

D R A F T

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

*~~First~~ Draft that Includes Revisions to Reflect October Zoom Meetings ~~Deletes Winery~~
~~Registration~~*



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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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November 4 ~~September 18~~, 2020

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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
20 At the time this act was prepared, approximately 46 states had chosen to allow some form
21 of direct-to-consumer (DTC) wine shipping by wineries. Some of these states also allow DTC
22 shipping by retailers and by producers of beer and distilled spirits. Most of these states require
23 licensing of DTC shippers, but approximately four do not. The purpose of this act is not to
24 require states to allow DTC shipping of alcoholic beverages or to establish requirements or
25 standards for DTC shipments, but rather to assist states with better mechanisms to stop the
26 unlawful DTC shipments that state policy-makers have chosen not to allow. Unauthorized DTC
27 shipments are often interstate shipments, and the act promotes uniformity and cooperation
28 among states seeking more effective cross-border enforcement of their existing DTC shipping
29 laws.

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) “Alcoholic beverages” means [any beverage in liquid form that contains at least 0.5
8 percent alcohol by volume and is intended for human consumption. “Alcoholic beverages”
9 includes beer, wine, and distilled spirits].

10 (2) “Carrier” means a person that:

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

13 (B) is engaged in the business of transporting and delivering [~~wine~~][alcoholic
14 beverages] in this state to consumers.

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

16 [(4) “Consignee” means is the intended recipient for a carrier’s delivery of a package
17 containing [~~wine~~][alcoholic beverages] when the package is provided to the carrier for
18 shipment.]

19 [(5) “Consignor” means is the person who provides to a carrier a package containing
20 ~~[wine]~~[alcoholic beverages] for shipment.]

21 (6) “Consumer” means an individual who orders, or for whom is ordered, [wine]
22 [alcoholic beverages] to be shipped to the individual in this state ~~as consignee~~. “Consumer” does
23 not include an individual who is, or is acting on behalf of, a person holding an alcoholic
24 beverage license, permit, or similar authorization under which the person is authorized to receive
25 shipments of [wine] [alcoholic beverages] for resale or production purposes. “Consumer” does

not include an individual who orders, or for whom is ordered, [wine] [alcoholic beverages] sold by a retailer for local delivery.

(7) "Direct shipper license" means a [license, permit, or similar authorization] issued by the [Commission] [other applicable authority] authorizing the sale and shipment of [wine] [alcoholic beverages] directly to a consumer.

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

(9) "Licensed direct shipper" means a [winery or other person] that holds a direct shipper license.

(10) "Logistics shipper" means a person that acts on behalf of a licensed direct shipper or other seller of [wine] [alcoholic beverages] to ship the [wine] [alcoholic beverages] to a consumer and that arranges for transport by carrier of the [wine] [alcoholic beverages] to the consumer. The term includes a person that provides, in addition to shipping services, other fulfillment services such as warehousing and packaging of [wine] [alcoholic beverages].

(11) "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.

(12) "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.

(13) "Registered logistics shipper" means a logistics shipper registered under Section 3.

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

(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].

Legislative Note: The legislative drafter should replace the term “Commission” and bracketed agency description in paragraph (3) with the applicable agency reference 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 Puerto Rico) rather than a state agency. The brackets are used to identify the option to substitute a more accurate term and definition.

The legislative drafter should tailor the bracketed language in paragraphs (7) and (9) to the specific terminology and direct shipping authorization applicable under the enacting state’s laws. The bracketed language “winery or other person” in paragraph (9) may be modified to reflect whether a winery, a retailer, or any other person is authorized to make shipments directly to consumers. Bracketed language also allows the legislative drafter to adjust the paragraph to reflect whether the authorization is in the form of a license, permit, or registration and whether this authorization is issued by the state or a local governmental unit. The legislative drafter may also prefer to substitute cross-references to the enacting state’s statutes authorizing direct shipping to consumers. In paragraphs ~~(2)(B), (4), (5),~~ (6), (7), (9), and (10), the legislative drafter should also tailor the provisions to reflect whether, in keeping with the enacting state’s law, the provisions should be limited to wine shipping or apply to shipments of any alcoholic beverages.

The definitions of “alcoholic beverage~~s~~” in paragraph (1) and “wine” in paragraph (15) are bracketed as optional because the legislative drafter will likely prefer ~~may elect~~ to use the enacting state’s definitions of alcoholic beverage~~s~~ and wine. These definitions ~~Either term~~ also may not be necessary for inclusion in the act.

The terms “consignor” and “consignee” are customary terms of carriage, used in their ordinary meaning in this act. They are bracketed as optional because the legislative drafter may determine that these definitions are not necessary and omit them.

Comment

States take a variety of approaches to direct-to-consumer shipping. Approximately 46 states authorize wineries to ship wine directly to consumers. About 15 states allow retailers to ship directly to consumers. Some states allow producers and retailers to ship any type of alcoholic beverage (wine, beer, or distilled spirits) directly to consumers. All of these states except approximately four require licensing to ship directly to the state’s consumers. The enacting state’s approach to enforcement will depend in part on what types of shipments are considered lawful, so the act is drafted to recognize this variation in both the types of direct shipping licenses states issue and the types of alcoholic beverages that may be lawfully shipped

1 to consumers. The act's definition of "licensed direct shipper" is intended to allow the enacting
2 state to tailor the definition to the specific circumstances applicable in the enacting state,
3 particularly whether the state authorizes only direct-to-consumer shipping of wine by wineries or
4 authorizes other direct-to-consumer shipping as well.

5
6 The term "consumer" is used repeatedly throughout the act. It is worth emphasizing that a
7 consumer is an individual located in the state of enactment. The ~~act defines the~~ consumer as is
8 the consignee of the shipment;^{5,2} the addressee or intended recipient of the package containing the
9 wine or alcoholic beverages. The consumer will usually be the individual who purchases the
10 product and has it shipped to him or her. However, if the product is ordered by someone as a gift
11 for another, the consumer will be the intended recipient of the gift rather than the purchaser. In
12 Section 5, the act recognizes that, as with other packages delivered by a carrier, many states
13 allow the package containing wine or alcoholic beverages to be received and signed for by
14 another of-age person, such as a spouse at the consumer's residence or a receptionist at the
15 consumer's place of business. Under the act, the consumer is the addressee or *intended* recipient
16 of the package even if the *actual* recipient of the package is a third-party who signs the carrier's
17 delivery slip on behalf of the consumer.

