

D R A F T  
FOR DISCUSSION ONLY

# Alcohol Direct-Shipping Compliance Act

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Uniform Law Commission

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## Alcohol Direct-Shipping Compliance Act

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this act consists of the following individuals:

Steven G. Frost	Illinois, <i>Chair</i>
Deborah E. Behr	Alaska
David J. Clark	California
Kenneth D. Dean	Missouri
Brian G. Gosch	South Dakota
Jess O. Hale	Tennessee
Robert W. Hayes	South Carolina
Gerald L. Jackson	Oklahoma
Philip Larragoite	New Mexico
Gene N. Lebrun	South Dakota
Gail Russell	Kentucky
Duane M. Searle	Pennsylvania
Nicole L. Streeter	District of Columbia
Aaron R. Gary	Wisconsin, <i>National Conference Reporter</i>
William H. Henning	Alabama, <i>Division Chair</i>
Carl H. Lisman	Vermont, <i>President</i>

### Other Participants

Richard Blau	Florida, <i>American Bar Association Advisor</i>
Vincent C. Deliberato Jr.	Pennsylvania, <i>Style Liaison</i>
Tim Schnabel	Illinois, <i>Executive Director</i>

Copies of this act may be obtained from:

Uniform Law Commission  
111 N. Wabash Ave., Suite 1010  
Chicago, IL 60602  
(312) 450-6600  
[www.uniformlaws.org](http://www.uniformlaws.org)

# Alcohol Direct-Shipping Compliance Act

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1 **Alcohol Direct-Shipping Compliance Act**

2 **Prefatory Note**

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

10  
11 In preparing this act, the National Conference of Commissioners on Uniform State Laws  
12 (Conference) recognizes that the policy-makers in each state are best suited to determine whether  
13 alcoholic beverages should be sold in the state and, if so, under what circumstances or with what  
14 restrictions the distribution and sale of alcoholic beverages should occur. The Conference is a  
15 state-supported organization comprised of representatives from each state who are appointed by  
16 state governments. The Conference was founded on principles of federalism and state autonomy.

17  
18 At the time this act was prepared, approximately 46 states had chosen to allow some form  
19 of direct-to-consumer (DTC) wine shipping by wineries. Some of these states also allow DTC  
20 shipping by retailers and by producers of beer and distilled spirits. Most of these states require  
21 licensing of DTC shippers, but approximately four do not. The purpose of this act is not to  
22 require states to allow DTC shipping of alcoholic beverages or to establish requirements or  
23 standards for DTC shipments, but rather to assist states with better mechanisms to stop the  
24 unlawful DTC shipments that state policy-makers have chosen not to allow. Unauthorized DTC  
25 shipments are often interstate shipments, and the act promotes uniformity and cooperation  
26 among states seeking more effective cross-border enforcement of their existing DTC shipping  
27 laws.

28  
29 This act enhances each state’s capability to detect and stop unlawful DTC shipments of  
30 alcoholic beverages to the state’s residents. The act incorporates the state’s existing law as to the  
31 industry participants and types of alcoholic beverages for which DTC shipping is allowed, and  
32 does *not* create any new or additional authorization to ship alcoholic beverages directly to a  
33 consumer. The act provides state regulators with new tools to distinguish between DTC  
34 shipments originating from shippers licensed under the state’s existing law and DTC shipments  
35 that do not, and aids state regulators in enforcing their existing laws governing DTC shipments  
36 of any type of alcoholic beverage.

1 **Alcohol Direct-Shipping Compliance Act**

2 **Section 1. Title**

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

4 **Section 2. Definitions**

5 In this [act]:

6 (1) “Alcoholic beverages” has the meaning in [cite to state’s definition of  
7 alcoholic beverages].

8 (2) “Carrier” means a person that:

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

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

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

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

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

19 (A) is, or is acting on behalf of, a person holding an alcoholic- beverage  
20 [license] [permit] under which the person is authorized to receive shipments of alcoholic  
21 beverages for resale or production purposes; or

22 (B) orders or for whom is ordered covered alcoholic beverages sold by a  
23 retailer for delivery not later than 24 hours after the order and not more than 50 miles from the

1 retailer's licensed premises.

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

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

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

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

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

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

16 (12) "Record" means information:

17 (A) inscribed on a tangible medium; or

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

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

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

1 jurisdiction of the United States.

2 (15) “Wine” has the meaning in [cite to state’s definition of wine].

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

5  
6 *A state should in paragraph (6) identify the types of alcoholic beverages that may be shipped*  
7 *directly to consumers under applicable state law, for example, wine only or some combination of*  
8 *wine, spirits, or malt beverages. Depending on the types of alcoholic beverages that may be*  
9 *shipped, the state may also need to add to this section the state’s definitions of distilled spirits*  
10 *and fermented malt beverages.*

11  
12 *Bracketed language in paragraphs (5) and (7) allows a state to adjust these paragraphs to*  
13 *reflect whether the authorization is in the form of a license or permit. If appropriate, the state*  
14 *may also insert another form authorization, such as registration. The state may prefer to*  
15 *substitute cross references to state law authorizing direct shipping to a consumer.*

### 16 17 **Comment**

18  
19 States take a variety of approaches to direct-to-consumer shipping. Approximately 46  
20 states authorize wineries to ship wine directly to consumers. About 15 states allow retailers to  
21 ship directly to consumers. Some states allow producers and retailers to ship any type of  
22 alcoholic beverage (wine, beer, or distilled spirits) directly to consumers. All of these states  
23 except approximately four require licensing to ship directly to the state’s consumers. The  
24 enacting state’s approach to enforcement will depend in part on what types of shipments are  
25 considered lawful, so the act is drafted to recognize this variation in both the types of direct  
26 shipping licenses states issue and the types of alcoholic beverages that may be lawfully shipped  
27 to consumers. The act’s definition of “covered alcoholic beverages” identifies the types of  
28 alcoholic beverages for which the state authorizes direct-to-consumer shipments. The act’s  
29 definitions of “licensed direct shipper” and “direct-shipper license” are also intended to fit within  
30 the enacting state’s existing framework. The term “person” in the definition of “licensed direct  
31 shipper” might be limited to a winery in some states, or also include a retailer or other producers  
32 in other states, depending on whether the state authorizes only direct-to-consumer shipping of  
33 wine by wineries or authorizes other direct-to-consumer shipping as well.

