

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

March 13 – 14, 2020 Drafting Committee Meeting



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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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February 13, 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
6 Alcohol beverages enjoy a unique constitutional status, and states have broad power to
7 regulate the alcohol trade. Section 2 of the 21st Amendment empowers states to regulate the
8 “transportation or importation” into the state of intoxicating liquor “for delivery or use therein.”
9 The 21st Amendment grants the states “‘virtually complete control over whether to permit
10 importation or sale of liquor and how to structure the liquor distribution system.’” *Granholm v.*
11 *Heald*, 544 U.S. 460, 488-89 (2005) (quoting *California Retail Liquor Dealers Ass’n v. Midcal*
12 *Aluminum, Inc.*, 445 U.S. 97, 110 (1980)).
13

14 In preparing this act, the National Conference of Commissioners on Uniform State Laws
15 (Conference) recognizes that the policy-makers in each state are best suited to determine whether
16 alcohol beverages should be sold in the state and, if so, under what circumstances or with what
17 restrictions should the distribution and sale of alcohol beverages occur. The Conference is a
18 state-supported organization comprised of representatives from each state who are appointed by
19 state governments. The Conference was founded on principles of federalism and state
20 autonomy. The purpose of this act is not to require states to allow direct-to-consumer (DTC)
21 wine shipping, but rather to provide more uniformity of standards for those states that choose to
22 allow DTC wine sales along with better mechanisms to stop the illegal DTC shipments that state
23 policy-makers have chosen not to allow.
24

25 At the time this act was prepared, approximately 43 states had chosen to allow some form
26 of DTC wine shipping. The act has three principal areas of focus relating to DTC wine shipping:
27 1) standards that facilitate compliance with a state’s licensing, shipping, and reporting
28 requirements; 2) standards that facilitate compliance with a state’s tax reporting and payment
29 requirements; and 3) rules to reduce sales and deliveries of alcohol products that are not
30 authorized under the state’s laws, including unlicensed DTC sales and sales to underage
31 purchasers. The act promotes uniformity of law among the states that already allow DTC wine
32 shipping by establishing uniform standards for the licensing and reporting of producers and their
33 agents, along with uniform methods to guard against sales and deliveries to underage persons.
34 The uniformity established under the act will simplify compliance, improve tax collections, help
35 prevent unlawful sales, and make cross-border enforcement more effective.

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

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

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

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

11 [(2) “Commission” means this state’s alcohol beverage commission.]

12 (3) “Common carrier” means any person that holds itself out to the general public as
13 engaged in the business of transporting goods for a fee. The term does not include the United
14 States Postal Service.

15 (4) “Electronic” means relating to technology having electrical, digital, magnetic,
16 wireless, optical, electromagnetic, or similar capabilities.

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

19 (6) “Licensed fulfillment provider” means a person that holds a fulfillment provider license issued
20 under section 8.

21 (7) “Person” means an individual, estate, business or nonprofit entity, [public
22 corporation, government or governmental subdivision, agency, or instrumentality,] or other legal
23 entity. [The term does not include a public corporation, government or governmental
24 subdivision, agency, or instrumentality.]

25 (8) “Record” means information that is inscribed on a tangible medium or that is stored in

an electronic or other medium and is retrievable in perceivable form.

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

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

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

(10) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. [The term includes a federally recognized Indian tribe.]

(11) “Valid identification document” means an unexpired, government-issued form of identification which contains the photograph and date of birth of the individual to whom it is issued.

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

(13) “Wine carrier” means a common carrier that delivers wine in this state to an individual for personal use and not for resale.

(14) “Wine fulfillment services” means services directly related to the storage, packaging, and shipping of wine.

(15) “Winery” means a person that manufactures and bottles wine and holds a federal basic permit as a wine producer or blender under 27 U.S.C. Sections 203(b) and 204(a).

Legislative Note: *Regarding the term “Commission,” the name of the department or agency responsible for administering the state’s alcohol beverage laws varies from state to state. Common agency names include the Alcohol Beverage Commission, Department of Revenue, Liquor Control Commission, and others. A list of agency appellations is available on the website of the U.S. Treasury’s Alcohol and Tobacco Tax and Trade Bureau (TTB), <https://www.ttb.gov/wine/alcohol-beverage-control-boards#US>. The legislative drafter should*

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

9
10 **Drafting Note:** The term “state” in this draft includes the U.S. Virgin Islands and Puerto Rico.
11 As discussed in the issues memo dated November 12, 2019, alcohol beverages originating from
12 the U.S. Virgin Islands and Puerto Rico have a special status under federal law. This draft does
13 not yet address the particular complexities that may arise from direct-to-consumer (DTC)
14 shipping of wine from or to the U.S. Virgin Islands, Puerto Rico, or other U.S. territories. The
15 draft does not anticipate any additional complexities shipping from or to the District of
16 Columbia, also defined as a “state” under the draft.

17
18 **Drafting Note:** Regarding the terms “common carrier” and “wine carrier,” the definition of
19 “common carrier” is similar but not identical to: 1) the definition under 15 U.S.C. Section 375
20 relating to cigarette taxes; and 2) the definition under South Dakota statute section 35-12B-1.
21 The definition of “wine carrier” is narrowly drafted. It excludes motor carriers, water carriers,
22 and railroads that transport wine into and within the state as part of the three-tier system (that is,
23 to other businesses in the alcohol beverage industry). The definition focuses only on common
24 carriers that deliver direct-to-consumer shipments of wine to individuals. It is only such
25 deliveries that are subject to the act, and the carrier will know when the provisions of the act
26 apply because the package must be labeled to indicate both that it contains alcohol and that it is
27 for personal use and not for resale, which distinguishes the package from, for example, a package
28 delivered to a gift shop or other retail location (which delivery would not be subject to the act).

29
30 **Drafting Note/Legislative Note:** The definition of “wine” in paragraph (12) is derived from
31 federal law. There is not a simple, easily understood definition of wine under federal law that
32 can be adopted here, but the definition in paragraph (12) contains important elements of the
33 federal definition under the Federal Alcohol Administration Act (FAAA), except that it does not
34 limit wine for purposes of the act to wine containing at least 7 percent alcohol by volume (ABV).
35 See 27 U.S.C. Section 211 (a)(6); 27 C.F.R 4.10. See also 26 U.S.C. Sections 5381, 5392. The
36 definition of wine in paragraph (12) is bracketed as optional because each state has an existing
37 definition of wine, and the states’ definitions sometimes vary from each other and from the
38 federal definition. For example, as discussed in the issues memo dated November 12, 2019,
39 under federal law, fortified wine remains wine until it exceeds 24 percent ABV or more than half
40 of the product’s alcohol is derived from added spirits rather than fermentation. Many states have
41 a more restrictive definition of wine – for example, limiting wine to products having no more
42 than 21 percent ABV - and the legislative drafter may elect to use the enacting state’s existing
43 definition of wine. This definition of wine will govern what products can be shipped under a
44 wine direct shipper license.

45
46 **Drafting Note:** Regarding the term “winery,” to be a winery under the act, the winery must hold

1 a federal basic permit. It does not seem necessary to require a winery to provide a copy of its
2 federal basic permit to the enacting state because a list of permittees is publicly available on the
3 TTB's website. See <https://www.ttb.gov/resources/data-statistics/list-of-permittees>.

4
5 **Drafting Note:** Regarding the term “valid identification document,” this draft takes a
6 conventional approach to identification that is common in many existing state statutes. The draft
7 does not account for advancing technology under which, for example, an individual's driver's
8 license or passport can be used to create a digital ID that is potentially a more reliable and secure
9 form of identification and proof of age than a driver's license. This issue of advancing
10 technology is also discussed in notes after act sections 5 and 6, and the committee may wish to
11 consider how advances in identification technology fits into the goals of the act.