18
19 Most states restrict direct-to-consumer shipping to shipments for the recipient's personal
20 use, and the act clarifies that a consumer does not include, for example, an individual who
21 receives the shipment as an employee of a retailer or rectifier or otherwise as part of the three-
22 tier system. The term "consumer" is also defined to exclude individuals who order wine or
23 alcoholic beverages for local delivery, as opposed to shipment. Many states have now authorized
24 retailers to make online sales followed by local delivery, both directly and through third-party
25 apps and services, and the act is not intended to apply to these transactions that are made through
26 the three-tier system and typically involve nearly simultaneous purchase and delivery.

27
28 The term "logistics shipper" means, in effect, the consignor or sender of a shipment if the
29 shipment is arranged with the carrier by a third-party and not by the seller, the "licensed
30 shipper." Usually the logistics shipper will be a fulfillment provider that warehouses, packs, and
31 ships the product for the licensed shipper, but providing storage and packaging services is not a
32 requirement for being considered a logistics shipper subject to the provisions of the act. The act's
33 reference in the definition to shipments on behalf of a licensed shipper "or other seller" does not
34 mean that an unlicensed seller is allowed to make shipments to consumers. Rather, this
35 definitional language is intended to prevent a logistics shipper from avoiding the registration
36 requirement by claiming it does not ship on behalf of licensed shippers. The phrase "or other
37 seller" means only that a person is subject to the act's requirements as a "logistics shipper" if the
38 person ships wine or alcoholic beverages into the state on behalf of another, regardless of
39 whether the person ships on behalf of licensed or unlicensed sellers.

40
41 Regarding the term "carrier," the definition is in part similar to the definition of
42 "common carrier" under 15 U.S.C. Section 375 relating to cigarette taxes and the definition
43 under South Dakota statute section 35-12B-1. The definition of "carrier" is intended to be much
44 narrower than "common carrier," focusing only on common carriers that deliver direct-to-
45 consumer shipments of wine or alcoholic beverages to individuals. The definition excludes
46 motor carriers, water carriers, and railroads that transport wine or alcoholic beverages into and

1 within the state as part of the three-tier system (that is, to other businesses in the alcoholic
2 beverage industry). The act allows, but does not require, the carrier to have the consignor
3 identify whether the package containing alcohol is being sent to a licensee (that is, distributed
4 through the three-tier system) or to a consumer. Only consumer shipments must be reported
5 under Section ~~6~~5 of the act.

6
7 Regarding the term “Commission,” the name of the department or agency responsible for
8 administering the state’s alcoholic beverage laws varies from state to state. Common agency
9 names include the Alcoholic Beverage Commission, Department of Revenue, Liquor Control
10 Commission, and others. A list of agency appellations is available on the website of the U.S.
11 Treasury’s Alcohol and Tobacco Tax and Trade Bureau (TTB),
12 <https://www.ttb.gov/wine/alcohol-beverage-control-boards#US>. The act uses the term
13 “Commission” as the default because it is the most common agency name.

14
15 The definition of “wine” is derived from elements of federal law. See 27 U.S.C. Section
16 211 (a)(6); 27 C.F.R. 4.10. See also 26 U.S.C. Sections 5381, 5392. Each state has an existing
17 definition of wine, and the states’ definitions sometimes vary from each other and from federal
18 definitions. For example, under federal law, fortified wine remains wine until it exceeds 24
19 percent alcohol by volume (ABV) or more than half of the product’s alcohol is derived from
20 added spirits rather than fermentation, but many states define wine as limited to products
21 containing not more than 21 percent ABV. The definition of “alcoholic beverages” is derived in
22 part from the definition in 27 C.F.R. 16.10 (defining alcoholic beverage for the purpose of health
23 warning labels). The enacting state may also have its own definition of “alcoholic beverages”
24 that could be substituted for this definition.

25 26 **SECTION 3. REGISTRATION OF LOGISTICS SHIPPERS.**

27 (a) A logistics shipper must register with the [Commission] under this section before
28 shipping [wine] [alcoholic beverages] into or within this state.

29 (b) Subject to subsection (c), an application for registration as a logistics shipper must be
30 in the form prescribed by the [Commission] and include:

31 (1) each address from which the logistics shipper will ship [wine] [alcoholic
32 beverages] to consumers;

33 (2) the name, address, and direct shipper license number of each licensed direct
34 shipper on whose behalf the logistics shipper will ship [wine] [alcoholic beverages] to
35 consumers; and

36 (3) other information the [Commission] determines is necessary to implement this

1 [act].

2 (c) To register under this section, a logistics shipper must agree to:

3 (1) appoint and maintain under Section 6(d) an agent for service of process and to
4 accept service of process through the agent;

5 (2) provide access to or copies of its records under Section 6(b) and allow the
6 [Commission] to conduct an audit of its records and inspect its premises under Section 6(b) and
7 (c);

8 (3) file all reports required under Section 5; and

9 (4) submit to the jurisdiction of the [Commission], the courts, and other
10 enforcement authority of this state, with respect to enforcement of this [act] and other laws of
11 this state regulating the shipment of ~~[wine]~~[alcoholic beverages] directly to ~~consumers~~
12 individuals in this state.

13 (d) A logistics shipper registered under this section shall provide [monthly] to the
14 [Commission], in the form prescribed by the [Commission], an updated list of all licensed direct
15 shippers on whose behalf the logistics shipper ships [wine] [alcoholic beverages] to consumers.
16 The list shall include the name, address, and direct shipper license number of each licensed direct
17 shipper, with the name stated as identically as possible to the name appearing on the direct
18 shipper license.