34  
35 The term “consumer” is used repeatedly throughout the act. It is worth emphasizing that a  
36 consumer is an individual located in the state of enactment. The consumer is the consignee of the  
37 shipment, the addressee or intended recipient of the package containing alcoholic beverages. The  
38 consumer will usually be the individual who purchases the product and has it shipped to him or  
39 her. However, if the product is ordered by someone as a gift for another, the consumer will be  
40 the intended recipient of the gift rather than the purchaser. The act recognizes that, as with other  
41 packages delivered by a carrier, many states allow the package containing wine or alcoholic  
42 beverages to be received and signed for by another of-age person, such as a spouse at the  
43 consumer’s residence or a receptionist at the consumer’s place of business. Under the act, the  
44 consumer is the addressee or *intended* recipient of the package even if the *actual* recipient of the

1 package is a third-party who signs the carrier’s delivery slip on behalf of the consumer. The act  
2 does not preclude a consumer from ordering alcoholic beverages (if the alcoholic beverages are  
3 of a type authorized for direct-to-consumer shipping) for the consumer’s use at an event like a  
4 reception, if doing so complies with the enacting state’s existing law.  
5

6 Most states restrict direct-to-consumer shipping to shipments for the recipient’s personal  
7 use, and the act clarifies that a consumer does not include, for example, an individual who  
8 receives the shipment as an employee of a retailer or rectifier or otherwise as part of the three-  
9 tier system. The term “consumer” is also defined to exclude individuals who order alcoholic  
10 beverages for local delivery, as opposed to shipment. Many states have now authorized retailers  
11 to make online sales followed by local delivery, both directly and through third-party apps and  
12 services, and the act is not intended to apply to these transactions that are made through the  
13 three-tier system and typically involve contemporaneous purchase and delivery.  
14

15 The term “logistics shipper” means, in effect, the consignor or sender of a shipment if the  
16 shipment is arranged with the carrier by a third-party and not by the seller (the “licensed  
17 shipper”). Usually the logistics shipper will be a fulfillment provider that warehouses, packs, and  
18 ships the product for the licensed shipper, but providing storage and packaging services is not a  
19 requirement for being considered a logistics shipper subject to the provisions of the act.  
20

21 Regarding the term “carrier,” the definition is in part similar to the definition of  
22 “common carrier” under 15 U.S.C. Section 375 relating to cigarette taxes and the definition  
23 under South Dakota statute section 35-12B-1. The definition of “carrier” is intended to be much  
24 narrower than “common carrier,” focusing only on common carriers that deliver direct-to-  
25 consumer shipments of alcoholic beverages to individuals. The definition excludes motor  
26 carriers, water carriers, and railroads that transport alcoholic beverages into and within the state  
27 as part of the three-tier system (that is, to other businesses in the alcoholic beverage industry).  
28 The act allows, but does not require, the carrier to have the consignor identify whether the  
29 package containing alcohol is being sent to a licensee (that is, distributed through the three-tier  
30 system) or to a consumer. Only consumer shipments must be reported under Section 5 of the act.  
31 A carrier engaged in the business of transporting and delivering to consumers only wine and no  
32 other alcoholic beverages meets the standard under paragraph (2) (B) because wine is an  
33 alcoholic beverage.  
34

35 Regarding the term “Commission,” the name of the department or agency responsible for  
36 administering the state’s alcoholic beverage laws varies from state to state. Common agency  
37 names include the Alcoholic Beverage Commission, Department of Revenue, Liquor Control  
38 Commission, and others. The act uses the term “Commission” as the default because it is the  
39 most common agency name.  
40

41 State definitions of wine can vary. The act relies on the state’s existing definitions of  
42 wine and alcoholic beverages. Depending on optional language included in the act, adding the  
43 state’s definitions of distilled spirits and fermented malt beverages might also be warranted.  
44

### 45 **Section 3. Registration of Logistics Shipper**

1 (a) A logistics shipper shall register with the [commission] before shipping covered  
2 alcoholic beverages into or within this state.

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

5 (1) each address from which the logistics shipper will ship covered alcoholic  
6 beverages to a consumer;

7 (2) the name, address, and direct-shipper-license number of each licensed direct  
8 shipper on whose behalf the logistics shipper will ship covered alcoholic beverages to a  
9 consumer; and

10 (3) other information the [commission] determines necessary to implement this  
11 [act].

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

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

14 (2) provide access under Section 6(b) to its records;

15 (3) allow the [commission] to conduct an audit under Section 6(b) of its records  
16 and an inspection under Section 6(c) of its premises; and

17 (4) submit to the jurisdiction of the [commission], the courts, and other  
18 enforcement authority of this state with respect to enforcement of this [act] and other law of this  
19 state regulating the shipment of alcoholic beverages directly to an individual in this state.