12
13 **Drafting Note:** “Certificate of label approval” and “certificate of exemption from label
14 approval” are both defined in 27 C.F.R. 13.11. The exemption is for wine exported from the
15 U.S. or wine sold only in intrastate commerce. The FAAA, and therefore COLA requirements,
16 do not apply to wine containing less than 7 percent ABV. See 27 C.F.R. 24.257, 27 C.F.R. 4.10
17 (defining wine). The key provision relating to the COLA requirement and the exemption is 27
18 C.F.R. 4.50.

19
20 **Drafting Note:** The definitions in paragraphs (4), (7), (8), (9), and (10) are ULC “boilerplate”
21 terms (including bracketed options). As the draft progresses, the bracketed material might be
22 removed or, if a term is not used in the draft, it will be eliminated from section 2. A
23 consideration with respect to the definition of “person” is whether it should include an LLC
24 series (see Uniform Protected Series Act (2017)). A consideration with respect to the definition
25 of “state” is whether to include the optional language applying the term to an American Indian
26 tribe. Despite a tribe's sovereignty for some purposes, states have concurrent authority to
27 regulate alcohol beverage activity on tribal lands located within the state, at least if the activity
28 will affect non-tribal members. Retail establishments on tribal land, such as tribal casinos, often
29 must obtain two sets of liquor licenses: one issued by the tribe's governing body and the other
30 issued by the state or political subdivision of the state where the tribe is located. See *Rice v.*
31 *Rehner*, 463 U.S. 713, 726 (1983); 18 U.S.C. Section 1161. Presumably this principle would
32 apply not only with respect to retailers but to wineries as well.

33 34 **SECTION 3. WINE DIRECT SHIPPER LICENSE; ISSUANCE.**

35 (a) Except as otherwise provided in subsections (c) or (d), upon application satisfactory to
36 the [Commission], the [Commission] shall issue a wine direct shipper license to an applicant
37 that:

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

1 (3) pays a license fee of [\$100]; and

2 (4) if the winery is located outside this state, provides proof satisfactory to the

3 [Commission] that it has obtained the same certificates or licenses or completed the same

4 registration necessary for a winery located in this state with respect to payment of any applicable

5 excise tax, state or local sales or use tax, or other tax owed under the law of this state in

6 connection with the direct shipment of wine to individuals in this state.

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

9 (1) the address and a description of the premises from which the winery will ship
10 wine to individuals in this state;

11 (2) if the applicant is a winery located outside this state, a copy of the winery's
12 current license, permit, or other authorization to manufacture wine in the state where the winery
13 is located;

14 (3) all information necessary for the [Commission] to make determinations under
15 subsection (c); and

16 (4) any other information the [Commission] determines to be necessary to
17 implement and administer this [act].

18 (c) The [Commission] may refuse to issue a wine direct shipper license if the
19 [Commission] reasonably makes any of the following determinations:

20 (1) The applicant made a materially false statement or material omission on the
21 application or provided a fraudulent or materially altered record to the [Commission].

22 (2) The applicant has had a license issued under this section revoked by the
23 [Commission] within the [12-month] period immediately preceding the date of application.

1 (3) At the time of application, the applicant is not current in its payment of taxes
2 owed to this state or a political subdivision of this state.

3 (4) If the applicant is a winery located outside this state, the applicant holds a
4 direct or indirect interest in a producer, distributor, or retailer of alcohol beverages which, if the
5 applicant were located in this state, would prohibit the applicant from holding a license, permit,
6 or other authorization to manufacture wine in this state. For purposes of making this
7 determination, if the applicant is not an individual, the [Commission] shall consider, in addition
8 to the applicant, a director, officer, member, manager, shareholder, or other owner of the
9 applicant to the same extent as if the applicant were a domestic entity applying to the
10 [Commission] for a license, permit, or other authorization to manufacture wine in this state.

11 (5) If the applicant is a winery located outside this state, the applicant has been
12 convicted of a crime that, if the applicant were located in this state, would disqualify the
13 applicant from holding a license, permit, or other authorization to manufacture wine in this state.
14 For purposes of making this determination, if the applicant is not an individual, the
15 [Commission] shall consider, in addition to the applicant, the conviction of a director, officer,
16 member, manager, shareholder, or other owner of the applicant to the same extent as if the
17 applicant were a domestic entity applying to the [Commission] for a license, permit, or other
18 authorization to manufacture wine in this state.

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

20 (d) The [Commission] may not issue a wine direct shipper license unless, as a condition
21 of receiving the license, the applicant agrees to:

22 (1) appoint and continuously maintain an agent for service of process that need
23 not be a resident of this state, and agrees that the [Commission] shall serve as its agent if it fails

1 to maintain a current agent for service of process;

2 (2) maintain the records required under Section 11 and provide access to or copies
3 of these records as provided in Section 14;

4 (3) allow the [Commission] to conduct audits of the applicant's records and
5 inspect the applicant's premises as provided in Section 14;

6 (4) file all reports required under Section 12 and pay all taxes required under
7 Section 13;

8 (5) accept service of process through its agent; and

9 (6) the jurisdiction of the [Commission and other applicable agency], the courts,
10 and all other enforcement authority of this state, with respect to enforcement of this [act] against
11 the applicant.

12 **Drafting Note:** Some states allow DTC shipments by an in-state winery under the state's winery
13 license while requiring out-of-state wineries to obtain a wine direct shipper license to ship wine
14 DTC to state residents. Other states require both in-state and out-of-state wineries to hold the
15 wine direct shipper license to ship wine DTC to state residents. This draft takes the latter
16 approach, requiring the license for all wineries regardless of location. The definition of winery
17 in section 2 includes wineries located in and outside the state of enactment. In subsection (a)(2),
18 "the state where the winery is located" may be the state of enactment or another state - the draft
19 does not make a distinction between in-state and out-of-state wineries in this provision.

20
21 **Drafting Note:** In subsection (a)(1), the phrase "located in a state" is intended to prevent
22 issuance of a license to a winery located in a foreign country. Under the definition of "state," the
23 winery issued a wine direct shipper license could be located in the District of Columbia or in any
24 U.S. territory, but not in a foreign country. Regarding subsections (a)(2) and (b)(2), the
25 definition of winery in section 2 includes only a winery that holds a federal basic permit issued
26 by the TTB. Subsections (a)(2) and (b)(2) require the winery to also hold the applicable license,
27 permit, or certificate of registration issued by the winery's home state or, in Hawaii, the
28 applicable county in its home state.

29
30 **Drafting Note:** Subsections (c)(4) and (c)(5) apply only to a winery located outside the state of
31 enactment. Under subsection (a)(2), an in-state winery must hold a winery license issued by the
32 state of enactment. To obtain that license, it would have already satisfied the requirements
33 specified in subsections (c)(4) and (c)(5) relating to interest restrictions and criminal background,
34 and that is why in-state wineries are not included in subsections (c)(4) and (c)(5). To illustrate
35 the effect of subsection (c)(4), the provision would have no effect, for example, if an out-of-state

winery's home state and the enacting state both prohibit a winery from having an interest in a wholesaler. But if the out-of-state winery's home state allows the winery to have an interest in a wholesaler and the winery holds such an interest, but the enacting state does not allow this for in-state wineries, the provision would prevent the enacting state from issuing a wine direct shipper license to the out-of-state winery.

Drafting Note: A central aspect of this act is ensuring that the enacting state can establish jurisdiction over out-of-state actors. Subsection (d) is included in the draft, in addition to section 14, on the theory that there is stronger support for the enacting state's authority to assert jurisdiction if the actor has actually agreed to the state's jurisdiction rather than being deemed by statute to have agreed. It is contemplated that the agreement will take the form of check-boxes on the license application.

