), and (c) already*
10 *may apply to an in-state winery under the enacting state’s existing law. The legislative drafter*
11 *may elect to include a winery licensee in subsection (b) even if the form and content of records*
12 *kept by a winery are not determined by Section 11 but instead by law other than the act.*

13
14 *The second sentence of subsection (c) is bracketed as optional because it creates an uncertain*
15 *liability for an out-of-state winery.*

16
17 *The legislative drafter should include the bracketed language in subsection (e)(1) if political*
18 *subdivisions in the enacting state share authority with one or more state agencies in regulating*
19 *any aspect of the alcoholic beverages trade.*

20
21 *If the enacting state includes subsection (f), the legislative drafter should insert the appropriate*
22 *percentage of funding and terminology for the enacting state.*

23 24 **Comment**

25
26 Subsection (a) asserts the enacting state’s jurisdiction over licensees located in another
27 state and in-state actors. Subsection (a) operates in conjunction with Sections 3(d)(5) and 4(d)(5)
28 to ensure that out-of-state wineries and fulfillment providers licensed to ship wine to the enacting
29 state’s consumers are subject to jurisdiction in the enacting state. Subsection (a) does not assert
30 jurisdiction over a person that is neither licensed in the enacting state nor regularly operating
31 within the enacting state like an in-state winery or common carrier. Whether the enacting state
32 has jurisdiction over an unlicensed “bad actor” illegally shipping wine into the state will be
33 determined on a fact-specific basis under the state’s long-arm statute in light of constitutional
34 due process considerations, such as whether the bad actor has “minimum contacts” with the state.
35 *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Int’l Shoe Co. v. Washington*, 362
36 U.S. 310 (1945).

37
38 Subsection (e) allows the state regulator in the enacting state to share information with
39 regulators in other states, and with other officials in the same state and federal officials. This
40 provision allows states to easily cooperate to stop illegal interstate shipping. Although Section
41 12(f) generally makes reports related to DTC wine shipping confidential, an exception allows
42 these reports or information from the reports to be shared as provided in subsection (e).

1 If included, the optional second sentence of subsection (c) allows personnel of a state
2 regulator to recover reasonable airfare, lodging, and other travel expenses (but not the cost of the
3 inspectors' time) in connection with an on-site inspection of an out-of-state winery if the
4 inspection reveals that the licensee has knowingly committed a violation.

5
6 State agency funding mechanisms and priorities can vary widely from state to state. If
7 included, optional subsection (f) ensures at least some funding is dedicated by the enacting state
8 to enforcing state law relating to direct-to-consumer shipping.

9
10 **SECTION 15. SUSPENSION, REVOCATION, OR NONRENEWAL OF WINE**
11 **DIRECT SHIPPER LICENSE OR FULFILLMENT PROVIDER LICENSE;**
12 **APPLICABILITY TO WINERY LICENSE.**

13 (a) Subject to subsection (c), the [Commission], after notice and an opportunity for
14 hearing, may suspend, revoke, or refuse to renew a wine direct shipper license or fulfillment
15 provider license if:

- 16 (1) the licensee violates this [act] or rule adopted under this [act];
17 (2) the licensee ships wine or other alcoholic beverages into another state in
18 violation of that state's law;
19 (3) the licensee no longer meets the qualifications applicable for the license; or
20 (4) the [Commission] discovers a fact that, had it been known when the
21 [Commission] considered the license application, would have been a ground for the
22 [Commission] to deny the license application.

23 (b) For the purpose of subsection (a)(1), a violation of Section 7 by a wine carrier is
24 deemed a violation of this [act] by the wine-direct-shipper licensee under whose license the wine
25 was shipped.

26 (c) The [Commission] may not suspend, revoke, or refuse to renew a wine-direct-shipper
27 license or fulfillment provider license under subsection (a)(1) or (2) unless the [Commission]
28 issues the licensee a cease and desist [order] [letter] and the licensee fails to correct the violating

1 activity or omission within the time specified in the [order] [letter].

2 (d) The [Commission] shall determine the duration of suspension under subsection (a). A
3 suspension under subsection (a)(1) or (2) may not exceed [60 days] for a first violation or [120
4 days] for a subsequent violation within [36 months]. If the [Commission] revokes a license under
5 subsection (a), the licensee may not reapply for issuance of a new license for a period of [365
6 days] after the date of the revocation.

7 (e) A suspension, revocation, or refusal to renew a license under subsection (a) is subject
8 to judicial review under [cite to this state's administrative procedure act].