20 (d) A logistics shipper registered under this section shall provide [monthly] to the  
21 [commission], in the form prescribed by the [commission], an updated list of all licensed direct  
22 shippers on whose behalf the logistics shipper ships covered alcoholic beverages to consumers.  
23 The list must include the name, business address, and direct-shipper-license number of each

1 licensed direct shipper, with the name stated if possible as it appears on the direct-shipper  
2 license.

3 (e) A logistics shipper may ship covered alcoholic beverages to a consumer only if:

4 (1) the registration of the logistics shipper is not suspended, revoked, or canceled  
5 [under subsection (f) or (g)];

6 (2) the covered alcoholic beverages were supplied to the logistics shipper by a  
7 licensed direct shipper;

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

9 (A) on the shipping label, the name and applicable address of the logistics  
10 shipper, as they appear in the registration under this section, as consignor and the name and address of the  
11 consumer as intended recipient;

12 (B) on the package or shipping label, the name and direct-shipper license  
13 number of the licensed direct shipper that supplied to the logistics shipper the covered alcoholic  
14 beverages contained in the package; and

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

16 [(f) The [commission], after notice and an opportunity for an evidentiary hearing, may  
17 suspend, revoke, or impose conditions on the registration of a logistics shipper[ for good cause,  
18 including for any violation specified in Section 9(a)(1)].]

19 [(g) A registered logistics shipper may cancel its registration, in the manner prescribed by  
20 the [commission], unless an enforcement proceeding is pending against the logistics shipper.

21 Cancellation of the registration does not affect the [commission's] jurisdiction with respect to  
22 activity that occurred before the cancellation. If an enforcement proceeding is pending against a  
23 registered logistics shipper, the logistics shipper may cancel its registration only with the consent

1 of the [commission].]

2 (h) Use by a licensed direct shipper of the services of a registered logistics shipper does  
3 not relieve the direct shipper of a requirement imposed on it under [cite to applicable law of the  
4 state].

5 **Legislative Note:** *This section requires a registered logistics shipper to identify to the*  
6 *commission each licensed direct shipper on whose behalf it makes shipments. A state may choose*  
7 *to amend its law to require each licensed direct shipper to also notify the commission of all*  
8 *logistics shippers it has engaged to make shipments on its behalf. The state may need to clarify in*  
9 *its law that a licensed direct shipper may engage the services of a registered logistics shipper to*  
10 *make a shipment to a consumer.*

11  
12 *In subsection (d), “monthly” is bracketed because the state may prefer an alternative period,*  
13 *such as quarterly or the logistics shipper’s reporting period under Section 5.*

14  
15 *Subsections (f) and (g) are bracketed because the topic of administrative actions may fit better*  
16 *under other state law addressing similar matters.*

17  
18 *Brackets around the clause starting “for good cause” in subsection (f) allow the state to adopt a*  
19 *different standard, including listing specific conduct or a violation that may result in suspension*  
20 *of, revocation of, or conditions on the registration.*

21  
22 *Brackets in subsection (h) allow the state to reference provisions of law that impose restrictions*  
23 *on direct-to-consumer shipments, such as the quantity of a covered alcoholic beverage that may*  
24 *be shipped to a consumer.*

25

26

## Comment

27

28 A significant amount of direct-to-consumer shipping of alcoholic beverages is  
29 accomplished by means of an intermediary, usually referred to as a logistics shipper or  
30 fulfillment provider. Few states require licensing or registration of such intermediaries, but the  
31 use of such an intermediary makes it difficult for state regulators to identify the originator of the  
32 alcoholic beverage shipment. This act provides a mechanism under which state regulators can  
33 better identify what alcoholic beverages are being shipped into the state and by whom. The act  
34 does not establish standards or requirements for these shipments. The enacting state’s existing  
35 law will govern such matters as licensing requirements for direct shippers authorized to ship to  
36 consumers in the state, which might be wineries only or might include retailers and other  
37 producers. The enacting state’s existing law also governs what types of alcoholic beverages may  
38 be shipped, i.e., whether the state authorizes direct-to-consumer shipments of wine only or also  
39 allows direct-to-consumer shipments of other alcoholic beverages, and what restrictions apply to  
40 these shipments, such as quantity limits, package marking, and age verification. The enacting  
41 state’s law will require compliance by the licensed direct shipper, whether that shipment is  
42 accomplished directly or with help from a logistics shipper. This act assists state regulators in

1 establishing the identity of both the seller of alcoholic beverages and the logistics shipper acting  
2 on its behalf.

3  
4 A central aspect of this act is ensuring that the enacting state can establish jurisdiction  
5 over out-of-state actors. Subsection (c) is included in the act, in addition to Section 6, to create  
6 stronger support for the enacting state’s authority to assert jurisdiction. Subsection (c) requires  
7 the actor to agree to the state’s jurisdiction, rather than relying only on a statutory assertion of  
8 jurisdiction. It is contemplated that the agreement will take the form of a check-box on the  
9 registration application.

10  
11 Subsection (f) allows the enacting state to suspend or revoke a logistics shipper’s  
12 registration for good cause, including violations of the act. This standard is bracketed as optional  
13 because the state may wish to more specifically identify the conduct that may result in  
14 suspension or revocation of the registration. The act also allows the state, in Section 10, to adopt  
15 rules to define, or establish guidelines for determining, “good cause. Subsection (f) also allows  
16 the state to opt for a punishment less severe than suspension or revocation by imposing a  
17 condition on the registration, such as requiring additional employee training. Subsections (f) and  
18 (g) are also bracketed in their entirety because the enacting state may have existing standards or  
19 procedures that are well-suited to the administrative considerations underlying these provisions.