Drafting Note: This draft does not include a requirement that the wine direct shipper license applicant post a surety or other bond as part of the application process. A preliminary determination was made that the minimal benefit of a bonding requirement is outweighed by the administrative burden.

SECTION 4. WINE DIRECT SHIPPER LICENSE; TERM; RENEWAL; TRANSFERABILITY.

(a) A wine direct shipper license is valid during the calendar year in which it is initially issued and, except as otherwise provided in Section 15, may be renewed annually.

(b) If the valid period upon initial issuance of a wine direct shipper license is less than 10 months, the license fee under Section 3(a)(3) shall be prorated based on the number of months or part of a month for which the license is valid.

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

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

Drafting Note: Some states include provisions relating to the transfer of a license from one person to another (typically licenses are non-transferable) and also to the transfer of a license from one location to another (for example, if the winery relocates within the state). This provision, in making the license non-transferable, is drafted to prohibit only transfers associated with ownership, not transfers associated with a winery relocation.

1 **SECTION 5. WINE DIRECT SHIPPER AUTHORIZATION, REQUIREMENTS.**

2 (a) A wine direct shipper license authorizes the licensee to sell and ship wine to an
3 individual in this state for the individual's personal use and not for resale in compliance with this
4 section and Section 6.

5 (b) A wine direct shipper licensee may sell and ship wine only to an individual who is at
6 least 21 years of age. Before shipping the wine, the wine direct shipper licensee shall verify the
7 age of the individual placing the order by using an age verification service or by requiring the
8 display of a valid identification document issued to the individual. The wine direct shipper
9 licensee shall generate a record of this age verification for each order of wine to be shipped. The
10 wine direct shipper licensee shall notify the individual placing the order that the shipment will
11 not be delivered unless the recipient of the shipment provides a valid identification document at
12 the time of delivery verifying that the recipient is at least 21 years of age.

13 (c) A wine direct shipper licensee may sell or ship to an individual in this state not more
14 than a total of [216] liters of wine in a calendar year.

15 (d) A wine direct shipper licensee may sell and ship to an individual in this state only
16 wine:

17 (1) manufactured by the licensee;

18 (2) for which the licensee has been issued a certificate of label approval or
19 exemption, unless the wine is not subject to the Federal Alcohol Administration Act, 27 U.S.C.
20 Section 201 et seq., and regulations promulgated under that act; and

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

22 (e) A wine direct shipper licensee shall label each package to be shipped to an individual in
23 this state to conspicuously display words indicating that:

1 (1) the package contains alcohol for personal use and not resale; and

2 (2) the signature of an individual who is at least 21 years of age is required for
3 delivery.

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

10 (g) A wine direct shipper licensee may ship wine to an individual in this state only by
11 means of a common carrier.

12 (h) A wine direct shipper licensee may engage the services of a licensed fulfillment
13 provider to ship wine on its behalf to an individual in this state if the wine direct shipper licensee
14 has provided notice to the [Commission], in the form prescribed by the [Commission], of each
15 licensed fulfillment provider shipping wine into this state on its behalf. The use by a wine direct
16 shipper licensee of a licensed fulfillment provider for shipping wine does not relieve the wine
17 direct shipper licensee from compliance with this section.

18 (i) A wine direct shipper licensee may ship wine to an individual in this state only from
19 the premises described in its wine direct shipper license application or, if the wine is shipped
20 through a licensed fulfillment provider, from the premises of the licensed fulfillment provider.

21 (j) A wine direct shipper licensee may not sell or ship wine under the license to an
22 individual in this state for resale or for a purpose other than the individual's personal use. A
23 wine direct shipper licensee may not ship wine under the license except as authorized under this

[act]. A wine direct shipper license does not authorize the licensee to ship wine into this state to a warehouse or other staging area rather than to an individual.

Drafting Note: The amount specified in subsection (c), 216 liters, equals 24 cases of wine, with a case calculated as twelve 750-ml bottles. The draft imposes on each wine direct shipper licensee an annual limit on the quantity of wine that may be shipped to a specific individual. The draft does not limit the total amount of wine that an individual may order, so an individual could order 24 cases of wine from each of several wineries. In addition, if a winery ships more than 24 cases of wine to an individual, the penalty is imposed on the winery, not the individual.

Drafting Note: Regarding the use of an age verification service under subsection (b), section 18 (rules) allows the Commission to require that the age verification service be one approved by the Commission.

Drafting Note: Regarding the option under subsection (b) to display an identification document instead of using an age verification service, this display is not required to be in-person. The Revised Uniform Law on Notarial Acts (2018) contemplates that technological advances now enable a notary public in one location to appropriately establish the identity, through the use of identification documents, of an individual located elsewhere. Technology allows a person to adequately view documents from a remotely-located individual, and technology that is reliable enough to establish identity for the notarization of legal documents should be sufficient to establish identity and age for purposes of alcohol sales. As discussed in a Note after act section 2, the draft takes a conventional approach to age verification that is common under the existing law of many states, but the reference to a “valid identification document” in subsection (b) may be too limiting. The committee may wish to consider whether digital ID and other apps or platforms would provide more reliable assurance of the recipient’s true age along with enhanced security of personal information.

Drafting Note: Regarding subsection (d), “certificate of label approval or exemption” is a defined term in the act, and there is further discussion of the term in section 2. Under federal law, the COLA is obtained by the winery that bottles the wine, 27 C.F.R. 4.50 (a), so the wine producer typically obtains the COLA. Subsection (d)(1) and (2) are intended to limit a winery to shipping DTC only wine that it actually produces.

Drafting Note: Subsection (d) of the draft does not limit the type of wine that may be shipped DTC. Any limitation on the type of product shipped would derive from the way the enacting state defines “wine” under existing law. Some states currently limit the types of wine that may be shipped DTC. At least one state limits the sale of wine having an alcohol content greater than 16 percent ABV to liquor stores and prohibits such wine from being shipped DTC.

Drafting Note: Subsection (e) adds a new element to the standard package label currently in use for DTC shipping. Virtually all states require the package to be labeled as containing alcohol and requiring the signature of a person at least 21 years of age. The draft creates a new requirement that the package also be labeled to provide that it is for personal use and not for resale. This labeling requirement on the package alerts the carrier to the fact that the provisions

1 of the act will apply. Simply labeling a package as containing alcohol does not necessarily mean
2 that the act applies, as the alcohol might be delivered to an individual who is an employee at a
3 retailer's premises. The additional labeling may create some burden on the consignor but it
4 raises the red flag for the carrier that the requirements imposed on the carrier by the act will need
5 to be satisfied.

6
7 **Drafting Note:** Subsection (f) prohibits a wine direct shipper licensee from shipping wine to a
8 "dry" jurisdiction within the state, which might be a county or municipality or even a
9 neighborhood. Subsection (f) also relieves the shipping winery of responsibility for determining
10 which locations in a state are "dry," as the provision allows the shipping winery to rely on the
11 Commission to make this determination. Subsection (f) does not limit the days or hours in which
12 wine may be delivered, and does not, for example, prohibit the delivery of wine shipped DTC on
13 a Sunday in a state that has "blue laws" for alcohol.

14
15 **Drafting Note:** Subsection (g) requires the DTC shipment to be delivered by a common carrier.
16 Whether a winery, in its home state, may deliver wine sold DTC to the customer in the winery's
17 own vehicle, or whether the winery must use a common carrier even if the DTC customer lives
18 on the same street as the winery, varies from state to state. This act requires a winery to use a
19 common carrier for all DTC sales, which ensures that the recordkeeping and reporting
20 requirements under sections 11 and 12 will apply in all circumstances in which wine is sold
21 DTC.