9 (f) Instead of suspension, revocation, or refusal to renew a license under subsection (a),
10 the [Commission] and the licensee may agree to [an offer in compromise under which the
11 licensee pays to the [Commission]] a civil penalty .

12 (g) A suspension, revocation, or refusal to renew a license under subsection (a) is in
13 addition to a penalty that may be imposed under [Section 17].

14 (h) The [Commission], after notice and an opportunity for hearing, also may suspend or
15 revoke the authority of a winery licensee under Section 6(a) to sell and ship wine to a consumer
16 under this [act] for a reason specified in subsection (a)(1) or (2). Subsections (b) through (g)
17 apply to a winery license in the same manner they apply to a wine direct shipper license, except
18 that the [Commission] may suspend or revoke only the privilege of the winery licensee to ship
19 wine to consumers under this [act].

20 **Legislative Note:** *The legislative drafter may determine that existing provisions applicable to the*
21 *suspension, revocation, or nonrenewal of any alcoholic beverage license issued by the state at*
22 *least partly cover the new licenses created in this act and that amending the existing provisions*
23 *to add new elements from this section is preferable to adopting this section.*

24
25 *The brackets in certain provisions of this section indicate that such matters as the maximum*
26 *period of suspension and minimum period of revocation may be adjusted to reflect the enacting*
27 *state's preferences. In subsection (c), the legislative drafter may insert the term order rather*

1 *than letter if the enacting state prefers a more formal cease-and-desist process.*

2
3 *The bracketed clause in subsection (f) allows the legislative drafter to refer to this settlement*
4 *process by the well-known term “offer in compromise” used by the Federal Tax and Trade*
5 *Bureau and many states.*

6
7 *The cross-reference to Section 17 is bracketed as optional in subsection (g) and should be*
8 *omitted if Section 17, which is also optional, is omitted from this act.*

9 10 **Comment**

11
12 Some states utilize a broad statutory provision that applies to the suspension, revocation,
13 or nonrenewal of any alcoholic beverage license issued by the state. Accordingly, at least some
14 portion of Section 15 may already be covered by the enacting state’s law.

15
16 Subsection (a)(1), violation of the act, encompasses a variety of actions or omissions,
17 including the licensee’s failure to maintain records, file reports, pay taxes, maintain a current
18 agent for service of process, or allow inspection of the licensee’s premises. Subsection (a)(2)
19 allows the enacting state to pursue administrative action against a wine-direct-shipper licensee or
20 fulfillment-provider licensee for illegally shipping in violation of another state’s law.

21
22 Under the act, an out-of-state winery holds an authorization to manufacture wine, and sell
23 to distributors, in its home state. The out-of-state winery may obtain from the enacting state a
24 wine direct shipper license that authorizes the winery to ship wine to the state’s consumers. An
25 in-state winery holds only one license – its winery license. This license authorizes the winery to
26 manufacture wine, sell to distributors, and ship wine to the state’s consumers. The suspension or
27 revocation of a wine direct shipper license stops the winery from shipping wine to the state’s
28 consumers. The suspension or revocation of a winery license would stop the winery from
29 producing wine, selling to distributors, and shipping wine to the state’s consumers. Therefore,
30 this section provides for suspension or revocation of only a wine direct shipper license. Under
31 subsection (h), if a winery licensee violates the act, the winery licensee loses the privilege of
32 shipping wine to the state’s consumers but may continue to conduct other operations like
33 manufacturing wine and selling to distributors.

34
35 While subsection (d) includes a 36-month “look back” period in counting prior
36 violations, many states place no limit on the “look back” period. Regarding subsections (c) and
37 (f), some states provide for a cease-and-desist “warning” process and allow settlement of
38 violations through an offer-in-compromise process and some do not.

39 40 **SECTION 16. SUSPENSION, REVOCATION, OR NONRENEWAL OF OTHER** 41 **LICENSE OR PERMIT.**

42 (a) Except as otherwise provided in subsection (b) and subject to subsection (c), the
43 [Commission] [or other applicable authority], after notice and an opportunity for hearing, may

1 suspend, revoke, or refuse to renew a license, permit, or other authorization to produce,
2 distribute, or sell alcoholic beverages issued by the [Commission] [or other applicable authority]
3 if the person holding the license, permit, or authorization has shipped wine or other alcoholic
4 beverages into another state in violation of that state's law.

