

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 Deletes Winery Registration



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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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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 beverage” means [any beverage in liquid form that contains at least 0.5
8 percent alcohol by volume and is intended for human consumption. “Alcoholic beverage”
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” is the intended recipient for a carrier’s delivery of a package containing
17 [wine] [alcoholic beverages] when the package is provided to the carrier for shipment.

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

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

1 by a retailer for local delivery.

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

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

7 (9) “Licensed direct shipper” means a [winery or other person] that holds a direct shipper
8 license.

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

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

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

19 (13) “Registered logistics shipper” means a logistics shipper registered under Section 3.

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

23 (15) “Wine” means [an alcoholic beverage obtained from the normal fermentation of the juice or

1 must of sound, ripe grapes, or other fruit or agricultural products, containing at least 0.5 percent and not
2 more than 24 percent alcohol by volume. The term includes sparkling and carbonated wine, wine made
3 from condensed grape must, vermouth, cider, perry, and sake].

4 **Legislative Note:** *The legislative drafter should replace the term “Commission” and bracketed*
5 *agency description in paragraph (3) with the applicable agency reference in the state of*
6 *enactment. It is also possible that this term may need to refer to a county (in Hawaii) or other*
7 *governmental unit (in Puerto Rico) rather than a state agency. The brackets are used to identify*
8 *the option to substitute a more accurate term and definition.*

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

22
23 *The definitions of “alcoholic beverage” in paragraph (1) and “wine” in paragraph (15) are*
24 *bracketed as optional because the legislative drafter may elect to use the enacting state’s*
25 *definitions of alcoholic beverage and wine. Either term also may not be necessary for inclusion*
26 *in the act.*

27
28 *The terms “consignor” and “consignee” are customary terms of carriage, used in their ordinary*
29 *meaning in this act. They are bracketed as optional because the legislative drafter may*
30 *determine that these definitions are not necessary and omit them.*

31 32 **Comment**

33
34 States take a variety of approaches to direct-to-consumer shipping. Approximately 46
35 states authorize wineries to ship wine directly to consumers. About 15 states allow retailers to
36 ship directly to consumers. Some states allow producers and retailers to ship any type of
37 alcoholic beverage (wine, beer, or distilled spirits) directly to consumers. All of these states
38 except approximately four require licensing to ship directly to the state’s consumers. The
39 enacting state’s approach to enforcement will depend in part on what types of shipments are
40 considered lawful, so the act is drafted to recognize this variation in both the types of direct
41 shipping licenses states issue and the types of alcoholic beverages that may be lawfully shipped
42 to consumers. The act’s definition of “licensed direct shipper” is intended to allow the enacting
43 state to tailor the definition to the specific circumstances applicable in the enacting state,

1 particularly whether the state authorizes only direct-to-consumer shipping of wine by wineries or
2 authorizes other direct-to-consumer shipping as well.

3
4 The term “consumer” is used repeatedly throughout the act. It is worth emphasizing that a
5 consumer is an individual located in the state of enactment. The act defines the consumer as the
6 consignee of the shipment; the addressee or intended recipient of the package containing the
7 wine or alcoholic beverages. The consumer will usually be the individual who purchases the
8 product and has it shipped to him or her. However, if the product is ordered by someone as a gift
9 for another, the consumer will be the intended recipient of the gift rather than the purchaser. In
10 Section 5, the act recognizes that, as with other packages delivered by a carrier, many states
11 allow the package containing wine or alcoholic beverages to be received and signed for by
12 another of-age person, such as a spouse at the consumer’s residence or a receptionist at the
13 consumer’s place of business. Under the act, the consumer is the addressee or *intended* recipient
14 of the package even if the *actual* recipient of the package is a third-party who signs the carrier’s
15 delivery slip on behalf of the consumer.

16
17 Most states restrict direct-to-consumer shipping to shipments for the recipient’s personal
18 use, and the act clarifies that a consumer does not include, for example, an individual who
19 receives the shipment as an employee of a retailer or rectifier or otherwise as part of the three-
20 tier system. The term “consumer” is also defined to exclude individuals who order wine or
21 alcoholic beverages for local delivery, as opposed to shipment. Many states have now authorized
22 retailers to make online sales followed by local delivery, both directly and through third-party
23 apps and services, and the act is not intended to apply to these transactions that are made through
24 the three-tier system and typically involve nearly simultaneous purchase and delivery.