19 (e) A logistics shipper may not ship [wine] [alcoholic beverages] to a consumer unless:

20 (1) the logistics shipper is registered under this section and the registration is not
21 suspended, revoked, or canceled under subsection (f) or (g);

22 (2) the [wine was] [alcoholic beverages were] supplied to the logistics shipper by
23 a licensed direct shipper; and

(3) the package containing the [wine] [alcoholic beverages] clearly indicates:

(A) on the shipping label, the logistics shipper's name and applicable address, as they appear in the registration under this section, as consignor and the name and address of the consumer as consignee; and

(B) on the package or shipping label, the name and direct shipper license number of the licensed direct shipper that supplied to the logistics shipper the [wine] [alcoholic beverages] contained in the package.

(f) The [Commission], after notice and an opportunity for an evidentiary hearing, may suspend or revoke the registration of a logistics shipper for good cause, including for any violation specified in Section 9(a) or (b). Instead of suspension or revocation of a registration under this subsection, the [Commission] may impose conditions on the registration.

(g) A registered logistics shipper may cancel its registration, in the manner prescribed by the [Commission], if no enforcement proceeding against the registered logistics shipper is pending, but cancellation of the registration does not affect the [Commission]'s jurisdiction with respect to any activity of the logistics shipper that occurred before the cancellation. While an enforcement proceeding against a registered logistics shipper is pending, the logistics shipper may cancel its registration only with the consent of the [Commission].

(h) Use by a licensed direct shipper of the services of a registered logistics shipper does not relieve the licensed direct shipper of any requirement imposed upon it under [cross-reference applicable law of the state].

Legislative Note: The optional bracketed terms "wine" or "alcoholic beverages" allow the legislative drafter to elect the more appropriate term depending on whether the enacting state authorizes direct-to-consumer shipments of wine only or also allows direct-to-consumer shipments of other alcoholic beverages.

This section requires a registered logistics shipper to identify to the Commission each licensed

1 *direct shipper on whose behalf it makes shipments. The legislative drafter may wish to amend the*
2 *enacting state's law to also require each licensed direct shipper to notify the Commission of all*
3 *logistics shippers it has engaged to make shipments on its behalf. The legislative drafter may*
4 *also need to clarify in the enacting state's law that a licensed direct shipper may engage the*
5 *services of a registered logistics shipper in making shipments to consumers.*

6
7 *The frequency with which a logistics shipper must provide an updated list in subsection (d) is*
8 *bracketed as optional. The enacting state may prefer an alternative period, such as*
9 *quarterly. The legislative drafter may wish to maintain consistency of this period and the*
10 *logistics shipper's reporting period under Section 5.*

11 12 **Comment**

13
14 A significant amount of direct-to-consumer shipping of alcoholic beverages is
15 accomplished by means of an intermediary, usually referred to as a logistics shipper or
16 fulfillment provider. Few states require licensing or registration of such intermediaries, but the
17 use of such an intermediary makes it difficult for state regulators to identify the originator of the
18 alcoholic beverage shipment. This act provides a mechanism under which state regulators can
19 better identify what alcoholic beverages are being shipped into the state and by whom. The act
20 does not establish standards or requirements for these shipments. The enacting state's existing
21 law will govern such matters as licensing requirements for direct shippers (such as wineries,
22 retailers, or other producers) authorized to ship to consumers in the state, restrictions on
23 shipments such as quantity limits, and requirements for shipment and delivery such as package
24 marking and age verification. The enacting state's law will require compliance by the licensed
25 direct shipper, whether that shipment is accomplished directly or with help from a logistics
26 shipper. This act assists state regulators in establishing the identity of both the seller of a package
27 containing alcoholic beverages and the logistics shipper acting on its behalf.

28
29 A central aspect of this act is ensuring that the enacting state can establish jurisdiction
30 over out-of-state actors. Subsection (c) is included in the act, in addition to Section 6, to create
31 stronger support for the enacting state's authority to assert jurisdiction. Subsection (c) requires
32 the actor to agree to the state's jurisdiction, rather than relying only on a statutory assertion of
33 jurisdiction. It is contemplated that the agreement will take the form of a check-box on the
34 registration application.

35
36 Subsection (f) allows the enacting state to suspend or revoke a logistics shipper's
37 registration for good cause, including violations of the act. The subsection also allows the state
38 to opt for a less severe punishment by imposing a condition on the registration, such as requiring
39 additional employee training.

40
41 The act does not specifically require a contract between a logistics shipper and the
42 licensed direct shipper on whose behalf it arranges shipments, but it is likely there will be such a
43 contract defining the parties' respective responsibilities and liabilities. The act also does not
44 expressly refer to the logistics shipper as the "agent" of the licensed direct shipper, although the
45 parties' contract might.

1 **SECTION 4. CARRIER DELIVERY FROM LICENSED OR REGISTERED**
2 **SHIPPERS.**

3 (a) Subject to subsection (b), A a carrier may not deliver to a consumer a package that the
4 consignor has identified as containing ~~[wine]~~[alcoholic beverages] unless one of the following
5 applies:

6 (a1) The consignor is a licensed direct shipper and the carrier maintains a record
7 of ~~its the~~current direct shipper license for the current license period.

8 (b2) The consignor is a registered logistics shipper and the carrier maintains a
9 record of ~~its the~~ logistics shipper's registration under Section 3.

10 (b) After a carrier has obtained a record of a direct shipper license for the current license
11 period, the carrier may consider the license to be valid for the remainder of the license period
12 unless the carrier receives notice from the [Commission] [other applicable authority] that the
13 license has been suspended or revoked [or otherwise terminated]. After a carrier has obtained a
14 record of a logistics shipper's registration, the carrier may consider the registration to be valid
15 unless the carrier receives notice from the [Commission] that the registration has been
16 suspended, revoked, or canceled. [A carrier may consider an expired direct shipper license to be
17 valid if the [Commission] [other applicable authority that issued the license] has delayed
18 processing direct shipper license renewals.]

19 ~~**Legislative Note:** In this section, the legislative drafter may opt for the term "alcoholic~~
20 ~~beverages" instead of "wine" to reflect carrier practices or give the provision a broader scope~~
21 ~~even if the enacting state does not authorize shipments of alcoholic beverages other than wine.~~
22

23 **Legislative Note:** The legislative drafter may replace the bracketed phrase "or otherwise
24 terminated" with the appropriate terms in the enacting state, which might include cancellation
25 or surrender of the license rather than termination of the license. The legislative draft should
26 include the final, bracketed sentence of subsection (b) if the enacting state wishes to allow
27 licensed activity to continue during administrative disruptions in the license renewal process,
28 such as during the COVID-19 pandemic.