22 23 **SECTION 6. DELIVERY REQUIREMENTS FOR DIRECT WINE SHIPMENTS.**

24 (a) A wine carrier may not deliver wine shipped under a direct wine shipper license
25 unless:

- 26 (1) the individual delivering the wine is at least 21 years of age;
- 27 (2) the package containing the wine is accompanied by a shipping label that clearly
28 indicates the name and address of the wine direct shipper licensee or licensed fulfillment provider as
29 consignor and the name and address of the consignee;
- 30 (3) the package containing the wine is labeled in accordance with Section 5 (e);
- 31 (4) at the time of delivery, the recipient of the shipment presents to the individual
32 delivering the package a valid identification document and, prior to transferring possession of the
33 package, the individual delivering the package visually inspects the document and verifies the
34 identity of the recipient and, by visual examination or by using age verification technology, that

1 the recipient is at least 21 years of age; and

2 (5) before transferring possession of the package, the individual delivering the
3 package:

4 (A) obtains the signature of the recipient of the shipment; and

5 (B) verifies by visual inspection that the recipient is not visibly
6 intoxicated.

7 (b) Wine shipped under a direct wine shipper license may be delivered to a residential
8 address or a business address but may not be delivered to a location licensed to sell alcohol
9 beverages. A consignee of a shipment made under a wine direct shipper license may arrange
10 with the wine carrier to receive the shipment at a location other than the consignee's address on
11 the original shipping label if the new location is one to which the wine direct shipper licensee
12 could have shipped the wine.

13 (c) The individual who receives and signs under subsection (a)(5)(A) is not required to be
14 the individual who purchased the wine.

15 (d) An individual who delivers wine shipped under a wine direct shipper license shall
16 create a record of verification under subsection (a)(4) and (5)(B).

17 (e) A wine carrier may not accept for shipment to an individual in this state a package
18 declared to contain alcohol if the consignor for the shipment is identified in the list under
19 Sections 16(h)(3) and 17(i)(3).

20 [(f) If a wine carrier is unable to complete delivery of wine shipped under a direct wine
21 shipper license:

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

23 (2) the wine direct shipper licensee that originated the transaction may consider

1 that no sale occurred, cancel the transaction, and credit the customer's account.]

2 **Drafting Note:** Wine carrier is a defined term in section 2. Subsection (b) allows the consignee
3 to pick up the wine at the carrier's business office or at any other location agreeable to the
4 carrier, subject to the same delivery requirements (e.g., presenting ID with proof of age, wine
5 cannot be picked up at a bar, etc.)
6

7 **Drafting Note:** Regarding paragraphs (4) and (5), as discussed in Notes after act sections 2 and
8 5, this draft incorporates traditional notions of identification and age verification common under
9 existing law in many states. These paragraphs may need to be significantly revised if the
10 committee finds that technological advances in age verification provide a more secure and
11 reliable method for identity and age verification than traditional methods. As a corollary, the
12 requirement that the courier delivering the package of wine always obtain a signature from the
13 recipient, which is required under most states' DTC shipping laws, may need further
14 examination. If a digital ID is used, an ID or QR Code scan at the time of delivery may be more
15 reliable than a signature to establish the identity of the recipient and may render the signature
16 unnecessary and inefficient.
17

18 **Drafting Note:** This draft does not attempt to address the relative liability of the wine direct
19 shipper licensee and the common carrier for delivery of wine to an underage person, particularly
20 if the winery properly satisfied its screening responsibilities under section 5 (b) but the carrier
21 then delivered to an underage recipient. Note, however, that for purposes of suspension,
22 revocation, or non-renewal of the wine direct shipper license, the carrier's actions are attributable
23 to the license holder. Most or all states will have laws of general applicability that prohibit
24 anybody from providing alcohol to an underage person. In some states, there is a defense for a
25 retailer that sells to an underage person if the retailer reasonably relies on what turns out to be a
26 fake ID. It seems that these statutes of general applicability would apply to a carrier that delivers
27 (provides) alcohol to an underage person. The draft does not include any language for the carrier
28 or the wine direct shipper licensee that immunizes either if they rely on a realistic fake ID (and
29 the purchaser/recipient reasonably looks to be at least 21 years of age).
30

31 **Drafting Note/Legislative Note:** This draft specifies that, for tax purposes, the sale of wine
32 under a wine direct shipper license shipped to a resident of the enacting state occurs in the
33 enacting state. The draft does not declare where the sale occurs for other purposes. The draft
34 also does not attempt to identify when the sale occurs (e.g., when payment is made at the time of
35 the order, or later at the time of delivery). Subsection (f), bracketed as optional material,
36 attempts to address the very practical (and necessary) issue of what happens if a delivery cannot
37 be made, including when the purchaser/recipient is discovered to be underage. As discussed in
38 the issues memo dated November 12, 2019, some states have "no return" policies for alcohol
39 beverage sales to consumers, which statutes might need to be amended if subsection (f) is
40 included by the legislative drafter. Subsection (f) is bracketed as optional because of its
41 potentially uncertain effect and connection to existing law of the enacting state. The effect of
42 subsection (f) is debatable with respect to an interstate transaction because it might be beyond
43 the authority of the enacting state (where the recipient is located) to determine whether the
44 shipping winery, located in another state, may "reverse the sale" and accept return of the product.
45 If the sale is considered to occur in the enacting state, the provision might be considered

appropriate for the enacting state's laws. At this point, consideration has not been given to federal law, which governs product returns among industry members, but not from consumers.

SECTION 7. SHIPMENT OF WINE WITHOUT WINE DIRECT SHIPPER

LICENSE, RESALE PROHIBITED.

(a) Except as otherwise provided in subsection (c) or (d), a person engaged in the business of producing, distributing, warehousing, or selling alcohol beverages may not ship wine to an individual in this state.

(b) An individual who receives wine shipped under a wine direct shipper license may not resell or attempt to resell the wine, use the wine for a commercial purpose, or transport the wine to any location licensed for the sale of alcohol beverages.

(c) A winery that holds a wine direct shipper license, or a licensed fulfillment provider acting on behalf of a wine direct shipper licensee, may ship wine to an individual in this state in compliance with the requirements under this [act].

(d) Subsection (a) does not apply to the shipment of wine to an individual who is, or is acting on behalf of, a person holding an alcohol beverage license, permit, or similar authorization under which the person is authorized to receive shipments of wine.

Drafting Note: Subsections (a), (c), and (d) are drafted to prohibit a person from shipping wine DTC into the enacting state unless the person holds a wine direct shipper license or is a licensed fulfillment provider acting on behalf of a wine direct shipper licensee. The provision is limited to wine and does not apply to beer or spirits. Subsection (d) is necessary to make clear that the provision does not apply to legal shipments made through the 3-tier system.

SECTION 8. FULFILLMENT PROVIDER LICENSE; ISSUANCE.

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

(1) provides or will provide wine fulfillment services on behalf of a wine direct

1 shipper licensee; and

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

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

5 (1) the address and a description of the premises from which the fulfillment
6 provider will ship wine to individuals in this state;

7 (2) all information necessary to make determinations under subsection (c); and

8 (3) other information the [Commission] determines to be necessary to implement
9 this [act].

10 (c) The [Commission] may refuse to issue a fulfillment provider license if the
11 [Commission] reasonably makes any of the following determinations:

12 (1) The applicant made a materially false statement or material omission on the
13 application or provided a fraudulent or materially altered record to the [Commission].