5 (b) Subsection (a) does not apply to a wine direct shipper license, winery license, or
6 fulfillment provider license.

7 (c) The [Commission] [or other applicable authority] may not suspend, revoke, or refuse
8 to renew a license, permit, or authorization issued by the [Commission] [or other applicable
9 authority] under subsection (a) unless the licensee, permittee or authorized person ships wine or
10 other alcoholic beverages into another state in violation of that state's law after the
11 [Commission] [or other applicable authority] issues a cease and desist [order] [letter].

12 (d) The [Commission] [or other applicable authority] shall determine the duration of a
13 suspension under subsection (a). The suspension may not exceed [60 days] for a first violation or
14 [120 days] for a subsequent violation within [36 months]. If the [Commission] [or other
15 applicable authority] revokes a license, permit, or other authorization under subsection (a), the
16 licensee, permittee, or authorized person may not reapply for issuance of the same license,
17 permit, or authorization for [365 days] after the date of the revocation.

18 (e) A suspension, revocation, or refusal to renew a license, permit, or other authorization
19 under this section is subject to judicial review under [cite to this state's administrative procedure
20 act].

21 (f) Instead of suspension, revocation, or refusal to renew a license, permit, or other
22 authorization under subsection (a), the [Commission] [or other applicable authority] and the
23 licensee, permittee, or authorized person may agree to [an offer in compromise under which the

licensee, permittee, or authorized person pays to the [Commission or authority]] a civil penalty.

Legislative Note: *The legislative drafter may determine that part of this section is unnecessary and that it is preferable to insert necessary provisions of this section into the enacting state's existing framework for suspension, revocation, or nonrenewal of alcoholic beverage licenses.*

The legislative drafter should include in subsections (a) and (c) each license-issuing authority in the enacting state.

The bracketed clause in subsection (f) allows the legislative drafter to refer to this settlement process by the well-known term "offer in compromise" used by the Federal Tax and Trade Bureau and many states. The brackets in certain provisions of this section indicate that such matters as the maximum period of suspension and minimum period of revocation may be adjusted to reflect the enacting state's legislative preferences. In subsection (c), the legislative drafter may insert the term order rather than letter if the enacting state prefers a more formal cease-and-desist process.

Comment

This section allows the enacting state to, for example, take action against a retailer licensed in the enacting state if the retailer is illegally shipping alcohol into another state in violation of that state's law. A retailer that does so risks losing its retail license in its home state.

As discussed in Section 15, each state issues various forms of alcoholic beverage licenses or permits. There may also be more than one issuing authority in the enacting state. For example, the state may issue licenses to producers, but local governments may issue licenses to retailers or wholesalers. Each state has some form of existing process and standards for the suspension, revocation, or nonrenewal of alcoholic beverage licenses or permits. Accordingly, at least some portion of Section 16 may already be covered by the enacting state's law.

While subsection (d) includes a 36-month "look back" period in counting prior violations, many states place no limit on the "look back" period. Regarding subsections (c) and (f), some states provide for a cease-and-desist "warning" process and allow settlement of violations through an offer-in-compromise process and some do not.

[SECTION 17. PENALTIES.

(a) Except as otherwise provided in subsections (b) through (f), a person that violates this [act] is subject to a civil penalty, for each violation, of not more than \$[1,000] for a first violation and not more than \$[2,000] for a subsequent violation within [36 months].

(b) A person that violates Section 9 is subject to a civil penalty, for each violation, of not more than \$[10,000] for a first violation and not more than \$[20,000] for a subsequent violation

1 within [36 months].

2 (c) A person that sells or delivers wine to an individual under 21 years of age in violation of this
3 [act] is subject to a civil penalty, for each violation, of not more than \$[1,000] for a first violation
4 and not more than \$[5,000] for a subsequent violation within [36 months]; but a penalty may not
5 be imposed if the person completed appropriate age verification and reasonably concluded the
6 individual was at least 21 years of age].

7 (d) A wine-direct-shipper licensee, [winery licensee,] fulfillment-provider licensee, or wine
8 carrier that violates Section 11 or 12 is subject to a civil penalty, for each violation, of not more than
9 \$[200] for a first violation and not more than \$[1,000] for a subsequent violation within [36
10 months].

11 (e) A wine-direct-shipper licensee or fulfillment-provider licensee that fails to maintain a current
12 agent for service of process in the records of the [Commission] in violation of this [act] is subject to a
13 civil penalty, for each violation, of not more than \$[500].