1 **Comment**

2
3 This section creates requirements related to the carrier's activities in the enacting state.
4 As discussed previously, a consumer is an individual in the enacting state and both a licensed
5 direct shipper and registered logistics shipper are businesses authorized by the enacting state to
6 ship into the enacting state. The provision therefore regulates the carrier only in the enacting
7 state, where the delivery would otherwise occur.

8
9 After a carrier has verified that a consignor either holds a direct shipper license valid for
10 the applicable license period or has a logistics shipper's registration, the carrier is not required to
11 continually confirm that the license or registration hasn't been suspended or revoked. However,
12 if the carrier receives notice that the license or registration has been suspended or revoked, the
13 carrier cannot thereafter consider the license or registration as valid.

14
15 As discussed in Section 2, approximately four states allow direct-to-consumer shipping
16 with~~out~~ requiring licensing of the shipper. In these few states, Section 4 will need to be modified.

17
18 **SECTION 5. REPORTS RELATED TO DIRECT-TO-CONSUMER [WINE]**
19 **[ALCOHOLIC BEVERAGE] SHIPMENTS.**

20 (a) Except as otherwise provided in subsection (e), a registered logistics shipper shall file
21 with the [Commission] a [monthly] report that includes:

22 (1) the name, business address, and this state's registration number of the logistics
23 shipper;

24 (2) the total [gallons] [liters] of [wine] [each type of alcoholic beverage] shipped
25 to consumers by the logistics shipper during the reporting period, identified by this state's
26 applicable tax classification; and

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

28 (A) the name, business address, and ~~this state's~~ the direct shipper license
29 number of the licensed direct shipper on whose behalf the logistics shipper shipped the [wine]
30 [alcoholic beverages], with the name stated as identically as possible to the name appearing on
31 the direct shipper's~~s~~ license;

32 (B) the name and address of the consumer to whom the [wine was]

1 [alcoholic beverages were] shipped and, if different, the name and address of the recipient;

2 (C) the address from which the logistics shipper originated the shipment,
3 stated identically with an address provided by the logistics shipper under Section 3(b)(1);

4 (D) the date the shipment was delivered to the consumer or other recipient;

5 (E) the type, brand label, and quantity by volume of [wine] [alcoholic
6 beverages] shipped; and

7 (F) the name and business address of the carrier that delivered the [wine]
8 [alcoholic beverages] and the carrier's parcel tracking number for the shipment.

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

11 (1) the name, business address, and ~~this state's~~ the direct shipper license number
12 of the licensed direct shipper;

13 (2) the total [gallons] [liters] of [wine] [each type of alcoholic beverage] shipped
14 to consumers during the reporting period, identified by this state's applicable tax classification;
15 and

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

17 (A) the name and address of the consumer to whom the [wine was]
18 [alcoholic beverages were] shipped and, if different, the name and address of the recipient;

19 (B) the date the shipment was delivered to the consumer or other recipient;

20 (C) the type, brand label, and quantity by volume of [wine] [alcoholic
21 beverages] shipped;

22 (D) the purchase price of the [wine] [alcoholic beverages] shipped and the
23 amount and type of each tax charged in connection with the [wine] [alcoholic beverages]

1 shipped;

2 (E) if the wine was shipped for the licensed direct shipper by a logistics
3 shipper, the name, business address, and this state's registration number of the logistics shipper
4 that shipped the [wine] [alcoholic beverages], with the name stated as identically as possible to
5 the name appearing on the logistics shipper's registration; and

6 (F) if the [wine was] [alcoholic beverages were] delivered by a carrier, the
7 name and business address of the carrier and the carrier's parcel tracking number for the
8 shipment.]

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

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

12 (2) a list containing the name, business address, and direct shipper license number
13 or logistics shipper registration number of each licensed direct shipper and logistics shipper from
14 which the carrier has obtained an agreement related to shipping ~~[wine]~~[alcoholic beverages],
15 with the name stated as identically as possible to the name appearing on the direct shipper license
16 or logistics shipper registration; and

17 (3) for each shipment to a consumer during the reporting period for which the
18 consignor declared the package being shipped to contain alcoholic beverages:

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

20 (B) the name and address of the consignee of the shipment and, if
21 different, the name and address of the recipient;

22 (C) the date the package was ~~received~~ delivered by the carrier ~~for delivery~~
23 ~~and the date the package was delivered;~~

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

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

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

(e) If no business was transacted in this state during the reporting period, a report under subsection (a)[, (b), or (c)] may include the information under subsection (a)(1)[, (b)(1), or (c)(1)] and otherwise attest to the fact that no business was transacted in this state during the reporting period.

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

(1) as provided in Section 6(e); ~~or~~

(2) if reasonably necessary to enforce or implement this [act] or other laws of this state relating to the shipment of ~~[wine]~~ [alcoholic beverages] directly to consumers individuals in this state; or

(3) as a compilation of aggregated data, if personally identifiable information is not disclosed.

Legislative Note: The optional bracketed language "wine" or "alcoholic beverages" allows the legislative drafter to elect the more appropriate term depending on whether the enacting state authorizes direct-to-consumer shipments of wine only or also allows direct-to-consumer shipments of other alcoholic beverages.

~~Most~~ Many states require licensed direct shippers and carriers to file reports with the state regulator. The legislative drafter may elect to modify the enacting state's reporting provisions to add essential elements of the information under subsections (b) and (c) instead of replacing the

1 *state's existing provisions.*

2
3 *The reporting period in subsections (a), (b), and (c) is bracketed as optional. The enacting*
4 *state may prefer an alternative reporting period, such as quarterly. However, the volume of*
5 *carrier reports, in particular, may be such that monthly or more frequent reporting is*
6 *preferable.*

7
8 *The legislative drafter may need to treat provisions of the state's public records law to*
9 *accomplish the intended confidentiality under subsection (f).*

10 11 **Comment**

12
13 The act requires reporting of certain critical pieces of information that assist state
14 regulators in determining whether shipments into the enacting state are originating from a
15 licensed or unlicensed direct shipper. If the carrier reports the package tracking number, the
16 direct shipper reports the package tracking number and its direct shipper license number, and
17 (if applicable) the logistics shipper reports the package tracking number and the name and
18 license number of the direct shipper on whose behalf it is shipping, the state regulator can
19 "triangulate" information to determine whether the shipment originated from a licensed
20 direct shipper. That is, the absence of a tracking number match with an associated direct
21 shipper license number indicates a possible unlicensed shipment. This information is
22 particularly helpful if reports are filed electronically and included in a searchable database.