25
26 The term “logistics shipper” means, in effect, the consignor or sender of a shipment if the
27 shipment is arranged with the carrier by a third-party and not by the seller, the “licensed
28 shipper.” Usually the logistics shipper will be a fulfillment provider that warehouses, packs, and
29 ships the product for the licensed shipper, but providing storage and packaging services is not a
30 requirement for being considered a logistics shipper subject to the provisions of the act. The act’s
31 reference in the definition to shipments on behalf of a licensed shipper “or other seller” does not
32 mean that an unlicensed seller is allowed to make shipments to consumers. Rather, this
33 definitional language is intended to prevent a logistics shipper from avoiding the registration
34 requirement by claiming it does not ship on behalf of licensed shippers. The phrase “or other
35 seller” means only that a person is subject to the act’s requirements as a “logistics shipper” if the
36 person ships wine or alcoholic beverages into the state on behalf of another, regardless of
37 whether the person ships on behalf of licensed or unlicensed sellers.

38
39 Regarding the term “carrier,” the definition is in part similar to the definition of
40 “common carrier” under 15 U.S.C. Section 375 relating to cigarette taxes and the definition
41 under South Dakota statute section 35-12B-1. The definition of “carrier” is intended to be much
42 narrower than “common carrier,” focusing only on common carriers that deliver direct-to-
43 consumer shipments of wine or alcoholic beverages to individuals. The definition excludes
44 motor carriers, water carriers, and railroads that transport wine or alcoholic beverages into and
45 within the state as part of the three-tier system (that is, to other businesses in the alcoholic
46 beverage industry). The act allows, but does not require, the carrier to have the consignor

1 identify whether the package containing alcohol is being sent to a licensee (that is, distributed
2 through the three-tier system) or to a consumer. Only consumer shipments must be reported
3 under Section 6 of the act.
4

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

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

24 **SECTION 3. REGISTRATION OF LOGISTICS SHIPPERS.**

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

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

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

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

33 (3) other information the [Commission] determines is necessary to implement this
34 [act].

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

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

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

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

7 (4) submit to the jurisdiction of the [Commission], the courts, and other
8 enforcement authority of this state, with respect to enforcement of this [act] and other laws of
9 this state regulating the shipment of [wine] [alcoholic beverages] to consumers.

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

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

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

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

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

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

1 as consignee; and

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

5 (f) The [Commission], after notice and an opportunity for hearing, may suspend or
6 revoke the registration of a logistics shipper for good cause, including for any violation specified
7 in Section 9(a) or (b).

8 (g) A registered logistics shipper may cancel its registration in the manner prescribed by
9 the [Commission], but cancellation of the registration does not affect the [Commission]’s
10 jurisdiction with respect to any activity of the logistics shipper that occurred before the
11 cancellation.

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

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

19
20 *This section requires a registered logistics shipper to identify to the Commission each licensed*
21 *direct shipper on whose behalf it makes shipments. The legislative drafter may wish to amend the*
22 *enacting state’s law to also require each licensed direct shipper to notify the Commission of all*
23 *logistics shippers it has engaged to make shipments on its behalf. The legislative drafter may*
24 *also need to clarify in the enacting state’s law that a licensed direct shipper may engage the*
25 *services of a registered logistics shipper in making shipments to consumers.*

26
27 *The frequency with which a logistics shipper must provide an updated list in subsection (d) is*
28 *bracketed as optional. The enacting state may prefer an alternative period, such as*
29 *quarterly. The legislative drafter may wish to maintain consistency of this period and the*
30 *logistics shipper’s reporting period under Section 5.*