20  
21 Subsection (d) requires a registered logistics shipper to provide the state with a list of  
22 licensed direct shippers on whose behalf shipments are made. Under Section 2, “licensed direct  
23 shipper” is a defined term that includes only a person holding a direct-shipper license issued by  
24 the enacting state. In other words, this list of direct shippers is limited to the direct shippers  
25 licensed by the enacting state.

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

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

33  
34 (a) Subject to subsection (b), a carrier may not deliver to a consumer a package known by  
35 the carrier to contain alcoholic beverages unless:

36 (1) the consignor is a licensed direct shipper and the carrier has verified its direct-  
37 shipper license for the current license period; or

38 (2) the consignor is a registered logistics shipper and the carrier has verified its  
39 registration under Section 3.

1 (b) A carrier that verifies that a direct shipper has a direct-shipper license for the current  
2 license period may consider the license to be valid for the remainder of the license period unless  
3 the carrier receives notice from the [commission] that the license has been [suspended, revoked,  
4 or canceled]. A carrier that verifies that a logistics shipper is registered under Section 3 may  
5 consider the registration to be valid unless the carrier receives notice from the [commission] that  
6 the registration has been suspended, revoked, or canceled. [A carrier may consider an expired  
7 direct-shipper license to be valid if the [commission] has delayed processing renewal of direct-  
8 shipper licenses.]

9 **Legislative Note:** Brackets in subsection (b) allow the state to insert the proper terminology for  
10 suspension, revocation, or termination of a direct-shipper license.

11  
12 *Include the final, bracketed sentence of subsection (b) if the state chooses to allow licensed*  
13 *activity to continue during administrative disruptions in the license renewal process, such as*  
14 *during the COVID-19 pandemic.*

15  
16 **Comment**  
17

18 This section creates requirements related to the carrier’s activities in the enacting state.  
19 As discussed previously, a consumer is an individual in the enacting state and both a licensed  
20 direct shipper and registered logistics shipper are businesses authorized by the enacting state to  
21 ship into the enacting state. The provision therefore regulates the carrier only in the enacting  
22 state, where the delivery occurs.

23  
24 After a carrier has verified that a consignor either holds a direct-shipper license valid for  
25 the applicable license period or has a logistics shipper’s registration, the carrier is not required to  
26 continually confirm that the license or registration hasn’t been suspended or revoked. However,  
27 if the carrier receives notice that the license or registration has been suspended or revoked, the  
28 carrier cannot thereafter consider the license or registration as valid.

29  
30 As discussed in Section 2, approximately four states allow direct-to-consumer shipping  
31 without requiring licensing of the shipper. In these few states, Section 4 will need to be modified.

32  
33 **Section 5. Shipment Report**

34 (a) Except as provided in subsection (e), a registered logistics shipper shall file with the  
35 [commission] a [monthly] report that includes:

1 (1) the name, business address, and registration number of the logistics shipper;

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

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

7 (A) the name, business address, and direct-shipper-license number of the  
8 licensed direct shipper on whose behalf the logistics shipper shipped the covered alcoholic  
9 beverages], with the name stated if possible as it appears on the direct-shipper license;

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

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

14 (D) the date the shipment was delivered;

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

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

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

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

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

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

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

8 (B) the date the shipment was delivered;

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

12 (D) the purchase price of the covered alcoholic beverages shipped and the  
13 amount and type of each tax charged in connection with the covered alcoholic beverages;

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

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

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

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

1 (2) a list containing the name, business address, and direct-shipper-license number  
2 or logistics-shipper-registration-number of each licensed direct shipper and registered logistics  
3 shipper with which the carrier has an agreement to ship alcoholic beverages, with the name  
4 stated if possible as it appears on the direct-shipper license or logistics-shipper registration; and

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

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

8 (B) the name and address of the consumer;

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

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

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

12 (d) The [commission] shall prescribe the form and deadline for filing a report under this section.

13 The [commission] may require the report to be filed electronically. The [commission] may require a  
14 person filing the report to submit additional information, including business records, to  
15 substantiate information in the report.

16 (e) If no business was transacted in this state during the reporting period, a report under  
17 this section must include the information under subsection [(a)(1)] [(a)(1) or [(b)(1)] [(a)(1) or  
18 (c)(1)] [(a)(1), (b)(1), or (c)(1)] and report that no business was transacted in this state during the  
19 reporting period.

20 (f) Except as provided in subsection (g), a report filed under this section, and information  
21 obtained from the report, is confidential and exempt from public inspection or disclosure.

22 (g) The [commission] may disclose a report under this section or information from the  
23 report:

1 (1) as provided in Section 6(e) and (f);

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

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

6 **Legislative Note:** *If a state requires a licensed direct shipper or carrier to file a report with the*  
7 *state regulator, the state may choose to amend the requirement to add the information under*  
8 *subsection (b) or (c) and omit that subsection.*

9  
10 *If the state authorizes direct-to-consumer shipping of distilled spirits, the state may need to*  
11 *clarify that quantity in subsections (a)(2) and (b)(2) might need to be stated in proof gallons.*

12  
13 *The reporting period in subsections (a), (b), and (c) is bracketed as optional. The state may*  
14 *prefer an alternative reporting period, such as quarterly. However, the volume of carrier*  
15 *reports, in particular, may be such that monthly or more frequent reporting is preferable.*  
16 *The bracketed material in subsection (e) requires a choice based on which options are*  
17 *selected in subsections (b) and (c).*

18  
19 *A state may need to amend its public records law to accomplish the confidentiality under*  
20 *subsection (f) and (g).*

## 21 22 **Comment**

23  
24 The act requires reporting of certain critical pieces of information that assist state  
25 regulators in determining whether shipments into the enacting state are originating from a  
26 licensed or unlicensed direct shipper. If the carrier reports the package tracking number, the  
27 direct shipper reports the package tracking number and its direct-shipper-license number, and  
28 (if applicable) the logistics shipper reports the package tracking number and the name and  
29 license number of the direct shipper on whose behalf it is shipping, the state regulator can  
30 “triangulate” information to determine whether the shipment originated from a licensed  
31 direct shipper. That is, the absence of a tracking number match with an associated direct-  
32 shipper-license number indicates a possible unlicensed shipment. This information is  
33 particularly helpful if reports are filed electronically and included in a searchable database.