23
24 The act requires a registered logistics shipper, licensed direct shipper, and carrier to
25 report some of the same information. As discussed, cross-reporting of information is
26 intended to assist the state regulator in analyzing shipping into the enacting state. Although
27 the act requires a carrier to report only the weight of the package and the licensed direct
28 shipper and logistics shipper to report the contents of the package, this information can be
29 cross-referenced to ascertain whether the package weight is consistent with the reported
30 contents or whether the direct shipper appears to be underreporting shipments (and tax
31 obligations).

32
33 State regulators also have difficulty matching information among reports if the same
34 information is reported in an inconsistent manner. For example, if a direct shipper is licensed
35 as "Three Lakes Winery, Inc." but the registered logistics shipper reports the direct shipper
36 as "3 Lakes," the regulator may be uncertain whether it is the same company. The act
37 requires names to be reported as identically as possible to the name appearing on a license or
38 registration maintained with the enacting state. The reporting entity may obtain this
39 information by requesting a copy of the applicable license or registration certificate or, in a
40 state that makes such information publicly available, by checking the state's database. This
41 requirement for precision in reporting a name is not intended to preclude the reporting entity
42 from using a trade name (DBA) identified in a license or registration, but the DBA must be
43 stated with accuracy on each report.

44
45 As discussed in Section 2, the act recognizes that the consumer (the consignee /
46 addressee of the package) may not be available at the time of delivery and that the package

1 might be received and signed for by another individual. If this occurs, subsections (a)(3)(B),
2 (b)(4)(A), and (c)(3)(B) require reports to also include the name and address of the actual
3 recipient of the package.

4
5 The act requires reporting by a common carrier that delivers ~~wine or~~ alcoholic
6 beverages in the enacting state to a consumer. The act does not require carriers to report ~~wine~~
7 ~~or~~ alcoholic beverage shipments to licensed industry participants receiving the package
8 through the three-tier system. Although the act does not include a requirement for carriers to
9 identify packages designated for consumers, the carrier may choose to require consignors to
10 declare (perhaps through a check-box) whether the consignee is a consumer or a licensee.

11
12 Many states already require licensed direct shippers and carriers to report information
13 similar to the information required under this section. If this is the case in the enacting state, the
14 enacting state may wish to add elements of this section to its existing requirements to ensure that
15 state regulators are able to make full use of the reported information.

16
17 The act includes a minimal reporting requirement if there was no reportable activity
18 during the reporting period. State regulators will therefore be able to distinguish between
19 lack of activity and non-compliance (failure to receive a report). The act includes a
20 presumption of monthly reporting, but the enacting state may prefer a different reporting
21 period or a variable reporting period, with, for example, a high-volume shipper reporting
22 monthly and a lower-volume shipper reporting quarterly.

23
24 The act requires reports to include detailed and potentially sensitive personal and
25 proprietary information, such as a consumer's name and address and the brand and quantity
26 of wine or alcoholic beverages purchased. Subsection (f) requires the state regulator to
27 maintain confidentiality of these reports and exempts them from disclosure under the state's
28 public records law, subject to limited exceptions.

29 30 **SECTION 6. STATE JURISDICTION; ENFORCEMENT POWERS.**

31 (a) A registered logistics shipper[, a licensed direct shipper, and a carrier] [is] [are]
32 subject to the jurisdiction of the [Commission], the courts, and other enforcement authority of
33 this state with respect to the enforcement of this [act] and other laws of this state regulating the
34 shipment of ~~[wine]~~ [alcoholic beverages] directly to ~~consumers~~ individuals in this state.

35 (b) The [Commission] may inspect and audit the records of a registered logistics shipper[, a
36 licensed direct shipper, or a carrier] relevant to compliance with this [act] and other laws of this
37 state regulating the shipment of ~~[wine]~~ [alcoholic beverages] directly to ~~consumers~~ individuals in
38 this state. A registered logistics shipper[, licensed direct shipper, or carrier] shall allow the

1 [Commission] to inspect and audit its records and, at the [Commission]’s request in a record,
2 shall provide to the [Commission], at a location specified by the [Commission], complete and
3 accurate records not later than [10] business days after the request.

4 (c) The [Commission] may inspect, during ordinary hours of operation, any location from which
5 a registered logistics shipper [licensed direct shipper, or carrier] conducts its operations to assess
6 compliance with this [act] and other laws of this state regulating the shipment of ~~[wine]~~[alcoholic
7 beverages] directly to ~~consumers~~ individuals in this state.

8 (d) A registered logistics shipper[, a licensed direct shipper, and a carrier] shall appoint,
9 on a form prescribed by the [Commission], and continuously maintain, an agent for service of
10 process, which need not be located in this state. The appointment of an agent under this
11 subsection is an affirmation by the registered logistics shipper[, licensed direct shipper, or
12 carrier] that the agent consents to accept service. Service of process on the agent constitutes valid
13 service of process on the registered logistics shipper[, licensed direct shipper, or carrier] in an
14 action or proceeding arising out of the enforcement of this [act] or other laws of this state
15 regulating the shipment of ~~[wine]~~[alcoholic beverages] directly to ~~consumers~~ individuals in this
16 state. If a registered logistics shipper[, licensed direct shipper, or carrier] fails to maintain, in the
17 records of the [Commission], a current agent for service of process or if the current agent cannot
18 be served with reasonable diligence, the [Commission] is the agent for service of process.