14 (f) The penalty for failure to pay tax to the [Commission] as required under Section 13(a) or (b),
15 or for any other tax-related violation, is governed by law of this state other than this [act] unless a rule of
16 the [Commission] implementing Section 13(c) imposes on a wine-direct-shipper licensee the penalty
17 under subsection (a).

18 (g) For the purpose of this section, a violation of a rule adopted by the [Commission]
19 under this [act] is deemed a violation of this [act].

20 (h) A penalty imposed under this section is in addition to:

21 (1) tax liability that may arise in connection with the activity that resulted in the
22 penalty; and

23 (2) suspension, revocation, or nonrenewal under Section 15.]

1 **Legislative Note:** *The legislative drafter may determine that part of this section is unnecessary*
2 *and that it is preferable to insert only certain provisions of it into the enacting state's existing*
3 *penalty structure for alcoholic beverage violations. The creation in the act of only civil penalties*
4 *might not be consistent with the state's approach to making violations of state alcoholic*
5 *beverage laws criminal offenses. Because of the significant variation among states in*
6 *approaches to penalizing alcoholic beverage violations, this entire section is bracketed as*
7 *optional. If the legislative drafter omits this section, at least some portion of the substance of it*
8 *will need to be incorporated into the enacting state's existing law.*

9
10 *If the legislative drafter includes this section, some provisions are bracketed to indicate that such*
11 *matters as the amount of the penalty or the 36-month "look back" period may be adjusted to*
12 *reflect the enacting state's legislative preferences. In subsection (d), the term "winery licensee"*
13 *is bracketed as optional because the act makes it optional with the enacting state for a winery*
14 *licensee to be subject to Sections 11 and 12. The legislative drafter should ensure that subsection*
15 *(d) is consistent with the treatment in Sections 11 and 12.*

16
17 *Subsection (c) includes bracketed, optional language that creates a "safe harbor" for a*
18 *winery or courier that sells or delivers wine to an underage person if the winery or courier*
19 *completed appropriate age verification and reasonably concluded the purchaser or recipient*
20 *was at least 21 years of age. The legislative drafter may need to create exceptions to other*
21 *provisions of the enacting state's law to carry out the "safe harbor" in subsection (c).*

22 23 **Comment**

24
25 Some states prescribe general penalties that apply to almost any violation of the state's
26 alcoholic beverage laws. Accordingly, at least some portion of Section 17 may already be
27 covered by the enacting state's law. It is also common for violations of state alcoholic beverage
28 laws to be criminal offenses. The creation in the act of only civil penalties might not be
29 consistent with the state's approach to penalizing alcoholic beverage violations.

30
31 The penalties imposed under this section are imposed by a court. The act does not include
32 any provision specifying who may bring a court enforcement proceeding. Depending on the
33 state, the action might be brought by the attorney general, a district attorney or city attorney, or
34 the regulatory agency. This act presumes that each state will continue to rely on existing law that
35 specifies which agencies or governmental units may bring an enforcement action.

36
37 If included, optional language in subsection (c) creates a "safe harbor" under which the
38 act imposes no penalty for a winery or courier that sells or delivers wine to an underage person if
39 the underage person showed credible, acceptable identification as proof of age and appeared to
40 be at least 21 years of age. As discussed in Section 7, most or all states have laws of general
41 applicability that prohibit anybody from selling or providing alcohol to an underage person. The
42 enacting state's law, aside from the act, probably prohibits the winery from selling and the
43 courier from delivering alcohol to an underage person, although some states allow a defense for a
44 person who relies on realistic fake identification if the purchaser or recipient reasonably looks to
45 be at least 21 years of age. The "safe harbor" in the act may not be effective unless other
46 provisions of the enacting state's law are also amended. Also, if this "safe harbor" provision is

1 included, there is an important connection between the optional age verification provisions in
2 Sections 6 and 7 and the “safe harbor” in subsection (c). If an actor will be immunized for
3 following age verification procedures, the enacting state has a stronger incentive to ensure that
4 those procedures are effective. Conversely, if there is no “safe harbor,” even if the enacting state
5 adopts more lenient age verification procedures, the threat of liability under law other than the
6 act will be an incentive for the actor to follow appropriate procedures to ensure that it is not
7 selling or delivering alcohol to an underage person
8