34  
35 The act requires a registered logistics shipper, licensed direct shipper, and carrier to  
36 report some of the same information. As discussed, cross-reporting of information is  
37 intended to assist the state regulator in analyzing shipping into the enacting state. Although  
38 the act requires a carrier to report only the weight of the package and the licensed direct  
39 shipper and logistics shipper to report the contents of the package, this information can be  
40 cross-referenced to ascertain whether the package weight is consistent with the reported  
41 contents or whether the direct shipper appears to be underreporting shipments (and tax

1 obligations). Reporting requirements in the act assist the state in verifying that required  
2 taxes are being reported and collected.  
3

4 State regulators also have difficulty matching information among reports if the same  
5 information is reported in an inconsistent manner. For example, if a direct shipper is licensed  
6 as “Three Lakes Winery, Inc.” but the registered logistics shipper reports the direct shipper  
7 as “3 Lakes,” the regulator may be uncertain whether it is the same company. The act  
8 requires names to be reported, if possible, as they appear on a license or registration  
9 maintained with the enacting state. The reporting entity may obtain this information by  
10 requesting a copy of the applicable license or registration certificate or, in a state that makes  
11 such information publicly available, by checking the state’s database. This requirement for  
12 precision in reporting a name is not intended to preclude the reporting entity from using a  
13 trade name (DBA) identified in a license or registration, but the DBA must be stated with  
14 accuracy on each report.  
15

16 The act requires reporting by a common carrier that delivers alcoholic beverages in  
17 the enacting state to a consumer. The act does not require carriers to report alcoholic  
18 beverage shipments to licensed industry participants receiving the package through the three-  
19 tier system. Although the act does not include a requirement for carriers to identify packages  
20 designated for consumers, the carrier may choose to require consignors to declare (perhaps  
21 through a check-box) whether the consignee is a consumer or a licensee.  
22

23 Many states already require licensed direct shippers and carriers to report information  
24 similar to the information required under this section. If this is the case in the enacting state, the  
25 enacting state may wish to add elements of this section to its existing requirements to ensure that  
26 state regulators are able to make full use of the reported information.  
27

28 The act includes a minimal reporting requirement if there was no reportable activity  
29 during the reporting period. State regulators will therefore be able to distinguish between  
30 lack of activity and non-compliance (failure to receive a report). The act includes a  
31 presumption of monthly reporting, but the enacting state may prefer a different reporting  
32 period.  
33

34 As mentioned above, reports under this section assist the state not only in identifying  
35 shipment origin but also in ensuring tax collection. Therefore, subsections (a)(2) and (b)(2)  
36 require reporting according to tax classification. To use federal tax classifications as an  
37 example, aggregate volumes would be grouped in the reports as follows: still wine with an  
38 alcohol content not exceeding 16 percent; still wine with an alcohol content greater than 16  
39 percent; sparkling wine; and cider (although there are actually more tax classifications than  
40 these).  
41

42 The act requires reports to include detailed and potentially sensitive personal and  
43 proprietary information, such as a consumer’s name and address and the brand and quantity  
44 of alcoholic beverages purchased. Subsection (f) requires the state regulator to maintain  
45 confidentiality of these reports and exempts them from disclosure under the state’s public  
46 records law, subject to the limited exceptions under subsection (g).

1           **Section 6. State Jurisdiction; Enforcement Powers**

2           (a) A registered logistics shipper[,] [and] [licensed direct shipper][,] [and carrier] [is]  
3 [are] subject to the jurisdiction of the [commission], the courts, and other enforcement authority  
4 of this state with respect to the enforcement of this [act] and other law of this state regulating the  
5 shipment of alcoholic beverages directly to individuals in this state.

6           (b) The [commission] may inspect and audit the records of a registered logistics shipper[,] [and]  
7 [licensed direct shipper][,] [and carrier] for compliance with this [act] and other law of this state  
8 regulating the shipment of alcoholic beverages directly to individuals in this state. A registered  
9 logistics shipper[, licensed direct shipper, and carrier] shall allow the [commission] to inspect and  
10 audit its records and, at the [commission’s] request in a record, provide complete and accurate  
11 copies to the [commission] at a location specified by the [commission] not later than [10]  
12 business days after the request.

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

17           (d) A registered logistics shipper[, licensed direct shipper, and carrier] shall appoint, on a  
18 form prescribed by the [commission], and continuously maintain, an agent for service of process.  
19 The agent need not be located in this state. By appointing an agent under this subsection, the  
20 registered logistics shipper[, licensed direct shipper, or carrier] affirms that the agent consents to  
21 accept service. Service of process on the agent constitutes valid service of process on the  
22 registered logistics shipper[, licensed direct shipper, or carrier] in an action or proceeding arising  
23 out of enforcement of this [act] or other law of this state regulating the shipment of alcoholic

1 beverages directly to individuals in this state. If a registered logistics shipper[, licensed direct  
2 shipper, or carrier] fails to maintain in the records of the [commission] a current agent for service  
3 of process or if the current agent cannot be served with reasonable diligence, the [commission] is  
4 the agent for service of process.