19 (e) For a regulatory or enforcement purpose, the [Commission] may disclose a report,
20 record, or other information in its possession, including a suspected or alleged violation or an
21 [administrative injunction] issued under Section 7, to:

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

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

(3) a federal agency with regulatory authority over matters relating to alcoholic beverages or a federal law enforcement agency.

Legislative Note: ~~The optional bracketed language for “wine” or “alcoholic beverages” allows the legislative drafter to elect the more appropriate term depending on whether the enacting state authorizes direct-to-consumer shipments of wine only or also allows direct-to-consumer shipments of other alcoholic beverages.~~

Many states require licensed direct shippers to consent to jurisdiction, appoint an agent for service of process, provide records upon request, and allow audits and inspections. Similar requirements may also apply to carriers, although carriers by definition conduct physical operations (package delivery) within the territorial limits of the enacting state so jurisdiction is evident. Optional bracketed language in this section allows the enacting state to impose requirements on licensed direct shippers and carriers if the enacting state’s law does not already include similar provisions.

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

Comment

Subsection (a) asserts the enacting state’s jurisdiction over registered logistics shippers, whether located in the enacting state or another state, and further asserts jurisdiction over licensed direct shippers and carriers if the optional language is included. (This jurisdictional provision is not necessary for an entity with significant in-state operations, like a carrier or in-state direct shipper.) Subsection (a) operates in conjunction with Section 3(c)(4) to ensure that out-of-state logistics shippers registered to ship ~~wine or~~ alcoholic beverages to the enacting state’s consumers are subject to jurisdiction in the enacting state. Subsection (a) does not assert jurisdiction over a person that is not licensed or registered in the enacting state and is not regularly operating within the enacting state. Whether the enacting state has jurisdiction over an unlicensed or unregistered “bad actor” unlawfully shipping into the state will be determined on a fact-specific basis under the state’s long-arm statute in light of constitutional due process considerations, such as whether the bad actor has “minimum contacts” with the state. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Int’l Shoe Co. v. Washington*, 362 U.S. 310 (1945).

Subsection (e) allows the state regulator in the enacting state to share information with regulators in other states, and with other officials in the same state and federal officials. This provision allows states to easily cooperate to stop unlawful interstate shipping. Although Section 5(f) generally makes reports related to direct-to-consumer shipping confidential, an exception

1 allows these reports or information from the reports to be shared as provided in subsection (e).

2
3 The enforcement provisions of Section 6 apply with respect to all alcoholic beverages.
4 Even if the enacting state limits authorized shipping to wine only, the state has a strong interest
5 in detecting and stopping unlawful shipments of any type of alcoholic beverage.
6

7 Section 2 defines a record to include electronic materials.

8
9 **SECTION 7. NOTICE TO CARRIER OF CONSIGNOR'S UNLAWFUL**
10 **SHIPMENTS; [ADMINISTRATIVE INJUNCTIONS].**

11 (a) If the [Commission] has reason to believe that ~~[wine has]~~ [alcoholic beverages have]
12 been unlawfully shipped into or within this state, the [Commission] may give notice to the
13 consignor of the shipment requiring the consignor to show cause ~~not later than 30 days after the~~
14 ~~date of the notice~~ why shipments by the consignor into or within this state should not be
15 [administratively enjoined]. ~~After the 30-day period and~~ an opportunity for an evidentiary
16 hearing, if the [Commission] determines that the consignor unlawfully shipped ~~[wine]~~ [alcoholic
17 beverages] into or within this state, the [Commission] may issue an [administrative injunction]
18 prohibiting additional shipments of ~~[wine]~~ [alcoholic beverages] into or within this state by the
19 consignor.

20 (b) The [Commission] may give notice to any carrier of the [administrative injunction]
21 under subsection (a) ~~to the carrier that delivered the shipment resulting in the [administrative~~
22 ~~injunction]~~. Except as provided in subsection (d), bBeginning 15 days after the date of ~~the~~ this
23 notice, and until the carrier receives notice that the [administrative injunction] is rescinded, the
24 carrier may not accept from the consignor identified in the notice, for shipment into or within
25 this state, any package identified as containing ~~[wine]~~ [alcoholic beverages].

26 (c) For good cause, the [Commission] may rescind an [administrative injunction] issued
27 under subsection (a). On rescinding an [administrative injunction], the [Commission] shall give

1 notice of the rescission to ~~a~~ any carrier that received notice of the [administrative injunction]
2 under subsection (b).

3 (d) The [Commission] may not hold a hearing as provided in subsection (a) less than 30
4 days after the date of the notice requiring the consignor to show cause unless the consignor
5 agrees to an earlier hearing date or unless the notice describes with particularity how the
6 consignor's alleged unlawful shipments pose a serious risk to public health or safety. If the
7 notice includes such a description and the [Commission] issues an [administrative injunction],
8 the [administrative injunction] shall identify the risk to public health or safety and the
9 [Commission's] notice to a carrier under subsection (b) shall advise the carrier to implement the
10 administrative injunction as soon as possible.

11 ~~(de)~~ An [administrative injunction] issued under subsection (a) is subject to judicial
12 review under [cite to this state's administrative procedure act].

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

16
17 ~~*In this section, the legislative drafter may opt for the term “alcoholic beverages” instead of*~~
18 ~~*“wine” to give the provision a broader scope even if the enacting state does not authorize*~~
19 ~~*shipments of alcoholic beverages other than wine.*~~

20 21 Comment

22
23 This section provides an enforcement mechanism to aid the enacting state in stopping
24 unlawful alcohol shipping into or within the state, particularly by unlicensed shippers. The
25 advantage of this mechanism is that it involves an administrative proceeding rather than a court
26 action. If the state regulator detects an unlawful shipment of alcoholic beverages into or within
27 the state, the state regulator may give notice to the consignor to show cause why shipments from
28 the consignor should not be enjoined. After affording the consignor an opportunity for an
29 evidentiary hearing, the state regulator may determine that the consignor has unlawfully shipped
30 alcoholic beverages into or within the enacting state and issue an administrative injunction (an
31 agency order) prohibiting additional shipments of alcoholic beverages into or within the state by
32 the consignor. The state regulator may give notice of the administrative injunction to anythe
33 carrier, whether it be the carrier that delivered the unlawful shipment or other carriers in the
34 state. Beginning 15 days after this notice, the carrier may not accept from the consignor

1 identified in the notice any package identified as containing alcohol, except that this 15-day
2 period is shortened if the consignor's shipments pose a serious risk to public health or safety.