1 **Comment**

2
3 A significant amount of direct-to-consumer shipping of alcoholic beverages is
4 accomplished by means of an intermediary, usually referred to as a logistics shipper or
5 fulfillment provider. Few states require licensing or registration of such intermediaries, but the
6 use of such an intermediary makes it difficult for state regulators to identify the originator of the
7 alcoholic beverage shipment. This act provides a mechanism under which state regulators can
8 better identify what alcoholic beverages are being shipped into the state and by whom. The act
9 does not establish standards or requirements for these shipments. The enacting state's existing
10 law will govern such matters as licensing requirements for direct shippers (such as wineries,
11 retailers, or other producers) authorized to ship to consumers in the state, restrictions on
12 shipments such as quantity limits, and requirements for shipment and delivery such as package
13 marking and age verification. The enacting state's law will require compliance by the licensed
14 direct shipper, whether that shipment is accomplished directly or with help from a logistics
15 shipper. This act assists state regulators in establishing the identity of both the seller of a package
16 containing alcoholic beverages and the logistics shipper acting on its behalf.
17

18 A central aspect of this act is ensuring that the enacting state can establish jurisdiction
19 over out-of-state actors. Subsection (c) is included in the act, in addition to Section 6, to create
20 stronger support for the enacting state's authority to assert jurisdiction. Subsection (c) requires
21 the actor to agree to the state's jurisdiction, rather than relying only on a statutory assertion of
22 jurisdiction. It is contemplated that the agreement will take the form of a check-box on the
23 registration application.
24

25 The act does not specifically require a contract between a logistics shipper and the
26 licensed direct shipper on whose behalf it arranges shipments, but it is likely there will be such a
27 contract defining the parties' respective responsibilities and liabilities. The act also does not
28 expressly refer to the logistics shipper as the "agent" of the licensed direct shipper, although the
29 parties' contract might.
30

31 **SECTION 4. CARRIER DELIVERY FROM LICENSED OR REGISTERED**

32 **SHIPPERS.** A carrier may not deliver to a consumer a package that the consignor has identified
33 as containing [wine][alcoholic beverages] unless one of the following applies:

34 (a) The consignor is a licensed direct shipper and the carrier maintains a record of its
35 current direct shipper license.

36 (b) The consignor is a registered logistics shipper and the carrier maintains a record of its
37 registration under Section 3.

38 **Legislative Note:** In this section, the legislative drafter may opt for the term "alcoholic
39 beverages" instead of "wine" to reflect carrier practices or give the provision a broader scope

1 *even if the enacting state does not authorize shipments of alcoholic beverages other than wine.*

2
3 **Comment**
4

5 This section creates requirements related to the carrier's activities in the enacting state.
6 As discussed previously, a consumer is an individual in the enacting state and both a licensed
7 direct shipper and registered logistics shipper are businesses authorized by the enacting state to
8 ship into the enacting state. The provision therefore regulates the carrier only in the enacting
9 state, where the delivery would otherwise occur.
10

11 As discussed in Section 2, approximately four states allow direct-to-consumer shipping
12 with requiring licensing of the shipper. In these few states, Section 4 will need to be modified.
13

14 **SECTION 5. REPORTS RELATED TO DIRECT-TO-CONSUMER [WINE]**

15 **[ALCOHOLIC BEVERAGE] SHIPMENTS.**

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

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

20 (2) the total [gallons] [liters] of [wine] [each type of alcoholic beverage] shipped
21 to consumers by the logistics shipper during the reporting period, identified by tax classification;
22 and

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

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

28 (B) the name and address of the consumer to whom the [wine was]
29 [alcoholic beverages were] shipped and, if different, the name and address of the recipient;

30 (C) the address from which the logistics shipper originated the shipment,

1 stated identically with an address provided by the logistics shipper under Section 3(b)(1);

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

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

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

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

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

11 (2) the total [gallons] [liters] of [wine] [each type of alcoholic beverage] shipped
12 to consumers 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 and address of the consumer to whom the [wine was]
15 [alcoholic beverages were] shipped and, if different, the name and address of the recipient;

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

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

19 (D) the purchase price of the [wine] [alcoholic beverages] shipped and the
20 amount and type of each tax charged in connection with the [wine] [alcoholic beverages]
21 shipped;

22 (E) if the wine was shipped for the licensed direct shipper by a logistics
23 shipper, the name, business address, and this state's registration number of the logistics shipper

1 that shipped the [wine] [alcoholic beverages], with the name stated as identically as possible to
2 the name appearing on the logistics shipper's registration; and

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

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

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

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

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

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

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

19 (C) the date the package was received by the carrier for delivery and the
20 date the package was delivered;

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

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

23 (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] to consumers.

