

## UNIFORM LAW COMMISSION ADOPTS PROPOSED MODEL ACT GOVERNING DTC SHIPMENTS OF ALCOHOL BEVERAGES



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Judges, lawyers, lawmakers, and legal academics from across America met this summer in Philadelphia for the 131st Annual Meeting of the **Uniform Law Commission (ULC)**, held from July 8, 2022, through July 14, 2022. At that meeting, the commissioners of the ULC approved the July 12th draft of the **Uniform Alcohol Direct Shipping Compliance Act**; a copy is accessible online at: <https://www.uniformlaws.org/viewdocument/vote-by-state-act?CommunityKey=ae85397d-c04e-465d-a44b-b308d42b3160&tab=librarydocuments>.

### What is the Uniform Law Commission?

The ULC, also known as the National Conference of Commissioners on Uniform State Laws, is a non-profit association comprised of members appointed by state governments. Founded in 1892, the ULC provide states with non-partisan, carefully-conceived, and well-drafted model legislation that brings clarity and stability to critical areas of state statutory law.

Importantly, the association does not make law; rather, the ULC drafts proposed legislation for consideration by state legislatures with the goal of harmonizing certain areas of law where common considerations exist without regard to jurisdictional differences. Once the ULC proposes a model act, it is then up to state lawmakers to introduce the proposed Act and for the legislatures to adopt it into law.

Over the course of its existence, the ULC has drafted and recommended to the states over 300 proposed model acts. The organization is most well-known for drafting the **Uniform Commercial Code (UCC)**, a set of rules for governing commercial transactions in the United States. With minor revisions here and there, the UCC as proposed by the ULC has been enacted by all 50 states and the District of Columbia.

After receiving the ULC's seal of approval, a "uniform act" is officially promulgated for consideration by the states, and legislatures are urged to adopt it. Whether they do so is never a predictable circumstance, especially in the world of alcohol legislation.

### ***What is the Uniform Alcohol Direct Shipping Compliance Act***

The ULC appointed a special committee to investigate and draft a model act with the aim to "enhance an enacting state's capability to detect and stop unlawful Direct To Consumer (DTC) shipments of alcoholic beverages to the state's residents." At the time the drafting committee was constituted, 47 states permitted DTC wine shipments by wineries, and approximately a dozen states permitted DTC shipments of other alcohol beverages. The ULC committee's goal was to develop a uniform statutory framework that could be integrated into each state's respective DTC laws, creating a more uniform compliance environment for alcohol industry members while also establishing new enforcement tools for states to regulate interstate alcohol shipping more effectively.

As Robert Tobiassen, the President of the **National Association of Beverage Importers (NABI)** and an observer of the ULC committee's deliberations recently wrote:

The ULC goal is not to recommend adoption (or repudiation) of current state laws and policies permitting DTC of wine and spirits; rather, the goal to recommend consistent policies for regulating such commercial transactions where the state at issue has permitted its consumers to enjoy the privilege of having access to the national and international marketplace for beer, wine, and spirits.

Among the 70+ participants in the drafting process were numerous observers representing different interests and views from within the alcohol beverage industry. In addition to NABI, the **Wine Institute**, the **Distilled Spirits Council of the United States (DISCUS)**, the **Wine and Spirits Wholesalers of America (WSWA)**, and the **National Association of Wine Retailers (NAWR)** were just some of the trade associations that attended as observers and actively engaged with committee members regarding key elements of the drafted language.

After almost three years of drafting and numerous public hearings, the ULC committee charged with this project produced a model act for regulating the interstate shipment of alcohol beverages. The Uniform Alcohol Direct Shipping Compliance Act covers specifics like registration of fulfillment providers, delivery by carrier from licensed direct shipper or registered fulfillment provider, shipment reports, jurisdiction, and enforcement powers.

Equally important to many alcohol industry members, the model legislation does not draw any distinction between imported and domestic alcohol beverage products. Rather, the Act as proposed by the ULC leaves it up to the adopting state to specifically define what products constitute “covered alcoholic beverages,” as that term is used in the Act.

As is often the case when drafting legislation, the end product rarely satisfies everyone. Nevertheless, the drafting process was thorough and transparent, affording all interested persons an opportunity to present and defend their respective positions.

### What Happens Next?

Now that the commissioners of the ULC have formally approved The Uniform Alcohol Direct Shipping Compliance Act, the model legislation will be transmitted to the states for consideration. State lawmakers are free to adopt, amend, or even ignore the model act.

Some industry members already have voiced concerns over the Act. For example, the Wine Institute and **WineAmerica** issued a joint letter to the ULC earlier this month expressing concern that the diversity of state approaches for regulating the alcohol industry make alcohol DTC business practices an “inappropriate project for the ULC to pursue.” The NAWR, which vigorously advocates in favor of a national market for retail sales of wine, believes the Act “violates the U.S. Constitution’s principles of legal jurisdiction,” although the drafters amassed substantial legal authority to the contrary.

Interestingly, alcohol beverage wholesalers declined to give full-throated support to the initiative; however, that was driven primarily by the notion that the middle tier objects to any form of DTC shipping that leaves wholesalers out of the distribution chain. In a public statement concerning the ULC’s Model Act, the wholesalers’ trade association WSWA said:

Wine & Spirits Wholesalers of America opposes the direct-to-consumer shipping of alcohol and were disappointed that the Uniform Law Commission took up this issue. But we appreciate the efforts the ULC has taken to provide state lawmakers with model legislation to promote a compliant and fair marketplace for those states that choose to allow certain types of shipping.

Alcohol legislating is rarely an easy process. Despite the legal brain power that went into the crafting of the Uniform Alcohol Direct Shipping Compliance Act, it's far from clear that the draft legislation will actually be adopted into law in any state.

Nevertheless, given the quality of the work product, it is sure to at least get careful attention from state alcohol regulators, legislators, and attorneys general.



[Richard M. Blau](#) leads GrayRobinson's [Nationwide Alcohol Industry Group](#), focusing on the laws that govern the production, importation, marketing, distribution and sale of alcohol beverages throughout America. Richard works with all levels of the alcohol industry's "three-tier system," as well as providers who are not licensees. He has represented international alcohol beverage importers and domestic manufacturers, statewide wholesaler trade groups and regional distributors, and retailers (including multistate on- and off-premises chains). Throughout the three year drafting process, Richard served as the **American Bar Association's** representative and liaison to the ULC Committee responsible for drafting the Uniform Alcohol Direct Shipping Compliance Act.