3 The act neither limits carriers to accepting packages from only an authorized list of shippers, nor
4 prohibits carriers from accepting packages from an ever-changing list of banned consignors. The
5 notice to a carrier under the act is specific to a single consignor and permanent unless the carrier
6 receives a subsequent notice that the administrative injunction has been rescinded.

7
8 Under Section 3, if a registered logistics shipper unlawfully ships wine or alcoholic
9 beverages into or within the enacting state, the regulator may suspend or revoke the logistics
10 shipper's registration and the logistics shipper may not thereafter ship wine or alcoholic
11 beverages into or within the state. The act presumes that the enacting state's existing law
12 provides similar authority to suspend or revoke a direct shipper license if the licensed direct
13 shipper unlawfully ships wine or alcoholic beverages into or within the state. The most
14 significant aspect of this section is to provide state regulators with an enforcement tool when
15 there is no registration or license to take action against. Nonetheless, a state regulator could
16 pursue an administrative injunction under this section against a consignor that is a registered
17 logistics shipper or licensed direct shipper, including pursuing an administrative injunction in
18 tandem with a proceeding to suspend or revoke the logistics shipper registration or direct shipper
19 license.

20
21 Most states have enacted a general prohibition making it unlawful to ship alcoholic
22 beverages into the state unless the shipper is authorized to do so. In some states, the statute
23 prohibits any person from shipping alcoholic beverages into the state except to a licensed
24 wholesaler, with an exception recognized for certain licensed direct-to-consumer shippers. Other
25 states specifically prohibit direct-to-consumer shipments unless the shipper holds a specified
26 direct shipper license. (Approximately four states allow direct-to-consumer shipments with no
27 required license.) This act presumes, and relies on, the enacting state's existing general
28 prohibition and does not include a blanket ban on unlicensed direct-to-consumer shipments.

29 30 **SECTION 8. SUSPENSION, REVOCATION, OR NONRENEWAL OF LICENSE**

31 **OR PERMIT FOR UNLAWFUL SHIPPING.**

32 (a) [Subject to subsection (b),] the [Commission] [or other applicable authority], after
33 notice and an opportunity for an evidentiary hearing, may suspend, revoke, or refuse to renew a
34 license, permit, or other authorization to produce, distribute, or sell alcoholic beverages issued by
35 the [Commission] [or other applicable authority] if the person holding the license, permit, or
36 authorization has shipped ~~[wine]~~ [alcoholic beverages] into another state in violation of that
37 state's law.

38 [(b) The [Commission] [or other applicable authority] may not suspend, revoke, or refuse

1 to renew a license, permit, or authorization issued by the [Commission] [or other applicable
2 authority] under subsection (a) unless the licensee, permittee, or authorized person ships ~~{wine}~~
3 ~~{alcoholic beverages}~~ into another state in violation of that state's law after the [Commission] [or
4 other applicable authority] issues a cease and desist [order] [letter].]

5 [(c) The [Commission] [or other applicable authority] shall determine the duration of a
6 suspension under subsection (a). The suspension may not exceed [60 days] for a first violation or
7 [120 days] for a subsequent violation within [36 months]. If the [Commission] [or other
8 applicable authority] revokes a license, permit, or other authorization under subsection (a), the
9 licensee, permittee, or authorized person may not reapply for issuance of the same license,
10 permit, or authorization for [365 days] after the date of the revocation.]

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

14 [(e) Instead of suspension, revocation, or refusal to renew a license, permit, or other
15 authorization under subsection (a), the [Commission] [or other applicable authority] and the
16 licensee, permittee, or authorized person may agree to [an offer in compromise under which the
17 licensee, permittee, or authorized person pays to the [Commission] [or other applicable
18 authority]] a civil penalty.]

19 [(f) After the [Commission] [or other applicable authority] has given notice initiating a
20 proceeding under subsection (a) to suspend, revoke, or refuse to renew a license, permit, or other
21 authorization, the licensee, permittee, or authorized person may not surrender the license,
22 permit, or authorization without the consent of the [Commission] [or other applicable authority].]

23 **Legislative Note:** *The legislative drafter may determine that this section fits better within the*
24 *enacting state's existing framework for suspension, revocation, or nonrenewal of alcoholic*

1 *beverage licenses or permits and that the bracketed subsections should be omitted because they*
2 *are already governed by, or inconsistent with, this existing framework.*

3
4 *The legislative drafter should include in subsections (a), ~~and~~ (c), and (f) each license- issuing*
5 *authority in the enacting state.*

6
7 *The bracketed clause in subsection (e) allows the legislative drafter to refer to this settlement*
8 *process by the well-known term “offer in compromise” used by many states and the federal*
9 *Alcohol and Tobacco Tax and Trade Bureau. The brackets in certain provisions of this section*
10 *indicate that such matters as the maximum period of suspension and minimum period of*
11 *revocation may be adjusted to reflect the enacting state’s legislative preferences. In subsection*
12 *(b), the legislative drafter may insert the term order rather than letter if the enacting state*
13 *prefers a more formal cease-and-desist process.*

14 15 **Comment**

16
17 This section allows the enacting state to, for example, take action against a retailer
18 licensed in the enacting state if the retailer is unlawfully shipping alcohol into another state in
19 violation of that state’s law. A retailer that does so risks losing its retail license in its home state.
20 The provision facilitates cooperation among state regulators, as the retailer’s unlawful shipping
21 is likely to come to light as a result of information provided by regulators in other states. The
22 retailer’s home state must afford the retailer due process in any action taken against the retailer.

23
24 Each state issues various forms of alcoholic beverage licenses or permits. There may also
25 be more than one issuing authority in the enacting state. For example, the state may issue
26 licenses to producers, but local governments may issue licenses to retailers or wholesalers. Each
27 state has some form of existing process and standards for the suspension, revocation, or
28 nonrenewal of alcoholic beverage licenses or permits. Accordingly, at least some portion of this
29 section is likely to already be covered by the enacting state’s law.