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 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 state’s existing provisions.

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

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 of certain critical pieces of information that assist state regulators in determining whether shipments into the enacting state are originating from a licensed or unlicensed direct shipper. If the carrier reports the package tracking number, the direct shipper reports the package tracking number and its direct shipper license number, and (if applicable) the logistics shipper reports the package tracking number and the name and license number of the direct shipper on whose behalf it is shipping, the state regulator can “triangulate” information to determine whether the shipment originated from a licensed direct shipper. That is, the absence of a tracking number match with an associated direct shipper license number indicates a possible unlicensed shipment. This information is particularly helpful if reports are filed electronically and included in a searchable database.

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

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

As discussed in Section 2, the act recognizes that the consumer (the consignee / addressee of the package) may not be available at the time of delivery and that the package might be received and signed for by another individual. If this occurs, subsections (a)(3)(B), (b)(4)(A), and (c)(3)(B) require reports to also include the name and address of the actual recipient of the package.

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

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

5
6 The act includes a minimal reporting requirement if there was no reportable activity
7 during the reporting period. State regulators will therefore be able to distinguish between
8 lack of activity and non-compliance (failure to receive a report). The act includes a
9 presumption of monthly reporting, but the enacting state may prefer a different reporting
10 period or a variable reporting period, with, for example, a high-volume shipper reporting
11 monthly and a lower-volume shipper reporting quarterly.

12
13 The act requires reports to include detailed and potentially sensitive personal and
14 proprietary information, such as a consumer's name and address and the brand and quantity
15 of wine or alcoholic beverages purchased. Subsection (f) requires the state regulator to
16 maintain confidentiality of these reports and exempts them from disclosure under the state's
17 public records law, subject to limited exceptions.

18 **SECTION 6. STATE JURISDICTION; ENFORCEMENT POWERS.**

19
20 (a) A registered logistics shipper[, a licensed direct shipper, and a carrier] [is] [are]
21 subject to the jurisdiction of the [Commission], the courts, and other enforcement authority of
22 this state with respect to the enforcement of this [act] and other laws of this state regulating the
23 shipment of [wine] [alcoholic beverages] directly to consumers.

24 (b) The [Commission] may inspect and audit the records of a registered logistics shipper[, a
25 licensed direct shipper, or a carrier] relevant to compliance with this [act] and other laws of this
26 state regulating the shipment of [wine] [alcoholic beverages] directly to consumers. A registered
27 logistics shipper[, licensed direct shipper, or carrier] shall allow the [Commission] to inspect and
28 audit its records and, at the [Commission]'s request in a record, shall provide to the
29 [Commission], at a location specified by the [Commission], complete and accurate records not
30 later than [10] business days after the request.

31 (c) The [Commission] may inspect, during ordinary hours of operation, any location from which
32 a registered logistics shipper [licensed direct shipper, or carrier] conducts its operations to assess

1 compliance with this [act] and other laws of this state regulating the shipment of [wine] [alcoholic
2 beverages] directly to consumers.

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

14 (e) For a regulatory or enforcement purpose, the [Commission] may disclose a report,
15 record, or other information in its possession, including a suspected or alleged violation or an
16 [administrative injunction] issued under Section 7, 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) a federal agency with regulatory authority over matters relating to alcoholic
22 beverages or a federal law enforcement agency.

23 ***Legislative Note:*** The optional bracketed language for “wine” or “alcoholic beverages” allows
24 the legislative drafter to elect the more appropriate term depending on whether the enacting

1 *state authorizes direct-to-consumer shipments of wine only or also allows direct-to-consumer*
2 *shipments of other alcoholic beverages.*

3
4 *Many states require licensed direct shippers to consent to jurisdiction, appoint an agent for*
5 *service of process, provide records upon request, and allow audits and inspections. Similar*
6 *requirements may also apply to carriers, although carriers by definition conduct physical*
7 *operations (package delivery) within the territorial limits of the enacting state so jurisdiction is*
8 *evident. Optional bracketed language in this section allows the enacting state to impose*
9 *requirements on licensed direct shippers and carriers if the enacting state's law does not already*
10 *include similar provisions.*