14 (2) The applicant has had a license issued under this section revoked by the
15 [Commission] within the [12-month] period immediately preceding the date of application.

16 (3) The applicant is a winery or holds a direct or indirect interest in a winery or
17 another producer, distributor, or retailer of alcohol beverages. For purposes of making this
18 determination, if the applicant is not an individual, the [Commission] shall consider, in addition
19 to the applicant, a director, officer, member, manager, shareholder, or other owner of the
20 applicant to the same extent as if the applicant were a domestic entity applying to the
21 [Commission] for a license, permit, or other authorization to manufacture wine in this state.

22 (4) The applicant is a common carrier.

23 (5) The applicant has been convicted of a crime that, if the applicant were located

1 in this state, would disqualify the applicant from holding a license, permit, or other authorization
2 to manufacture wine in this state. For purposes of making this determination, if the applicant is
3 not an individual, the [Commission] shall consider, in addition to the applicant, the conviction of
4 a director, officer, member, manager, shareholder, or other owner of the applicant to the same
5 extent as if the applicant were a domestic entity applying to the [Commission] for a license,
6 permit, or other authorization to manufacture wine in this state.

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

8 (d) The [Commission] may not issue a fulfillment provider license unless, as a condition
9 of receiving the license, the applicant agrees to:

10 (1) appoint and continuously maintain an agent for service of process that need
11 not be a resident of this state, and agrees that the [Commission] shall serve as its agent if it fails
12 to maintain a current agent for service of process;

13 (2) maintain the records required under Section 11 and provide access to or copies
14 of these records as provided in Section 14;

15 (3) allow the [Commission] to conduct audits of the applicant's records and
16 inspect the applicant's premises under Section 14;

17 (4) file all reports required under Section 12;

18 (5) accept service of process through its agent; and

19 (6) the jurisdiction of the [Commission and other applicable agency], the courts,
20 and all other enforcement authority of this state, with respect to enforcement of this [act] against
21 the applicant.

22 **Drafting Note:** For a discussion of wine marketing portals, see the note after section 10. If
23 provisions related to wine marketing portals are added to the draft, subsection (c) should be
24 modified to add a wine marketing portal as prohibited from holding a fulfillment provider
25 license.

1 **SECTION 9. FULFILLMENT PROVIDER LICENSE; TERM; RENEWAL;**
2 **TRANSFERABILITY.**

3 (a) A fulfillment provider license is valid during the calendar year in which it is initially
4 issued, and, except as otherwise provided in Section 15, may be renewed annually.

5 (b) If the valid period upon initial issuance of a fulfillment provider license is less than 10
6 months, the license fee under Section 8(a)(2) shall be prorated based on the number of months or
7 portion of a month for which the license will be valid.

8 (c) The [Commission] may prescribe an abbreviated form for renewal of a fulfillment
9 provider license.

10 (d) A fulfillment provider license may not be transferred to another person.

11 **SECTION 10. LICENSED FULFILLMENT PROVIDER AUTHORIZATION,**
12 **REQUIREMENTS, RESTRICTIONS.**

13 (a) A fulfillment provider license authorizes the licensee to provide wine fulfillment
14 services and ship wine to an individual in this state in compliance with this section.

15 (b) A fulfillment provider license authorizes the licensee to ship wine only on behalf of a
16 wine direct shipper licensee that has identified the licensed fulfillment provider in a notice to the
17 [Commission] under Section 5(h).

18 (c) A fulfillment provider license does not authorize the licensee to:

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

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

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

(4) ship wine into this state to a warehouse or staging area rather than to an individual.

(d) A licensed fulfillment provider may ship wine only to an individual in this state who is at least 21 years of age. Sections (c), (e), (f), (g), and (i) apply to wine shipped by a licensed fulfillment provider to the same extent as if the wine had been shipped directly by a wine direct shipper licensee.

(e) When shipping wine to an individual in this state on behalf of a wine direct shipper licensee, a licensed fulfillment provider is not responsible for tax liability of the wine direct shipper licensee.

Drafting Note: This section does not specifically require a contract between the wine direct shipper licensee and the licensed fulfillment provider, but it is likely there will be such a contract defining the parties' respective responsibilities and liabilities. The draft also does not expressly refer to the licensed fulfillment provider as the "agent" of the wine direct shipper licensee, although the parties' contract might.

Drafting Note: This draft prohibits a licensed fulfillment provider from processing orders or accepting payments from customers on behalf of wineries shipping wine DTC. Virginia authorizes, distinct from a fulfillment provider, an entity referred to as an approved "marketing portal," defined as "a business organized as an agricultural cooperative association under the laws of a state, soliciting and receiving orders for wine ... and accepting and processing payment of such orders as the agent of a licensed wine ... shipper." Allowing a "marketing portal," however defined, might be useful to assist wineries in offering multi-winery wine clubs.

SECTION 11. RECORDKEEPING REQUIREMENTS.

(a) A wine direct shipper licensee shall maintain:

(1) records necessary to properly complete the reports under Section 12(a);

(2) age verification records under Section 5(b); and

(3) other records required by the [Commission].

(b) A fulfillment provider licensee shall maintain:

(1) records necessary to properly complete the reports under Section 12(b); and

(2) other records required by the [Commission].

(c) A wine carrier shall maintain:

(1) records necessary to properly complete the reports under Section 12(c);

(2) signature and verification records under Section 6(a)(5)(A) and (d); and

(3) other records required by the [Commission].

(d) With respect to the records described in subsections (a), (b), and (c), a wine direct shipper licensee, fulfillment provider licensee, and wine carrier, respectively, shall:

(1) maintain the records for three years after the date of the wine delivery, unless earlier destruction is authorized in writing by the [Commission]; and

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

(e) A record required to be kept under this section may be created or retained in electronic form if authorized by the [Commission].

(f) Upon request, any person required to maintain a record under subsections (a), (b), or (c) shall promptly provide to another person required to maintain records under those provisions any record needed to comply with Sections 12 and 13.

Drafting Note: Section 12 of the draft requires the reporting of some information originating with a person other than the person filing the report, in particular the parcel tracking number for the wine shipped. Subsection (f) requires, for example, the licensed fulfillment provider to provide the wine direct shipper licensee, if requested, with the tracking number for each shipment.

SECTION 12. REQUIRED REPORTS RELATED TO DIRECT WINE

SHIPMENTS.

(a) A wine direct shipper licensee shall file with the [Commission] quarterly reports that include:

1 (1) the name, business address, and wine direct shipper license number of the
2 licensee;

3 (2) a taxpayer identification number for the licensee other than a social security
4 number;

5 (3) the total [gallons] [liters] of wine shipped to recipients in this state under the
6 wine direct shipper license during the quarterly period, broken down by tax classification; and

7 (4) for each shipment to an individual in this state during the reporting period:

8 (A) the name and address of the consignee of the shipment and, if
9 different, the name and address of the individual who received the shipment;

10 (B) the date the shipment was received by the carrier for delivery and the
11 date the shipment was delivered;

12 (C) the wine type, brand label, and quantity of wine shipped and the date
13 that the licensee was issued a certificate of label approval or exemption for the wine shipped
14 unless the licensee declares that a certificate is not required for the wine;

15 (D) the purchase price of the wine shipped and the amount of taxes
16 charged to the customer for the wine shipped;

17 (E) the name and business address of the wine carrier that delivered the
18 wine shipped and the parcel tracking number for the shipment; and

19 (F) if the wine was shipped by a licensed fulfillment provider, the name,
20 business address, and fulfillment provider license number of the fulfillment provider that shipped
21 the wine.