30
31 While subsection (c) includes a 36-month “look back” period in counting prior violations,
32 many states place no limit on the “look back” period. Regarding subsections (b) and (e), some
33 states provide for a cease-and-desist “warning” process and allow settlement of violations
34 through an offer-in-compromise process and some do not. Regarding subsection (f), the enacting
35 state may already preclude a licensee from surrendering a license while an administrative
36 enforcement proceeding is pending unless the license-issuing authority consents to the surrender.

37 38 **SECTION 9. PENALTIES.**

39 (a) A logistics shipper that violates Section 3(e)(1) or (2) is subject to a civil penalty, for
40 each violation, of not more than \$[1,000] for a first violation and not more than \$[5,000] for a
41 subsequent violation within [36 months].

42 (b) A carrier that violates Section 4 or Section 7(b) is subject to a civil penalty, for each

violation, of not more than \$[1,000] for a first violation and not more than \$[5,000] for a subsequent violation within [36 months].

(c) A logistics shipper that violates Section 3(d) or (e)(3), Section 5(a), or Section 6(b) or (d) is subject to a civil penalty, for each violation, of not more than \$[100] for a first violation and not more than \$[500] for a subsequent violation within [36 months].

[(d) A licensed direct shipper or carrier that violates Section 5(b) or (c) or Section 6(b) or (d) is subject to a civil penalty, for each violation, of not more than \$[100] for a first violation and not more than \$[500] for a subsequent violation within [36 months].]

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

(f) A suspension or revocation of registration under Section 3(f) is in addition to a penalty that may be imposed under this section.

Legislative Note: *The legislative drafter may determine that this section fits better within the enacting state's existing framework for imposing penalties related to alcoholic beverage violations and that it is preferable to insert the applicable penalties under the act within this existing framework. Also, the creation in the act of only civil penalties might not be consistent with the state's approach to making violations of state alcoholic beverage laws criminal offenses.*

Paragraph (d) is bracketed as optional because it relates to the optional language in Sections 5 and 6. The legislative drafter should ensure that the treatments in these provisions are consistent. If the enacting state requires licensed direct shippers to submit reports under existing law, the legislative drafter should determine whether the penalties under this section are consistent with the penalties under existing law for the licensed direct shipper's failure to do so.

Some provisions in this section are bracketed to indicate that such matters as the amount of the penalty or the 36-month "look back" period may be adjusted to reflect the enacting state's legislative preferences.

Comment

Some states prescribe general penalties that apply to almost any violation of the state's alcoholic beverage laws. Accordingly, at least some portion of this section may already be covered by the enacting state's law. It is also common for violations of a state's alcoholic

1 beverage laws to be criminal offenses. The creation in the act of only civil penalties might not be
2 consistent with the state’s approach to penalizing alcoholic beverage violations.

3
4 The penalties imposed under this section are imposed by a court. The act does not include
5 any provision specifying who may bring a court enforcement proceeding. Depending on the
6 state, the action might be brought by the attorney general, a district attorney or city attorney, or
7 the regulatory agency. This act presumes that each state will continue to rely on existing law that
8 specifies which agencies or governmental units may bring an enforcement action.

9
10 **SECTION 10. RULES.** The [Commission] may adopt rules under [cite to the state’s
11 administrative procedure act] to implement, administer, and enforce this [act], including rules
12 concerning:

13 (1) forms under this [act];

14 (2) the method for submitting logistics shipper registration applications;

15 (3) the method and deadline for filing reports, including the format for electronic reports;

16 ~~and~~

17 (4) appointing and maintaining an agent for service of process; and

18 (5) procedures providing due process in administrative proceedings under this [act].

19 **SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
20 applying and construing this uniform act, consideration must be given to the need to promote
21 uniformity of the law with respect to its subject matter among states that enact it.

22 **SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
23 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
24 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
25 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
26 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
27 U.S.C. Section 7003(b).

SECTION 13. TRANSITIONAL PROVISION.

(a) A [license, permit, or other authorization to ship alcoholic beverages on behalf of another to individuals in this state] which was issued by the [Commission] and in effect on [the effective date of this [act]] continues until its date of expiration or [three] months after [the effective date of this [act]], whichever occurs first. During this transitional period, the person holding the [license, permit, or authorization] may continue activity authorized under the [license, permit, or authorization] and is subject to the law of this state applicable to the [license, permit, or authorization] as it existed immediately before the effective date of this [act]. On expiration of the transitional period, the person holding the [license, permit, or authorization] is subject to this [act].

(b) A person that does not hold a [license, permit, or authorization to ship alcohol beverages on behalf of another to individuals in this state] on [the effective date of this [act]], is subject to this [act] on [the effective date of this [act]].]

Legislative Note: *This optional section should be included if the enacting state already issues fulfillment provider or logistics shipper licenses.* ~~The legislative drafter may substitute the appropriate terminology for the bracketed language. The enacting state may also desire more or less than three months as the transitional period.~~

Comment

A few states authorize by license, permit, or registration the operations of fulfillment providers or logistics shippers. If the enacting state is such a state, this section provides a “phase-in” during which the state’s existing system is replaced with the logistics shipper registration system under the act.

[SECTION 14. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

1 **Legislative Note:** Include this section only if this state lacks a general severability statute or a
2 decision by the highest court of this state stating a general rule of severability.
3

4 **SECTION 15. REPEALS; CONFORMING AMENDMENTS.**

5 (a) [Current direct-to-consumer alcoholic beverage shipping laws relating to fulfillment
6 providers or logistics shippers]

7 (b) [?????]

8 **Legislative Note:** The state should examine its statutes to determine whether conforming
9 revisions are required to enact this act. In particular, the state should review its statutes in light
10 of the provisions of this act relating to:

11 {public record}. See Section 5(f).

12 { ??? } See Section { ??? }.

13 { ??? } See Section { ??? }.

14
15 **SECTION 16. EFFECTIVE DATE.** This [act] takes effect

16 **Legislative Note:** The legislative drafter may wish to include a delayed effective date of at least
17 60 days to allow time to all applicable agencies and industry members to prepare for
18 implementation.