11
12 *The legislative drafter should include the bracketed language in subsection (e)(1) if political*
13 *subdivisions in the enacting state share authority with one or more state agencies in regulating*
14 *any aspect of the alcoholic beverages trade.*

15 16 **Comment**

17
18 Subsection (a) asserts the enacting state's jurisdiction over registered logistics shippers,
19 whether located in the enacting state or another state, and further asserts jurisdiction over
20 licensed direct shippers and carriers if the optional language is included. (This jurisdictional
21 provision is not necessary for an entity with significant in-state operations, like a carrier or in-
22 state direct shipper.) Subsection (a) operates in conjunction with Section 3(c)(4) to ensure that
23 out-of-state logistics shippers registered to ship wine or alcoholic beverages to the enacting
24 state's consumers are subject to jurisdiction in the enacting state. Subsection (a) does not assert
25 jurisdiction over a person that is not licensed or registered in the enacting state and is not
26 regularly operating within the enacting state. Whether the enacting state has jurisdiction over an
27 unlicensed or unregistered "bad actor" unlawfully shipping into the state will be determined on a
28 fact-specific basis under the state's long-arm statute in light of constitutional due process
29 considerations, such as whether the bad actor has "minimum contacts" with the state. *See Burger*
30 *King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Int'l Shoe Co. v. Washington*, 362 U.S. 310
31 (1945).

32
33 Subsection (e) allows the state regulator in the enacting state to share information with
34 regulators in other states, and with other officials in the same state and federal officials. This
35 provision allows states to easily cooperate to stop unlawful interstate shipping. Although Section
36 5(f) generally makes reports related to direct-to-consumer shipping confidential, an exception
37 allows these reports or information from the reports to be shared as provided in subsection (e).

38
39 Section 2 defines a record to include electronic materials.

40 41 **SECTION 7. NOTICE TO CARRIER OF CONSIGNOR'S UNLAWFUL** 42 **SHIPMENTS; [ADMINISTRATIVE INJUNCTIONS].**

43 (a) If the [Commission] has reason to believe that [wine has] [alcoholic beverages have]

1 been unlawfully shipped into or within this state, the [Commission] may give notice to the
2 consignor of the shipment requiring the consignor to show cause not later than 30 days after the
3 date of the notice why shipments by the consignor into or within this state should not be
4 [administratively enjoined]. After the 30-day period and an opportunity for hearing, if the
5 [Commission] determines that the consignor unlawfully shipped [wine] [alcoholic beverages]
6 into or within this state, the [Commission] may issue an [administrative injunction] prohibiting
7 additional shipments of [wine] [alcoholic beverages] into or within this state by the consignor.

8 (b) The [Commission] may give notice of the [administrative injunction] under
9 subsection (a) to the carrier that delivered the shipment resulting in the [administrative
10 injunction]. Beginning 15 days after the date of the notice, and until the carrier receives notice
11 that the [administrative injunction] is rescinded, the carrier may not accept from the consignor
12 identified in the notice, for shipment into or within this state, any package identified as
13 containing [wine] [alcoholic beverages].

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

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

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

23
24 In this section, the legislative drafter may opt for the term “alcoholic beverages” instead of
25 “wine” to give the provision a broader scope even if the enacting state does not authorize
26 shipments of alcoholic beverages other than wine.
27

1 **Comment**

2
3 This section provides an enforcement mechanism to aid the enacting state in stopping
4 unlawful alcohol shipping into or within the state, particularly by unlicensed shippers. The
5 advantage of this mechanism is that it involves an administrative proceeding rather than a court
6 action. If the state regulator detects an unlawful shipment of alcoholic beverages into or within
7 the state, the state regulator may give notice to the consignor to show cause why shipments from
8 the consignor should not be enjoined. After affording the consignor an opportunity for hearing,
9 the state regulator may determine that the consignor has unlawfully shipped alcoholic beverages
10 into or within the enacting state and issue an administrative injunction (an agency order)
11 prohibiting additional shipments of alcoholic beverages into or within the state by the consignor.
12 The state regulator may give notice of the administrative injunction to the carrier that delivered
13 the unlawful shipment. Beginning 15 days after this notice, the carrier may not accept from the
14 consignor identified in the notice any package identified as containing alcohol. The act neither
15 limits carriers to accepting packages from only an authorized list of shippers, nor prohibits
16 carriers from accepting packages from an ever-changing list of banned consignors. The notice to
17 a carrier under the act is specific to a single consignor and permanent unless the carrier receives
18 a subsequent notice that the administrative injunction has been rescinded.
19