5 (e) The [commission] may disclose a report, record, order, or other information in its  
6 possession, for a regulatory or enforcement purpose, to:

7 (1) a state agency or law enforcement agency of this state [or a local agency in  
8 this state with regulatory authority relating to alcoholic beverages];

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

11 (3) a federal agency with regulatory authority relating to alcoholic beverages or  
12 taxation or a federal law enforcement agency.

13 (f) The [commission] may disclose to the public an order resulting from a completed  
14 investigation.

15 **Legislative Note:** *Optional bracketed language in this section allows the state to impose*  
16 *requirements on a licensed direct shipper or carrier if the state's law does not already include a*  
17 *similar provision.*

18  
19 *Include the bracketed language in subsection (e)(1) if political subdivisions in the state share*  
20 *authority with a state agency in regulating alcoholic beverages.*

21  
22 *A state may need to amend its public records law to allow disclosure under subsections (e) and*  
23 *(f).*

### 24 25 **Comment**

26  
27 Many states require licensed direct shippers to consent to jurisdiction, appoint an agent  
28 for service of process, provide records upon request, and allow audits and inspections. Similar  
29 requirements may also apply to carriers, although carriers by definition conduct physical  
30 operations (package delivery) within the territorial limits of the state so jurisdiction is evident.

31  
32 Subsection (a) asserts the enacting state's jurisdiction over registered logistics shippers,

1 whether located in the enacting state or another state, and further asserts jurisdiction over  
2 licensed direct shippers and carriers if the optional language is included. (This jurisdictional  
3 provision is not necessary for an entity with significant in-state operations, like a carrier or in-  
4 state direct shipper.) Subsection (a) operates in conjunction with Section 3(c)(3) to ensure that  
5 out-of-state logistics shippers registered to ship alcoholic beverages to the enacting state’s  
6 consumers are subject to jurisdiction in the enacting state. Subsection (a) does not assert  
7 jurisdiction over a person that is not licensed or registered in the enacting state and is not  
8 regularly operating within the enacting state. Whether the enacting state has jurisdiction over an  
9 unlicensed or unregistered “bad actor” unlawfully shipping into the state will be determined on a  
10 fact-specific basis under the state’s long-arm statute in light of constitutional due process  
11 considerations, such as whether the bad actor has “minimum contacts” with the state. *See Burger*  
12 *King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Int’l Shoe Co. v. Washington*, 362 U.S. 310  
13 (1945).

14  
15 Subsection (e) allows the state regulator in the enacting state to share information with  
16 regulators in other states, and with other officials in the same state and federal officials. This  
17 provision allows states to easily cooperate to stop unlawful interstate shipping. Although Section  
18 5(f) generally makes reports related to direct-to-consumer shipping confidential, an exception in  
19 Section 5(g) allows these reports or information from the reports to be shared as provided in  
20 subsection (e).

21  
22 The enforcement provisions of Section 6 apply with respect to all alcoholic beverages.  
23 Even if the enacting state limits authorized shipping to wine only, the state has a strong interest  
24 in detecting and stopping unlawful shipments of any type of alcoholic beverage. The state also  
25 has a strong interest in enforcing tax obligations, and the right to records inspection in Section 6  
26 helps the state ensure appropriate tax collections.

27  
28 Section 2 defines a record to include electronic materials.

29  
30 Section 5(f) and (g) generally require reports from registered logistics shippers, as well as  
31 reports from licensed direct shippers and carriers if the act’s optional language is incorporated, to  
32 be kept confidential. There is likely a provision of the enacting state’s law that already governs  
33 the confidentiality of other records and information maintained by the Commission. Therefore,  
34 the act does not include a general statement of confidentiality for these other records and  
35 information similar to Section 5(f) but does clarify in Section 6(e) and (f) instances in which  
36 certain information can always be disclosed.

## 37 38 **Section 7. Notice to Carrier of Consignor’s Unlawful Shipment; Administrative**

### 39 **Order**

40 (a) If the [commission] has reason to believe that alcoholic beverages have been shipped  
41 unlawfully into or within this state, the [commission] may give notice to the consignor requiring  
42 the consignor to show cause why shipments by the consignor into or within this state should not

1 be prohibited. If the [commission], after an opportunity for an evidentiary hearing, determines  
2 that the consignor shipped alcoholic beverages into or within this state unlawfully, the  
3 [commission] may issue an administrative order prohibiting additional shipments by the  
4 consignor of alcoholic beverages into or within this state.

5 (b) The [commission] may give notice to a carrier of the administrative order under  
6 subsection (a). Except as provided in subsection (d), beginning 10 days after the date of the  
7 notice, and until the carrier receives notice that the administrative order is rescinded, the carrier  
8 may not accept from the consignor identified in the notice, for shipment into or within this state,  
9 a package known by the carrier to contain an alcoholic beverage.

10 (c) [For good cause,] the [commission] may rescind an administrative order issued under  
11 subsection (a). On rescinding the order, the [commission] shall give notice of the rescission to  
12 each carrier that received notice under subsection (b) of the order.

13 (d) The [commission] may not hold a hearing under subsection (a) less than [30] days  
14 after the date of the notice requiring the consignor to show cause unless:

15 (1) the consignor agrees to an earlier hearing date; or

16 (2) the notice describes with particularity how the consignor's alleged unlawful  
17 shipment poses a serious risk to public health or safety.

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

20 (1) the order must identify the risk; and

21 (2) the [commission's] notice under subsection (b) to a carrier must require the  
22 carrier to implement the order as soon as possible.