22 (b) A fulfillment provider licensee shall file with the [Commission] quarterly reports that
23 include:

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

3 (2) the total [gallons] [liters] of wine shipped to recipients in this state under the
4 fulfillment provider license during the quarterly period, broken down by tax classification; and

5 (3) for each shipment to an individual in this state during the reporting period:

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

8 (B) the name and address of the consignee of the shipment and, if
9 different, the name and address of the individual who received the shipment;

10 (C) the date the shipment was received by the carrier for delivery and the
11 date the shipment was delivered;

12 (D) the wine type, brand label, and quantity of wine shipped; and

13 (E) the name and business address of the wine carrier that delivered the
14 wine shipped and the parcel tracking number for the shipment.

15 (c) A wine carrier shall file with the [Commission] quarterly reports that include:

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

17 (2) for each shipment to an individual in this state during the reporting period for
18 which the consignor declared the package being shipped to contain wine:

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

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

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

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

2 (E) the parcel tracking number for the shipment.

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

7 (e) A report under subsection (a) or (b) must be filed even if no business was transacted
8 in this state during the reporting period.

9 **Drafting Note:** This draft does not include any provision requiring the Commission to
10 maintain confidentiality of any information in these reports. Accordingly, in at least some
11 states, the name, address, and quantity of wine purchased by the enacting state's residents
12 will be publicly available for inspection and copying under the state's open records laws.
13 The draft does not require any record that includes a purchaser or recipient's name and date
14 of birth – only a record that age verification was performed. The draft also excludes
15 disclosure of a social security number in the unlikely event a wine direct shipper license is
16 issued to an individual.

17
18 **Drafting Note:** Regarding subsection (a)(4)(C), the TTB maintains an online searchable
19 COLA public registry, a database that can be quickly searched for approved labels and dates
20 of approval. See <https://www.ttb.gov/labeling/cola-public-registry>.

21 22 **SECTION 13. TAX LIABILITY AND PAYMENTS.**

23 (a) For purposes of this section and for other tax purposes, each sale and delivery of wine
24 under a wine direct shipper license is a sale occurring in this state.

25 (b) A wine direct shipper licensee that sells wine under its wine direct shipper license for
26 shipment to an individual in this state shall sell the wine with all applicable [excise] taxes
27 included in the selling price. The taxes shall be collected by the wine direct shipper licensee
28 from the purchaser and paid to the [Commission].

29 (c) A wine direct shipper licensee that sells wine under its wine direct shipper license for
30 shipment to an individual in this state shall charge the purchaser all applicable [state and local

1 sales and use] taxes, which shall be separately identified on the purchaser's invoice. The taxes
2 shall be collected by the wine direct shipper licensee from the purchaser and paid to the
3 [Commission].

4 (d) If a wine direct shipper licensee is not located in this state, the amount of the [excise]
5 taxes to be paid by the wine direct shipper licensee under subsection (b) shall be calculated in the
6 same manner, using the same rates, applicable for wine manufactured in this state by a similarly-
7 situated winery.

8 (e) The amount of the [state and local sales or use] taxes to be paid by the wine direct
9 shipper licensee under subsection (c) shall be calculated based on the sale of the wine occurring
10 at the location identified as the consignee's address on the shipping label.

11 (f) With respect to taxes owed by a wine direct shipper licensee under this section, the
12 wine direct shipper licensee is subject to all return filing and payment requirements prescribed by
13 the [Commission]. Each return shall include the wine direct shipper license number. A return
14 must be filed even if no business was transacted in this state during the return period. Except as
15 prescribed by the [Commission], provisions relating to the assessment, collection, and
16 enforcement of taxes that are applicable to a winery that manufactures wine in this state shall
17 also apply to a similarly-situated wine direct shipper licensee located in another state.

18 (g) A wine direct shipper licensee's use of the services of a licensed fulfillment provider
19 does not relieve the wine direct shipper licensee of tax liability or other responsibility under this
20 section.

21 **Drafting/Legislative Note:** As discussed in the issues memo dated November 12, 2019, there is
22 a federal excise tax on wine production and typically a state excise tax as well. Many states also
23 impose sales tax on retail sales of alcohol. The names of the taxes in a particular state can vary
24 and the taxes can be known as occupational taxes, privilege taxes, wine taxes, luxury taxes,
25 gallonage taxes, or by other names. The brackets around the tax names indicate that the proper
26 tax appellation should be inserted. In addition, the taxing authority in the enacting state may or

1 may not be the same as the regulatory authority, and the bracketed term Commission in this
2 section may need to be replaced with a different agency name (the taxing authority) than the
3 bracketed term Commission in, for example, section 5.

4
5 **Drafting Note:** The issue of tax liability may be complicated because in some states the
6 producing winery is generally responsible for payment of the state excise taxes while in other
7 states the wholesaler is generally responsible for payment of state excise taxes. Subsection (d) is
8 drafted to recognize this. The provision focuses on the in-state wine production rather than the
9 tier paying the tax. The draft also does not include a provision exempting the out-of-state winery
10 shipping the wine from being double-taxed (i.e., paying excise tax in both the state of production
11 and the state where the wine is shipped) because many states already exempt from the excise tax
12 wine that is “exported” to another state.

13
14 **Drafting Note:** Subsection (e) is drafted to recognize that, in states where a local sales tax is
15 imposed, the total amount of sales tax will depend on the particular county or municipality where
16 the purchaser receives the wine shipment. Because the sales tax must be calculated at the time of
17 shipment and invoiced to the customer, the address of anticipated delivery when the shipment is
18 made, rather than the address of actual delivery (which could be the carrier’s office), is used.

19
20 **Drafting Note:** Some states provide, for example, an excise tax credit for some wineries, such as
21 those licensed as a “farm winery” or a small producer. Some states also have a graduated return
22 filing period, in which small producers are required to file less often than larger producers (for
23 example, annually or quarterly instead of monthly). The term “similarly-situated” winery is
24 intended to capture the situation where a state’s laws make distinctions between different types
25 of wineries within the same state.

26
27 **Drafting Note:** This draft includes no provision relating to confidentiality of tax return
28 information. The draft assumes that the state will have broad statutory provisions outside of the
29 act that govern confidentiality of tax return information. Subsection (f) is also drafted to
30 incorporate, as much as possible, the enacting state’s existing procedures and deadlines for filing
31 tax returns, submitting tax payment, and collecting delinquent taxes.

32
33 **Drafting Note:** The enacting state may wish to require tax returns to be filed in conjunction with
34 the reports under section 12. These two provisions are drafted to link the tax filings under
35 section 13 and the reports under section 12 by requiring the licensee to identify, on each, the tax
36 identification number and the wine direct shipper license number.

37 38 **SECTION 14. STATE JURISDICTION; ENFORCEMENT AUTHORITY.**

39 (a) A wine direct shipper licensee, fulfillment provider licensee, and wine carrier are
40 subject to the jurisdiction of the [Commission and other applicable agency], the courts, and all
41 other enforcement authority of this state with respect to the enforcement of this [act].

42 (b) The [Commission] may inspect and audit the records of a wine direct shipper licensee,

1 fulfillment provider licensee, or wine carrier relevant to compliance with this [act]. A wine direct
2 shipper licensee, fulfillment provider licensee, or wine carrier shall allow the [Commission] to
3 inspect and audit its records and, at the [Commission]'s written request, shall provide to the
4 [Commission], at a location specified by the [Commission], complete and accurate copies of
5 these records not later than 10 business days after the request.

6 (c) The [Commission] may perform an inspection, during ordinary hours of operation, of the
7 licensed premises of a wine direct shipper licensee or fulfillment provider licensee to assess compliance
8 with this [act]. If any violation of this [act] is found as a result of the inspection, the [Commission] may
9 require the licensee to reimburse the [Commission] for reasonable expenses attributable to the
10 inspection.