9 Some states provide for a warning process such as the issuance of a cease-and-desist
10 letter before the violator is penalized. The act provides for a warning process, the cease-and-
11 desist letter or order, in connection with the suspension, revocation, or nonrenewal of a license,
12 but not with respect to a court proceeding. If the “bad actor” is unlicensed, a cease-and-desist
13 letter may simply give the bad actor notice that it is time to change name and location to continue
14 evading enforcement efforts.
15

16 Subsection (h)(1) clarifies that a violator, such as a person illegally shipping alcohol into
17 the enacting state, is subject to both the monetary penalties under this section and any applicable
18 tax that is owed (and unpaid) on the illegal shipments. Subsection (f) clarifies that, for example,
19 the penalty imposed on a wine-direct-shipper licensee for failure to pay tax required under
20 Section 13 is the applicable penalty under the enacting state’s tax code.
21

22 **SECTION 18. RULES.** The [Commission] may adopt rules under [cite to the state’s
23 administrative procedure act] to implement, administer, and enforce this [act], including rules
24 concerning:

- 25 (1) forms under this [act];
- 26 (2) the method and deadline for submitting license applications;
- 27 (3) the method and deadline for filing reports;
- 28 (4) appointing and maintaining an agent for service of process;
- 29 (5) recordkeeping requirements under Section 11, including the format for electronic
30 records;
- 31 (6) tax returns, tax payment and collection, and other tax-related matters under this [act];
- 32 (7) notice by a wine-direct-shipper licensee or winery licensee identifying each licensed
33 fulfillment provider it will use to ship wine on its behalf; [and
- 34 (8) locations in the state where wine cannot be shipped under Section 6(f); and]

(9) approval of age verification credentials that may be used instead of valid identification documents[; (10) approval of age verification services; and (11) approval of alternative age verification processes].

Legislative Note: *If the agency with taxing authority in the enacting state is different from the regulatory agency, this section must be modified to create a separate provision establishing rule authority for this second agency.*

Paragraphs (10) and (11) are bracketed as optional because they relate to the optional language in Section 6(b)(1)(C) and (D), relating to age verification options for the shipping winery. The legislative drafter should ensure that the treatments in paragraphs (10) and (11) and Section 6(b)(1)(C) and (D) are consistent. The act does not contain similar approval language for age verification technology at the time of delivery, included as optional language in Section 7(a)(4)(A)(i).

Paragraph (8) is bracketed as optional because the provision to which it refers, Section 6(f), is also optional. The legislative drafter should ensure that the treatment of these provisions is consistent.

Comment

As discussed in Section 13, the act contemplates that the enacting state's tax code will generally apply to tax liability under the act and will govern such matters as due dates for tax returns, the form and method of tax payment, penalties for delinquent payment or non-filing, and similar matters. Paragraph (6) gives the enacting state authority to "fill in the gaps" by rule if there is an imperfect fit between the enacting state's tax code and the tax-related provisions in the act.

SECTION 19. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 20. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c) or

1 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
2 U.S.C. Section 7003(b).

3 **SECTION 21. TRANSITIONAL PROVISION.**

4 (a) Except as otherwise provided in subsection (b) [or (c)], a license, permit, or other
5 authorization to sell and ship, or package and ship, wine to individuals in this state which was
6 issued by the [Commission] and in effect on [the effective date of this [act]] continues until its
7 date of expiration or [three] months after [the effective date of this [act]], whichever occurs first.
8 During this transitional period, the person holding the license, permit, or authorization may
9 continue activity authorized under the license, permit, or authorization and is subject to the law
10 of this state applicable to the license, permit, or authorization as it existed immediately before the
11 effective date of this [act]. On expiration of the transitional period, the person holding the
12 license, permit, or authorization is subject to this [act].

13 (b) Subsection (a) does not apply to a winery license in effect on [the effective date of
14 this [act]], and this [act] applies to the winery licensee on [the effective date of this [act]].

15 [(c) Subsection (a) does not apply to a license, permit, or authorization issued by the
16 [Commission] [or other applicable authority] to a retailer to sell and ship wine to individuals in
17 this state.]

18 (d) A person that does not hold a license, permit, or authorization to sell and ship, or
19 package and ship, wine to individuals in this state on [the effective date of this [act]], including a
20 common carrier, is subject to this [act] on [the effective date of this [act]].

21 **Legislative Note:** Subsection (c) is bracketed as optional. This provision should be included if
22 the enacting state maintains a licensing system to allow retailers to ship wine into the state
23 directly to consumers. The legislative drafter may substitute the name or a cross-reference to the
24 applicable license in the enacting state.
25