23 (f) An administrative order issued under subsection (a) is subject to judicial review under

1 [cite to state administrative procedure act].

2 **Legislative Note:** *A state may replace the bracketed term “good cause” in subsection (c) with*  
3 *more specific criteria for rescinding an administrative order.*

4  
5  
6

### Comment

7 This section provides an enforcement mechanism to aid the enacting state in stopping  
8 unlawful alcohol shipping into or within the state, particularly by unlicensed shippers. The  
9 advantage of this mechanism is that it involves an administrative proceeding rather than a court  
10 action. If the state regulator detects an unlawful shipment of alcoholic beverages into or within  
11 the state, the state regulator may give notice to the consignor to show cause why shipments from  
12 the consignor should not be enjoined. After affording the consignor an opportunity for an  
13 evidentiary hearing, the state regulator may determine that the consignor has unlawfully shipped  
14 alcoholic beverages into or within the enacting state and issue an administrative order prohibiting  
15 additional shipments of alcoholic beverages into or within the state by the consignor. The state  
16 regulator may give notice of the administrative order to any carrier, whether it be the carrier that  
17 delivered the unlawful shipment or other carriers in the state. Beginning 10 days after this notice,  
18 the carrier may not accept from the consignor identified in the notice any package known to  
19 contain alcohol, except that this 10-day period is shortened if the consignor’s shipment poses a  
20 serious risk to public health or safety. The act neither limits carriers to accepting packages from  
21 only an authorized list of shippers, nor prohibits carriers from accepting packages from an ever-  
22 changing list of banned consignors. The notice to a carrier under the act is specific to a single  
23 consignor and permanent unless the carrier receives a subsequent notice that the administrative  
24 order has been rescinded.

25

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

37

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

1 In subsection (c), the state may wish to replace the “good cause” standard with specific  
2 requirements or criteria for rescinding an administrative order. The act also allows the state, in  
3 Section 10, to adopt rules to define, or establish guidelines for determining, “good cause.”  
4

## 5 **Section 8. Suspension, Revocation, or Nonrenewal of License or Permit for Unlawful**

### 6 **Shipping into Another State**

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

13 [(b) The [commission] [or other applicable authority] may not suspend, revoke, or refuse  
14 to renew a [license] [permit] issued by the [commission] [or other applicable authority] under  
15 subsection (a) if the person holding the [license] [permit] shows that:

16 (1) the violation of the other state’s law is the subject of an enforcement action in  
17 the other state that is pending before an administrative body or trial or appellate court in the other  
18 state;

19 (2) an enforcement action described in paragraph (1) has concluded in the other  
20 state and resulted in a determination that no violation of the other state’s law occurred; or

21 (3) the violation of the other state’s law occurred more than [two] years before the  
22 date of the notice under subsection (a).]

23 [(c) A suspension or revocation of a [license] [permit] under subsection (a) is not  
24 effective until all administrative proceedings are concluded and administrative remedies  
25 exhausted.]

1 [(d) The [commission] [or other applicable authority] may not under subsection (a)  
2 suspend, revoke, or refuse to renew a [license] [permit] issued by the [commission] [or other  
3 applicable authority] unless the [licensee or permittee] ships alcoholic beverages into another  
4 state in violation of that state’s law after the [commission] [or other applicable authority] issues a  
5 cease and desist [order] [letter].]

6 [(e) The [commission] [or other applicable authority] shall determine the duration of a  
7 suspension under subsection (a). The suspension may not exceed [60] days for a first violation or  
8 [120] days for a subsequent violation not later than [three] years after imposition of the prior  
9 suspension. If the [commission] [or other applicable authority] revokes a [license] [permit] under  
10 subsection (a), the [licensee or permittee] may not reapply for issuance of the same [license]  
11 [permit] for [one year] after the date of the revocation.]

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

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

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

22 ***Legislative Note:*** *Include in this section each license-issuing authority in the state.*

23  
24 *A state may limit the administrative authority granted under subsection (a) by adopting*  
25 *subsection (b).*

1 *If existing law governs suspension, revocation, or nonrenewal of alcoholic beverage licenses or*  
2 *permits, a state may choose to amend that law. Subsections (c) through (h) are bracketed*  
3 *because the state may prefer to amend existing law and not adopt subsections (c) through (h) as*  
4 *inconsistent with the state’s administrative process.*

5  
6 *A state that issues both licenses and permits should retain both terms in this section.*

7  
8 *In subsection (d), a state may insert “order” rather than “letter”, depending on the formality of*  
9 *its cease-and-desist process.*

10  
11 *The bracketed clause in subsection (g) allows the state to refer to the settlement process by the*  
12 *term “offer in compromise” used by many states and the federal Alcohol and Tobacco Tax and*  
13 *Trade Bureau.*

### 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, and that is why most of the  
30 section is bracketed as optional. The state may prefer to address the topics contained in this  
31 section by amendment of its existing law governing the administrative process applicable to its  
32 alcoholic beverage licensing system.

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

### 41 42 **[Section 9. Penalties**

43 (a) A court may impose a penalty on:

44 (1) a logistics shipper that violates:

- 1 (A) Section 3(e)(1), (2), or (4); or
- 2 (B) Section 3(d) or (e)(3), 5(a), or 6(b) or (d); [and]
- 3 (2) a carrier that violates[
  - 4 (A)] Section 4 or 7(b)[; or
  - 5 (B) Section 5(c) or 6(b) or (d)][; and
- 6 (3) a licensed direct shipper that violates Section 5(b) or 6(b) or (d)].

7 (b) The court may impose a separate penalty for each violation under subsection (a).