11 (d) A wine direct shipper licensee and a fulfillment provider licensee shall appoint, in a
12 form prescribed by the [Commission], an agent for service of process. The agent need not be a
13 resident of this state. The licensee shall continuously maintain, and keep current in the records
14 of the [Commission], the licensee's agent for service of process, as prescribed by the
15 [Commission]. Service of process on the licensee's agent shall constitute legal and valid service
16 of process on the licensee in an action or proceeding concerning or arising from the enforcement
17 of this [act]. If a licensee fails to maintain in the records of the [Commission] a current agent for
18 service of process, the [Commission] shall be the licensee's agent, and effective service on the
19 licensee may be made by service upon the [Commission].

20 (e) The [Commission] may share a report, record, or other information in its possession,
21 for a regulatory or enforcement purpose, with:

22 (1) a state agency or law enforcement agency of this state;

23 (2) a state or local agency in another state with regulatory authority over matters

relating to alcohol beverages or a law enforcement agency of another state; and

(3) the Federal Tax and Trade Bureau, a Federal agency with regulatory authority over matters relating to alcohol beverages, and a Federal law enforcement agency.

[(f) Of the fees collected by the [Commission] under Sections 3(a) and 8(a), 50 percent shall be [appropriated] [allocated] to the [Commission] for costs incurred in enforcing this [act].]

***Legislative Note:** Subsection (f) is an optional provision that ensures at least some funding is dedicated by the enacting state to enforcing state law relating to direct-to-consumer shipping. However, agency funding mechanisms and priorities can vary widely from state to state.*

SECTION 15. SUSPENSION, REVOCATION, OR NONRENEWAL OF WINE DIRECT SHIPPER LICENSE OR FULFILLMENT PROVIDER LICENSE.

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

(1) the licensee violates this [act] or rule adopted under this [act];

(2) the licensee ships wine or other alcohol beverages into another state in violation of that state's law;

(3) the licensee no longer meets the qualifications applicable for the license; or

(4) the [Commission] discovers a fact or circumstance that, had it been known when the [Commission] considered the earlier license application, would have caused the [Commission] to deny the license application.

(b) For purposes of subsection (a)(1), a violation of Section 6 by a wine carrier shall be considered to be a violation of this [act] by the wine direct shipper licensee under whose license the wine was shipped.

[(c) The [Commission] may not suspend, revoke, or refuse to renew a wine direct shipper

license or fulfillment provider license under subsection (a)(1) or (2) unless the [Commission] first sends the licensee a cease and desist [order] [letter] and the licensee fails to correct the violating activity or omission.]

(d) The duration of license suspension under subsection (a) shall be a period determined by the [Commission], except that a suspension under subsection (a)(1) may not exceed [60 days] for a first violation or [120 days] for a subsequent violation within a [36-month] period. If the [Commission] revokes a license under subsection (a), the licensee may not reapply for issuance of the same license for a period of [12 months] after the date of the revocation.

(e) A suspension, revocation, or refusal to renew a license under this section is subject to judicial review in accordance with [this state's administrative procedure act].

[(f) In lieu of suspension, revocation, or refusal to renew a license under subsection (a), the [Commission] may agree to an offer in compromise with the licensee under which the licensee pays to the [Commission] a civil penalty in an agreed amount.]

(g) A suspension, revocation, or refusal to renew a license under this section is in addition to a penalty that may be imposed under Section 17.

Drafting Note: Subsection (a)(1), violation of the act, encompasses a variety of actions or omissions, including the licensee's failure to maintain records, file reports, pay taxes, maintain a current agent for service of process, or allow inspection of the licensee's premises.

Drafting Note: Subsection (a)(2) allows the enacting state to pursue administrative action against a wine direct shipper licensee or fulfillment provider licensee for illegally shipping in violation of another state's law.

Drafting Note/Legislative Note: Some states utilize a broad statutory provision that applies to the suspension, revocation, or nonrenewal of any alcohol beverage license or permit issued by the state. In those states, the legislative drafter may determine that the existing provisions properly cover the new licenses created in this act and that a portion of this section is not necessary. In addition, the brackets around subsections (c) and (f) identify these provisions as optional because some states recognize a formal cease-and-desist or offer-in-compromise process and some states do not.

Drafting Note: Under subsection (a)(3), if a winery loses its winery license or acquires a prohibited interest in another industry member, the Commission may revoke the winery's wine direct shipper license.

Legislative Note: The brackets in this provision 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. Some states also impose a higher penalty for a third violation than a second violation. While the draft includes a 36-month "look back" period in counting prior violations, many states place no limit on the "look back" period.

SECTION 16. SUSPENSION, REVOCATION, OR NONRENEWAL OF OTHER LICENSE OR PERMIT; NOTICE OF CERTAIN VIOLATIONS.

(a) Except as otherwise provided in subsection (b), [and subject to subsection (c),] the [Commission] may, after notice and an opportunity for hearing, suspend, revoke, or refuse to renew a license, permit, or other authorization to produce, distribute, or sell alcohol beverages issued by the [Commission] if the person holding the license, permit, or other authorization has shipped wine or other alcohol beverages into another state in violation of that state's law.

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

[(c) The Commission may not suspend, revoke, or refuse to renew a license, permit, or other authorization issued by the [Commission] under subsection (a) unless the [Commission] first sends the licensee, permittee, or other authorized person a cease and desist [order] [letter] and the licensee, permittee, or other authorized person thereafter ships wine or other alcohol beverages into another state in violation of that state's law.]

(d) The duration of a suspension under subsection (a) shall be a period determined by the [Commission], except that the suspension may not exceed [60 days] for a first violation or [120 days] for a subsequent violation within a [36-month] period. If the [Commission] revokes a

1 license, permit, or other authorization under subsection (a), the licensee, permittee, or authorized
2 person may not reapply for issuance of the same license, permit, or other authorization for [12
3 months] after the date of the revocation.

4 (e) A suspension, revocation, or refusal to renew a license, permit, or other authorization
5 under this section is subject to judicial review in accordance with [this state's administrative
6 procedure act].

7 [(f) In lieu of suspension, revocation, or refusal to renew a license, permit, or other
8 authorization under subsection (a), the [Commission] may agree to an offer in compromise with
9 the licensee, permittee, or authorized person under which the licensee, permittee, or authorized
10 person pays to the [Commission] a civil penalty in an agreed amount.]

11 (g) A suspension, revocation, or refusal to renew a license, permit, or other authorization
12 under this section is in addition to a penalty that may be imposed under Section 17.

13 (h) If the [Commission] finds, after notice and an opportunity for hearing, that a person
14 has violated Section 7, other than Section 7(b), the [Commission] shall:

15 (1) notify the Federal Tax and Trade Bureau of the violation;

16 (2) notify the alcohol beverage regulatory agency of the state where the person is
17 located of the violation; and

18 (3) identify the person on the [Commission's] Internet website or by other
19 publicly available means in a list of violators created and maintained by the [Commission] under
20 Section 18(a).

21 **Drafting Note:** Subsection (a) allows the enacting state to, for example, take action against a
22 retailer licensed in the state if the retailer is illegally shipping alcohol into another state in
23 violation of that state's law. A retailer that does so risks losing its retail license in its home state.