20 Under Section 3, if a registered logistics shipper unlawfully ships wine or alcoholic
21 beverages into or within the enacting state, the regulator may suspend or revoke the logistics
22 shipper's registration and the logistics shipper may not thereafter ship wine or alcoholic
23 beverages into or within the state. The act presumes that the enacting state's existing law
24 provides similar authority to suspend or revoke a direct shipper license if the licensed direct
25 shipper unlawfully ships wine or alcoholic beverages into or within the state. The most
26 significant aspect of this section is to provide state regulators with an enforcement tool when
27 there is no registration or license to take action against. Nonetheless, a state regulator could
28 pursue an administrative injunction under this section against a consignor that is a registered
29 logistics shipper or licensed direct shipper, including pursuing an administrative injunction in
30 tandem with a proceeding to suspend or revoke the logistics shipper registration or direct shipper
31 license.
32

33 Most states have enacted a general prohibition making it unlawful to ship alcoholic
34 beverages into the state unless the shipper is authorized to do so. In some states, the statute
35 prohibits any person from shipping alcoholic beverages into the state except to a licensed
36 wholesaler, with an exception recognized for certain licensed direct-to-consumer shippers. Other
37 states specifically prohibit direct-to-consumer shipments unless the shipper holds a specified
38 direct shipper license. (Approximately four states allow direct-to-consumer shipments with no
39 required license.) This act presumes, and relies on, the enacting state's existing general
40 prohibition and does not include a blanket ban on unlicensed direct-to-consumer shipments.
41

42 **SECTION 8. SUSPENSION, REVOCATION, OR NONRENEWAL OF LICENSE**
43 **OR PERMIT FOR UNLAWFUL SHIPPING.**

44 (a) [Subject to subsection (b),] the [Commission] [or other applicable authority], after

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

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

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

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

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

authority]] a civil penalty.]

Legislative Note: *The legislative drafter may determine that this section fits better within the enacting state’s existing framework for suspension, revocation, or nonrenewal of alcoholic beverage licenses or permits and that the bracketed subsections should be omitted because they are already governed by, or inconsistent with, this existing framework.*

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

The bracketed clause in subsection (e) allows the legislative drafter to refer to this settlement process by the well-known term “offer in compromise” used by many states and the federal Alcohol and Tobacco Tax and Trade Bureau. 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 (b), 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 unlawfully 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. The provision facilitates cooperation among state regulators, as the retailer’s unlawful shipping is likely to come to light as a result of information provided by regulators in other states. The retailer’s home state must afford the retailer due process in any action taken against the retailer.

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 this section is likely to already be covered by the enacting state’s law.

While subsection (c) includes a 36-month “look back” period in counting prior violations, many states place no limit on the “look back” period. Regarding subsections (b) and (e), 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 9. PENALTIES.

(a) A logistics shipper that violates Section 3(e)(1) or (2) 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].

(b) A carrier that violates Section 4 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

1 alcoholic beverage laws. Accordingly, at least some portion of this section may already be
2 covered by the enacting state's law. It is also common for violations of a state's alcoholic
3 beverage laws to be criminal offenses. The creation in the act of only civil penalties might not be
4 consistent with the state's approach to penalizing alcoholic beverage violations.

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

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

15 (1) forms under this [act];

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

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

18 and

19 (4) appointing and maintaining an agent for service of process.

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

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

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

SECTION 15. REPEALS; CONFORMING AMENDMENTS.

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

(b) [?????]

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

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

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

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

SECTION 16. EFFECTIVE DATE. This [act] takes effect

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