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

- 9 (1) subsection (a)(1)(A) is [not more than \$1,000];
- 10 (2) subsection (a)(1)(B) is [not more than \$100]; [and]
- 11 (3) subsection [(a)(2)(A)][(a)(2)] is [not more than \$1,000][;]
- 12 [(4) subsection (a)(2)(B) is [not more than \$100]][; and]
- 13 [(5) subsection (a)(3) is [not more than \$100]].

14 (d) For a violation that occurs not later than [three] years after imposition of a penalty  
15 under subsection (c), the penalty for a violation under:

- 16 (1) subsection (a)(1)(A) is [not more than \$5,000];
- 17 (2) subsection (a)(1)(B) is [not more than \$500];[and]
- 18 (3) subsection [(a)(2)(A)][(a)(2)] is [not more than \$5,000][;]
- 19 [(4) subsection (a)(2)(B) is [not more than \$500]][; and]
- 20 [(5) subsection (a)(3) is [not more than \$500]].

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

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

1 *A state that generally makes a violation of alcoholic beverages law a criminal offense may need*  
2 *to amend other provisions of state law may to accommodate the creation in this section of only*  
3 *civil penalties or the state may substitute criminal penalties in this section.*

4  
5 *A state should enact subsections (a)(2)(B) and (3), (c)(4) and (5), and (d)(4) and (5) only if the*  
6 *state enacts the corresponding optional language in Sections 5 and 6. The state should ensure*  
7 *that the text in these provisions is consistent.*

8  
9 *If a state requires licensed direct shippers to submit reports under existing law, it should*  
10 *conform the penalties under this section for logistics shippers to the penalties under existing law*  
11 *for licensed direct shippers.*

12  
13 *In subsection (d)(3) and (4): if a state does not enact subsection (a)(2)(B), the state should refer*  
14 *to subsection (a)(2).*

### 15 16 **Comment**

17  
18 Some states prescribe general penalties that apply to almost any violation of the state's  
19 alcoholic beverage laws. Accordingly, at least some portion of this section may already be  
20 covered by the enacting state's law. It is also common for violations of a state's alcoholic  
21 beverage laws to be criminal offenses. The creation in the act of only civil penalties might not be  
22 consistent with the state's approach to penalizing alcoholic beverage violations.

23  
24 The penalties imposed under this section are imposed by a court. The act does not include  
25 any provision specifying who may bring a court enforcement proceeding. Depending on the  
26 state, the action might be brought by the attorney general, a district attorney or city attorney, or  
27 the regulatory agency. This act presumes that each state will continue to rely on existing law that  
28 specifies which agencies or governmental units may bring an enforcement action.

### 29 30 **Section 10. Rules**

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

33 (1) a form under this [act];

34 (2) the method for submitting a logistics-shipper-registration application; [and]

35 (3) the method and deadline for filing a report, including the format for an  
36 electronic report[;] [and]

37 [(4) appointing and maintaining an agent for service of process[;] [and]]

38 [(5) procedures providing due process in administrative proceedings under this

1 [act] [;] [and]]

2 [(6) a definition of, or guidelines for determining, “good cause” for purposes of

3 Sections 3(f) and 7(c)].

4 *Legislative Note: A state should include this section only if the state’s administrative procedure*  
5 *act does not provide adequate rulemaking authority to the state agency.*

6

7 **Section 11. Uniformity of Application and Construction**

8 In applying and construing this uniform act, a court shall consider the promotion of

9 uniformity of the law among jurisdictions that enact it.

10 **Section 12. Relation to Electronic Signatures in Global and National Commerce Act**

11 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National

12 Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or

13 supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices

14 described in 15 U.S.C. Section 7003(b).

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

20

21 **[Section 13. Transitional Provision**

22 (a) A [license] [permit] issued by the [commission] [to a person to ship covered alcoholic

23 beverages on behalf of another to an individual in this state] that is in effect on [the effective date

24 of this [act]] continues until the earlier of its date of expiration or [three] months after [the

25 effective date of this [act]]. During this period, the person holding the [license] [permit] may

26 continue activity authorized under the [license] [permit] and is subject to the law of this state

27 applicable to the [license] [permit] as it existed immediately before [the effective date of this

28 [act]]. On expiration of this period, the person holding the [license] [permit] is subject to this

1 [act].

2 (b) A person that does not hold a [license] [permit] [to ship covered alcoholic beverages  
3 on behalf of another to an individual in this state] on [the effective date of this [act]] is subject to  
4 this [act] on and after [the effective date of this [act]].]

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

7  
8 *A state may substitute another form of authorization in lieu of the term license or permit.*

9  
10 **Comment**

11  
12 A few states authorize by license, registration, or otherwise the operations of fulfillment  
13 providers or logistics shippers. If the enacting state is such a state, this section provides a “phase-  
14 in” during which the state’s existing system is replaced with the logistics shipper registration  
15 system under the act.

16  
17 **[Section 14. Severability**

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

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

23  
24 **[Section 15. Repeals; Conforming Amendments**

25 [(a) Current direct-to-consumer alcoholic beverage shipping law relating to a fulfillment  
26 provider or logistics shipper.]

27 [(b) ...]

28 **Legislative Note:** *The state should examine its statutes to determine whether conforming  
29 revisions are required by provisions of this act relating to public records. See Sections 5(f) and  
30 (g) and 6(e).*

31  
32 **Section 16. Effective Date**

33 This [act] takes effect . . .

- 1 **Legislative Note:** *A state may include a delayed effective date of at least 60 days to allow time*
- 2 *for agencies and industry members to prepare for implementation.*