24
25 **Legislative Note:** As discussed after Section 15, each state already issues various forms of
26 alcohol beverage licenses or permits and has some form of existing process and standards for

1 *the suspension, revocation, or nonrenewal of a license or permit. The legislative drafter may*
2 *determine that part of this section is unnecessary and that it is preferable to insert subsection (a)*
3 *into the enacting state's existing framework for suspension, revocation, or nonrenewal of alcohol*
4 *beverage licenses.*

5
6 *The brackets in this provision indicate that such matters as the maximum period of suspension*
7 *and minimum period of revocation may be adjusted to reflect the enacting state's legislative*
8 *preferences. Some states also impose a higher penalty for a third violation than a second*
9 *violation. While the draft includes a 36-month "look back" period in counting prior violations,*
10 *many states place no limit on the "look back" period.*

11 12 **SECTION 17. PENALTIES; NOTICE OF CERTAIN VIOLATIONS.**

13 (a) Except as otherwise provided in subsections (b), (c), (d), (e), or (f), a person that
14 violates this [act] is subject to a civil penalty, for each violation, of not more than [\$1,000] for a
15 first violation and not more than [\$2,000] for a subsequent violation within a [36-month] period.

16 (b) A person that violates Section 7 is subject to a civil penalty, for each violation, of not
17 more than [\$10,000] for a first violation and not more than [\$20,000] for a subsequent violation
18 within a [36-month] period.

19 (c) A person that sells or delivers wine to an individual under 21 years of age in violation of this
20 [act] is subject to a civil penalty, for each violation, of not more than [\$1,000] for a first violation
21 and not more than [\$5,000] for a subsequent violation within a [36-month] period.

22 (d) A wine shipper licensee, fulfillment provider licensee, or wine carrier that violates Section 11
23 or 12 is subject to a civil penalty, for each violation, of not more than [\$200] for a first violation
24 and not more than [\$1,000] for a subsequent violation within a [36-month] period.

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

28 (f) The penalty for a wine direct shipper licensee's failure to pay taxes to the [Commission] as
29 required under Section 13(b) and (c), and for any other tax-related violation, shall be determined by law

1 of this state other than this [act], except to the extent that any rule of the [Commission] implementing
2 Section 13(f) imposes on the wine direct shipper licensee the penalty under subsection (a).

3 (g) For purposes of this section, a violation of a rule adopted by the [Commission] under
4 this [act] is considered a violation of this [act] or, as applicable, the relevant section of this [act].

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

6 (1) tax liability that may arise in connection with the activity that resulted in the
7 violation; and

8 (2) any suspension, revocation, or nonrenewal under Section 15 or 16.

9 (i) If a court finds that a person has violated Section 7, other than Section 7(b), upon
10 receiving notice of this finding of violation, the [Commission] shall:

11 (1) notify the Federal Tax and Trade Bureau of the violation;

12 (2) notify the alcohol beverage regulatory agency of the state where the person is
13 located of the violation; and

14 (3) identify the person on the [Commission's] Internet site or by other publicly
15 available means in a list of such violators created and maintained by the [Commission] under
16 Section 18(a).

17 **Drafting Note:** Under subsection (f), provisions of the state's tax law will establish the penalty
18 for tax-related violations under the act.

19
20 **Legislative Note:** Some states prescribe general penalties that apply to almost any violation of
21 the state's alcohol beverage laws. The legislative drafter may determine that part of this section
22 is unnecessary and that it is preferable to insert only certain provisions of it into the enacting
23 state's existing penalty structure for alcohol beverage violations. It is also common for
24 violations of state alcohol beverage laws to be criminal offenses. The creation in the act of only
25 civil penalties might not be consistent with the state's approach to penalizing alcohol beverage
26 violations. In addition, some states provide for a warning process such as the issuance of a
27 cease and desist letter before the violator is penalized. The act provides for an optional warning
28 process, the cease and desist order, in connection with the suspension, revocation, or
29 nonrenewal of a license, but not with respect to a court proceeding. Some have argued that, if
30 the wrongful actor is completely unlicensed, requiring a cease-and-desist letter impedes effective

1 enforcement because the more brazen and sketchy illegal operators can change their business
2 names and location upon receiving this letter informing them that they have been “caught” and
3 thereby continue to evade enforcement efforts. In addition, there is an additional level of
4 administrative complexity if a cease-and-desist letter is required of the regulatory agency but the
5 court proceeding is instituted by a different unit of government. This act does not include any
6 provision specifying who may bring a court enforcement proceeding. Depending on the state,
7 the action might be brought by the attorney general, a district attorney or city attorney, or the
8 regulatory agency. This act presumes that each state will continue to rely on existing law the
9 specifies which agencies or governmental units may bring an enforcement action.

10
11 The brackets around the penalty amounts indicate that the amount of each penalty may be
12 modified. Some states also impose a higher penalty for a third violation than a second violation.
13 While the draft includes a 36-month “look back” period in counting prior violations, many states
14 place no limit on the “look back” period.

15 16 **SECTION 18. LIST; RULES.**

17 (a) The [Commission] shall establish a list of persons subject to Section 16(h)(3) or
18 17(i)(3). If the person is no longer subject to Section 16(h)(3) or 17(i)(3), the [Commission] shall
19 correct the list.

20 (b) The [Commission] may adopt rules to implement, administer, and enforce this [act],
21 including rules concerning:

- 22 (1) forms used under this [act];
- 23 (2) methods and deadlines for submitting license applications;
- 24 (3) methods and deadlines for filing reports;
- 25 (4) appointing and maintaining agents for service of process;
- 26 (5) recordkeeping requirements, including authorizing records to be kept in
27 electronic form;
- 28 (6) tax returns, tax payments, and the collection of taxes due under this [act];
- 29 (7) a process and criteria for the [Commission] to approve age verification
30 services and a requirement that only [Commission]-approved age verification services be used;
- 31 (8) a wine direct shipper licensee’s notice identifying each licensed fulfillment

1 provider it will use to ship wine on its behalf; and

2 (9) areas of the state to which wine cannot be shipped under Section 5(f).

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

6
7 **SECTION 19. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
8 applying and construing this uniform act, consideration must be given to the need to promote
9 uniformity of the law with respect to its subject matter among states that enact it.

10 **SECTION 20. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
11 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
12 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
13 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
14 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
15 U.S.C. Section 7003(b).

16 **SECTION 21. TRANSITIONAL PROVISION.**

17 (a) A license, permit, or other authorization to sell and ship, or package and ship, wine to
18 individuals in this state that was issued by the [Commission] and in effect on [the effective date
19 of this [act]] continues until its date of expiration or six months after [the effective date of this
20 [act]], whichever occurs first. During this period, the person holding the license, permit, or other
21 authorization may continue to engage in any activity authorized under the license, permit, or
22 other authorization and is subject to the law of this state applicable to the license, permit, or other
23 authorization as it existed immediately before enactment of this [act]. Upon expiration of the
24 license, permit, or other authorization, or six months after [the effective date of this [act]],
25 whichever occurs first, the person holding the license, permit, or other authorization is subject to

1 this [act].

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

5 **[SECTION 22. SEVERABILITY.** If any provision of this [act] or its application to any
6 person or circumstance is held invalid, the invalidity does not affect other provisions or
7 applications of this [act] which can be given effect without the invalid provision or application,
8 and to this end the provisions of this [act] are severable.]

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

11
12 **SECTION 23. REPEALS; CONFORMING AMENDMENTS.**

13 (a) [Current direct-to-consumer wine shipping laws]

14 (b)

15 (c)

16 ***Legislative Note:** The state should examine its statutes regarding { } to determine whether*
17 *conforming revisions are required to { } In particular, the state should review its statutes in*
18 *light of the provisions of this act relating to:*

19 { } See Section { }.

20 { } See Section { }.

21
22 **SECTION 24. EFFECTIVE DATE.** This [act] takes effect

23 ***Legislative Note:** The legislative drafter may wish to include a delayed effective date of at least*
24 *60 days to allow time to all applicable agencies and industry members to prepare for*
25 *implementation.*